REQUEST FOR REHEARING
OR, IN THE ALTERNATIVE, CLARIFICATION OF
SOUTHWEST POWER POOL, INC.

Pursuant to Rule 713 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, ¹ Southwest Power Pool, Inc. (“SPP”) submits this Request for Rehearing and Clarification of the order issued on July 1, 2011 in the above captioned docket. ²

SPP seeks rehearing of the Commission’s misinterpretation of the language in section 5.2 of the Joint Operating Agreement (“JOA”) between the Midwest Independent Transmission System Operator, Inc. (“MISO”) and SPP, ³ the result of which incorrectly permits MISO to misappropriate SPP’s transmission capacity without compensation for the purpose of incorporating Entergy Arkansas, Inc. (“Entergy Arkansas”) into MISO. The Commission, without explanation, failed to interpret the JOA’s use of the ordinary term “contract path” in a manner consistent with the common industry meaning ascribed to these words. Moreover, the Commission completely miscomprehended the parties’

¹ 18 C.F.R. § 385.713.
single past use of section 5.2 of the JOA, upon which the Commission also relied for its interpretation.

If nonetheless the Commission declines to grant rehearing and reverse its holding, then, in the alternative, SPP seeks clarification that section 5.2 of the JOA provides MISO the ability to use SPP’s transmission system only on a non-firm basis and only in an amount up to the amount of the direct contract path capacity that MISO has with Entergy Arkansas. Any other interpretation would lead to patently illogical results. SPP also seeks clarification that MISO’s obligation to renegotiate the JOA in good faith, as the Commission directed, includes an obligation to address any and all changes to the JOA that SPP may propose, including potential changes to section 5.2.

I. SPECIFICATION OF ERRORS AND STATEMENT OF ISSUES

In accordance with Order No. 663-A\(^4\) and Rule 713 of the Commission’s regulations, SPP states the following issues and specifications of errors:

- The Commission erred in interpreting section 5.2 of the JOA\(^5\) by failing to make a reasoned decision based upon substantial evidence in the record. 5 U.S.C. § 706(2)(A); Sithe/Independence Power Partners v. FERC, 165 F.3d 944, 948 (D.C. Cir. 1999).

- The Commission erred by failing to interpret the JOA’s usage of the term “contract path” in a manner consistent with common industry usage of the words. 5 U.S.C. § 706(2)(A); Colorado Interstate Gas Co. v. FERC, 599 F.3d 698, 703 (D.C. Cir. 2010).


\(^5\) Petition Order at PP 61-63.
• The Commission erred by misstating and miscomprehending the single past use of section 5.2 of the JOA, thereby erroneously finding that its interpretation of the JOA was “consistent with the course of performance of the parties.”

II. REQUEST FOR REHEARING

A. The Commission Misinterpreted The Language Of Section 5.2 Of The JOA.

The Commission’s terse three-paragraph interpretation of the term “contract path” in the Petition Order lacks any sound foundation and therefore is arbitrary and capricious. The Commission failed “to demonstrate that it has made a reasoned decision based upon substantial evidence in the record, and [that] the path of its reasoning [is] clear.” The Commission’s interpretation of the JOA’s usage of the term “contract path” is contrary to established trade usage, the Commission’s own usage of the term, and even MISO’s usage of the term. The Commission also relied on an incorrect understanding of the facts of the lone application of section 5.2 in the past seven years to support its mistaken finding that its interpretation is “consistent with the course of performance of

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6 Petition Order at P 63.
7 Id. at PP 61-63.
9 See Colorado Interstate Gas Co. v. FERC, 599 F.3d 698, 703 (D.C. Cir. 2010) (“Relying on the trade usage of the term is appropriate, as construing terms in light of their commonly understood meaning is a hallmark of reasonable interpretation.”) (internal citations and quotation marks omitted); see also Restatement (Second) of Contracts § 202(5) (1981) (terms must interpreted according to trade usage).
the parties.\textsuperscript{10} For all these reasons, the Commission should reverse its decision that section 5.2 “would allow for the sharing of available transmission capacity between MISO and Entergy Arkansas and SPP and Entergy Arkansas in the event Entergy Arkansas becomes a transmission-owing member of MISO”\textsuperscript{11} and interpret the plain language of section 5.2 based on the common industry usage of the term “contract path.” If the Commission believes it cannot so interpret the plain language, it should set for hearing the parties’ intentions regarding their use of the term “contract path.”

1. The Commission Incorrectly Evaluated The JOA’s Use Of The Term “Entity” Rather Than The Phrase “Contract Paths To The Same Entity.”

The Commission’s starting point, an evaluation of the JOA’s use of the term “entity,”\textsuperscript{12} is beside the point of whether MISO may use section 5.2 of the JOA to provide market service to Entergy Arkansas, once it is a transmission-owing member of MISO. The Commission’s finding that “the term ‘entity’ is sufficiently broad to encompass Entergy Arkansas, regardless of whether it is a member of MISO, SPP, or neither”\textsuperscript{13} is immaterial to whether SPP and MISO would have contract paths to Entergy Arkansas over which MISO may provide market service within the meaning of section 5.2 of the JOA. SPP did not contend that Entergy Arkansas, a duly incorporated person under the laws of Arkansas, is not an “entity” within the plain meaning of that word. Any corporate person obviously is an “entity,” and, if Entergy Arkansas were to join MISO, Entergy Arkansas obviously would be an “entity” that is a transmission-owing

\textsuperscript{10} Petition Order at P 63.
\textsuperscript{11} Id. at P 60.
\textsuperscript{12} Id. at P 61.
\textsuperscript{13} Id. at P 61.
member within MISO. But, this proves nothing and is not helpful in understanding the applicability of section 5.2 to Entergy Arkansas’s integration into MISO.

Rather, as SPP explained, once Entergy Arkansas joins MISO, SPP and MISO will not have contract paths to Entergy Arkansas (in its capacity as a member of MISO that has turned over operational control of its transmission facilities) over which MISO may provide market service to Entergy Arkansas.\(^\text{14}\) Entergy Arkansas still would be an “entity,” just not an entity to which SPP and MISO have “contract paths” within the meaning of section 5.2.\(^\text{15}\) Section 5.2 by its plain terms only applies if SPP and MISO both have “contract paths to the same entity.” If Entergy Arkansas joins MISO, SPP would no longer have any contract paths to Entergy Arkansas; rather, after Entergy Arkansas joins MISO, all such contract paths would become contract paths “to MISO.” This is because once MISO assumes operational control of Entergy Arkansas’s transmission facilities, all points of receipt or delivery for transmission service to or from SPP would be MISO, not Entergy Arkansas, points of receipt and delivery. No party disputes this. Accordingly, all of SPP’s existing paths to Entergy Arkansas will become paths “to” MISO and there will be no SPP contract path capacity to Entergy Arkansas for SPP to share under section 5.2.

Further, MISO cannot have a contract path to itself. Transmission providers cannot have contract paths to (or more aptly, within) themselves. There is no need for MISO, or any other transmission provider, to designate a “contract path” with points of receipt and points of delivery to move energy from resources on its own system to its

\(^{14}\text{Motion to Intervene and Protest of Southwest Power Pool, Inc., Docket No. EL11-34-000, at 33-35 (May 9, 2011) (“SPP Protest”).}\)

\(^{15}\text{SPP Protest at 33-35.}\)
own system load. As the Commission has found, “[n]etwork service has no identified contract-path,”16 and it is network service that is used to move the energy dispatched in MISO’s market. MISO simply manages its system with least cost economic dispatch to match resources with load in the most efficient manner. MISO does not have contract paths over which it provides market service to its internal, transmission-owning members, and MISO will not have a contract path to Energy Arkansas within the meaning of section 5.2 after Entergy Arkansas joins MISO.17

2. The Commission’s Interpretation Of Section 5.2’s Use Of The Term “Contract Path” Lacks Foundation.

The Commission’s position that MISO can have a contract path “to”18 one of its own transmission-owning members lacks foundation. The Commission consistently has stated that it is point-to-point transmission service, not network service, that is provided over contract paths.19 The Commission, without explanation and without even attempting to reconcile its consistent past usage of the term “contract path,” simply asserted that “[t]here is no reason why MISO cannot have a ‘contract path’ with Entergy


18 See JOA § 5.2 (“If the Parties have contract paths to the same entity, the combined contract path capacity will be made available for use by both Parties.”) (emphasis added).

19 See Order No. 890 at P 1612 (“Point-to-point service consists of a contract-path with a designated point of receipt and point of delivery”).
Arkansas if Entergy Arkansas becomes a transmission-owning member of MISO, or why SPP would no longer have contract paths with Entergy Arkansas simply by virtue of Entergy Arkansas joining MISO.” 20 In merely posing these questions in the negative, absent any factual or legal support for the statements, the Commission failed to explain or support its interpretation and ignored its responsibility to engage in reasoned decision-making.

The Commission’s interpretation of the phrase “contract paths to the same entity” improperly expands the meaning of “contract path” beyond its commonly understood definition. The only purported support the Commission cites for its expansive interpretation is “the context of 5.2 and how it has been used.” 21 As explained below in section II.A.3, the Commission misunderstood the facts of the single instance in which section 5.2 “has been used,” and this past use therefore cannot support the Commission’s interpretation. As to the “context” of the use of the term “contract path,” the Commission erroneously cited language designed to limit the scope of the application of section 5.2 to expand its scope to include never before contemplated uses of SPP’s system. The Commission quoted language from section 5.2 that restricts its usage by requiring that section 5.2 “will not create new contract paths for either Party that did not previously exist” and that SPP and MISO “will not be able to deal directly with companies with which it does not physically or contractually interconnect.” 22 It is clear that the purpose of these two clauses is to narrow the application of section 5.2. The Commission acted

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20 Petition Order at P 62.

21 Id. at P 62.

22 JOA § 5.2 (emphasis added); see Petition Order at P 62.
arbitrarily and capriciously in using this limiting language to support its expansive reading of section 5.2.

If the Commission wanted to rely on context, it should have acknowledged that the parties placed the language at issue in the section of the JOA concerning the availability of capacity for selling point-to-point transmission service. Section 5.2 is located in Article 5, Available Flowgate Capability Calculations, which provides for the coordinated exchange of data to enable MISO and SPP to know how much capacity is available for selling point-to-point transmission service. The Commission entirely ignored this actual context in its ruling, despite claiming to rely on “the context of section 5.2.”

3. The Commission Misunderstood The Single Instance Of The Past Use Of Section 5.2, Erroneously Finding That SPP Allowed Use Of Its System As A Contract Path To An Internal Transmission-Owning Member Of MISO.

The Commission relied on an incorrect understanding of the single instance of past use of section 5.2 to erroneously find that SPP allowed its system to be used as a contract path to an internal, transmission-owning member of MISO. In fact, in the single instance in which section 5.2 was used, SPP allowed MISO to use SPP’s contract path to Entergy Arkansas, a third party, not to Ameren, an internal MISO operating entity. SPP is not interconnected, physically or contractually, to the Ameren radial load off of the Entergy Arkansas system that the Commission cited in describing the past use; SPP does not have any contract path to that Ameren radial load. As a result, to provide service to that Ameren radial load when MISO’s contractual path to Entergy Arkansas

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23 See Petition Order at n.47.
24 Id. at P 63.
was out of service in 2009, MISO used SPP’s contract path capacity to Entergy Arkansas. From there, Entergy Arkansas, not SPP, provided network service to MISO and Ameren to complete the transaction. SPP was not involved after it delivered the energy to Entergy Arkansas, a third party, and section 5.2 was not used to deliver MISO energy to an internal MISO load.

Thus, the Commission mistakenly interpreted section 5.2 based on its errant understanding that “both MISO and SPP have interconnections with Ameren, a transmission-owning member of MISO.” In actuality, in this single instance in which section 5.2 was used, both MISO and SPP had interconnections with Energy Arkansas, a third-party system, and it was these contract paths to Entergy Arkansas that permitted the use of section 5.2. SPP had no “interconnections with” the Ameren load. Accordingly, the facts of the lone application of section 5.2 support SPP’s interpretation of the JOA – that it was intended for use in reaching third party systems – and provide no support to MISO and the Commission’s interpretation. There are no examples of past use of section 5.2 in the manner MISO proposes. Therefore, the Commission’s reliance on “how [section 5.2] has been used” to support its interpretation of section 5.2 is misplaced, and the Commission cannot rely on this past example to find section 5.2 applicable here.

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25 Id. at P 63.
26 The performance of the joint operating agreement between MISO and PJM Interconnection, L.L.C. is not probative of SPP’s intentions. Aside from vastly different circumstances, where both PJM and MISO had remote loads they wished to serve giving rise to mutual benefits, words can be used differently by different parties and “identical language in different contracts” can be “interpreted to have different meanings.” Pennzoil Co. v. FERC, 645 F.2d 360, 386 (5th Cir. 1981).

The Commission unreasonably, and without explanation, ignored the ordinary industry usage of the term “contract path.” Reasonable interpretation of commercial agreements requires the Commission to rely on trade usage to discern the meaning of terms.\(^{27}\) As commonly used in the electric industry, a contract path is a designated path over which parties engage in point-to-point transmission service transactions. Contrary to the Petition Order,\(^{28}\) the JOA employs this common usage.\(^{29}\) The Commission blithely dismissed this contention, ignoring common industry usage of the term “contract path.” The Commission, without explanation, found SPP’s position “unsupported,” despite an affidavit describing SPP’s intent regarding section 5.2 and SPP’s detailed discussion of the common industry usage of the term “contract path” as used by the North American Electric Reliability Council (“NERC”), the North American Energy Standards Board (“NAESB”), MISO, and even the Commission.\(^{30}\) None of this evidence was addressed by the Commission.

Common industry usage of the term “contract path” fully supports SPP’s position that a contract path is a reference to a path used for point-to-point transmission service.

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\(^{27}\) See Colorado Interstate Gas Co. v. FERC, 599 F.3d 698, 703 (D.C. Cir. 2010) (“Relying on trade usage of the term is appropriate, as construing terms in light of their commonly understood meaning is a hallmark of reasonable interpretation.”) (internal citations and quotation marks omitted); see also Restatement (Second) of Contracts § 202(5) (1981) (terms must interpreted according to trade usage).

\(^{28}\) Petition Order at P 62.

\(^{29}\) As noted, the structure of the JOA confirms this usage in that section 5.2 is location in the Article concerning point-to-point transmission service. See JOA § 5.1.

\(^{30}\) SPP Protest at 34-39.
NERC, the entity that develops the reliability standards for the electric industry, defines contract path as “an agreed upon electrical path for the continuous flow of electrical power between the parties of an Interchange Transaction,” where an Interchange Transaction is an agreement for the transfer of energy across one or more Balancing Authority Areas – i.e., a point-to-point transaction.\(^{31}\) MISO transactions with Entergy Arkansas will take place within the single balancing authority area established by MISO in 2008.\(^{32}\) NAESB, which serves as an electric industry forum for the development and promotion of standards, defines a “contract path” as “between contiguous Transmission Service Providers.”\(^{33}\) MISO and Entergy Arkansas will not be “contiguous Transmission Service Providers” once Entergy Arkansas is internal to the MISO balancing authority area. Individually and collectively, both NERC’s and NAESB’s definitions of contract path provide context to section 5.2 and support the interpretation that section 5.2 is focused on contract path capacity used for point-to-point transmission service. Neither definition provides any support for the notion that contract paths are used in providing network service within an RTO.

What is more, MISO’s own business practices distinguish between flow based services (i.e., market or network service) and contract path services (i.e., point-to-point service). MISO applies contract path principles only in the context of transactions with

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\(^{33}\) NAESB Wholesale Electric Quadrant Business Practices Standards Version 002.1, Definition of Terms section (booklet dated March 11, 2009 with minor corrections applied through December 14, 2009): 008-010 (emphasis added).
Balancing Authority Areas with physical connections to MISO.\textsuperscript{34} Entergy Arkansas, when it joins MISO, will not be a Balancing Authority connected to MISO; it will be part of the single MISO Balancing Authority. MISO’s application of the term “contract path” comports with both NERC’s and NAESB’s definition and SPP’s interpretation of the term in section 5.2.

The Commission failed to consider common industry usage, its own general usage, and even MISO’s own usage of the term “contract path” in evaluating section 5.2. In so doing, the Commission acted in an arbitrary and capricious manner and failed to engage in reasoned decision-making. Accordingly, the Commission should reverse its decision and find that section 5.2 is inapplicable to the provision of market service by MISO to Entergy Arkansas over SPP facilities.

5. If The Commission Does Not Reverse Its Decision And Find Section 5.2 To Be Inapplicable To MISO Providing Market Service To Entergy Arkansas, It Should Set For Hearing The Interpretation Of Section 5.2 And Consider The Extrinsic Evidence Of The Negotiation Of The Provision.

For the reasons explained above, the Commission should reverse its interpretation and interpret the language of section 5.2 consistent with common industry usage of the term “contract path.”\textsuperscript{35} If the Commission does not so interpret the contract, it should set for hearing the parties’ intentions regarding the use of the term “contract path.” The hearing should evaluate the extrinsic evidence regarding the parties’ intentions in using the term of “contract path” and the commercial context in which the JOA was negotiated.

\textsuperscript{34} MISO Business Practice Manual for Module B of the Open Access Transmission, Energy and Operating Reserves Tariff § 4.3.

The Commission must consider “all relevant course of dealing and usage [of trade] evidence” before determining whether an agreement contains ambiguities, because “evidence of course of dealing and usage of trade is admissible to permit analysis of the written agreement in the proper commercial setting.”36 “Even when a contract is unambiguous, it may be appropriate to turn to one common form of extrinsic evidence of trade practice and custom.”37

If the Commission continues to ignore the plain meaning of the words as used in the industry, it cannot, without acting arbitrarily and capriciously, interpret section 5.2 without reference to SPP’s testimony, submitted by affidavit, regarding its intent in agreeing to section 5.2. SPP personnel involved in the negotiations did not contemplate that section 5.2 could be used to integrate distant, weakly connected systems into one RTO using the transmission capacity of the other RTO. Rather, SPP understood that section 5.2 referred only to the provision of point-to-point transmission service to entities that were not within SPP or MISO.38

36 Chase Manhattan Bank v. First Marion Bank, 437 F.2d. 1040, 1047 (5th Cir. 1971).
37 See TEG-Paradigm Envtl., Inc. v. US, 465 F.3d 1329, 1338 (Fed. Cir. 2006) (citing Hunt Constr. Group, Inc. v. US, 281 F.3d 1369, 1373 (Fed. Cir. 2002)).
38 See SPP Protest, Exhibit A, Affidavit of Carl A. Monroe at PP 12-19 (“Affidavit”); id. at P 15 (“At the time, we had internal discussions at SPP about the words used in section 5.2, and we believed that its reference to “contract paths” from MISO and SPP to other entities was a reference to the ability to conduct point-to-point transmission transactions to and from third party systems that were not a part of either MISO or SPP.”); id. at P 17 (“SPP does not recall any conversations with MISO that indicated that MISO intended this provision to enable a party’s market to use the other party’s transmission capacity to reach the internal loads of a distant member that lacked adequate interconnections with the market.”).
III. REQUEST FOR CLARIFICATION

A. If The Commission Does Not Reverse Its Interpretation Of Section 5.2 Of The JOA, The Commission Should Clarify That Section 5.2 Provides MISO Only Non-Firm Service Up To The Amount Of Interconnection Capacity that MISO Has With Entergy Arkansas.

If the Commission does not reverse its interpretation of Section 5.2 of the JOA, it should clarify that section 5.2 provides MISO only non-firm service up to the amount of interconnection capacity that MISO has with Entergy Arkansas.

1. Interpreting Section 5.2 To Permit The Sharing Of Capacity Only On A Non-Firm Basis Is Consistent With Commission Precedent And Is The Only Sensible Interpretation Of The Provision.

Clarifying that section 5.2 provides only for non-firm service is consistent with the Commission’s holding in *Midwest Independent System Operator, Inc.*, 135 FERC ¶ 61,205 (2011) (“*Midwest ISO*”). In that case, the Commission, in accepting inclusion in the MISO tariff of a provision virtually identical to section 5.2 of the JOA, held that “MISO and Seams Service customer can each rely on the other party’s capacity that would be shared under the new provision *only on a non-firm basis*.”39 This only makes sense. Any other interpretation would mean that MISO could have an extremely limited interconnection with Entergy Arkansas (e.g. 10 MW), yet be able to receive unlimited, free firm transmission service (MISO indicates it intends to rely on the ability to transfer at least 4000 MW to Entergy Arkansas) over SPP’s system. Such an interpretation would unreasonably place both economic and operational burdens on SPP and its members, without compensation, which would be patently unjust and unreasonable.

Clarifying that section 5.2 provides only non-firm service also would appropriately confirm that MISO and Entergy Arkansas cannot rely on SPP’s system,

39 *Midwest ISO* at P 45 (emphasis added).
including all of the upgrades SPP is making to that system, to provide firm service to Entergy Arkansas loads, rather than relying on their own upgrades to the MISO-Entergy Arkansas interconnection. If section 5.2 provided for firm service in unlimited amounts, MISO and Entergy Arkansas would have no incentive to construct additional capacity to accommodate the firm network service that Entergy Arkansas needs to serve its loads. MISO should not be able to rely on SPP’s upgraded system, for which MISO currently has no cost responsibility under the Commission’s interpretation of section 5.2, to provide firm service to Entergy Arkansas.

The MISO energy market dispatch that MISO will provide over SPP’s facilities from resources not designated by Entergy Arkansas as network resources by definition is non-firm service. Energy delivered to network load from non-designated network resources is delivered on an as-available basis.\(^{40}\) This “secondary service”\(^{41}\) is non-firm “and, therefore, network customers should not be allowed to lock in [secondary] service in advance of other non-firm uses of available transmission.”\(^{42}\) The reservation priorities established by NERC in its Transmission Loading Relief (“TLR”) Procedures similarly provide that network integration transmission service from sources not designated as network resources has a reservation priority of NN6, which is a non-firm service

\(^{40}\) See Order No. 890 at P 1592.

\(^{41}\) See Order No. 890-A at P 455 (“The Commission has long required network customers to use secondary service to deliver energy from non-designated resources to serve network load.”).

\(^{42}\) Order No. 890-A at P 963; see also id. at P 453 (“[W]e reiterate that, to the extent a transmission provider takes power from a non-designated network resource to serve bundled retail load, such power must be a non-firm basis comparable to secondary network service.”).
priority.\textsuperscript{43} The Commission should confirm that service provided under section 5.2 is non-firm for all purposes.

If the Commission does not so clarify the meaning of section 5.2, at a minimum, it should confirm that how section 5.2 will be applied in this regard in the future may properly be addressed in the renegotiation of the JOA that the Commission has directed.\textsuperscript{44}

2. \textbf{Pursuant To Section 5.2, MISO May Share SPP Capacity Only Up To The Amount Of MISO’s Interconnection Capacity With Entergy Arkansas.}

The Commission also should clarify that, pursuant to section 5.2 of the JOA, MISO can share capacity on SPP’s system only up to the amount of interconnection capacity that MISO has with Entergy Arkansas, currently 1000 MW. To interpret section 5.2 as permitting MISO to share SPP’s system up to the far greater amount of interconnection capacity that SPP has with Entergy when MISO has only a much smaller interconnection with Entergy Arkansas would lead to absurd results. MISO could simply terminate its current contract path to Entergy Arkansas (which is itself in the process of renegotiation) and replace it with a 10 MW (or even 1 MW) contract path (at minimal cost) and then use the full extent of SPP’s extensive interconnection capacity with Entergy Arkansas without compensation to integrate Entergy Arkansas into MISO. MISO would never have to build interconnection capacity to Entergy Arkansas or contract for it. It could leave all the transmission improvements to SPP, without sharing in their cost whatsoever.


\textsuperscript{44} See section III.B below.
If the Commission does not so clarify the meaning of section 5.2, at a minimum, it should confirm that how section 5.2 will be applied in this regard in the future may properly be addressed in the renegotiation of the JOA that the Commission has directed.45

3. **The Commission Further Should Clarify That MISO Must Remove Its Transactions From The SPP System During Congestion And Return To Its Historical Firm Flow As Of The Freeze Date Specified In The JOA.**

The Commission further should clarify that MISO must remove its transactions with Entergy Arkansas during congestion in order to return to its Historical Firm Flow as of April 1, 2004, the Freeze Date under the JOA,46 to avoid adverse effects on SPP’s system. In its Petition, MISO stated that:

> The use of Reciprocal Coordinated Flowgates ("RCFs") under the JOA allows SPP and MISO to maximize transmission system utilization for all parties because it allows reciprocal use *up until congestion occurs* and *then the parties return to their allocation based on historic use.* The parties are returned to the historic firm parallel flow impacts that the parties have had in the past, meaning the parties *are not creating additional parallel flow on the reciprocal entity’s transmission system.*

The Historical Firm Flows, of course, were not based on MISO and Entergy’s vast use of SPP’s transmission system, as now contemplated. By reducing its flows to the historic levels when there is congestion, the parties would prevent MISO from

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45 See section III.B below.

46 See JOA § 6.4. The parties used the reservations as of the “Freeze Date” to determine the historical levels of import and export energy to calculate the Historical Firm Flow. Historical Firm Flow is “the quantification of Firm Flows that would have occurred if all Control Areas maintained their current configuration and continued to: (1) serve their native load with their Designated Network Resources, and (2) import and export energy at historical levels (based upon Firm Transmission Service Reservation as of the Freeze Date, which is currently set at April 1, 2004.)” *Id.*

“creating additional parallel flow” on SPP’s system as a result of the integration of Entergy Arkansas into MISO. To prevent such additional parallel flow impacts, as MISO says is appropriate, the Commission should clarify that, during congestion, MISO must reduce the parallel flows that its market places on the SPP system to Historical Firm Flow as of the Freeze Date.

If the Commission does not so clarify the meaning of section 5.2, at a minimum, it should confirm that how section 5.2 will be applied in this regard in the future may properly be addressed in the renegotiation of the JOA that the Commission has directed.48

B. The Commission Should Clarify That MISO’s Obligation To Renegotiate In Good Faith Includes An Obligation To Address Changes That SPP May Propose To All Sections Of The JOA, Including Section 5.2.

The Commission should confirm that any aspect of the JOA, including section 5.2, may be subject to renegotiation to properly re-balance the benefits and burdens to the parties as a result of MISO’s system reconfiguration. In the Petition Order, the Commission somewhat inconsistently found (i) that section 5.2 permits MISO to use SPP’s transmission capacity in the event Entergy Arkansas becomes a transmission-owning member of MISO;49 but that (ii) “the SPP JOA should be renegotiated,” with the parties having “an obligation to negotiate in good faith” in response to revisions “SPP may propose.”50 To remove any uncertainty, the Commission should confirm that it has not prejudged the outcome of the renegotiation that has yet to occur and that the renegotiation may include revisions to section 5.2, among others.

48 See section III.B below.
49 Petition Order at P 64.
50 Petition Order at P 64.
The balance of benefits and burdens from section 5.2 shifts dramatically with Entergy Arkansas joining MISO, particularly as the Commission interpreted the provision. Neither MISO nor SPP currently uses section 5.2 on a regular, or even semi-regular, basis. In fact, as discussed, section 5.2 has been used only once in seven years. This infrequent employment of section 5.2 is what SPP expected in negotiating the JOA. SPP did not contemplate that section 5.2 could be used by a party to meet network load obligations on a continuous basis.\footnote{See n.40, supra.} In contrast to the parties’ course of performance in the past – a single usage of the section in seven years – MISO now plans to use section 5.2, at no cost, to move vast quantities of energy, on a continuous basis, every hour of every day. SPP, of course, is unlikely to use section 5.2 at all, just as it has not used it for the past seven years. This drastically increases the benefits received by MISO under the JOA and the operational burdens and costs borne by SPP. Accordingly, the parties must renegotiate the JOA to rectify this imbalance of benefits and burdens.

Renegotiation of the extent to which section 5.2 may be used, and the compensation due when section 5.2 is used, is therefore critical, and the Commission should confirm that it has not prejudged these issues before renegotiation has even begun. MISO’s massive uncompensated usage of SPP’s transmission capacity that would be permitted under the Commission’s interpretation of section 5.2 tips the scales in MISO’s favor to such degree that the JOA may no longer be just and reasonable. SPP and its members must be held harmless from Entergy Arkansas’s integration into MISO, just as
the Commission required MISO utilities to be held harmless from the RTO choices of PJM members.\textsuperscript{52} Compensation plainly must be part of any renegotiation.

In addition, the manner in which section 5.2 treats MISO’s energy flows over SPP’s transmission system during periods of congestion must be renegotiated. The congestion management protocols contained in the JOA do not adequately preserve SPP’s rights in the event MISO places market flows on SPP’s system. As discussed, MISO treats its non-firm network flows as NN6, the highest non-firm priority, and, therefore, some of SPP’s non-firm transmission service may be curtailed prior to MISO’s service in a TLR event. As a result, SPP’s customers’ rights to maintain non-firm usage of the SPP system would be impacted adversely by the presence of MISO’s market flows to Entergy Arkansas.

There are several other significant issues that also must be renegotiated to accommodate Entergy Arkansas joining MISO, including: (1) sharing of costs of the SPP transmission system that MISO will use, including new and additional facilities being added to the SPP Transmission Expansion Plan (“STEP”); (2) sharing of costs of any additional transmission facilities required to integrate Entergy Arkansas into MISO; and (3) operations during outages of MISO’s single interconnection to Entergy Arkansas. The parties should be permitted to address all of these issues when renegotiating the JOA, thereby allowing the parties to rebalance the JOA to provide equivalent benefits and costs to both MISO and SPP.

The Commission properly did not limit the scope of permitted renegotiation, just as section 3.1 of the JOA does not limit the scope of renegotiation. MISO, unfortunately,

\textsuperscript{52} See, e.g., \textit{Alliance Cos.}, 102 FERC ¶ 61,214 (2003); \textit{Alliance Cos.}, 103 FERC ¶ 61,274, \textit{reh’g denied}, 105 FERC ¶ 61,215 (2003); \textit{Commonwealth Edison Co.}, 106 FERC ¶ 61,250 (2004).
after the Commission’s order was issued, informed SPP that in its view the Commission ordered the parties to address only “operational issues” that may arise from its system configuration, a manufactured limitation not stated in section 3.1 or the Commission’s order. It claims, without reference to anything in the Commission’s holding, that the Commission in its order accepted this limitation of the renegotiation under section 3.1. Quite to the contrary, the Commission properly accepted SPP’s position that the parties must renegotiate the JOA upon request of either party, without limitation, in light of the changed system configuration that Entergy’s integration into MISO would present. Quoting section 3.1, the Commission expressly “recognize[d] SPP’s statement that the SPP JOA should be renegotiated,” holding, without limitation, that “MISO and SPP have an obligation to negotiate in good faith in response to revisions (including deleting, adding, or revising requirements or protocols) either MISO or SPP may propose.”

IV. CONCLUSION

For the reasons explained above, the Commission should grant rehearing, reverse its interpretation of section 5.2 of the JOA, and interpret the language of section 5.2 consistent with common industry usage of the term “contract path.” If the Commission does not so interpret the contract, it should set for hearing the parties’ intentions regarding the use of the term “contract path.” To the extent the Commission does not

53 Petition Order at P 64 (emphasis added).
reverse its holdings, it should clarify that: (i) section 5.2 provides MISO only non-firm service up to the amount of interconnection capacity that MISO has with Entergy Arkansas; and (ii) MISO’s obligation to renegotiate in good faith includes an obligation to address changes that SPP may propose to all sections of the JOA, including section 5.2.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 1st day of August, 2011.

Carrie L. Bumgarner