

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Midcontinent Independent	)	
System Operator, Inc.,	)	
Complainant,	)	
	)	
v.	)	Docket No. EL14-30-000
	)	
Southwest Power Pool, Inc.,	)	
Respondent.	)	

**ANSWER OF  
SOUTHWEST POWER POOL, INC.**

Southwest Power Pool, Inc. (“SPP”), pursuant to Rules 206(f) and 213, 18 C.F.R. §§ 385.206(f) and 385.213, hereby answers the complaint of the Midcontinent Independent System Operator, Inc. (“MISO”) in Docket No. EL14-30.<sup>1</sup>

The Commission should dismiss MISO’s Complaint. MISO’s Complaint raises no new issues of law or fact. It presents issues already joined in other proceedings concerning the proper interpretation of the contract path sharing provision in section 5.2 of the Joint Operating Agreement (“JOA”) between SPP and MISO. The relief MISO seeks and all arguments raised in support are pending before the Commission in Docket Nos. EL11-34, EL14-21 and ER14-1174.

The Commission regularly dismisses complaints that “would be duplicative and unnecessary, and waste the resources of the Commission and the parties.”<sup>2</sup> There is

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<sup>1</sup> SPP also briefly responds to comments filed by MISO’s Independent Market Monitor, served on parties to this proceeding and the SPP Complaint proceeding in Docket EL14-21-000 on Saturday, March 8, 2014. A copy of this answer is also being submitted in Docket No. EL14-21-000.

<sup>2</sup> *Tesoro Ref. & Mktg. Co. v. SFPP, L.P.*, 137 FERC ¶ 61,154, at P 11 (2011) (“Because the issue of the justness and reasonableness of SFPP’s North Line rates are already the subject of an open proceeding . . . , addressing the merits of

already an open proceeding on the validity of SPP’s invoices for unreserved use penalties to which MISO is a party and the full relief MISO seeks is available there. That is the only issue MISO raises in its complaint. Accordingly, addressing the merits of MISO’s Complaint would be duplicative and unnecessary, would waste the resources of the Commission and the parties, and would only serve to confuse and muddle the record.<sup>3</sup>

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Tesoro’s challenge to the North Line rates here would be duplicative and unnecessary, and waste the resources of the Commission and the parties. . . . *We therefore dismiss Tesoro’s duplicative complaint*”(emphasis added); *see also La. Pub. Serv. Comm’n v. Entergy Corp.*, 124 FERC ¶ 61,010, at P 27 (2008) (“we conclude that because these issues are currently before the Commission in Docket No. ER07-956-000, there is no need to establish a separate proceeding to address them. Accordingly, . . . we dismiss that portion of the [] complaint that raises those issues.”); *Williams Energy Servs. v. Mid-American Pipeline Co., LLC*, 116 FERC ¶ 61,175, at P 13 (2006) (“the Commission dismisses Williams’ complaint insofar as it relates to MAPL’s rates. The Commission concludes that the ongoing consolidated proceedings . . . afford Williams an appropriate forum in which to address issues relating to MAPL’s rates.”); *Texaco Ref. & Mktg. Inc. v. SFPP*, 75 FERC ¶ 61,292, at 61,939 (1996) (“Because these are already being litigated before the Commission . . . , setting them for hearing in a separate proceeding would be duplicative and unnecessary, and a waste of the resources of the Commission and the parties. We will, therefore, dismiss the complaints.”).

<sup>3</sup> The proceedings on SPP’s Complaint and the MISO Service Agreement Filing concern many of the same issues originally presented to the Commission in the proceeding concerning the interpretation of JOA section 5.2 in Docket No. EL11-34. Those issues have been returned to the Commission by virtue of the court’s vacating and remanding the Commission’s orders in that proceeding. *See Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013). However, SPP’s Complaint (and the MISO Service Agreement Filing) build on these issues and raise additional concerns related to MISO’s actual use of SPP’s system and the appropriate level of compensation MISO should provide for such use. By contrast, MISO’s Complaint *raises no new issues* and presents no new facts. Therefore nothing new is to be gained through its complaint. The Commission “has discretion in deciding whether to initiate investigations pursuant to section 206 of the FPA and whether to set the issue for a formal hearing.” *International Transmission Co.*, 116 FERC ¶ 61,036, at P 35 (2006) (footnote omitted); *see also General Motors Corp. v. FERC*, 613 F.2d 939, 944 (D.C. Cir. 1979) (“an administrative agency’s decision to conduct or not to conduct an investigation is committed to the agency’s discretion.” (citing *City of Chicago v. U.S.*, 396 U.S. 162, 165 (1969); *Kixmiller v. SEC*, 492 F.2d 641, 645 (D.C. Cir. 1974))). The Commission should exercise that discretion here and dismiss MISO’s Complaint.

## **I. BACKGROUND**

Given that the long and detailed history of the dispute at the heart of this proceeding – the interpretation of JOA section 5.2 – is well summarized in Docket Nos. EL14-21 and ER14-1174, SPP will not repeat it in full here. The background directly relevant to MISO’s Complaint is as follows.

In Docket No. EL14-21, SPP filed a complaint seeking a Commission order finding that MISO’s use of SPP’s transmission system without reservation or compensation is in violation of the JOA and SPP’s Open Access Transmission Tariff (“SPP Tariff”), and that MISO must pay unreserved use penalties that SPP assesses and invoices MISO in accordance with the SPP Tariff (“SPP Complaint”). To provide an avenue for MISO to use SPP’s transmission system without incurring such penalties, SPP filed in Docket No. ER14-1174 an unexecuted service agreement for MISO to reserve and take non-firm point-to-point transmission service from SPP (“MISO Service Agreement Filing”). In its answer filed February 18, 2014, MISO asked the Commission to reject both SPP’s Complaint and the MISO Service Agreement Filing.<sup>4</sup> On the same day, MISO filed the instant complaint.

## **II. ANSWER**

### **A. MISO’s Request For Relief Is Already Pending Before The Commission.**

MISO’s Complaint is a practical nullity. MISO requests that the Commission “direct[] SPP to cease issuing invoices to MISO for alleged transmission service,

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<sup>4</sup> See Answer of the Midcontinent Independent System Operator, Inc., Docket No. EL14-21-000 (Feb. 18, 2014) (“MISO Answer”); Motion to Intervene and Protest of the Midcontinent Independent System Operator, Inc., Docket No. ER14-1174-000 (Feb. 18, 2014) (“MISO ER14-1174 Protest”).

including unreserved use penalties,” under the SPP Tariff.<sup>5</sup> Yet, MISO seeks the same relief in Docket No. EL14-21, where it has asked the Commission to deny SPP’s Complaint seeking enforcement of SPP’s invoices for MISO’s unreserved use of SPP’s transmission system. It is impossible to grant both complaints, as they seek *the exact opposite* relief.

**B. MISO’s Complaint Raises No New Issues Of Law Or Fact.**

MISO raises no new arguments or facts in its Complaint that it has not already raised in Docket Nos. EL14-21 and ER14-1174. MISO’s assertion in its Complaint that the SPP Tariff does not authorize SPP to assess MISO transmission charges and unreserved use penalties<sup>6</sup> appears to be a nearly verbatim copy of MISO’s arguments in response to SPP’s Complaint<sup>7</sup> and the MISO Service Agreement Filing.<sup>8</sup> Similarly, MISO’s claim that SPP’s unreserved use invoice is “barred by Order No. 890”<sup>9</sup> is nothing more than a three-sentence reiteration of its earlier claims in response to SPP’s filings.<sup>10</sup> MISO rehashes from its response to SPP’s Complaint<sup>11</sup> identical allegations addressing SPP’s invoices in the context of the Commission’s “loop flow” policy (as MISO views

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<sup>5</sup> MISO Complaint at 1.

<sup>6</sup> MISO Complaint at 10-15.

<sup>7</sup> See MISO Answer at 58-62.

<sup>8</sup> See MISO ER14-1174 Protest at 16-19.

<sup>9</sup> MISO Complaint at 10.

<sup>10</sup> See MISO Answer at 55; MISO ER14-1174 Protest at 11, 12-13.

<sup>11</sup> See MISO Answer at 47-52.

it).<sup>12</sup> MISO also rehashes arguments challenging SPP's invoices as allegedly contrary to JOA section 5.2.<sup>13</sup>

Indeed, MISO attempts to incorporate by reference *everything* that it has already filed in Docket No. EL14-21, including all of its attachments and exhibits.<sup>14</sup> And it admits that "MISO presented each of the arguments" set forth in the Complaint "as a defense to the SPP Complaint in Docket No. EL14-21-000." MISO Complaint at 9.

SPP has already responded to all of MISO's arguments.<sup>15</sup> The issues regarding the parties' different interpretations of JOA section 5.2 are poised for consideration in Docket No. EL14-21.<sup>16</sup> Accordingly, to avoid unnecessary repetition and waste, and so as not to burden the Commission, SPP will not repeat its treatment of those issues here. Instead, to ensure a complete record, SPP has attached to this answer the SPP Complaint (Attachment A), the MISO Service Agreement Filing (Attachment B), and the SPP answer filed in those proceedings (Attachment C).

There is no merit whatsoever to MISO's allegation of harm to its markets based on the uncertain outcome of the proceeding concerning SPP's Complaint. MISO Complaint at 20-23. This so-called harm is wholly speculative and, like everything else in MISO's Complaint, is merely duplicative of MISO's pleadings in Docket No. EL14-

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<sup>12</sup> MISO Complaint at 15-18.

<sup>13</sup> MISO Complaint at 18-20; *see* MISO Answer at 14-41; MISO ER14-1174 Protest at 6-10.

<sup>14</sup> MISO Complaint at 1-2 n.2.

<sup>15</sup> *See* SPP Complaint at 25-26, 35, 39; MISO Service Agreement Filing at 7; Answer of Southwest Power Pool, Inc. to Answer, Protests, Comments, and Motion to Dismiss, Docket Nos. EL11-34-000, EL14-21-000, and ER14-1174-000, at 22-27, 37-45 (Mar. 5, 2014) ("SPP Answer").

<sup>16</sup> SPP Complaint at 13-25 and Attachment A, Affidavit of Carl A. Monroe ¶¶ 6-14; SPP Answer at 10-22.

21. See MISO Answer, Attachment B, Affidavit of Richard Doying ¶¶ 15-20. But most importantly, contrary to MISO's implications, nothing in SPP's Complaint seeks to stop MISO's transactions between MISO Midwest and MISO South or the benefits they produce to MISO members. SPP (and other neighboring systems) simply seek the ordinary, Tariff-approved compensation for MISO's share of its use of other transmission systems, so that the customers of SPP (and others) do not pay the costs of producing the MISO benefits.

In late-filed comments on the SPP Complaint, also filed in this docket, the MISO Independent Market Monitor claims, erroneously, that SPP seeks to "limit the transfers between" MISO Midwest and MISO South and that "MISO would have incurred increased production costs of at least \$18 million in the six weeks starting in mid-December if it had complied with SPP's proposal."<sup>17</sup> MISO's Market Monitor concludes that this amounts to "dissavings" of \$12 million per month.<sup>18</sup> Nothing could be further from the truth. SPP *does not* seek to limit MISO's transfers or prevent MISO from realizing the identified benefits.<sup>19</sup> In fact, the Market Monitor's analysis makes precisely SPP's point. MISO seeks to achieve, by this account, approximately \$144 million of yearly benefits through its use of SPP's and others' transmission systems, but it would have SPP and other customers, who obtain none of these benefits, bear the full transmission investment and operating costs incurred to produce the benefits. SPP seeks only to have MISO pay for the transmission costs being incurred to enable the benefits,

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<sup>17</sup> Motion to Intervene and Comments of MISO's Independent Market Monitor, Docket Nos. EL14-30 and EL14-21, at 3, 8, served March 8, 2014.

<sup>18</sup> *Id.* at 11.

<sup>19</sup> Nothing in this answer should be construed as SPP agreeing with the Market Monitor's benefits calculation, which was not timely submitted in Docket No. EL14-21, and which MISO did not include with its Complaint.

which are a fraction of the benefits that the MISO Market Monitor identifies. There is nothing just and reasonable about SPP and others paying the costs, while MISO obtains the benefits.

### **III. COMMUNICATIONS**

SPP requests that all correspondence and communications with respect to this filing be sent to, and the Secretary should include on the official service list, the following:<sup>20</sup>

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### **IV. ADMISSIONS AND DENIALS REQUIRED BY RULE 385.213(c)**

Pursuant to Commission Rule 213(c)(2), SPP submits the following admissions and denials of the material allegations in the Complaint.

1. SPP denies that its invoices to MISO for unreserved use penalties are contrary to law or policy.
2. SPP denies that its invoices to MISO for unreserved use penalties are contrary to Order No. 890.
3. SPP denies that its invoices to MISO for unreserved use penalties are contrary to the SPP Tariff.

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<sup>20</sup> To the extent necessary, SPP respectfully requests waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b), to permit all of the persons listed to be placed on the official service list for this proceeding.

4. SPP denies that its invoices to MISO for unreserved use penalties are contrary to the SPP-MISO JOA.
5. SPP denies that its invoices to MISO for unreserved use penalties are contrary to the Commission's policy regarding compensation for loop flows.
6. SPP denies that MISO is entitled to any relief on any of the claims asserted in the Complaint.

**V. CONCLUSION**

For the foregoing reasons and the reasons stated in SPP's pleadings in Docket Nos. EL14-21 and ER14-1174, as attached to this answer, the Commission should dismiss MISO's Complaint.

Respectfully submitted,

/s/ Barry S. Spector

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March 10, 2014

**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 10th day of March, 2014.

/s/ Ryan J Collins

Ryan J. Collins

**Attorney for  
Southwest Power Pool, Inc.**