

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

Tilton Energy LLC)	Docket Nos. EL16-108-000
v.)	
Midcontinent Independent System Operator, Inc.)	
)	
American Municipal Power, Inc.)	EL17-29-000
v.)	
Midcontinent Independent System Operator, Inc.)	
)	
Northern Illinois Municipal Power Agency)	EL17-31-000
v.)	
PJM Interconnection, L.L.C.)	
)	
American Municipal Power, Inc.)	EL17-37-000
v.)	
PJM Interconnection, L.L.C.)	
)	
Dynergy Marketing and Trade, LLC)	EL17-54-000
v.)	
Midcontinent Independent System Operator, Inc.)	(not consolidated)

COMMENTS OF AMERICAN MUNICIPAL POWER, INC.

On January 23, 2018, PJM Interconnection, L.L.C. (“PJM”) and Midcontinent Independent System Operator, Inc. (“MISO”) (collectively, the “RTOs”) submitted their Sixth Status Update in the captioned dockets. The RTOs described this filing as an “informational update on the efforts of the RTOs to develop proposed solutions to the congestion overlap issue related to pseudo-ties”¹ This Sixth Status Update follows the RTOs’ January 25, 2017 *sua sponte* commitment to make these filings every sixty days. The RTOs made that commitment in conjunction with their motion seeking to hold several of these proceedings in abeyance for a

¹ Sixth Status Update at 1.

period of four months. American Municipal Power, Inc. (“AMP”) objected to that motion² and has filed comments in response to a number of the RTOs’ subsequent informational filings.

A full year has passed since the RTOs’ filed their abeyance motion and this Sixth Status Update demonstrates once again how little progress MISO and PJM have made toward eliminating the duplicative congestion charges currently assessed against resources pseudo-tied into PJM. The Sixth Status Update acknowledged the Commission’s December 28, 2017 deficiency letters addressing the RTOs’ Phase 1 partial pseudo-tie “solution” filed in Docket Nos. ER18-136 and ER18-137, and stated the RTOs’ intent to make a Phase 2 filing, in which they “will establish and clarify appropriate congestion charges, congestion rebates, and scheduling and submission requirements for pseudo-tied resources between MISO and PJM.”³

Unlike prior status updates, the Sixth Status Update provides no timeline for the RTOs’ Phase 2 filing. In the Fifth Status Update, the RTOs stated their intention to submit the Phase 2 filing in the first quarter of 2018, with an expected proposed effective date of June 1, 2018.⁴ The Fourth Status Update indicated the Phase 2 filing would be made in late 2017 or early 2018.⁵ The Third Status Update, filed in July 2017, described a singular fourth quarter 2017 filing to comprehensively address the congestion overlap issue.⁶ Thus, over a period of six months, the RTOs allowed the expected filing date for their ultimate prospective solution to the congestion overlap problem to slip from the fourth quarter of 2017 to some unknown date in the future.

On January 29, 2018, the RTOs submitted their response to the Commission’s deficiency letters in Docket Nos. ER18-136 and ER18-137. The deficiency responses noted that the RTOs

² AMP, Answer, Docket No. EL16-108 *et al.*, at 2 (filed Jan. 27, 2017).

³ Sixth Status Update at 4.

⁴ Fifth Status Update, Docket No. EL16-108 *et al.*, at 4 (Nov. 22, 2017).

⁵ Fourth Status Update, Docket No. EL16-108 *et al.*, at 4 (Sep. 25, 2017).

⁶ Third Status Update, Docket No. EL16-108 *et al.*, at 3 (Jul. 25, 2017).

had sought a substantive order from the Commission by December 22, 2017, that would approve the RTOs' Phase 1 filing with an effective date of March 1, 2018.⁷ However, the RTOs now seek approval from “the Commission [to] allow the RTOs to inform the Commission of a revised effective date to allow sufficient time for the RTOs to develop, test, and implement the software associated with the Phase 1 solution.”⁸ The RTOs did not specify that new effective date in their January 29, 2018 deficiency responses and stated only that they would file updated tariff provisions “at least 60 days prior to the proposed effective date”⁹ As a result, the RTOs have postponed until an uncertain future date the effectiveness of any incremental relief that may be made available under the incomplete “solution” described in the Phase 1 filing.

The RTOs' January 29, 2018 deficiency responses state that “[t]he submission and implementation of Phase 2 revisions may also be affected by delays in the effective date of Phase 1.”¹⁰ Further, the deficiency responses demonstrate that the Phase 1 filing will not resolve the overlapping congestion charges affecting pseudo-ties in PJM and MISO. Implementation of Phase 1 will, at best, provide revenue to support refunds of future overlapping congestion charges once the Phase 2 filing is in effect.¹¹ As a result, the Sixth Status Update and the additional information provided in the RTOs' deficiency responses makes clear that any prospective resolution of these overcharges will come at some unspecified future date once the RTOs have selected a new effective date for the Phase 1 filing that accommodates delays in the

⁷ RTOs' Deficiency Responses, Docket Nos. ER18-136-000, ER18-137-000, *et al.*, at 15 (Jan. 29, 2018).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* n.10.

¹¹ *Id.* at 14-15.

RTOs' efforts to develop appropriate software, and once the RTOs prepare and implement the Phase 2 filing.

Even then, none of these efforts will address the refunds due for the overlapping congestion charges collected by the RTOs that are the subject of the complaint proceedings in these dockets. The first complaint was filed in August 2016, almost eighteen months ago. The RTOs' lack of concrete progress toward resolving these overcharges even on a going forward basis undercuts the RTOs' request for abeyance of the complaint proceedings presented in the RTOs' January 25, 2017 motion. The Commission should recognize the overwhelming evidence establishing the existence of these unjust and unreasonable overlapping charges and move these complaint proceedings forward.

WHEREFORE, for the foregoing reasons, AMP respectfully requests that the Commission: (1) consider its comments regarding the RTOs' Sixth Status Update in the captioned complaint proceedings; (2) issue one or more orders granting the relief sought in the complaints; and (3) grant such further relief as the Commission may deem appropriate.

Respectfully submitted,

/s/ Gary J. Newell

Gary J. Newell

Gerit F. Hull

Jennings, Strouss & Salmon, PLC

1350 I Street, N.W., Suite 810

Washington, DC 20005-3305

(202) 292-4738

gnewell@jsslaw.com

ghull@jsslaw.com

Attorneys for American Municipal Power, Inc.

Dated: February 7, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for these proceedings by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Washington, D.C., this 7th day of February, 2018.

By: /s/ Anna Williamson
Anna Williamson