UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.	Docket Nos.	ER26-1538-000 ER26-1538-001 ER26-1676-000 ER26-1676-001 ER26-1761-000 ER26-1761-001
Commonwealth Edison Company		ER26-1683-001
Duke Energy Ohio, Inc.		ER26-1765-000 ER26-1765-001
PJM Interconnection, L.L.C.		ER26-1804-001 ER26-1851-001

REQUEST FOR REHEARING AND REQUEST FOR STAY OF THE ELECTRICITY TRANSMISSION COMPETITION COALITION AND THE INDUSTRIAL ENERGY CONSUMERS OF AMERICA

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"),[1] the Electricity Transmission Competition Coalition ("Competition Coalition") and the Industrial Energy Consumers of America ("IECA") respectfully request rehearing and stay of the Commission's Order Accepting Tariff Revisions and Certificates of Concurrence, and Conditionally Accepting Cost Recovery And Funding Agreements issued on August 14, 2026 ("August 14 Order")[2]. The August 14 Order approved the filing of the Midcontinent Independent System Operator, Inc. ("MISO") seeking Commission approval of amendments to MISO's Open Access Transmission, Energy and Operating Reserve

[1] 18 C.F.R. § 385.713 (2023).

[2] *See* Order Accepting Tariff Revisions and Certificates of Concurrence, and Conditionally Accepting Cost Recovery and Funding Agreements, FERC Docket No. ER26-1538, *et al*., (issued August 14, 2026).

Markets Tariff ("Tariff") to retroactively legitimize MISO's decision not to subject greenfield, tie-line MISO Multi-Value Projects ("MVP Projects") to Tariff mandated competition.[3] The August 14 Order arbitrarily and capriciously accepts MISO's *post hac* rationale to create a new exemption from competitive solicitations for developing the greenfield, tie-line MVP Projects at issue, contrary to the Tariff's Competitive Transmission Process[4] which was accepted by the Commission[5] as MISO's compliance with Order No. 1000.[6] The August 14 Order errs because it:

- Fails to engage in reasoned decision-making by arbitrarily and capriciously concluding that MISO is not obligated to use the Competitive Transmission Process for the MISO planned regional projects at issue in MISO's Filing based on a legally irrelevant assertion as to where the projects are geographically located;

- Arbitrarily and capriciously reclassifies MISO regional Eligible Projects as PJM Supplemental Projects, in direct violation of Order No. 1000, MISO's existing Order No. 1000 compliant Tariff, and PJM's Tariff;

- Unduly discriminates against nonincumbent developers in favor of incumbent utilities by effectuating a new incumbent preference or right of first refusal that is not supported by substantial evidence in the underlying record;

- Fails to comply with Order No. 1000-based interregional planning and coordination requirements;

- Arbitrarily and capriciously adopts transmission planning that will not result in selection of the most efficient and cost-effective project, which is contrary to the just and reasonable rate standard established in the Federal Power Act, as well as

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[3] Proposed Revisions to MISO Tariff to Implement Agreements with External Transmission Owners, Docket No. ER26-1538-000 (Feb. 27, 2026) ("MISO Filing"). MISO requests an effective date for its proposed changes of May 28, 2026.

[4] Tariff, Attachment FF, VIII, Competitive Transmission Process.

[5] *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 (2013)(FERC's first order pertaining to MISO compliance with Order No. 1000); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 (2014) (FERC's second order pertaining to MISO compliance with Order No. 1000); *Midwest Independent Transmission System Operator, Inc.*, 150 FERC ¶ 61,037, at P 25 (2015) (FERC's third order pertaining to MISO compliance with Order No. 1000).

[6] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 66,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

the need for the Commission to protect customers and ensure energy affordability; and

- By accepting the MISO Tariff Revisions, arbitrarily and capriciously accepts the Cost Recovery and Funding Agreements without a showing of reasoned decision-making or explanation thereto.

In summary, ETCC and IECA request that the Commission grant rehearing to reject MISO's Filing with prejudice and mandate MISO's adherence to its Tariff which requires as a default rule, that MISO's MVP Projects be subject to the Tariff's Competitive Transmission Process. Rehearing is warranted because the August 14 Order, departs, without explanation, from its determination that "as the Commission found in Order No. 1000," the Commission maintains "a duty to consider anticompetitive practices and to eliminate barriers to competition consistent with the [Federal Power Act ("FPA")]."[7] ETCC and IECA further request that the Commission immediately issue a stay of the August 14 Order and the effectiveness of the associated Cost Recovery and Funding Agreements. If the Commission either grants this Rehearing Request at some point in the future or an appellate court finds that the Commission committed an error of law in approving MISO's Filing and the associated CRAF Agreements, then the grant of the stay will serve the public interest by helping to avoid unnecessary incurrence resources associated with a transmission planning process (of nearly $2 billion in project value) that could ultimately be invalidated.

I. REQUEST FOR REHEARING - BACKGROUND[8]

A. MISO Planning of LRTP Tranche 2.1

MISO coordinates, controls, and monitors portions of the interstate transmission

[7] Order No. 1000-A at 361 (citing Gulf States Utils. Co., 5 FERC ¶ 61,066 at 61,098; Otter Tail v. U.S., 410 U.S. at 374 ("the history of Part II of the Federal Power Act indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.")).

[8] ETCC and IECA challenge the August 14 Order's framing of the relevant facts and background in these proceedings. Therefore, the formal Rehearing Request begins here, followed by Specifications of Error, Argument, and a Request for Stay of the August 14 Order.

systems across 15 states. MISO is one of the largest power grid operators in the world and is responsible for planning the reliability *and expansion* of regional transmission infrastructure under its operational control which serves 45 million customers. MISO operates 79,000 miles of existing transmission.[9] Each year, MISO develops a MISO Transmission Expansion Plan ("MTEP") that evaluates various types of transmission projects to meet regional reliability standards and facilitate competition among electric producers through expansion of the MISO grid, as well as the inclusion of additional transmission projects based on individual transmission owner planning criteria.[10] Long-range transmission projects, known as Multi-Value Projects, are additional transmission investments that become part of an annual transmission expansion plan. Such MVPs are capital improvement projects planned by MISO, each with a total cost of $20,000,000 or more, that promote reliability, resolve problems, or confer other benefits across all, or a significant portion of, the MISO system.

On July 25, 2022, MISO approved Tranche 1 of its long-range transmission projects.[11] Of the $10.3 billion in planned investment, only about $1 billion was subjected to competitive solicitations due to MISO's application of the state preference law and upgrade exemptions.[12] On December 12, 2024, MISO approved a $30 billion annual plan, the largest portfolio of transmission

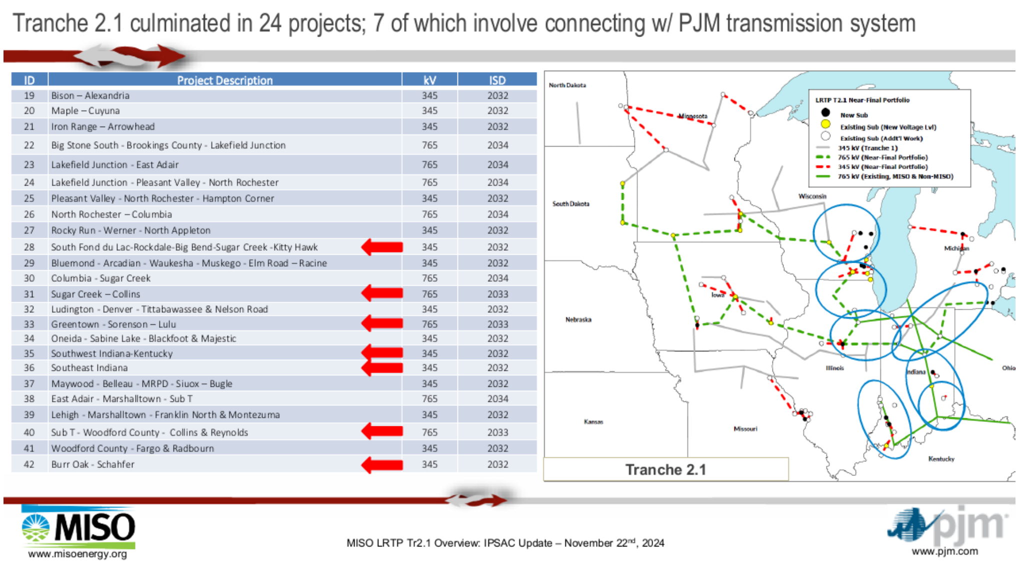
[9] *See* About MISO, available at https://www.misoenergy.org/meet-miso/media-center/corporate-fact-sheet/ (last accessed Sept. 14, 2026).

[10] *See* MISO Transmission Expansion Plan, available at https://www.misoenergy.org/planning/planning/ (last accessed Sept. 14, 2026).

[11] *See MISO Draft MTEP21*, Chapter 3, at 6, available at https://cdn.misoenergy.org/MTEP21%20Addendum-LRTP%20Tranche%201%20Report%20with%20Executive%20Summary625790.pdf (last accessed Sept. 14, 2026).

[12] "Competitive Transmission Update," MISO, the System Planning Committee of the Board of Directors (June 15, 2022) at Slides 2, 5. The presentation does not appear to be on MISO's website anymore, but is included as Attachment C to the complaint filed by IECA *et al.* against MISO on June 17, 2022 in Docket No. EL22-78-000.

projects in the nation's history.[13] The 2024 plan[14] includes Tranche 2.1, a $21.8 billion investment for 24 Multi-Value Projects that will be cost allocated throughout the 11-state MISO north/central region ("Tranche 2.1"). Included in the MISO-planned MVPs were green-field tie-line expansion projects tying existing MISO facilities to PJM that MISO seeks to directly assign to PJM transmission owners. Of the 24 projects in Tranche 2.1, seven projects connect existing or new MISO facilities to facilities owned by PJM transmission owners.[15]



MISO Tranche 1 and MISO Tranche 2.1 MVPs are being cost-allocated to consumers across portions of the 11-state MISO northern/central regions: Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Montana, North Dakota, South Dakota, and Wisconsin.

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[13] "MISO Board Approves Historic Transmission Plan to Strengthen Grid Reliability," MISO (Dec. 12, 2024), *available at* https://www.misoenergy.org/meet-miso/media-center/2024/miso-board-approves-historic-transmission-plan-to-strengthen-grid-reliability/ (last accessed Sept. 14, 2026).

[14] *See* MTEP24 Report, *available at* 20241212 Board of Directors Item 09a MTEP Executive Summary Appdendix A Appendix F665158.pdf (last accessed Sept. 14, 2026).

[15] *See* Protest of ETCC/IECA, Docket No. ER26-1538-000 (filed Mar. 3, 2026), Attachment 1 (November 22, 2024 MISO-PJM Presentation at the MISO-PJM Inter-Regional Planning Stakeholder Advisory Committee (IPSAC)).

Notably, the in-service dates ("ISD") for the subject projects are not until 2032 or 2033. MISO's MTEP24 Appendix A report provides details on the Facilities tab as to the subject projects that MISO seeks to withhold from competition and directly assign to the PJM transmission owners ("TOs"). The total cost estimates for those projects is approximately $1.95 billion.[16] Project 31 includes a new 100 mile 765kV transmission line from the IL-WI State Line to Collins PJM substation estimated at $521.6 million with an in-service date of June 2034.[17]

B. MISO Filing

To facilitate its desire to directly assign the greenfield MVP Projects to PJM transmission owners in contravention of the Tariff's mandated application of the Competitive Developer Process to those MVP Projects, MISO's Filing proposed several, effectively retroactive, Tariff changes.[18]

To overcome the Tariff's mandated application of the Competitive Developer Process MISO based its filing on the claim that MISO cannot implement the Competitive Developer Process for the MVP Projects because they are not on the existing MISO Transmission System and are thus located outside MISO. To make its narrative reality, MISO sought to add "located on the Transmission System"[19] to the existing Competitive Developer Process requirements to write in the limitation after-the-fact when no such restriction exists. The existing regional planning Tariff, which references "Transmission System" dozens of times, has no such reference in the

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[16] *See* ETCC/IECA Protest, Attachment 2 (MTEP24 Appendix A – Tranche 2.1 Excel file highlighting subject projects). The latest information on Tranche 2.1 and MTEP24 is available here: https://www.misoenergy.org/planning/long-range-transmission-planning/ (last accessed Sep. 14, 2026).

[17] *See* ETCC/IECA Protest at 13-14 (citing and excerpting MISO planning Excel files in MTEP24 Appendix A – Tranche 2.1).

[18] MISO also sought to directly assign certain "Do No Harm" projects to PJM transmission owners, allegedly arising out of MISO's planning of LRTP Tranche 2.1 projects.

[19] MISO Filing at 15, Tab A (Redlined Tariff).

Competitive Developer Selection portion of the Tariff, as the projects subject to competitive development are projects that largely expand the Transmission System (which is defined as the **existing** transmission facilities that have been turned over to MISO's operational control).[20]

To build its false narrative, MISO asserted that "MISO's authority as the Transmission Provider extends to the MISO Transmission System only."[21] Of course MISO can only provide transmission on transmission facilities that exist and that it operationally controls, so MISO's authority as "Transmission Provider" is limited to those facilities. That does not mean that MISO's planning authority for the MTEP is so limited. Indeed, the E in MTEP stands for "expansion" of the MISO controlled grid.

MISO also proposed additional changes to Attachment FF to support excluding the MISO Midwest cost allocated MVPs from the Competitive Developer Process, which changes allow MISO to fund upgrades on external RTO facilities as part of an MVP project, without engaging in Order No. 1000-required interregional planning. Specifically, MISO sought to add the following:

> Section II.C. All Network Upgrades associated with a Multi-Value Project including <u>any network upgrades on an external system</u> and lower voltage facilities that may be needed to relieve applicable reliability criteria violations that are projected to occur as a direct result of the development of the Multi Value Project <u>including any lower voltage facilities that are needed on an external system</u>; may be cost shared per Section III.A.2.g of Attachment FF . . ..[22]

Finally, MISO's Filing was geared to "a Tariff framework for implementing agreements with external (i.e., non-MISO) transmission owners to fund, construct, own and operate new transmission facilities and reliability upgrades serving MISO needs" and MISO asserts that "MISO

[20] *See* MISO Tariff, Module A (definition of Transmission System).

[21] MISO Filing at 3.

[22] MISO Filing at 14.

and each Applicable PJM Transmission Owner will submit their respective Agreements for filing in separate Commission dockets under Section 205 of the FPA in the near future."[23] MISO further asserted that the "Commission's acceptance of the proposed Tariff revisions, without condition or modification, is a condition to the effectiveness of the [Cost Recovery and Funding ("CRAF")] Agreements."[24] Although MISO did not file the CRAF Agreements as part of the MISO Filing, MISO states "MISO expects that some or all of the CRAF Agreements Filings will be made shortly after this filing."[25] MISO states: "Where feasible, MISO and its counterparties under the CRAF Agreements will request coordinated comment periods and/or effective dates."[26] The MISO Filing sought an effective date of May 28, 2026, and in accepting the MISO filing, FERC accepted the CRAF agreements accordingly.

C. Commission Requirements for Regional Planning

Any analysis of the MISO Filing must start with the Commission's requirements for transmission competition for regionally cost-allocated projects. The MVP Projects that MISO sought to directly assign are projects selected in MISO's regional plan for purposes of cost allocation, and thus subject to required competition at either the regional or interregional level. Further, because they are selected in MISO's regional plan for purposes of cost allocation, they cannot be "local" projects for which a transmission owner, whether in MISO or PJM, has an exclusive right to build. "The concept is that there should not be a federally established monopoly over the development of an entirely new transmission facility that is selected in a regional

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[23] *Id*. at 2.

[24] *Id*.

[25] MISO Filing at 16.

[26] *Id*. at 16.

transmission plan for purposes of cost allocation to others."[27] MISO's Filing backtracked on Order No. 1000, at the expense of MISO ratepayers, at a time when electricity affordability is at a breaking point.

The elimination of incumbent preferences in exchange for competition was an integral part of the Commission's package of reforms via Order No. 1000.[28] The purpose of this elimination in the context of regionally cost-allocated projects was "to allow more types of entities to be considered for potential construction responsibility . . ."[29] The reforms and developer selection processes were focused on ensuring "that a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation."[30] Order No. 1000 reiterated in multiple places that without the reforms the Commission could not ensure just and reasonable rates or rates that were not unduly discriminatory or preferential.[31]

In Order No. 1000, the Commission defined what it meant for a project to be "selected in the regional plan for purposes of cost allocation":

> Transmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because

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[27] Order No. 1000-A at P 426.

[28] Order No. 1000 at P 42; *See also id*. at 47 (holding "each of the individual reforms adopted by the Commission is intended to address specific deficiencies in the Commission's existing transmission planning and cost allocation requirements. . . . Although focused on particular aspects of the Commission's transmission planning and cost allocation requirements, these reforms are integrally related and should be understood as a package that is designed to reform processes and procedures that, if left in place, could result in Commission-jurisdictional services being provided at rates that are unjust and unreasonable and unduly discriminatory or preferential.")

[29] *Id*. at P 290.

[30] *Id*. at P 332.

[31] *See, e.g.*, *Id*. at PP 47, 59, 253, 284, 286, 289, 314; Order No. 1000-A at P 428; Order No. 1000-B at PP 37-38.

> they are more efficient or cost-effective solutions to regional transmission needs. Those may include both regional transmission facilities, which are located solely within a single transmission planning region and are determined to be a more efficient or cost-effective solution to a regional transmission need, and interregional transmission facilities, which are located within two or more neighboring transmission planning regions and are determined by each of those regions to be a more efficient or cost effective solution to a regional transmission need.[32]

In Order No. 1000-A, the Commission clarified that "'selected in a regional transmission plan for purposes of cost allocation' excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located."[33] This distinction was important because Order No. 1000 allowed existing transmission owners to retain self-created preferences for "a new transmission facility if the regional cost allocation method results in 100% of the facility's cost being allocated to the public utility transmission provider in whose retail distribution service territory or footprint the facility is to be located."[34]

Commission precedent combined with legislative intent shows that such an exemption from competition, as the August 14 Order approves, is not permitted under the Order No. 1000 regulatory structure. Importantly, Congress has not legislated a geographic or interregional exemption from competition through a right of first refusal ("ROFR") or other preferential act. If Congress wished, it could have created an avenue for a ROFR or other incumbent preference through legislation, as it did in FPA Section 216.[35] There, Congress specifically designated national interest electric transmission corridors, and emphasized that ""[n]othing in [section 216]

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[32] Order No. 1000 at P 63.

[33] Order No. 1000-A at P 423.

[34] *Id*.

[35] *See* 16 U.S. Code § 824p.

precludes any person from constructing or modifying any transmission facility in accordance with State law."[36] By enacting Section 216, Congress affirmed the longstanding statutory framework in the FPA, including the fact that FERC does not have the statutory authority to broadly implement monopoly franchises to incumbent utilities to the exclusion of nonincumbent, competitive transmission developers.

The Commission's precedent makes clear that where a project's costs are allocated regionally, incumbent preferences cannot apply. Specifically, the Commission held that "if any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facility."[37] This bright-line rule forecloses MISO's attempt to directly assign the MVP Projects. Because the projects at issue are regionally cost allocated across MISO, they cannot, as a matter of Commission policy and regulations (as upheld by the appellate courts), be subject to any incumbent preference—whether exercised by MISO transmission owners or, as here, by MISO interpreting PJM's tariff to grant PJM transmission owners a preference notwithstanding the regional allocation across the 8-state MISO north/central region. Nor may MISO evade this prohibition through contractual arrangements or other mechanisms that effectively recreate the ROFR that Order No. 1000 mandated be eliminated. The August 14 Order errs by allowing MISO to directly assign regionally cost-allocated projects through bilateral agreements, thereby undermining the Commission's reforms and reintroducing the very preferences that Order No. 1000 was designed to eliminate.[38] Regardless of how MISO

[36] 16 U.S.C. § 824p(g).

[37] Order No. 1000-A at P 430.

[38] Order No. 1000 at PP 287, 319–321.

or the August 14 Order characterize this new contractual framework, the practical effect is to grant a de facto right of first refusal to incumbent transmission owners for regionally planned and cost-allocated projects. The Commission has emphasized that it will look to the substance of an arrangement rather than its form, and has rejected mechanisms that result in undue discrimination or preferential treatment.[39]

D. Commission Requirements for Interregional Planning

Recognizing that regional borders for purposes of regional transmission planning are arbitrary, and that electricity knows no such boundaries,[40] Order No. 1000 also required changes to ensure that regional plans were also reviewed at the interregional level. Order No. 1000 required "public utility transmission providers in each pair of neighboring transmission planning regions develop the same language to be included in each public utility transmission provider's [tariff] that describes the interregional transmission coordination procedures for that particular pair of regions."[41] As relevant to the MISO Filing, Order No. 1000 held that the "Commission requires the development and implementation of procedures for neighboring public utility transmission providers *to identify and jointly evaluate transmission facilities that are proposed to be located in both regions*."[42] The Commission found that "in the absence of coordination between transmission planning regions, public utility transmission providers may be unable to identify more efficient or cost-effective solutions to the individual needs identified in their respective local and regional transmission planning processes, potentially including interregional transmission facilities."[43] In

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[39] *See id.* at PP 63, 226–227.

[40] *New York v. F.E.R.C.*, 535 U.S. 1, 8 (2002) (any electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving in interstate commerce.)

[41] *Id*. PP 346, 475; Order No. 1000-A at P 223.

[42] Order No. 1000 at P 345 (emphasis added).

[43] Order No. 1000 at P 368.

Order No. 1000, the Commission explained: “Clear and transparent procedures that result in the sharing of information regarding common needs and potential solutions across the seams of neighboring transmission planning regions will facilitate the identification of interregional transmission facilities that more efficiently or cost-effectively could meet the needs identified in individual regional transmission plans.”[44] MISO’s Filing claimed that 15 years after Order No. 1000, MISO remained unable to plan its system, either on its own and comply with Order No. 1000 directives at the regional level, or in coordination with PJM at the interregional level, leaving the only choice to be Tariff changes and one-off contracts with utilities whose facilities are not under MISO’s functional control.

E. MISO’s Order No. 1000 Regional Compliant Tariff

Consistent with Order No. 1000, MISO’s Tariff establishes competition as the default standard for MVPs and Economic Projects. Specifically, Attachment FF, Section VIII.A provides:

> Except as otherwise provided in Sections VIII.A.1, VIII.A.2 and VIII.A.3 of this Attachment FF, the Competitive Developer Selection Process shall be applicable to all transmission facilities and substation facilities and included in an Eligible Project.

Eligible Projects are defined as:

> Eligible Projects: Shall mean any Market Efficiency Projects (“MEP”) and Multi-Value Projects (“MVP”) approved by the Transmission Provider’s Board after December 1, 2015 regardless of whether such project is subject to the Transmission Provider’s Competitive Developer Selection Process.[45]

The exceptions are for State or Local Rights of First Refusal (VIII.A.1), Upgrades to Existing Facilities (VIII.A.2 (with its 10-page definition of qualifying upgrades)), and Immediate Need Reliability Projects (VIII.A.3). There is no geographic exception, as the MISO Filing makes clear.

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[44] Order No. 1000 at P 368.

[45] MISO Tariff, Module A, Common Tariff Provisions.

The August 14 Order has accepted a new exclusion to Order No. 1000 mandated competition for regionally cost allocated projects, covering nearly $2 billion in Tranche 2.1 projects.[46] The new exclusion that MISO seeks to add for projects not "located on the Transmission System" creates a right of first refusal, for external transmission owners, for regionally cost-allocated projects. The record in this proceeding does not support the exclusion, even if Order No. 1000 allowed it.

F. MISO And PJM's Interregional Compliance Filings

In July 2013, in separate filings, MISO and PJM made filings seeking to comply with the interregional compliance obligations of Order No. 1000.

The Commission found the respective MISO and PJM interregional filings only partially compliant with the Order No. 1000 interregional requirements. Importantly, the Commission also found that the MISO and PJM filings as to interregional cost allocation only partially complied with Order No. 1000 "because the cost allocation methods do not explicitly apply to an interregional transmission facility, as defined by Order No. 1000."[47] The Commission noted that "Order No. 1000 defines an interregional transmission facility as "a transmission facility that is located in two or more transmission planning regions."[48] In rejecting MISO's proposal, the Commission specifically referenced MISO's testimony that would do exactly what the MISO's Filing now proposes: "Ms. Curran describes a tie-line that would be addressed by MISO's proposal

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[46] *See* ETCC/IECA Protest at 3.

[47] *PJM Interconnection, L.L.C., et al.*, 149 FERC ¶ 61,250 (2014) at P 39 ("First Interregional Compliance Order").

[48] *Id*. *citing* Order No. 1000 at P 482, fn.374.

as a transmission facility that interconnects to the transmission facilities of transmission owners in MISO and in PJM."[49]

The Commission directed further compliance to:

> (1) adopt identical language to govern the interregional transmission coordination between MISO and PJM, with any differences limited to those needed to reflect that the discussion is from the perspective of either MISO or PJM; and (2) include a common interregional cost allocation method consistent with our directives below in the Cost Allocation section of this order.[50]

In directing MISO and PJM to revise their submissions, the Commission clarified that:

> any proposed cost allocation method that MISO and PJM seek to apply to interregional transmission projects that address regional reliability transmission needs **must** continue to 'allocat[e] to the customers in each RTO the cost of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO' and **apply to interregional transmission facilities, which are defined as facilitates 'that [are] located in two or more transmission planning regions**.'[51]

Finally, the Commission also found that the respective MISO and PJM interregional filings failed to comply with Order No. 1000 because they "have not proposed to consider regional transmission needs driven by public policy requirements as part of the evaluation of an interregional transmission facility."[52] The Commission made this determination because the

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[49] *Id.* at P 39, citing MISO and MISO Transmission Owners Compliance Filing, Docket No. ER131943-000, Tab D (Testimony of Jennifer Curran) at 10. Curran specified that "MISO is proposing to remove the existing flow-based cost allocation mechanisms for CBBRPs and instead to include provisions that would allow for tie-lines that interconnect to the transmission facilities of Transmission Owners in MISO and in PJM to be designated as CBBRPs, with ownership and responsibility to build the relevant facilities to be shared based on the RTO boundaries between the connected Transmission Owners in the respective RTOs, or in another mutually agreed manner between the Transmission Owners in each RTO to which the CBBRP is interconnecting." Curran Testimony at 12-13.

[51] *Id*. at P 40 (emphasis added).

[52] *Id*. at P 89.

respective submissions "focus exclusively on regional reliability and regional economic needs"[53] and those project categories may not include projects driven by public policy needs.

In their subsequent compliance filings, MISO and PJM proposed two new categories of projects, Interregional Public Policy Projects and Interregional Reliability Projects, to go along with the previously accepted Cross-Border Market Efficiency Projects.[54] The Commission accepted the proposals for the two additional categories of interregional projects, but rejected the proposal to "only displace transmission projects that have not yet been approved in MISO's and PJM's regional transmission plans."[55] The Commission rejected the proposal as it failed to comply with Order No. 1000, which focused on the "obligation to identify and evaluate interregional transmission projects to the extent that they might be more efficient or cost-effective in addressing *regional* transmission needs driven by reliability, economic, and/or public policy requirements. . ."[56] The Commission found that MISO and PJM could not adequately determine the benefits of an interregional project displacement if they only allowed that displacement for projects not yet approved in a regional plan.[57]

G. Supplemental Projects in PJM

MISO's Filing was based on the assertion that the greenfield MVP Projects are "Supplemental Projects" under the PJM Tariff[58] and Operating Agreement.[59] They are not. The

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[53] *Id*. at P 94.

[54] *PJM Interconnection, L.L.C. et al.*, 155 FERC ¶ 61,008 (2016) (Second Interregional Compliance Order) at P 28.

[55] *Id*. at P 49.

[56] *Id*. at P 48 (emphasis in original).

[57] *Id*. at P 49.

[58] MISO Filing at 4-5; Doner Testimony at 5.

[59] *See* August 14 Order at P 12 (explaining that Supplemental Projects include facilities that address the needs of individual transmission owners that are identified and evaluated based on local planning criteria) (citing PJM Operating Agreement at Definitions I-L (23.0.0) (Local Plan)).

Supplemental Project category was created by PJM in 2008 to address transmission owner local planning criteria.[60] In proposing this new category of transmission facilities, PJM stated that the "Supplemental Project category will ensure that this localized level of Transmission Owner initiated project will be processed through the Order No. 890 compliant procedures."[61] PJM further identified the local nature of Supplemental Projects and the criteria driving such projects by submitting that:

> PJM will evaluate these **local transmission owner planning standards and criteria** to determine if these local reinforcements are needed to optimally meet **the local transmission owner planning criteria** and to determine whether these reinforcements may be categorized as PJM RTEP baseline projects or as Supplemental Projects."[62]

Attachment M-3 to the PJM OATT reinforces this individual transmission owner criteria focus by requiring that the transmission owner proposing an Attachment M-3 Project, inclusive of Supplemental Projects, must present to the PJM subregional stakeholders "a minimum of one Subregional RTEP Committee meeting to review the criteria, assumptions, and models Transmission Owners propose to use to plan and identify Attachment M-3 Projects." FERC confirmed this exclusively local focus in holding:

> PJM [Transmission Owners] plan Supplemental Projects to meet local needs in their respective zones. Supplemental Projects are planned through the Order No. 890 compliant procedures set forth in Attachment M-3. For instance, PJM TOs are required to provide the models used in developing their local plans and enable stakeholder participation to review and comment on their plans.

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[60] PJM Compliance Filing to Comply With Order No. 890 OATT Requirements, Docket OA08-32-000, at 35-36 (filed December 7, 2007).

[61] *Id*.

[62] *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163, at P 126 (2008) (emphasis added).

> Additionally, Supplemental Projects do not qualify for region-wide cost allocation under Schedule 12 of the PJM Tariff.[63]

Finally, consistent with Order No. 1000, when a transmission owner moves forward with an Attachment M-3 project, including Supplemental Projects, 100% of the costs of the transmission owner planned project is allocated to the transmission owner's zone. If the project is to be regionally allocated, it is no longer a PJM Supplemental Project.

II. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

ETCC and IECA respectfully raise the following issues and specify the following errors in Order No. 1920.

1. **Issue:** Did the August 14 Order arbitrarily and capriciously approve a new, *post hac*, exemption from the Competitive Transmission Process for MISO Eligible Projects in violation of Order No. 1000, the existing MISO Tariff, and governing appellate precedent?

   Yes. **Error #1:** FERC failed to engage in reasoned decision-making by arbitrarily and capriciously concluding that MISO is not obligated to use the Competitive Transmission Process for the regional projects at issue in MISO's Filing. [FERC Order Accepting Tariff Revisions and Certificates of Concurrence, and Conditionally Accepting Cost Recovery and Funding Agreements, FERC Docket No. ER26-1538, *et al*., (issued August 14, 2026); FERC Order 890-A, 890-B, 890-C, 890-D; FERC Order No. 1000, 1000-A; *So. Cal. Edison Co,* 164 FERC ¶ 61,160 (2018); *Cal. Pub. Util. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 (2018); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); *MISO Transmission Owners v. FERC*, 819 F.3d 329 (7th Cir. 2016); *Delaware Division of Pub. Advocate v. FERC,* 3 F.4th 461 (D.C. Cir. 2021); *FERC v. EPSA*, 577 U.S. 260 (2016); *Vistra Corp. v. FERC*, 80 F.4th 302 (D.C. Cir. Aug. 15, 2023); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 (1983); *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202 (D.C. Cir. 2018); *West Deptford Energy, LLC*, 766 F.3d 10 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945 (D.C. Cir. 2007); *New York v. FERC*, 535 U.S. 1 (2002); *Transmission Access Policy Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987)); *Colo. Interstate Gas Co. v. FERC*, 146 F.3d 889, 893 (D.C. Cir. 1998); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014).]

2. **Issue:** Did the August 14 Order arbitrarily and capriciously reclassify MISO's regional Eligible Projects as PJM Supplemental Projects in violation of Order No. 1000, thereby

[63] *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,136 (2020) at P 9.

unduly discriminating against nonincumbent developers in favor of incumbent utilities?

Yes. **Error #2:** FERC arbitrarily and capriciously mischaracterized MISO's projects in violation of regional and interregional planning requirements under Order No. 1000, thus creating undue discrimination against nonincumbent developers in favor of incumbent utilities. [FERC Order Accepting Tariff Revisions and Certificates of Concurrence, and Conditionally Accepting Cost Recovery and Funding Agreements, FERC Docket No. ER26-1538, *et al*., (issued August 14, 2026); FERC Order 890-A, 890-B, 890-C, 890-D; FERC Order No. 1000, 1000-A; *Am. Gas Ass'n v. FERC*, 593 F.3d 14 (D.C. Cir. 2010); *Laclede Gas Co. v. FERC*, 873 F.2d 1494 (D.C. Cir. 1989); *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,136 (2020); *Delaware Division of Pub. Advocate v. FERC*, 3 F.4th 461 (D.C. Cir. 2021); *FERC v. EPSA*, 577 U.S. 260 (2016); *Vistra Corp. v. FERC*, 80 F.4th 302 (D.C. Cir. Aug. 15, 2023); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 (1983); *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202 (D.C. Cir. 2018); *West Deptford Energy, LLC*, 766 F.3d 10 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945 (D.C. Cir. 2007); *New York v. FERC*, 535 U.S. 1 (2002); *Transmission Access Policy Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987)); *Colo. Interstate Gas Co. v. FERC*, 146 F.3d 889, 893 (D.C. Cir. 1998); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014).]

3. **Issue:** Did the August 14 Order fail to comply with Order No. 1000-based interregional planning and coordination requirements?

   Yes. **Error #3:** The August 14 Order failed to comply with Order No. 1000-based interregional planning and coordination requirements. [FERC Order Accepting Tariff Revisions and Certificates of Concurrence, and Conditionally Accepting Cost Recovery and Funding Agreements, FERC Docket No. ER26-1538, *et al*., (issued August 14, 2026); FERC Order 890-A, 890-B, 890-C, 890-D; FERC Order No. 1000, 1000-A; *Delaware Division of Pub. Advocate v. FERC*, 3 F.4th 461 (D.C. Cir. 2021); *FERC v. EPSA*, 577 U.S. 260 (2016); *Vistra Corp. v. FERC*, 80 F.4th 302 (D.C. Cir. Aug. 15, 2023); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 (1983); *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202 (D.C. Cir. 2018); *West Deptford Energy, LLC*, 766 F.3d 10 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945 (D.C. Cir. 2007); *New York v. FERC*, 535 U.S. 1 (2002); *Transmission Access Policy Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987)); *Colo. Interstate Gas Co. v. FERC*, 146 F.3d 889, 893 (D.C. Cir. 1998); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014).]

4. **Issue:** Did the August 14 Order arbitrarily and capriciously adopt transmission planning that will not result in selection of the most efficient and cost-effective project, contrary to the just and reasonable rate standard in the Federal Power Act and the need to protect customers and ensure energy affordability? By accepting the MISO Tariff Revisions, does the August 14 Order arbitrarily and capriciously accept the Cost

Recovery and Funding Agreements without a showing of reasoned decision-making or explanation thereto?

Yes**. Error #4:** The August 14 Order arbitrarily and capriciously adopted transmission planning that will not result in selection of the most efficient and cost-effective project, which is contrary to the just and reasonable rate standard established in the Federal Power Act, as well as the need for the Commission to protect customers and ensure energy affordability. [FERC Order Accepting Tariff Revisions and Certificates of Concurrence, and Conditionally Accepting Cost Recovery and Funding Agreements, FERC Docket No. ER26-1538, *et al*., (issued August 14, 2026); FERC Order 890-A, 890-B, 890-C, 890-D; FERC Order No. 1000, 1000-A; *Xcel Energy Serv. v. FERC*, 815 F.3d 947, 949 (D.C. Cir. 2016); 16 U.S.C. § 824d (e); *ISO New England, Inc.*, 136 FERC ¶ 61,221 at P 20 (2011);. *Delaware Division of Pub. Advocate v. FERC,* 3 F.4th 461 (D.C. Cir. 2021); *FERC v. EPSA,* 577 U.S. 260 (2016); *Vistra Corp. v. FERC*, 80 F.4th 302 (D.C. Cir. Aug. 15, 2023); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 (1983); *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202 (D.C. Cir. 2018); *West Deptford Energy, LLC,* 766 F.3d 10 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945 (D.C. Cir. 2007); *New York v. FERC*, 535 U.S. 1 (2002); *Transmission Access Policy Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987)); *Colo. Interstate Gas Co. v. FERC*, 146 F.3d 889, 893 (D.C. Cir. 1998); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014).]

III. REQUEST FOR REHEARING - ARGUMENT

A Commission order will be reversed on review if it is arbitrary or capricious, reflects an abuse of discretion, is not otherwise in accordance with law, or is not supported by substantial evidence.[64] In order to satisfy its obligation to engage in reasoned decision-making, the Commission must examine the relevant data and articulate a rational connection between the facts found and the choices made.[65] The Commission must reach its conclusion through decision-making that is "reasoned, principled, and based upon the record."[66] Under the FPA, FERC's

[64] *Vistra Corp. v. FERC*, 80 F.4th 302, 312-313 (D.C. Cir. Aug. 15, 2023), *cert. denied sub nom. Elec. Power Supply Assn. v. FERC*, No. 23-773, 2024 WL 2709351 (U.S. May 28, 2024); *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 55 (D.C. Cir. 2014); *Sacramento Mun. Util. Dist. v. FERC,* 616 F.3d 520, 528 (D.C. Cir. 2010).

[65] *FERC v. EPSA*, 577 U.S. 260, 292 (2016); *Sacramento*, 616 F.3d at 528; *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983)).

[66] *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202, 210-11 (D.C. Cir. 2018); *West Deptford Energy, LLC*, 766 F.3d 10, 20 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945, 953 (D.C. Cir. 2007); *see New York v.*

factual findings are determinative so long as they are supported by substantial evidence.[67] The "substantial evidence" standard "requires more than a scintilla, but can be satisfied by something less than a preponderance of the evidence."[68] Substantial evidence is "relevant evidence" that "a reasonable mind might accept as adequate to support a conclusion."[69] Additionally, to avoid an arbitrary and capricious decision or one that does not reflect reasoned decision-making, the Commission must consider all important aspects of the problem at issue.[70] It is "well established that the Commission must 'respond meaningfully to the arguments raised before it.'"[71]

Deference will not be owed if the Commission "has not substantiated the application of its policy, either through the development of specific facts or by making a reasoned explanation."[72] When the Commission fails to rely on its technical expertise or fails to substantiate the application of its policy, an appellate court will conclude that FERC's actions are arbitrary and capricious.[73] To avoid an arbitrary and capricious decision or one that does not reflect reasoned decision-

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FERC, 535 U.S. 1, 36 (2002); *see also Transmission Access Policy Group v. FERC*, 225 F.3d 667, 705, 716 (D.C. Cir. 2000) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1021 (D.C. Cir. 1987)); *Colo. Interstate Gas Co. v. FERC*, 146 F.3d 889, 893 (D.C. Cir. 1998).

67 Section 313(b) of the FPA, 16 U.S.C. § 825l(b).

68 *See N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 97 (3d Cir. 2014) (quoting *La. PSC v. FERC*, 522 F.3d 378, 395 (D.C. Cir. 2008)).

69 *N.J. Bd. of Pub. Utils.*, 744 F.3d at 9 (quoting *Mars Home for Youth v. NLRB*, 666 F.3d 850, 853 (3d Cir. 2011)).

70 *See e.g. Motor Vehicle Mfs.*, 463 U.S. at 43 ("an agency rule would be arbitrary and capricious if the agency . . . failed to consider an important aspect of the problem); *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998) ("In previous cases, we have rejected agency orders when the Commission neglected to deal with an important part of the problem…") (*citing Laclede Gas Co. v. FERC*, 997 F.2d 936, 945-48 (D.C. Cir. 1993)); *North Carolina Util. Comm'n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994) (given the complexity of the issue, FERC must more fully explain its decision).

71 *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 12 (D.C. Cir. 2015).

72 *El Paso Elec.*, 832 F.3d at 503 (quoting *Fla. Gas Transmission Co. v. FERC*, 876 F.2d 42, 45 (5th Cir. 1989)).

73 *Id*. (citing *Fla. Gas Transmission*, 876 F.2d at 45); *see also Mich. Pub. Power Agency v. FERC*, 405 F.3d 8, 16 (D.C. Cir. 2005).

making, the Commission must consider all important aspects of the problem at issue.[74] The August 14 Order approving MISO's Filing fails to satisfy each of these standards of review.

A. ERROR #1: FERC failed to engage in reasoned decision-making by arbitrarily and capriciously concluding that MISO is not obligated to use the Competitive Transmission Process for the regional projects at issue in MISO's Filing.

The August 14 Order errs by approving MISO's proposed tariff revisions allowing MISO to declare that its Competitive Developer Selection Process does not apply to MISO planned transmission facilities and substations if MISO determines the MISO-planned facilities are not located on the MISO transmission system.[75] The August 14 Order approved Tariff changes, more than a year and a half after MISO's planning decisions, that allow MISO to directly assign the MVP Projects through contractual arrangements with PJM transmission owners, but at MISO ratepayer expense. The August 14 Order uncritically accepted MISO's Tariff revisions and weak rationale, failing to meaningfully engage in the arguments presented by ETCC and IECA.[76]

Through the August 14 Order's accepted Tariff revisions, MISO is now empowered to arbitrarily select geographic locations and arbitrarily assign regionally-planned MVP Projects to PJM TOs (or other incumbent utilities not under MISO's functional control). The August 14 Order rests on the false premise that the projects at issue are geographically located exclusively within the PJM footprint, even though the facilities will connect to the MISO system and MVP Projects were planned to address problems on and expand the MISO Transmission System. The August 14 Order therefore relies on MISO's circular reasoning: MISO cannot apply the competitive

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[74] *See e.g. Motor Vehicle Mfs*, 463 U.S. at 43; *NorAm Gas Transmission*, 148 F.3d at 1165 ("In previous cases, we have rejected agency orders when the Commission neglected to deal with an important part of the problem…") (citing *Laclede Gas*, 997 F.2d at 945-48); *North Carolina*, 42 F.3d at 666 (given the complexity of the issue, FERC must more fully explain its decision).

[75] August 14 Order at P 132.

[76] August 14 Order at PP 136-137.

developer process to the MVP Projects as mandated by the existing Tariff because they are *located in PJM*, but the projects are only located in PJM because MISO ignores their connection in MISO and concludes the projects are located in PJM and must be under PJM's functional control, not MISO's. And, because the MVP Projects are under PJM's control, MISO must defer to PJM's Order No. 1000 processes, which the Commission accepted do not require competition for the MISO MVP Projects because they are to be considered PJM Supplemental Projects. But even here they are not treated as Supplemental Projects under PJM's Tariff, but through the creation of separate contracts (CRAF Agreements). This is not a clear and logically cohesive regulatory design that will protect customers; accepting this design constitutes arbitrary and capricious decision-making.

Specifically, the August 14 Order accepts Tariff changes that "create a Tariff framework for implementing agreements with external (*i.e.*, non-MISO) transmission owners to fund, construct, own and operate new transmission facilities and reliability upgrades serving MISO needs . . .."[77] But MISO is not restricted to planning solely to the edges of the existing Transmission System and not a foot further. As the Commission has made clear, regional planning as contemplated by Order No. 890[78] is related to "expansion" of the transmission system.[79] In fact, MISO's Attachment FF is titled the "TRANSMISSION EXPANSION PLANNING PROTOCOL." Section I.A. explains that "[t]he [MISO Transmission Expansion Plan] is

[77] *Id*.

[78] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, at P 444, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[79] *So. Cal. Edison Co*, 164 FERC ¶ 61,160 (2018); *Cal. Pub. Util. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 (2018).

developed to facilitate the timely and orderly expansion of and/or modification to the Transmission System."[80]

The August 24 Order's acceptance of MISO's assertion that the MVP Projects are located exclusively "in the PJM region" and thus will be under PJM functional control unjustly and unreasonably allows MISO to avoid initiating the Tariff's mandated use of the Competitive Solicitation Process as required by Order No. 1000 notwithstanding that the MVP Projects are connected to the MISO System, the entire reason for MISO planning them rather than PJM. Here, MISO simply declared that the subject MVP Projects would be located in the PJM region by agreeing with PJM and certain PJM transmission owners to make that conclusion true. The Commission found "we agree with MISO that the MISO Tariff does not extend to transmission facilities that will be located in another transmission provider's region and, in particular, to transmission facilities that will be under the functional control of another transmission provider."[81] Neither MISO nor the August 14 Order has substantiated any electrical or reliability basis to make that conclusion true given that the borders of MISO and PJM are arbitrarily determined by which region a transmission owner decides to join. In fact, Commonwealth Edison's retail distribution service territory was located in MISO, until it joined PJM and became an island inside MISO. If MISO had released the green-field MVP tie-line Projects to competition, those projects would have become part of the MISO region under MISO's operational control.

The August 14 Order's acceptance of the Tariff language creating a *post hac* Geographic Exemption to competition based on the claim that the MVP Projects are exclusively within territory under PJM's operational control despite connecting to MISO was arbitrary and capricious

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[80] MISO Tariff, Attachment FF, Article 1.A.

[81] August 14 Order at P 130.

decision making. Existing exemptions in the MISO Tariff are a result of Commission approval following a thorough process that required detailed factual and legal findings.[82] The August 14 Order does not support MISO's new Geographic Exemption with substantial evidence or show that the new exemption is just and reasonable.

The August 14 Order also runs contrary to federal court precedent affirming FERC's longstanding determinations that competitive pressures in the development of large-scale transmission projects are necessary to ensure just and reasonable rates.[83] The August 14 Order "disagrees with protestors that MISO's decision not to apply its Competitive Developer Selection Process to the MTEP PJM Facilities conflicts with Order No. 1000's requirements to eliminate rights of first refusal for incumbent transmission owners," but does not discuss the appellate precedent which contradicts with the August 14 Order's conclusions.[84] The United States Court of appeals for the Seventh Circuit ("Seventh Circuit") recognized an incumbent-preference based contract between and among MISO and the incumbent transmission owners for what it was: "[a] contract in which the parties are seeking to protect themselves from competition from third parties (cartels are the classic example of such contracts)."[85] Later, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") upheld the Seventh Circuit and Commission competition findings and foundational reasoning, explaining that "basic economic principles make

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[82] *See e.g.,* MISO Tariff, Schedule 10, ISO Recovery Adder, Exceptions ("The charges in this Schedule 10 are subject to the exceptions in the Settlement Agreements described below, as accepted by the Commission, regarding the following grandfathered agreements.").

[83] *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) ("*South Carolina*").

[84] August 14 Order at 133.

[85] *MISO Transmission Owners v. FERC*, 819 F.3d 329, 333-335 (7th Cir. 2016) ("*MISO Transmission Owners*").

clear that rights of first refusal are likely to have a direct effect on the costs of transmission facilities because they erect a barrier to entry."[86]

The D.C. Circuit further held:

> The Seventh Circuit has gone so far as to describe such self-protective and anti-competitive agreements as cartel-like. See *MISO Transmission* [], 819 F.3d at 335 []. We similarly think that such terms through "which the parties are seeking to protect themselves from competition from third parties" are a far cry from those in the original Mobile-Sierra cases.[87]

The August 14 Order does little to confront and apply the abovementioned governing precedent or explain how MISO's new Geographic Exemption and contorted designation of MVP Projects paid for by MISO ratepayers as PJM Supplemental Projects is consistent with appellate court precedent. It is without question that if MISO looked to the connection with MISO to determine that the MVP Projects were MISO related, they would be subject to the Competitive Developer Process as Eligible Projects. The new Geographic Exemption is not an otherwise valid exemption from Order No. 1000, and the August 14 Order provides no rationale, apart from its own disagreement with protesters, to support bypassing the mandated competitive process for the subject MVP Projects, whether the facilities are in or outside of the MISO region.

FERC acknowledges arguments of ETCC and IECA that Order No. 1000-A requires projects whose costs are allocated regionally be subject to competition, and that market solutions, process transparency, and potential cost savings are abandoned by MISO's reluctance to apply the Competitive Developer Selection Process to the MTEP PJM Facilities.[88] But, without further meaningful explanation and engagement of the arguments, the August 14 Order decides it is "not

[86] *South Carolina*, 762 F.3d at 74.

[87] *Id*.

[88] August 14 Order at PP 135-136.

persuaded" by such arguments and rejects them out of hand with "little more than a handwave."[89] Such an approach does not constitute the reasoned decision-making standard found in other Commission orders, especially given the Commission was very clear in the Order No. 1000 line of cases that exceptions to competition are defined and limited, such as in circumstances involving an immediate reliability need project or an upgrade.[90]

The August 14 Order additionally finds arbitrarily dismissed precedent advanced by IECA and ETCC: that a parallel RTO (California Independent System Operator, Inc. ("CAISO")), applied its competitive selection process to new planned facility in Nevada, outside of its territory.[91] The Commission attempted to distinguish that project in CAISO from the MVP Projects in MISO by the fact that the Nevada project was turned over to CAISO's functional control, whereas here, the MVP Projects will be located in PJM territory and be under PJM's functional control, not MISO.[92] But, the determination that the project would be under PJM's functional control was the outcome of MISO's decision not to initiate its Competitive Developer Process and to declare by fiat that the projects were in PJM and subject to PJM's functional control. As ETCC and ICEA have established, if MISO competed the MVP Projects as required by MISO's existing Tariff, just as CAISO did, the completed MVP Projects would have been under MISO's functional control. Indeed, agreeing to join MISO and turn over functional control of the facilities is one of

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[89] *Delaware Division of Pub. Advocate v. FERC*, 3 F.4th 461, 469 (D.C. Cir. 2021).

[90] *See* Order No. 1000-A at PP 357, 360, 392, 426-429, 430 ("Finally, in response to petitioners' concerns over which facilities are selected in a regional transmission plan for purposes of cost allocation, and for which a federal right of first refusal must therefore be eliminated, we clarify that if any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facility, except as provided in this order.").

[91] August 14 Order at P 138.

[92] *Id.*

the requirements for any party responding to a MISO competitive solicitation.[93] The Commission's reliance on the functional control of the completed project as a mechanism to avoid competition has no support in MISO's Tariff, or Order No. 1000 and its progeny. The August 14 Order was arbitrary and capricious

In addition, the newly concocted Geographic Exemption to competition has no limiting principle and is apt for abuse. Now, any transmission project could be removed from the Competitive Developer Selection Process if MISO characterizes, on a case-by-case basis, a project as not "located on the Transmission System." The August 14 Order authorizes MISO to convert the Tariff's default rule of competition into an exception applied at MISO's discretion for any projects that could geographically border external systems. In response to WPPI, ETCC, and IECA concerns relating to the aforementioned lack of a limiting principle, the August 14 Order merely "disagrees," stating that MISO Tariff Schedule 26-J provides explicitly for cost recovery of projects outside the MISO region, and therefore the Geographic Exemption proposal is narrowly applicable only to transmission facilities meeting the requirements under Schedule 26-J.[94] While this schedule may provide cost allocation parameters, it does not address or limit MISO's discretion in application of the Competitive Transmission Process (which imposes cost discipline on the ultimate revenue requirement for any one project). That discretion is the element in need of limitation. The August 14 Order fails to address this distinction.

At base, the August 14 Order does not address a threshold inconsistency: that MISO cannot both approve projects through its regional planning process that it claims are located in another region (without invoking Order No. 1000 mandated interregional transmission planning) and

[93] MISO Tariff, Attachment FF, VIII.D.5.12.

[94] August 14 Order at P 129.

simultaneously claim that its Tariff does not permit it to implement those same projects through its established regional processes. Throughout the August 14 Order, the Commission accepts MISO's flawed logic without offering substantive reasoning or explanation.[95] Without more, simple disagreement with protestor arguments does not amount to reasoned decision-making[96] and demonstrates that FERC did not meaningfully attempt to understand or apply the arguments raised by ETCC and IECA. In fact, FERC's deficiency letter to MISO referred to the facilities at issue as "Non-MISO Facilities"[97] reflecting that the Commission accepted MISO's characterization from the outset. The D.C. Circuit has previously held that "a passing reference to relevant factors [is] not sufficient to satisfy the Commission's obligation to carry out reasoned and principled decision-making."[98] In fact, the August 14 Order advances "disagreement" with protesting party arguments 11 times throughout its August 14 Order. Such an approach gives short shrift to the legally supported and thoroughly reasoned arguments advanced by ETCC, IECA, and other protestors in the proceeding. As such, rehearing is warranted.

[95] See August 14 Order at P 133 ("We disagree with Competition Coalition and IECA that it is contradictory for MISO to identify and select MTEP PJM Facilities while not applying its Competitive Developer Selection Process to such facilities."; at P 119 ("We find MISO's proposed revisions to the MISO Tariff, as amended, to establish a cost allocation and recovery framework for Non-MISO Facilities to be just and reasonable, not unduly discriminatory or preferential, and consistent with the requirements of Order No. 1000, and we therefore accept them.).

[96] *See Am. Gas Ass'n v. FERC*, 593 F.3d 14 (D.C. Cir. 2010) ("A passing reference to relevant factors is not sufficient to satisfy the Federal Energy Regulatory Commission's (FERC) obligation to carry out reasoned and principled decisionmaking; the Commission must fully articulate the basis for its decision."). *See also Laclede Gas Co. v. FERC*, 873 F.2d 1494 (D.C. Cir. 1989) ("[W]here a party raises facially reasonable alternatives to FERC's decision to reject a contested settlement, the agency must *either* consider those alternatives *or* give some reason . . . for declining to do so.").

[97] Deficiency Letter at 1.

[98] *Am. Gas Ass'n,* 593 F.3d at 19.

B. ERROR #2: The August 14 Order's arbitrary and capricious reclassification of MISO regional Eligible Projects as PJM Supplemental Projects violates Order No. 1000 and unduly discriminates against nonincumbent developers in favor of incumbent utilities.

The August 14 Order supports MISO's proposed classification of the MISO-planned regional Eligible Projects as PJM Supplemental Projects, and in doing so does not reflect reasoned decision-making. The August 14 Order errs by finding that the MVP Projects are "located outside the MISO region"[99] and therefore not subject to the mandated Competitive Developer Selection Process in MISO's Tariff, despite that one end connects to MISO *and* that Attachment FF, VIII.A. contains no geographic or topological restriction.[100] Even if MISO and the August 14 Order were correct that the MVP Projects are located in PJM because one end is in PJM, such projects would then be classified as being "located in both regions" (MISO and PJM) under the Long-Range Transmission Planning ("LRTP") Tranche 2.1 portfolio, subjecting them to the competitive evaluation process required under interregional planning. These projects would not automatically become PJM Supplemental Projects, as MISO advances and the Commission approves.[101] The only way for the projects to be exclusively within PJM is for the MISO planned MVP Projects, exclusively paid for by MISO ratepayers, to not be touching MISO at all. MISO never claimed such, as it cannot. It simply masked, and the Commission blindly accepted, that the projects are in PJM. There is no record basis that the project are in PJM or must be in PJM.

The August 14 Order further errs in determining that it is reasonable to allow MVP Projects to be automatically assigned as PJM Supplemental Projects. Both MISO and the August 14 Order assume that the MVP Projects are not needed to address regional or interregional planning issues

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[99] August 14 Order at PP 139-140.

[100] ETCC/IECA Protest at 41.

[101] August 14 Order at PP 139-140.

within PJM's planning authority, and that the projects fall within the definition of Supplemental Projects.[102] But it is clear that the greenfield MVP Projects must be evaluated as interregional projects, and as such, a planning obligation also falls on PJM.

While MISO refers to the greenfield projects at issue as the MTEP "PJM Projects" (MISO Filing at 3), that description is a self-serving designation designed to reflect MISO's desired outcome. The August 14 Order and the MISO Filing use the term Non-MISO Facilities to refer to the subject MVP Projects at issue. The August 14 Order's acceptance of that term and the framing of projects at issue based on a supposed geographic location of the MVP Projects at issue constitutes arbitrary and capricious decision-making that permeates the August 14 Order and its acceptance of MISO's proposal.

Regardless, the MISO-planned greenfield MVP Projects are not "Supplemental Projects" under the PJM Tariff as they do not arise from the transmission owner's planning criteria in a manner consistent with the PJM Tariff. Furthermore, if they were Supplemental Projects, the costs for such projects must be allocated exclusively to the zone of the transmission owner developing the project. The Supplemental Project category in PJM relates only to projects needed to meet individual transmission owner planning criteria established to address that transmission owner's so-called local needs. The Commission confirmed this individual transmission owner focus in holding:

> PJM TOs plan Supplemental Projects to meet local needs in their respective zones. Supplemental Projects are planned through the Order No. 890 compliant procedures set forth in Attachment M-3. For instance, PJM TOs are required to provide the models used in developing their local plans and

[102] "Supplemental Project" shall mean a transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not a state public policy project pursuant to Operating Agreement, Schedule 6, section 1.5.9(a)(ii). Any system upgrades required to maintain the reliability of the system that are driven by a Supplemental Project are considered part of that Supplemental Project and are the responsibility of the entity sponsoring that Supplemental Project. *See* PJM Operating Agreement, Definitions S-T.

> enable stakeholder participation to review and comment on their plans. Additionally, Supplemental Projects do not qualify for region-wide cost allocation under Schedule 12 of the PJM Tariff.[103]

MISO-planned MVP Projects have nothing to do with individual PJM transmission owner planning standards and criteria. PJM Tariff Attachment M-3 does not contemplate its use to advance projects to support regional planning needs of neighboring RTOs or ISOs. This fact is made clear by MISO's assertion that the PJM transmission owners only agreed to move forward with the MVP Projects "[a]fter a year-long, intensive arms-length negotiation process, . . . to establish terms and conditions for the funding and construction of the MISO-Requested Facilities."[104] Supplemental Projects require no such third-party negotiation.

The August 14 Order points to no precedent to show that the definition "Supplemental Project" under the PJM Operating Agreement is broad enough to encompass projects that are planned by MISO, exclusively under MISO planning criteria, and regionally cost allocated in MISO.[105] Further, there is no precedent to suggest that "Supplemental Project" encompasses a contractually agreed-to project. Instead, the August 14 Order, in potential recognition of the regulatory quandaries afoot, "encourage[s] PJM to consider whether revisions to its definition of Supplemental Projects…could provide a more precise definition of the category."[106] But encouraging PJM to change its Tariff prospectively does not address the underlying issues

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[103] *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,136 (2020) at P 9.

[104] MISO Filing at 3. MISO's statement here also confirms that MISO's Filing is a effort to retroactive revise its tariff in violation of the filed rate doctrine.

[105] The Supplemental Project definition does not result in the greenfield MVP Projects becoming a Supplemental Project as a result of the so-called "do no harm" projects. The definition of Supplemental Project provides that "[a]ny system upgrades required to maintain the reliability of the system that are driven by a Supplemental Project are considered part of that Supplemental Project and are the responsibility of the entity sponsoring that Supplemental Project." It is only when an actual Supplemental Project is appropriately identified that "system upgrades required to maintain the reliability of the system" become part of the original Supplemental Project. The definition does not work in reverse.

[106] August 14 Order at P 139.

highlighted in the ETCC/IECA protests in this proceeding that MISO MVP's are not Supplemental Projects.

The August 14 Order fails to provide any precedent in its cursory review of the Supplemental Project classification issues.[107] Meanwhile, Order No. 1000 provides directly contrary precedent: "The concept is that there should not be a federally established monopoly over the development of an entirely new transmission facility that is selected in a regional transmission plan for purposes of cost allocation to others.[108]" The Supplemental Project classification effectuates a practical competition exclusion, inconsistent with the Commission's holding in Order No. 1000. The August 14 Order accepts the premise of the MISO Filing "that MISO lacks the authority to facilitate or require development of transmission facilities in another region."[109] Yet, the Commission approves MISO's Filing to revise its tariff so as to allow project planning for its MVP Projects to occur in what is supposedly PJM's exclusive territory without invoking interregional planning with PJM. If MISO lacks the authority, as the Commission states, to facilitate transmission development in another region, what gives MISO the sudden authority to develop projects that will be assigned to PJM TOs using a local project category (Supplemental Project)? Implementing a regulatory framework with contradictions and inconsistencies and exceptions that are more powerful than the default rule is arbitrary and capricious decision-making.

The August 14 Order makes no attempt to explain or reconcile these inconsistencies but instead concludes that MISO's assessment regarding MISO's apparent lack of authority to initiate the Competitive Transmission Process and instead create MISO MTEP PJM Facilities is simply

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[107] *See* August 14 Order at PP 139-140.

[108] Order No. 1000-A at P 426.

[109] August 14 Order at P 132.

reasonable.[110] The August 14 Order approves reclassification of MISO regional Eligible Projects as PJM Supplemental Projects without basis. Supplemental Projects are excluded from competition solely because they are individual transmission owner-initiated projects and are not submitted for regional cost allocation. Treating MISO MVP Projects as Supplemental Projects but with regional cost allocation violates of the Commission's mandate against discrimination in favor of incumbent utilities. In Order No. 1000-A, the Commission explicitly identified:

> The ability of an incumbent transmission provider to discourage or preclude participation of new transmission developers through discriminatory rules in a regional transmission planning process, and in particular, the inclusion of a federal right of first refusal, can have the effect of limiting the identification and evaluation of potential solutions to regional transmission needs.[111]

The August 14 Order creates a Geographic Exemption to competition that "preclude[s] participation of new transmission developers through discriminatory rules in a regional transmission planning process" by allowing MISO to arbitrarily declare that a regionally cost allocated MISO MVP Project is not located in MISO. The August 14 Order fails to confront and justify the unduly discriminatory and preferential regime present in MISO's Filing here, in direct violation of Orders No. 1000 and 1000-A.[112] To cure such violation, rehearing is warranted.

C. ERROR #3: The August 14 Order fails to comply with Order No. 1000-based interregional planning and coordination requirements.

Order No. 1000 made clear the parameters around interregional planning and attendant obligations of RTOs: the "Commission requires the development and implementation of procedures for neighboring public utility transmission providers *to identify and jointly evaluate*

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[110] *Id.*

[111] Order No. 1000-A at P 358.

[112] *See, e.g.,* Order No. 1000-A at 364 ("as explained in Order No. 1000, nonincumbent transmission developers that build a transmission facility in an RTO or ISO and become members of that RTO or ISO will be subject to the same relevant obligations that apply to incumbent transmission providers that are members of an RTO or ISO,").

transmission facilities that are proposed to be located in both regions."[113] The August 14 Order accepted MISO's arbitrary determination that the MVP Projects are located in both regions, by finding that they were in PJM and appropriately assigned to PJM TOs. One of two things must be true. Either, the MISO-planned MVP Projects should be assigned to MISO TOs or go through MISO's Competitive Developer Process for Eligible Projects as required by MISO's Tariff and Order No. 1000 requirements. Or, the MISO MVP Projects are located in both PJM and MISO and they are required to "*jointly evaluate transmission facilities that are proposed to be located in both regions*"[114] under interregional planning processes. The August 14 Order fails to provide an adequate legal basis to support assignment of MISO-planned regional Eligible Projects (*i.e.*, the MVP Projects) to incumbent TOs in a different planning region outside the Order No. 1000-based interregional planning and coordination requirements. The Commission's requirement in Order No. 1000 was for RTOs with neighboring territories to plan together where such collaboration would advance reliability and ratepayer economic needs. Here, MISO and PJM did not plan the MVP projects together, nor were these projects jointly contemplated to meet the needs of MISO and PJM ratepayers. Instead, MISO planned the MVP Projects and later decided to give the nearly $2 billion is MISO ratepayer funded projects to incumbent TOs in PJM.

Order No. 1000 defines an interregional transmission facility as "a transmission facility that is located in two or more transmission planning regions."[115] The August 14 Order now allows MISO excessive discretion to simultaneously assert that its regional planning procedures like the

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[113] Order No. 1000 at P 345 (emphasis added).

[114] Order No. 1000 at P 345 (emphasis added).

[115] Order No. 1000 at P 482 n.374 (For purposes of this Final Rule, a regional transmission facility is a transmission facility located entirely in one region. The Proposed Rule sometimes called such a facility a regional facility and sometimes an intraregional facility. An interregional transmission facility is one that is located in two or more transmission planning regions. A transmission facility that is located solely in one transmission planning region is not an interregional transmission facility.).

Competitive Developer Selection Process do not apply because the MISO MVP Projects are outside the MISO region, yet not acknowledge that the projects are interregional projects because they are "located in two or more neighboring transmission planning regions."[116] The August 14 Order also appears to arbitrarily accept breaking MISO Tranche 2.1 portfolio, the basis on which it was allocated across MISO Midwest, into single project pieces to determine location and avoid Order No. 1000's interregional planning requirements.

The August 14 Order asserts that "The MTEP PJM Facilities do not meet the criteria to qualify under any category of interregional transmission project", and that "MISO fulfills the interregional transmission coordination requirements of Order No. 1000 with PJM through the Coordinated System Plan, in the MISO-PJM JOA, which provides specific categories of interregional transmission projects."[117] If that is true, then MISO and PJM are not incompliance with Order No. 1000, but that does not provide a workaround for the MISO MVP Projects at issue from the explicit requirement of Order No. 1000 that defines the projects as interregional. The August 14 Order and MISO fail to explain whether MISO and PJM met the requirements of Order No. 1000 to actually evaluate the projects as interregional projects given MISO's claim that the overall project is located in both regions.[118] MISO's Filing, while asserting that the greenfield tie-line projects are located in both regions offered no evidence that the projects were "jointly evaluate[d]" by both regions. The Joint Operating Agreement between MISO and PJM establishes coordination required by Order No. 1000. Without the evaluation mandated by Order No. 1000 for projects located in both regions, MISO cannot establish that the CRAF facilities are the more

[116] August 14 Order at P 141.

[117] *Id.*

[118] As MISO notes, MVPs are analyzed as a portfolio. MISO Filing at 3. (MISO's LRTP Tranche 2.1 studies indicated that the Tranche 2.1 portfolio necessitated facilities in the PJM region to be able to fulfill its reliability and economic promise.)

efficient or cost-effective interregional projects to address regional needs in both regions with the sufficiency necessary to permit Commission approval.

Even if the August 14 Order were correct about the limitations of MISO's regional planning process because the MVP portfolio extends "outside the MISO region," then MISO's FERC-approved (and required) interregional planning process with PJM is implicated. If MISO is correct that the MVP Projects are located in PJM, the LRTP Tranche 2.1 portfolio constitutes projects "located in both regions" and must be evaluated as such. In trying to skirt its regional Competitive Developer Selection Process, MISO has violated its interregional planning obligations under Order No. 1000.

The Concurring Opinion to the August 14 Order recognizes the conundrum afoot: "a modern grid's value often goes beyond the geographic boundaries of any single transmission provider. . . the size and scope of the needed infrastructure may require solutions that are no longer limited to traditional regional borders."[119] Here, the Concurring Opinion provides the definition of "interregional." The Concurring Opinion further notes:

> The geographic facts of this situation create difficulties in classification within and across MISO and PJM. The MISO-PJM JOA does not allow these facilities to be classified as "interregional," as they do not meet the agreement's definition of "interregional facilities."[120]

In their protest, ETCC and IECA made this point: Order No. 1000 defines the projects as interregional, and if it is true that MISO and PJM's Joint Operating Agreement does not, then this is a compliance issue for the Commission to address, not a valid justification to ignore the plain requirements of Order No. 1000 and circumvent competitive bidding. After all, the Concurring Opinion further recognizes that "the most beneficial and cost-effective solutions for one region's

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[119] Rosner/Chang Concurrence at P 1.

[120] Rosner/Chang Concurrence at P 2.

system needs may include transmission upgrades in another region's footprint. The benefits that these facilities will deliver, which include improved reliability, reduced congestion costs, and more efficient resource integration, are inherently interregional in nature."[121] Accordingly, the rationale in the Concurring Opinion justifies rejection of MISO's Filing and granting rehearing.

The August 14 Order fails to adequately engage the violation of Order No. 1000's interregional requirement raised in protests and comments submitted by stakeholders besides just ETCC/IECA.[122] FERC's failure to engage the arguments put forth in the protest of ETCC/IECA, including the interregional planning requirements of Order No. 1000, warrant rehearing.

D. ERROR #4: The August 14 Order arbitrarily and capriciously adopts transmission planning that will not result in selection of the most efficient and cost-effective project, contrary to the just and reasonable rate standard in the FPA and the need to protect customers and ensure energy affordability.

The August 14 Order not shown that approval of MISO's Filing will result in just and reasonable rates, despite that Section 205 of the FPA requires it. Section 205 of the Federal Power Act mandates that "[a]ll rates and charges ... demanded, or received by any public utility for ... the transmission or sale of electric energy subject to the jurisdiction of the Commission ... shall be just and reasonable."[123] Section 205 further provides that when there is an increase in rates or charges, "the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility."[124] In a Section 205 proceeding, "the burden of proof

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[121] Rosner/Chang Concurrence at P 3.

[122] In Docket No. ER26-1538, Protests or Comments were submitted by Entergy Services, LLC, the MISO TOs, Advanced Energy United, FirstEnergy Service Company, WPPI Energy, American Transmission Systems, and ETCC/IECA. For example, the MISO TOs submitted a limited protest advancing concerns with MISO's allocation of rights associated with new transmission facilities and allocation of costs to customers who will actually receive benefits or use rights to those projects. The MISO TOs explicitly request the Commission require MISO to follow the Owners Agreement when negotiating the aforementioned rights, to which FERC affords no mention in the August 14 Order.

[123] *Xcel Energy Serv. v. FERC*, 815 F.3d 947, 949 (D.C. Cir. 2016).

[124] Section 205, 16 U.S.C. § 824d (e).

is on the filing party to show that its proposal is just and reasonable; the onus is not on the protesters."[125] MISO claims that its proposed changes to Attachment FF are "just and reasonable because it is consistent with the MISO Tariff, the [Transmission Owners Agreement ("TOA")] and Order No. 1000."[126] ETCC and IECA raised significant doubts in their Protest regarding the justness and reasonableness of the practices affecting rates proposed in MISO's Filing. The longstanding and persistent trajectory of transmission costs (which are the fastest-growing component of electricity rates) necessitates competition as one of the Commission's primary tools to ensure that large-scale investments are made at just and reasonable cost. Competitive solicitation disciplines capital costs, incentivizes innovation, and imposes contractual performance obligations that protect consumers.

The August 14 Order eliminates those protections by removing the MVP Projects from MISO's Competitive Developer Selection Process and assigning the facilities through bilateral arrangements with incumbent PJM transmission owners. As a result, MISO customers – who will bear regional cost allocation for these projects for decades into the future – will be denied the cost savings that would naturally flow from competitive bidding and effective interregional planning and coordination. The August 14 Order approves a framework that substitutes negotiated, non-competitive outcomes for the Commission's preferred mechanism of market-based cost discipline, at a time when affordability concerns are at a breaking point. With this severity in mind, the Commission owes consumers more than a cursory glance at the issues. Interregional planning is important but a policy interest in near-term interregional planning implementation must not

[125] *ISO New England, Inc.*, 136 FERC ¶ 61,221 at P 20 (2011).

[126] MISO Filing at 15.

override thorough and methodical just and reasonable ratemaking and just and reasonable interregional planning.[127]

The August 14 Order concludes that the Commission is simply not persuaded by arguments that, in foregoing the Competitive Developer Selection Process, MISO also forgoes transparency, cost savings, and other benefits stemming from competition,[128] as first established by Order No. 1000. But these issues are not engaged in any detail or depth in the August 14 Order, and as explained in the below Request for Stay, the August 14 Order, by approving MISO's Tariff Revisions, also arbitrarily and capriciously accepted the Cost Recovery and Funding Agreements without a showing of reasoned decision-making or explanation thereto.[129] Specifically, the August 14 Order fails to directly confront the rate issues at hand by deferring review of the rate impacts until such future time that the respective PJM Transmission Owners "file revisions to their respective transmission formula rate template before the MISO-Requested Facilities are in service and any amounts are charged to their customers."[130] The August 14 Order fails to demonstrate that such cost-of-service oriented ratemaking helps establish just and reasonable rates. To the contrary, only ratemaking undergirded by principles of competition and cost discipline can help ensure just and reasonable rates for these large-scale regional and interregional projects. Accordingly, the August 14 Order's rationale does not represent reasoned decision-making and does not adequately justify the abandonment of market-based solutions created by the competitive process. Rehearing is warranted.

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[127] August 14 Order, Chang/Rosner concurrence, at P 3.

[128] August 14 Order at P 136.

[129] *See* August 14 Order at PP 2, 119-123.

[130] August 14 Order at P 122.

IV. REQUEST FOR STAY

ETCC and IECA request a stay of the August 14 Order and the attendant CRAF Agreements in conjunction with this instant Request for Rehearing. By Commission acceptance of the MISO Filing, it also accepts the attendant CRAF Agreements between MISO, PJM, Commonwealth Edison Company, and Duke Energy Ohio, Inc., effective June 1, 2026.[131] The CRAF Agreements establish terms and conditions for the funding, construction, ownership, and operation of the MVP Project facilities. Under the CRAF Agreements, the MVP Project facilities will be funded by MISO, though they are classified as PJM Supplemental Projects and will be placed under PJM's functional control.[132] The Commission approved the CRAF Agreements despite concerns raised by parties in the proceeding that the CRAF Agreements lack any provisions specifically addressing cost allocation or ensuring compliance with cost causation principles.[133] The practical effect of the CRAF Agreements is to grant a de-facto right of first refusal to incumbent TOs for regionally planned transmission projects whose costs are regionally allocated.[134] The August 14 Order categorizes the MISO Filing, and with it the CRAF Agreements, as just and reasonable without a legally sufficient basis for such determination.[135] As such, ETCC and IECA request a stay of the August 14 Order, including the effectiveness of the underlying CRAF Agreements. Granting the requested stay will ensure no work begins on the projects subject to the CRAF Agreements while litigation is pending.

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[131] August 14 Order at P 2.

[132] August 14 Order at P 24.

[133] August 14 Order at P 78.

[134] August 14 Order at P 95.

[135] August 14 Order at PP 120-121.

In evaluating whether to grant a request for a stay, the Commission applies the standard set forth in the Administrative Procedure Act.[136] The Commission has held that a stay will be granted if the Commission finds that "justice so requires."[137] The Commission considers factors such as "whether the moving party will suffer irreparable injury without a stay, whether issuance of a stay would substantially harm other parties, and where the public interest lies."[138] Here, justice requires a stay of the effectiveness of the CRAF Agreements while litigation determines whether the MISO Filing itself, which contains the CRAF Agreements, violates competition requirements established by the Commission in Order No. 1000 and binding appellate precedent. If the Commission either grants this Rehearing Request at some point in the future or an appellate court finds that the Commission committed an error of law in approving MISO's Filing and the associated CRAF Agreements, then the grant of the stay will serve the public interest by helping to avoid unnecessary incurrence of time and financial and personnel resources into a transmission planning process that is ultimately invalidated. As emphasized in the underlying ETCC/IECA protest in this proceeding, MISO has sought "to exclude approximately $1.95 billion of predominantly greenfield, Tranche 2.1 projects in Illinois and Indiana from competition, including an otherwise-competitive $600 million greenfield transmission project in Northern Illinois, with an in-service date of June 2034."[139] Given the amount of investment at issue and the 2034 in-service dates, a stay is warranted.

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[136] *See* 5 U.S.C. § 705; *see, e.g.*, *Clifton Power Corp*., 58 FERC ¶ 61,094 (1992).

[137] *Pub. Util. Dist. No. 1 of Pend Oreille Cnty., Washington*, 117 FERC ¶ 61,205 (2006).

[138] *See id. See also, Energy Transfer Partners, L.P.*, 124 FERC ¶ 61,149 (2008).

[139] *See* ETCC/IECA Protest at 3.

V. CONCLUSION

WHEREFORE, ETCC and IECA respectfully request that the Commission grant rehearing and grant a stay of the August 14 Order and associated approval of the attendant CRAF Agreements, consistent with the arguments raised herein.

Respectfully submitted,

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Dated: September 14, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 14th day of September 2026.

/s/ Rebecca Kimmel

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