192 FERC ¶ 61,055
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
David Rosner, Lindsay S. See,
and Judy W. Chang.

Midcontinent Independent System Operator, Inc. Docket No. EL25-80-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 18, 2025)

1. On May 7, 2025, Midcontinent Independent System Operator, Inc. (MISO) filed, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure,[1] a petition for declaratory order (Petition) seeking definitive guidance that certain monitoring of MISO's transmission planning by Potomac Economics, Ltd. (Potomac), acting as the MISO Independent Market Monitor (IMM), is outside the scope of the IMM's authority under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) and that MISO is not obligated to reimburse Potomac for this monitoring activity. As discussed below, we deny MISO's Petition because the declaration it is seeking would be inconsistent with the plain language of sections 50.1 and 53.1 of Module D of the Tariff.[2]

I. Petition

A. Background

1. MISO's Transmission Planning Process

2. MISO states that, as a Commission-approved Regional Transmission Organization (RTO), it is responsible for planning and directing necessary transmission expansions, additions, and upgrades within the MISO region.[3] MISO further states that its

[1] 18 C.F.R. § 385.207(a)(2) (2024).

[2] MISO, FERC Electric Tariff, Module D, § 53.1.e (Conditions, Functions, or Actions Monitored) (40.0.0).

[3] Petition at 6 (citing 18 C.F.R. § 35.34(k)(7); *Reg'l Transmission Orgs.*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285) (establishing transmission planning and expansion as one of eight minimum functions of an RTO), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000)

transmission planning process is primarily addressed in the Agreement of Transmission Owners to Organize the Midcontinent Independent System Operator, Inc., a Delaware Non-Stock Corporation (TOA) and in Attachment FF to the Tariff.[4] MISO explains that the TOA provides that "[t]he planning function of MISO shall be the responsibility of the MISO Planning Staff," that "MISO shall be organized to engage in such planning activities as are necessary to fulfill its obligations under the [TOA] and the Tariff," and that "the process for carrying out the planning of MISO shall be collaborative with Owners, Users, the [Organization of MISO States (OMS)] Committee, and other interested parties."[5]

3. According to MISO, Attachment FF governs MISO's transmission expansion planning protocol and sets forth the process used by MISO to develop the MISO Transmission Expansion Plan (MTEP). MISO states that under Attachment FF, MISO "shall develop the MTEP, consistent with Good Utility Practice and taking into consideration long-range planning horizons, as appropriate."[6] MISO states that the goal of the MTEP process is to develop a comprehensive expansion plan meeting reliability, economic, and public policy needs.[7]

4. The MTEP includes MISO's Long Range Transmission Planning (LRTP) initiative, which is a multi-year effort launched periodically to address significant changes to future conditions that the grid must be prepared to address to ensure the transmission system is reliable, economic, and compliant with state and utility policy and goals. LRTP projects are "regional backbone facilities needed to move bulk power between geographically dispersed areas within MISO" and aim to address long-term needs and issues (on a 20- to 40-year time horizon) that are not easily addressed in the cyclical MTEP process, which focuses on more near-term needs.[8] In July 2022, the MISO Board of Directors (MISO Board) approved the first set of LRTP projects, i.e.,

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(cross-referenced at 90 FERC ¶ 61,201), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

[4] *Id.* (citing MISO, MISO Rate Schedules, MISO TOA (30.0.0); MISO, FERC Electric Tariff, attach. FF (Transmission Expansion Planning Protocol) (93.0.0)).

[5] *Id.* (citing MISO, MISO Rate Schedules, MISO TOA, app. B (Planning Framework) (36.0.0)).

[6] *Id.* at 7 (citing MISO, FERC Electric Tariff, attach. FF (93.0.0), § I.C).

[7] *Id.*

[8] MISO, 2024 MISO Transmission Expansion Plan, at 11, 21 (Dec. 12, 2024), https://cdn.misoenergy.org/MTEP24%20Full%20Report658025.pdf (MTEP24).

"Tranche 1," which is comprised of 18 projects totaling $10.3 billion in investments. In December 2024, the MISO Board approved "Tranche 2.1," which is comprised of 24 projects totaling $21.8 billion in investments.[9] MISO plans to develop three additional LRTP tranches and is currently developing the Tranche 2.2 portfolio.[10]

5. MISO states that transmission projects resulting from the MTEP, including LRTP, reflect the outcome of an independent, Commission-accepted, fully vetted, and transparent planning process. MISO further states that the MTEP process, including LRTP Tranche 1 and Tranche 2.1, ensures that transmission needs are met in an efficient and cost-effective manner.[11]

6. MISO states that it recovers the costs associated with its transmission planning activities through Schedule 10 of the Tariff, which provides for the recovery of costs associated with serving as an independent system operator (ISO) and administering the Tariff. MISO assesses charges to recover these costs from transmission customers, transmission owners, and certain independent transmission companies approved by the Commission pursuant to Appendix I of the TOA.[12]

2. The IMM's Role and Responsibilities

7. MISO identifies two different sections of the Tariff that it states set forth the IMM's role and responsibilities: Module D and Attachment S-1. According to MISO, Module D sets forth MISO's Independent Market Monitoring Plan (Plan). MISO states that the Plan "provide[s] for the independent, impartial, effective monitoring and reporting on the Markets and Services as a whole."[13] MISO further states that, under

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[9] *Id.* at 80.

[10] *Id.* at 22.

[11] Petition at 9.

[12] *Id.* at 13 (discussing MISO, FERC Electric Tariff, Schedule 10 (ISO Cost Recovery Adder) (32.0.0)).

[13] *Id.* at 10 (citing MISO, FERC Electric Tariff, Module D, § I (Introduction) (31.0.0)). The Tariff defines "Markets and Services" as "[t]he markets that are operated, or the Tariff services provided by the Transmission Provider, including but not limited to, the Energy and Operating Reserve Markets, Market Activities, any market for the purchase or sale of transmission rights, Coordination Service and any other market administered, coordinated or facilitated by the Transmission Provider. This shall include any additional services that may be offered by the Transmission Provider that would have

Module D, the IMM "shall be responsible for the implementation of the Plan" and that its "mission shall be to pursue the purposes and objectives of the Plan, including the protecting of both consumers and Market Participants by identification and reporting of market design flaws and market power abuses, in a manner consistent with the Tariff."[14] In addition to implementing the Plan, MISO states that Module D tasks the IMM with conducting preliminary investigations into market participants' conduct and responding to requests for data or analysis from regulators and that it sets forth the IMM's core functions and responsibilities.[15]

8. According to MISO, Attachment S-1 sets forth the Independent Market Monitor Retention Agreement (IMM Agreement). MISO states that, under the IMM Agreement, the IMM must review market power and other competitive conditions in the MISO markets and make reports, perform all tasks required of the IMM under Module D, and undertake any related tasks that fall under the normal responsibilities of a market monitor, such as filing testimony or working on design improvements.[16] MISO states that the IMM Agreement is implemented annually through statements of work that detail specific IMM activities and their associated budget, as agreed to by Potomac and MISO's Markets Committee.[17]

9. MISO states that it reimburses the IMM for the costs it incurs performing its market monitoring functions under Schedule 17 of the Tariff. According to MISO, Schedule 17 is designed to recover these costs from market participants based upon their market activities.[18]

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the effect of facilitating or improving competitive conditions in the region." MISO, FERC Electric Tariff, Module A, § 1-M (Definitions – M) (78.0.0).

[14] Petition at 10 (citing MISO, FERC Electric Tariff, Module D, § I (31.0.0)).

[15] *Id.* at 11 (citing MISO, FERC Electric Tariff, Module D, § 50.1 (Purposes and Objectives) (31.0.0); *id.* § 52.3 (Core Functions and Responsibilities of the IMM) (32.0.0)).

[16] *Id.* at 12 (citing MISO, FERC Electric Tariff, attach. S-1 (Independent Market Monitor Retention Agreement) (32.0.0)).

[17] *Id.* (citing MISO, FERC Electric Tariff, attach. S-1 (32.0.0)).

[18] *Id.* at 12-13 (discussing MISO, FERC Electric Tariff, Schedule 17 (Energy Market Support Administrative Service Cost Recovery) (37.0.0)).

3. The Dispute Over the IMM's Monitoring of MISO's Transmission Planning Activities

10. MISO states that in recent years, the IMM has provided comments on MISO's LRTP processes in its State of the Market reports, participated in stakeholder meetings on transmission planning issues, and provided substantive comments on both potential resource plans and MISO business cases. MISO provides two specific examples where the IMM raised concerns regarding the cost-benefit analyses and business case for the LRTP Tranche 2.1 facilities: a memo to MISO, and comments submitted to the MISO Board.[19] MISO further claims that the IMM presents its comments on LRTP as having equal weight to its comments with respect to MISO's markets, which, MISO contends, strains MISO's and other stakeholders' ability to appropriately weigh viewpoints.[20]

11. MISO states that the IMM has requested and received reimbursement for conducting over 600 hours of LRTP monitoring and evaluation activities in 2023 and 2024 at a cost of approximately $300,000, and MISO states that these costs are expected to increase.[21] MISO also states that the IMM's actual costs exceeded its budgeted costs by $86,000 in 2023 and $236,000 in 2024, but that no such overages occurred in 2021 or 2022. MISO states that the IMM's 2024 overage and ongoing LRTP monitoring and evaluation gave rise to concerns from MISO members and staff. As a result of conflict among stakeholders on this issue, MISO's Markets Committee requested more information from the IMM, paid the IMM's 2024 invoices, and requested that MISO seek clarity from the Commission as to whether the Tariff permits the IMM to monitor MISO's transmission planning activities. The Markets Committee further informed

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[19] *Id.* at 14 (citing Memorandum from Potomac to MISO Re: Concerns and Recommendations for the Tranche 2 Benefit Methodologies, Potomac Economics (July 25, 2024), https://cdn.misoenergy.org/IMM%20Memo%20re%20Tranche2%20Benefits%20Methodologies646681.pdf; MISO IMM Comments on LRTP Tranche 2 Benefit Analysis, Potomac Economics (Oct. 30, 2024), https://cdn.misoenergy.org/20241030%20System%20Planning%20Committee%20of%20the%20BOD%20Item%2003a%20IMM%20LRTP%20Feedback655623.pdf (IMM Tranche 2 Comments)).

[20] *Id.* at 15.

[21] *Id.* at 15-16. In the Petition, MISO refers to the IMM's activity both as "LRTP monitoring and evaluation" and as "transmission planning and monitoring activities." In its Answer, MISO states explicitly that certain of the IMM's activities constitute "transmission planning" rather than mere monitoring of MISO's transmission planning activities. *See infra* P 80.

Potomac that it would not be reimbursed for any future monitoring until action from the Commission to resolve the controversy.[22]

B. Arguments

12. MISO contends that the IMM's transmission planning and monitoring activities exceed the scope of the IMM's duties under the Tariff. MISO argues that the IMM Agreement and associated statements of work executed thereunder establish a contract that engages Potomac as the IMM, which is similar to that of any other independent consultant. MISO contends that allowing Potomac to engage in and requiring MISO to pay for activities and analysis not contemplated by the agreement runs afoul of basic principles of contract law and Commission precedent.[23]

13. MISO further argues that the IMM's rights and obligations are exclusively found in and constrained by the Tariff, because the Commission and courts have consistently found that market monitors are limited to the authority and scope of services established in the tariffs and agreements for their respective markets.[24] For example, MISO contends that, in *Old Dominion*, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) explained that the function of the market monitor for the PJM Interconnection, L.L.C. (PJM) region "is limited to monitoring, advising, encouraging compliance, and informing others through regulatory filings and other informal communications" and that the market monitor's role "is much in the nature of an auditor" in that it is an "outside observer" which "is largely confined to observing the market's operations and then offering recommendations to PJM."[25]

14. MISO argues that, while the Tariff authorizes the IMM to monitor MISO's markets, the Tariff does not authorize the IMM to monitor MISO's transmission planning activities. MISO claims that Module D makes clear that the IMM is similar to an auditor because it states that the IMM's "mission shall be to pursue the purposes and objectives of the Plan, including the protecting of both consumers and Market Participants by

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[22] Petition at 16.

[23] *Id.* at 16-17 (citing *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1233 (D.C. Cir. 2018) (*Old Dominion*)).

[24] *Id.* at 17-18 (citing *Old Dominion*, 892 F.3d at 1233-34; *Del. Div. of the Pub. Advocate v. FERC*, 3 F.4th 461, 469 (D.C. Cir. 2021) (*Delaware Public Advocate*); *Stony Creek Wind Farm, LLC*, 187 FERC ¶ 63,014, at P 23 n.30 (2024); *Pub. Serv. Comm'n of W. Va. v. PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,163, at P 85 (2024) (*West Virginia Commission*)).

[25] *Id.* (citing *Old Dominion*, 892 F.3d at 1233-34).

identification and reporting of market design flaws and market power abuses."[26] MISO further contends that the IMM Agreement also assigns tasks similar to an auditor—not a transmission planner—including to review market power and other competitive conditions in MISO's markets, perform all tasks assigned under Module D, and undertake any related tasks.[27]

15. MISO further argues that the Tariff instead unambiguously confirms that MISO and its staff—not the IMM—must carry out transmission planning activities. MISO points to language in the MISO TOA, Attachment FF, and MISO's business practice manuals, and argues that each assigns responsibility for transmission planning to MISO and its staff and does not provide a role for the IMM.[28]

16. MISO further contends that the lack of authority under the Tariff for the IMM to monitor MISO's transmission planning activities is reinforced in two ways. First, MISO argues that the fact that Schedule 17 provides for the recovery of costs of the IMM's market monitoring costs, combined with the fact that Schedule 10 does not provide for the recovery for the IMM's monitoring of MISO's transmission planning activities, corroborates an intent to not include such activities as part of the IMM's market monitoring obligations.[29] Second, MISO contrasts its Tariff with the New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff, which MISO contends provides explicit authorization for NYISO's Market Monitoring Unit to review certain aspects of NYISO's transmission planning process.[30] MISO argues that no similar explicit authority exists in its Tariff.

17. MISO also claims that the IMM has acknowledged that the Tariff does not provide a role for the IMM to monitor MISO's transmission planning activities. MISO contends that, in comments previously filed with the Commission, the IMM has appeared to concede that its role does not extend to transmission planning or coincide with that of proposed independent transmission monitors (ITM). MISO further contends that the

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[26] *Id.* at 19 (citing MISO, FERC Electric Tariff, Module D, § I (31.0.0)).

[27] *Id.* at 19-20 (citing MISO, FERC Electric Tariff, attach. S-1 (32.0.0)).

[28] *Id.* at 20-22 (discussing MISO, MISO Rate Schedules, MISO TOA, app. B, §§ II, VI (36.0.0); MISO, FERC Electric Tariff, attach. FF (93.0.0), §§ I, I.C, II; MISO Transmission Planning Business Practice Manual (BPM-020), §§ 2.2.1, 2.6.1-2.6.7).

[29] *Id.* at 22.

[30] *Id.* at 22-23 (citing NYISO, NYISO Tariffs, NYISO OATT, attach. Y (New York ISO Comprehensive System Planning Process) (0.0.0); *id.* attach. FF (Generator Deactivation Process) (0.0.0)).

IMM advocated for the implementation of ITMs, which it need not have done if the Tariff authorized the IMM to monitor MISO's transmission planning activities.[31]

18. MISO further argues that, to the extent the IMM argues that monitoring MISO's transmission planning activities falls within the IMM's Tariff-defined role by virtue of the potential effect these activities have on MISO markets, the Commission should not adopt this view. MISO claims that doing so would conceivably expand the IMM's authority to any business area within MISO, such as hiring decisions or procurement practices, because all of MISO's business areas somehow affect MISO's markets. MISO contends that doing so could disrupt MISO's operations and introduce unnecessary costs.[32]

19. MISO advances two additional arguments grounded in broader Commission policy considerations. First, MISO argues that the Commission's precedent does not support the idea that the IMM should monitor MISO's transmission planning activities. According to MISO, the Commission's policy statement regarding market monitoring units and Order No. 719 charge market monitors with "monitoring the performance of wholesale markets, identifying ineffective tariff provisions and market design elements, and reporting on market performance and participant conduct to the applicable authorities," but do not provide a role with respect to transmission planning.[33] MISO avers that the absence of support for market monitors engaging in transmission monitoring is unsurprising given that the Commission vests transmission planning responsibilities with transmission providers and given that the Commission has declined to install an independent third-party coordinator of RTO regions' transmission planning or an ITM.[34]

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[31] *Id.* at 23-24 (citing, *inter alia*, IMM, Reply Comments, *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, Docket No. RM21-17-000, at 2 (Nov. 11, 2021); IMM, Comments, *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, Docket No. RM21-17-000, at 6-8 (Aug. 3, 2022)).

[32] *Id.* at 24-25.

[33] *Id.* at 25-28 (citing *Mkt. Monitoring Units in Reg'l Transmission Orgs. & Indep. Sys. Operators*, 111 FERC ¶ 61,267, at PP 1-2, 7 (2005) (Market Monitoring Units Policy Statement); *Wholesale Competition in Regions with Organized Elec. Mkts.*, Order No. 719, 125 FERC ¶ 61,071, at PP 353-354 (2008), *order on reh'g*, Order No. 719-A, 128 FERC ¶ 61,059, *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009)).

[34] *Id.* at 27-28 (citing *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, at P 567, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC

20. Second, MISO argues that the role of an ITM would require different skills and core competencies than an IMM, arguing that market monitoring focuses on near-term economic functions, whereas planning requires a longer-term and more holistic view of developing transmission and generation facilities.[35] MISO contends that an ITM would need expertise in Commission requirements and MISO Board guidance related to transmission planning, familiarity with North American Electric Reliability Corporation requirements related to reliability in the planning horizon, and experience with MISO's members' integrated resource plans. MISO argues that the IMM has not demonstrated the relevant expertise and, by contrast, has advanced positions at odds with Commission precedent that would impact its members' integrated resource planning efforts and limit MISO's ability to conduct long-term planning or select a range of appropriate solutions.[36]

21. Finally, MISO states that it recognizes the concerns expressed by the IMM and some stakeholders regarding the benefit-cost analyses that MISO has conducted as a part of LRTP. MISO therefore commits to engaging an independent third party to assess and validate the sufficiency of the processes MISO used to capture the value of transmission facilities and to evaluate the key metrics MISO used to define the benefits in MISO's benefit-cost analyses. MISO states that this third-party assessment will aid stakeholders in evaluating MISO's decisions and that MISO may incorporate any recommendations for improving MISO's benefit-cost analysis methods.[37]

II. Notice of Filing and Responsive Pleadings

22. Notice of the Petition was published in the *Federal Register*, 90 Fed. Reg. 21302 (May 19, 2025), with interventions and comments due on or before June 6, 2025. On May 16, 2025, the Coalition of MISO Transmission Customers (MISO Customers) and Wisconsin Industrial Energy Group (Wisconsin Industrials) submitted a joint motion for extension of time and request for expedited treatment seeking an extension of time to submit interventions, protests, or comments to June 20, 2025. On May 23, 2025, the

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¶ 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); *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068, at PP 1617, 1648, *order on reh'g*, Order No. 1920-A, 189 FERC ¶ 61,126, at P 858 (2024), *order on clarification*, Order No. 1920-B, 191 FERC ¶ 61,026 (2025)).

[35] *Id.* at 29-32.

[36] *Id.* at 30-32.

[37] *Id.* at 33-34.

Office of the Secretary issued a notice extending the deadline to submit interventions, protests, or comments to and including June 13, 2025.

23. The Louisiana Public Service Commission, Mississippi Public Service Commission (Mississippi Commission), and OMS filed notices of intervention. Timely motions to intervene were filed by: Advanced Energy United (Advanced Energy); Alliant Energy Corporate Services, Inc.; Ameren Services Company, on behalf of Ameren Illinois Company, Ameren Transmission Company of Illinois, and Union Electric Company (collectively, Ameren); American Clean Power Association; American Electric Power Service Corporation, on behalf of its affiliates AEP Energy Partners, Inc., AEP Indiana Michigan Transmission Company, Inc., and AEP Retail Energy Partners LLC; American Municipal Power, Inc.; American Transmission Company LLC; Americans for a Clean Energy Grid (ACEG); Calpine Corporation; Clean Wisconsin; Colorado Office of the Utility Consumer Advocate (Colorado Consumer Advocate); Constellation Energy Generation, LLC; Consumers Energy Company; Cooperative Energy; DTE Electric Company; Duquesne Light Company; Edison Electric Institute (EEI); Electric Power Supply Association (EPSA); Fresh Energy; Illinois Attorney General's Office (Illinois AG); International Transmission Company, Michigan Electric Transmission Company, LLC, and ITC Midwest LLC (collectively, ITC); Invenergy Transmission LLC; ISO New England Inc. Internal Market Monitor (ISO-NE IMM); Maryland Office of People's Counsel (Maryland People's Counsel); MISO Customers; MISO Transmission Owners (MISO TOs);[38] Missouri Joint Municipal Electric Utility Commission; Natural Resources Defense Council and Sustainable FERC Project;

[38] MISO TOs include: AEP Indiana Michigan Transmission Company; Ameren; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; Citizens Electric Corporation; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; GridLiance Heartland LLC; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company d/b/a AES Indiana; ITC; Lafayette Utilities System; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power, Inc.; Republic Transmission, LLC; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a CenterPoint Energy Indiana South); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Monitoring Analytics, LLC (PJM IMM); New Jersey Division of Rate Counsel (New Jersey Rate Counsel); NRG Business Marketing LLC; Norris Electric Cooperative; NYTOs;[39] PJM; PJM Power Providers Group; Potomac; PPL Electric Utilities Corporation; Public Citizen, Inc.; Resale Power Group of Iowa (Resale Power Group); Rural Electric Convenience Cooperative Co.; Solar Energy Industries Association; Southwestern Electric Cooperative, Inc.; Union of Concerned Scientists (UCS); Wisconsin Industrials; and WPPI Energy.

24. Timely comments or protests were submitted by: ACEG; Advanced Energy; Colorado Consumer Advocate; EEI; EPSA; Illinois AG; IMM; ISO-NE IMM; ITC; Maryland People's Counsel and New Jersey Rate Counsel (Joint Consumer Advocates); MISO Customers, Resale Power Group, and Wisconsin Industrials (Consumer Alliance); MISO TOs; Mississippi Commission; OMS; and PJM IMM.[40]

25. On June 20, 2025, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Upper Michigan Energy Resources Corporation (WEC Utilities) filed a late motion to intervene.

26. On June 30, 2025, MISO and MISO TOs filed answers. On July 8, 2025, Clean Wisconsin, Fresh Energy, and UCS (PIO) filed an answer. On July 10, 2025, the IMM filed an answer.

A. Source of and Limitations on IMM Authority

1. Comments and Protests

27. The IMM contends that the Commission and court precedent cited by MISO in the Petition is irrelevant because none of these cases suggests that monitoring MISO's transmission planning activities is outside the scope of the IMM's duties.[41] For example,

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[39] NYTOs include: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Power Authority; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

[40] We note that citations included herein to the OMS Comments correspond to the errata version of this document filed on June 9, 2025, and the citations to the IMM and Consumer Alliance protests correspond to the errata versions of these documents filed on June 26, 2025.

[41] IMM Protest at 17-19 (discussing *Old Dominion*, 892 F.3d 1223; *Stony Creek Wind Farm*, 187 FERC ¶ 63,014; *West Virginia Commission*, 186 FERC ¶ 61,163).

the IMM argues that *Old Dominion* addressed the prerequisites to a party obtaining Article III standing in appellate proceedings, not the scope of the PJM market monitor's authority to monitor PJM's transmission planning activities.[42] The IMM also argues that *Stony Creek Wind Farm* is not a Commission order, but a settlement report by a Commission administrative law judge, and that, even if it were a Commission order, the language cited by MISO is *dicta*.[43] Citing *Potomac Economics, Ltd. v. PJM Interconnection, L.L.C.*, the IMM urges the Commission to reject what it describes as MISO's attempt to argue that the Commission should narrowly construe the IMM's responsibilities. The IMM instead argues that the Commission should follow its precedent reflecting a broad scope of market monitors' responsibilities.[44]

28. Consumer Alliance also argues that the cases that MISO cites are irrelevant because each involves a market monitor acting outside of its authority or against explicit tariff language, which is not occurring here.[45] Consumer Alliance contends that MISO fails to analogize these cases to the facts here and fails to square these cases with Module D.[46] Joint Consumer Advocates agree, arguing that MISO's reliance on dicta from *Old Dominion* is inapposite because that order analyzes the PJM IMM's standing in the D.C. Circuit, which is a question of law which is not at issue here.[47]

29. However, MISO TOs agree with MISO that the Commission and court precedent cited by MISO have limited market monitors' responsibilities to those described in RTO

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[42] *Id.* at 17 (discussing *Old Dominion*, 892 F.3d at 1234).

[43] *Id.* at 17-18 (discussing *Stony Creek Wind Farm*, 187 FERC ¶ 63,014 at P 23 n.30).

[44] *Id.* at 19 (citing *Potomac Econ., Ltd. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,039, at PP 33, 41-43 (2020) (*Potomac Economics*) (finding that the IMM could file a complaint against certain PJM market rules because they would harm the MISO markets and therefore were related to the IMM's responsibilities)).

[45] Consumer Alliance Protest at 15-16 (citing Petition at 17-18; *Old Dominion*, 892 F.3d 1223, 1233-33; *West Virginia Commission*, 186 FERC ¶ 61,163 at P 6; *Stony Creek Wind Farm, LLC*, 187 FERC ¶ 63,014; *Del. Div. of Pub. Advoc.*, 3 F.4th at 469 n.7).

[46] *Id.* at 16.

[47] Joint Consumer Advocates Comments at 5-6.

tariffs.[48] EEI adds that the court in *Old Dominion* found that the PJM IMM has no independent legal interest in PJM's markets beyond its contractually assigned tasks.[49]

30. EPSA takes no position on the Petition but contends that ensuring that market monitors are following their Commission-approved tariffs is critical for predictable and effective market monitoring, which is fundamental for well-functioning and transparent markets. EPSA states that, if there is any lack of clarity over the IMM responsibilities and authorities in the Tariff, the Commission should direct that those provisions are clarified.[50] EPSA states that, in the Market Monitoring Units Policy Statement, the Commission noted that, if situations emerge that are beyond "the objectively identifiable, Commission-approved tariff provisions that are administered by the [RTO/ISO] . . . or in which the provisions of the tariff do not specifically address undesirable market behavior" but that require investigation and evaluation, the market monitor should notify Commission staff.[51] On this basis, EPSA argues that the Commission sought to ensure that market monitors act within the scope of their Commission-approved tariffs, that matters falling outside of that scope should be referred to the Commission, and that market monitors are not to act unilaterally outside of their approved charters.[52]

2. Answers

31. MISO disputes the IMM's interpretation of court and Commission precedent on the role of and limitations on market monitors. MISO argues that, just as the *Old Dominion* court granted the PJM market monitor *amicus curiae* status, rather than permission to intervene as a matter of right, the IMM may comment on MISO's transmission planning efforts as a stakeholder but may seek compensation only for its Tariff-defined responsibilities.[53] The IMM argues that it is unreasonable to assert that the IMM could or would participate as a stakeholder on an effectively *pro bono* basis. The IMM argues that, in contrast to stakeholders, it has no economic interest in the outcome

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[48] MISO TOs Comments at 9-10, 13-14 (citing MISO Petition at 17; *West Virginia Commission*, 186 FERC ¶ 61,163; *Old Dominion*, 892 F.3d at 1233).

[49] EEI Comments at 5 (citing *Old Dominion*, 892 F.3d at 1233).

[50] EPSA Comments at 1-2.

[51] *Id.* at 2 (citing Market Monitoring Units Policy Statement, 111 FERC ¶ 61,267 at P 6).

[52] *Id.* at 2-3.

[53] MISO Answer at 16-17 (citing *Old Dominion*, 892 F.3d at 1234).

of the transmission planning process, which is an essential part of the IMM's independence.[54]

32. Regarding *Stony Creek Wind Farm*, MISO agrees that the language it cites is *dicta* in a settlement report, but argues that the observations therein are nevertheless applicable here.[55] MISO also objects to the IMM's argument that *Potomac Economics* supports the IMM's position. In that order, MISO argues, the Commission distinguished between the right of an IMM to file a complaint under section 206 of the Federal Power Act (FPA) and Order No. 719's restriction on the IMM implementing rule or tariff changes.[56] Here, MISO states, the same distinction applies: the IMM may file complaints under section 206 of the FPA, but cannot exceed its Tariff-based role.[57]

B. Tariff

1. Section 53.1.e and General Arguments

a. Comments and Protests

33. The IMM argues that the Tariff unambiguously authorizes it to monitor MISO's transmission planning efforts.[58] In support, the IMM points to language in section 53.1.e of Module D that states:

> The IMM will achieve the purposes and objectives of this Plan through review and analysis of conditions, functions or actions affecting the competitiveness, economic efficiency and proper operation of the Markets and Services, including but not limited to[] the following to the extent each may be deemed relevant to the purposes and objectives of this Plan **by the IMM**:
> . . .

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[54] IMM Answer at 10.

[55] MISO Answer at 17 (citing *Stony Creek Wind Farm*, 187 FERC ¶ 63,014 at P 23 n.30; Petition at 18).

[56] *Id.* at 18-19 (citing *Potomac Econ., Ltd. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,039 at P 38; IMM Protest at 19).

[57] *Id.* at 19.

[58] IMM Protest at 1-2, 5, 23-24.

> e. Competitive or other market impacts of tariffs and agreements, or other rules, standards or procedures, **or any other Transmission Provider or Market Participant actions governing or affecting any of the Markets and Services** . . . .[59]

34. In light of this Tariff provision, the IMM contends that the only question in this proceeding is whether transmission planning affects MISO's markets or services. The IMM argues that it does and that MISO makes no contrary claim. The IMM avers that transmission planning affects the competitiveness of MISO's capacity and energy markets, long-term locational price signals and local capacity requirements, and the development and siting of large loads and distributed energy resources, as well as their incentives to participate in MISO markets. The IMM further argues that inefficient or ineffective transmission planning can increase costs to MISO's customers, slow resource interconnection, and hinder investment.[60] The IMM also contends that the Commission and the courts have held that transmission planning affects RTO/ISO markets and services.[61] The IMM therefore argues that the Petition must be denied because it seeks relief that would violate Module D.[62]

35. Several commenters agree with the IMM that the Tariff authorizes the IMM to monitor MISO's transmission planning activities. Consumer Alliance contends that MISO overlooks section 53.1.e and that, through broad, non-limiting language, section 53.1.e clearly and broadly authorizes the IMM to review impacts of any MISO actions, including transmission planning, on MISO's "Markets and Services." Consumer Alliance further argues that Module D does not bar the IMM from monitoring impacts of MISO's transmission planning on markets and that the Petition does not articulate language in Module D providing otherwise. Accordingly, Consumer Alliance argues,

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[59] *Id.* at 5 (citing MISO, FERC Electric Tariff, Module D, § 53.1.e (40.0.0)) (emphasis in original).

[60] *Id.* at 6-7.

[61] *Id.* at 8-12 (citing, *inter alia*, Order No. 890, 118 FERC ¶ 61,119 at P 172; Order No. 890-A, 121 FERC ¶ 61,297 at P 172; *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051, at PP 99, 893 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & 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); Order No. 1920, 187 FERC ¶ 61,068 at P 86; Order No. 1920-A, 189 FERC ¶ 61,126 at P 136); 18 C.F.R. § 35.34(k)(6)(i) (2024)).

[62] *Id.* at 8.

Module D's plain language delegates wide latitude to the IMM to monitor impacts of MISO's transmission planning.[63]

36. Joint Consumer Advocates agree that monitoring MISO's transmission planning activities is within the IMM's scope of work and therefore believe that the IMM should be reimbursed for this work. They assert that transmission monitoring is an essential aspect of market monitors' roles and critical in keeping rates as affordable as possible during a period of tremendous strain and instability on the grid.[64] Joint Consumer Advocates contend that the Tariff does not preclude transmission planning and monitoring from the IMM's scope of duties if it occurs as part of MISO's work. They argue that the Tariff precludes private transmission planning monitoring by the IMM only if it does not occur as part of the MISO planning process.[65]

37. OMS argues that a balance must be struck such that, while transmission planning is not a core function of the IMM, the IMM may provide input when transmission planning relates to markets. OMS explains that these occasions include, but are not limited to:

> [T]he operation, use, and congestion of the Transmission System; assessing cost-benefit methodologies used in [LRTP] and modeling assumptions; analyzing impacts of transmission projects on market prices, Financial Transmission Right revenue adequacy, and capacity value; identifying cost-minimizing solutions that protect ratepayers; market efficiency project assumptions, including congestion; and offering technical insight on how planning proposals affect wholesale market functioning.[66]

38. OMS asserts that these contributions, if advisory, would preserve transparency without infringing on jurisdiction.[67] OMS argues that "the IMM should not be so limited as to not be able to comment on matters that the IMM deems significant enough to

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[63] Consumer Alliance Protest at 6-8 (quoting MISO, FERC Electric Tariff, Module D, § 53.1(e) (40.0.0)). *See also id.* at 7 & n.28 (arguing that the Tariff defines "Markets and Services" broadly) (citing MISO, FERC Electric Tariff, Module A, 1.M (78.0.0)).

[64] Joint Consumer Advocates Comments at 1-2.

[65] *Id.* at 2-4.

[66] OMS Comments at 2-4.

[67] *Id.* at 4.

potentially impact markets."[68] OMS emphasizes that certain matters are appropriately reserved to states and their utilities, including decisions as to "transmission line siting, resource adequacy assumptions, evaluation of state policies, and integrated resource planning," and "considerations of economic development, local reliability, generation siting, and resource mix decisions."[69]

39. Several commenters agree with the IMM that transmission planning affects MISO's "Markets and Services."[70] For example, Illinois AG contends that the core functions of an RTO, i.e., planning and operating the transmission system and administering wholesale electricity markets, cannot and should not be cleanly separated.[71] Illinois AG states that inefficient transmission investment undermines market signals to participants that can address comparable system needs through resource investment.[72] Illinois AG also states that MISO's LRTP analysis includes considerations that fall within the scope of MISO's markets.[73]

40. Consumer Alliance argues that transmission planning and transmission constraints have direct implications for market congestion costs,[74] and transmission constraints

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[68] *Id.* at 6.

[69] *Id.* at 4.

[70] *See, e.g.*, ISO-NE IMM Comments at 4 (arguing that monitoring markets for how they signal the necessity of transmission improvements and monitoring transmission planning for responding to those signals are two sides of the same coin).

[71] Illinois AG Protest at 2-3.

[72] *Id.* at 3 (citing IMM Tranche 2 Comments).

[73] *Id.* at 3-4 (citing MISO, *LRTP Tranche 2 Robustness Testing: Low-End Bookend* (Jan. 26, 2024), https://cdn.misoenergy.org/20240126%20LRTP%20Workshop%20Item%2005%20Tranche%202%20Robustness%20Testing%20Low-End%20Bookend631474.pdf; IMM Tranche 2 Comments at 6; Market Monitoring Units Policy Statement, 111 FERC ¶ 61,267 at P 7).

[74] Consumer Alliance Protest at 8 (citing Potomac Economics, *2023 State of the Market Report for the MISO Electricity Markets* i-ii (June 2024), https://www.potomaceconomics.com/wp-content/uploads/2024/06/2023-MISO-SOM_Report_Body-Final.pdf).

impact market concentration and market power.[75] Consumer Alliance asserts that transmission planning impacts incentives for load and generation to locate in particular places. Consumer Alliance explains that inefficient transmission planning or overbuilding can increase consumers' costs and that underbuilding can create resource adequacy concerns and heightened risk of the use of emergency pricing.[76] Consumer Alliance also states that effective transmission planning can increase the competitiveness of MISO's energy, capacity, and ancillary services markets, as ineffective transmission planning can detrimentally impact the generation interconnection queue, delaying the availability of generation resources and impacting market prices.[77] Consumer Alliance cites precedent in which courts and the Commission addressed intersections between transmission planning, congestion, and rates, terms, and conditions of open access transmission service.[78]

41. Joint Consumer Advocates maintain that it is up to the market monitors, not the RTOs, to determine how best to monitor markets. Joint Consumer Advocates state that it is clear that the IMM has concluded that monitoring of MISO's transmission planning activities is necessary because generation and transmission are inextricably linked.[79]

42. Several commenters agree with MISO, however, that the Tariff does not authorize the IMM to monitor MISO's transmission planning activities.[80] For example, MISO TOs argue that the IMM's contractually assigned tasks under the Tariff do not include transmission planning. Specifically, MISO TOs state that Module D provides for "the

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[75] *Id.* (citing *Atl. City Elec. Co.*, 80 FERC ¶ 61,126 (1997)).

[76] *Id.* at 8-9.

[77] *Id.* at 9.

[78] *Id.* (citing *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 264, 266, 277 (2016) (*EPSA*); *El Paso Elec. Co. v. FERC*, 832 F.3d 495, 510 (5th Cir. 2016); *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009); Order No. 890, 118 FERC ¶ 61,119 at PP 57-61; Order No. 1000, 136 FERC ¶ 61,051 at P 43; Order No. 1920, 187 FERC ¶ 61,068 at P 86 ("[R]egional transmission planning and cost allocation processes are practices affecting rates subject to the Commission's jurisdiction."); *id.* ("[R]egional transmission planning and cost allocation processes . . . have a direct effect on the rates that customers pay for *both* the transmission and sale of electric energy in interstate commerce.")).

[79] Joint Consumer Advocates Comments at 5.

[80] ACEG Comments at 3-4; EEI Comments at 2-3; ITC Comments at 3-4; MISO TOs Comments at 6-8.

independent, impartial and effective monitoring and reporting on the Markets and Services as a whole" and provide the means for MISO to mitigate market effects of any conduct that would distort competitive outcomes in MISO's "Markets and Services."[81] MISO TOs explain that, under the Tariff, transmission planning is not included in the definition of "Markets and Services," as a task under the IMM Agreement, or as one of the markets the IMM is charged with monitoring under section 50.2 of Module D.[82]

43. ITC argues that the Commission should grant MISO's petition and issue an order affirming that MISO is not obligated to compensate the IMM for unsolicited transmission planning and monitoring activities that are outside the scope of the IMM's responsibilities under the Tariff.[83] ITC asserts that, because a plain reading of the Tariff makes clear that the IMM's unsolicited transmission planning activities are outside the IMM's scope of work, permitting the IMM to receive compensation for these activities would violate basic contract principles and Commission precedent that limits IMMs' responsibilities to their respective RTO/ISO tariffs and agreements and make market participants pay unreasonable costs for such activities.[84]

b. Answers

44. MISO contests the IMM's and commenters' interpretation of section 53.1.e to permit the IMM to monitor transmission planning activities that the IMM concludes are relevant to MISO markets. MISO and MISO TOs argue that the IMM's interpretation of section 53.1.e assumes that the general terms of section 53.1.e override the specific terms of Module D and the IMM Agreement, contrary to general principles of contract law, which provide that specific terms in a contract control over more general terms.[85] MISO

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[81] MISO TOs Comments at 6-7 (citing MISO, FERC Electric Tariff, Module D, § I (31.0.0). *See also* ACEG Comments at 3-4; EEI Comments at 2-3; ITC Comments at 3-4.

[82] MISO TOs Comments at 7-8 (citing MISO, FERC Electric Tariff, Module A, § 1-M (78.0.0); *id.* attach. S-1 (32.0.0); *id.,* Module D, § 50.2 (31.0.0)).

[83] ITC Comments at 1-3.

[84] *Id.* at 5 (citing MISO Petition at 17 (citing *Old Dominion*, 892 F.3d at 1233; *West Virginia Commission*, 186 FERC ¶ 61,163)).

[85] MISO Answer at 10 (citing Restatement (Second) of Contracts § 203(c) (1981); *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,010, at P 25 (2004)); MISO TOs Answer at 15 (citing, *e.g.*, *Honeysuckle Solar*, 191 FERC ¶ 61,085, at P 72 (2025) (citing *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,151, at P 67 (2024))).

states that Module D and the IMM Agreement clearly delineate the IMM's roles, responsibilities, and scope of authority without referencing or authorizing the IMM's transmission planning and monitoring activities.[86]

45. MISO TOs argue that the Commission has declared its expectation that contracting parties, in drafting written agreements, will "clearly express their intentions and not require the Commission to subsequently read into their agreements what is not there."[87] MISO TOs contend that several protesters ignore this precedent by asserting that Module D and the IMM Agreement explicitly permit the IMM to engage in transmission planning and monitoring activities.[88] MISO argues that the Commission's acceptance of the IMM's interpretation would be arbitrary, capricious, and beyond the Commission's authority because it would expand the Tariff without MISO seeking such a change through FPA section 205.[89]

46. MISO TOs state that, consistent with Commission precedent, specific provisions of a tariff or agreement should not be read to render other provisions superfluous.[90] MISO TOs argue that the bulk of Module D would be unnecessary if section 53.1.e delineates expansive authority without limitation for the IMM to monitor any action of MISO and its market participants that affects "Markets and Services." MISO TOs contend that, instead, it is more reasonable to conclude that the specific grants of authority related to transmission in Module D delineate the IMM's authorities regarding transmission.[91] The IMM argues that, under MISO's and the MISO TOs' interpretation, there would be no reason for the language in section 53.1.e and thus such language would

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[86] *Id.* at 11.

[87] MISO TOs Answer at 5 (quoting *Power Auth. of N.Y. v. Long Island Lighting Co.*, 60 FERC ¶ 61,069, at 61,234 (1992) (citations omitted)).

[88] *Id.* at 5-6 (citing Consumer Alliance Protest at 6-7; IMM Protest at 24; Joint Consumer Advocates Comments at 2-4; PJM IMM Comments at 4).

[89] MISO Answer at 13 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 115 (D.C. Cir. 2017); *Power Auth. of N.Y. v. Long Island Lighting Co.*, 60 FERC ¶ 61,069, at 61,234 (1992) ("The Commission may not read into agreements that which is simply not expressed; the Commission has an obligation under the FPA to enforce contracts as they were written by the parties consistent with the public interest.") (other citations omitted)).

[90] MISO TOs Answer at 15 (citing *Evergy Kan. Cent., Inc.*, 183 FERC ¶ 61,094, at P 20 (2023); *S. Co. Servs., Inc. v. FERC*, 353 F.3d 29, 35 (D.C. Cir. 2003)).

[91] *Id.* at 15-16. *See also infra* Other Tariff Language section.

be rendered meaningless. The IMM contends that MISO and the MISO TOs are instead making contrived arguments that effectively eliminate section 53.1.e.[92]

47. MISO and MISO TOs state that Module D does not contain any specific discussion of the IMM's role in monitoring or otherwise engaging in MISO's transmission planning activities because there was no intent for the IMM to take on this role.[93] MISO notes that the IMM argues that section 53.1.e is broadly written because it is difficult to predict in advance all the specific actions MISO could take as market operator and transmission provider that could adversely affect the markets.[94] MISO argues that this statement is conjecture and that transmission planning existed when the Commission accepted Module D but was explicitly not included within the scope of Module D.[95] The IMM counters that this argument should be rejected because the language in the Tariff is unambiguous such that the use of extrinsic evidence is inappropriate.[96] The IMM further contends that MISO's and MISO TOs' argument is also wrong on the merits, because Module D was adopted before Order Nos. 890, 1000, and 1920 expanded the scope of MISO's transmission planning role in ways that could not have been anticipated at the time of Module D's creation.[97]

48. MISO argues that the IMM asserts a false equivalency between the Commission's jurisdiction over transmission planning and the IMM's transmission planning monitoring role.[98] MISO states that the Commission's jurisdiction over transmission planning and cost allocation processes do not give the IMM corresponding authority to monitor and report on transmission issues under the Tariff. Rather, MISO argues, the IMM's role in MISO is delineated by Module D and the IMM Agreement.[99] The IMM counters by

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[92] IMM Answer at 2-3.

[93] MISO Answer at 10; MISO TOs Answer at 17.

[94] MISO Answer at 9 (citing IMM Protest at 12).

[95] *Id.* at 9.

[96] IMM Answer at 3-4 (citing MISO Answer at 9; MISO TOs Answer at 7).

[97] *Id.*

[98] MISO Answer at 14 (citing IMM Protest at 8-11); *see supra* note 61 and accompanying text.

[99] *Id.* at 14-15.

explaining that it only cited Commission statements to demonstrate that the Commission has already determined that transmission planning affects electricity markets, contrary to assertions made by MISO and the MISO TOs.[100]

49. PIOs agree with OMS that the IMM may appropriately participate in certain transmission planning and monitoring activities, such as identifying how transmission planning outcomes influence markets. Nevertheless, PIOs argue that the IMM's actions to date do not fall within the IMM's Tariff-defined role.[101]

50. The IMM argues that the limited discretion conferred by section 53.1.e is reasonable because it is impossible to name all of the activities that MISO or a market participant might take that could affect MISO's markets. The IMM further contends that the IMM and RTO are obligated to employ this Commission-approved discretion in a reasonable manner and that any party can seek a remedy at the Commission if they believe such discretion is not being employed reasonably.[102] The IMM asserts that it would be more appropriate for MISO to argue that the IMM's monitoring of its transmission planning activities are an unreasonable exercise of its discretion rather than arguing that the IMM should have no discretion because it cannot be trusted to not abuse such discretion. The IMM also notes that MISO may seek Commission approval to revise section 53.1.e, but argues that it should not be allowed to nullify the express terms of section 53.1.e.[103]

2. Slippery Slope

a. Comments and Protests

51. The IMM argues that a Commission finding that the Tariff authorizes the IMM to monitor MISO's transmission planning because of its effects on MISO's markets would not, as MISO contends, expand the IMM's authority to any business area within MISO. The IMM rejects this "slippery slope" argument and contends that it has interpreted the Tariff consistently for more than 20 years, and that there is no evidence that the IMM has

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[100] IMM Answer at 8 (citing MISO Answer at 14).

[101] PIOs Answer at 4-6 (quoting OMS Comments at 4, 6; citing OMS Comments at 3, 5).

[102] IMM Answer at 5.

[103] *Id.*

interpreted the relevant provisions of Module D unreasonably or that it has caused detrimental impacts that MISO alleges may occur.[104]

52. Consumer Alliance agrees with the IMM and argues that a finding for the IMM would not create a slippery slope or open the door for the IMM to serve as an ITM or transmission planner.[105] According to Consumer Alliance, MISO fails to explain how finding that the IMM has authority to monitor transmission planning would lead the IMM to determine that it also has authority to evaluate MISO's hiring decisions and procurement practices, which are too attenuated and indirect from any material, significant impacts on MISO's "Markets and Services."[106]

53. Two commenters agree with MISO, however, that denying the Petition could lead to an expansion of the IMM's role. EEI argues that allowing the IMM to receive compensation for transmission planning activities would allow the IMM to claim expansive authority over any business area in MISO, which would disrupt efficient operations in MISO and introduce unnecessary costs.[107] ACEG states that without a clear finding from the Commission on the authority provided to the IMM, the scope of its authority may continue to expand into other matters outside of its Tariff-defined responsibilities. ACEG states that this would potentially interfere with MISO's authority over transmission planning because the parameters and goals of the IMM's participation in transmission monitoring are not defined.[108]

b. Answers

54. MISO asserts that the Tariff must be given "a reasonable construction" and "interpreted in such a way to avoid unfair, unusual, absurd, or improbable results,"[109] MISO argues that the IMM and intervenors' asserted interpretation of section 53.1.e of Module D would allow the IMM to monitor and opine on any MISO or market participant action that conceivably affects MISO's "Markets and Services," no matter

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[104] IMM Protest at 12-13.

[105] Consumer Alliance Protest at 16 (citing Petition at 23-24, 27-30).

[106] *Id.* at 16-17.

[107] EEI Comments at 7 (citing MISO Petition at 24-25).

[108] ACEG Comments at 4-5.

[109] MISO Answer at 8 (quoting *TransMontaigne Partners LLC v. Colonial Pipeline Co.*, 188 FERC ¶ 63,015, at P 40 (2024)).

how remote or tangential the effect, and to charge Tariff customers for that service.[110] MISO argues that a reasonable line must be drawn to avoid this unfair, unusual, and absurd result.[111]

55. MISO TOs argue that permitting the IMM to engage in transmission planning and monitoring under section 53.1.e, as advocated for by the IMM and other commenters, would broadly authorize compensable monitoring services of "near-infinite breadth" with no limiting principle.[112] MISO TOs contend that allowing the IMM to engage in, and receive compensation for, activities not specifically precluded in Module D would turn the IMM Agreement and any other services contract on its head by allowing the IMM to perform and bill for services not specifically prohibited.[113]

56. The IMM argues that MISO's and MISO TOs' claims that the IMM's interpretation of section 53.1.e would give the IMM near-infinite authority are exaggerated and that there is no reason to believe that validating the IMM's interpretation would expose MISO or its customers to such hypothetical abuses.[114]

3. Other Tariff Language

a. Comments and Protests

57. In addition to section 53.1.e, several commenters identify section 50.1(3) of Module D as providing support for an IMM role in monitoring MISO's transmission planning activities. Joint Consumer Advocates contend that this provision, which states that the IMM should monitor "the operation, use, and congestion of the Transmission System as such system affects competitive conditions in the region," encourages the

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[110] *Id.* at 9 (citing IMM Protest at 12 ("[T]he IMM has interpreted [section 53.1] to broadly include any MISO actions that adversely affect its markets."); Petition at 24-25, ACEG Comments at 4-5, EEI Comments at 7).

[111] *Id.*

[112] MISO TOs Answer at 9-10 (citing IMM Protest at 24; Consumer Alliance Protest at 6-7; Illinois AG Protest at 5-6; PJM IMM Comments at 4; *EPSA*, 577 U.S. at 278 (explaining that when addressing statutory terms similar to "affecting," like "'relating to' or 'in connection with,' a non-hyperliteral reading is needed to prevent the statute from assuming near-infinite breadth")).

[113] *Id.* at 12.

[114] IMM Answer at 4 (citing MISO Answer at 4-5; MISO TOs Answer at 13, 19).

IMM to monitor MISO's transmission planning activities.[115] OMS argues that this provision underscores how broad the IMM's role is under Module D, such that attempts to limit the IMM's role would contradict these requirements.[116] Illinois AG argues that, through this provision, Module D recognizes the impact of congestion on locational marginal pricing and, in turn, energy and capacity markets and costs.[117] Illinois AG also argues that, because Module D mentions markets and transmission service together in section 50.1(2), those services are related.[118]

58. EEI draws a different conclusion than do these commenters. EEI argues that, while section 50.1 provides for monitoring and reporting on the operation, use, and congestion of MISO's transmission system, it does not contemplate or assign to the IMM the ability to monitor MISO's transmission planning activities; rather, it focuses on market design elements, market performance, and market participant behavior.[119]

59. Consumer Alliance states that section 50.4 of Module D emphasizes that "[t]he IMM shall be granted complete independence to perform those activities necessary to provide impartial and effective market monitoring within the scope of the Plan."[120] Consumer Alliance argues that the IMM should be able to perform Tariff obligations while the Petition is pending, and that MISO could pay the IMM pending resolution. Consumer Alliance states that MISO is impeding the IMM's independent monitoring and depriving stakeholders of the IMM's "independent evaluation of MISO's important Futures workstream." Consumer Alliance asserts that, if the Commission reaches the

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[115] Joint Consumer Advocates Comments at 4 (quoting MISO, FERC Electric Tariff, Module D, § 50.1 (31.0.0)); *see also* Consumer Alliance Protest at 7.

[116] OMS Comments at 3.

[117] Illinois AG Protest at 4 (quoting MISO, FERC Electric Tariff, Module D, § 50.1 (31.0.0)).

[118] *Id*. (citing MISO, FERC Electric Tariff, Module D, § 50.1 (31.0.0) ("This Plan is intended to provide for . . . monitoring of and reporting on . . . the conduct of Market Participants, Transmission Owners, Local Balancing Authorities, and the Transmission Provider, including but not limited, to any exercise of or attempt to exercise, market power in any Market or to inefficiently reduce the quantity or quality of Transmission Service in the region.")).

[119] EEI Comments at 3-4 (citing MISO, FERC Electric Tariff, Module D, § 50.1 (31.0.0)).

[120] Consumer Alliance Protest at 10 (citing MISO, FERC Electric Tariff, Module D, § 50.4 (Independence and Oversight) (31.0.0)).

conclusion it urges, then MISO is in violation of its obligation to compensate the IMM pursuant to Attachment S-1.[121]

b. Answers

60. MISO notes that Module D provides that the IMM "shall be responsible for the implementation of the Plan" and that the IMM's "mission shall be to pursue the purposes and objectives of the Plan, including the protecting of both consumers and Market Participants by identification and reporting of market design flaws and market power abuses, in a manner consistent with the Tariff."[122] MISO states that the "intent of the [P]lan highlights 'the operation, use, and congestion of the Transmission System as such system affects competitive conditions in the region.'"[123] MISO notes that, as relevant here, Module A defines "Transmission System" as "[t]he transmission facilities owned or controlled by Transmission Owners that have conveyed functional control to the Transmission Provider, and are used to provide Transmission Service under Module B of this Tariff."[124] Thus, MISO concludes, the Plan extends to congestion of the MISO transmission system that *presently* exists, not the system that will be planned via MTEP or the LRTP and may exist in 10 to 20 years.[125]

61. MISO TOs argue that, contrary to other commenters' assertions, sections 50.1 and 53.1.c, among others, do not mention transmission planning and monitoring.[126] MISO TOs argue that, based on the specific provisions of Module D, the drafters clearly intended for the IMM to monitor and report on a narrow scope of transmission-related issues, but not transmission planning.[127] MISO TOs assert that, while section 50.1(2)

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[121] *Id.* at 11-12 (citing MISO, FERC Electric Tariff, attach. S-1 (32.0.0)).

[122] MISO Answer at 11 (citing MISO, FERC Electric Tariff, Module D, § I (31.0.0)).

[123] *Id.* (citing MISO, FERC Electric Tariff, Module D, § 50.1 (31.0.0)).

[124] *Id.* (citing MISO, FERC Electric Tariff, Module A, § 1.T (Definitions – T) (43.0.0)).

[125] *Id. See also* MISO TOs Answer at 16-17 (quoting MISO, FERC Electric Tariff, Module D, § 50.1 (31.0.0); citing MISO, FERC Electric Tariff, Module A, § 1.T (43.0.0)).

[126] MISO TOs Answer at 11-12 (citing Consumer Alliance Protest at 5-8, 10, 12; Illinois AG Protest at 4; IMM Protest at 4-6, 12-13; PJM IMM Protest at 4).

[127] *Id.* at 16.

authorizes the IMM to monitor conduct that reduces the quality or quantity of "Transmission Service," the definition of "Transmission Service" solely focuses on point-to-point transmission service on a firm and non-firm basis.[128]

62. MISO notes that Module D outlines the IMM's core functions and responsibilities and the conditions, functions, and activities the IMM monitors, and MISO states that none explicitly reference transmission planning or any parts of a future transmission system not in present use.[129] MISO states that the IMM Agreement bars the IMM from changing the scope of work in Module D unless the Commission first issues an order approving the change.[130] MISO states that neither the IMM Agreement nor related statements of work referencing specific IMM activities and budgets reference transmission planning or monitoring by name.[131]

C. Other Evidence

63. The IMM argues that MISO's arguments fail because they ignore the plain language of section 53.1.e of Module D. The IMM states that Commission and judicial precedent provide that, if the express language of a filed tariff or agreement is clear, that language controls,[132] and the Commission will not consider extrinsic evidence or policy arguments.[133] The IMM argues that, nevertheless, if the Commission were to find that

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[128] *Id.* at 16-17 (citing MISO, FERC Electric Tariff, Module D, § 50.1 (31.0.0); *id.* § 53.1 (40.0.0); *id.*, Module A, § 1.T (43.0.0)).

[129] MISO Answer at 12 (citing MISO, FERC Electric Tariff, Module D, § 52.3 (32.0.0); *id.* § 53.1 (40.0.0)).

[130] *Id.* (citing IMM Agreement at 1-2).

[131] *Id.*

[132] IMM Protest at 8 (citing *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208 (D.C. Cir. 2011) (*PSEG Energy*); *Colo. Interstate Gas Co. v. FERC*, 599 F.3d 698, 702 (D.C. Cir. 2010); *ISO New England, Inc.*, 151 FERC ¶ 61,196, at P 11 n.24 (2015) (citing *PSEG Energy*, 665 F.3d at 208)). *See also* Consumer Alliance Protest at 7-8 (arguing that, when a tariff is unambiguous, its plain language controls) (citing *Cal. Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,168, at P 7 (2012); *ISO New England Inc.*, 172 FERC ¶ 61,251, at P 26 (2020); *Columbia Gas Transmission, LLC*, 187 FERC ¶ 61,133, at P 14 (2024)).

[133] *Id.* (citing *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 827 (D.C. Cir. 2021) (*OG&E*); *Iberdrola Renewables, Inc. v. FERC*, 597 F.3d 1299, 1304 (D.C. Cir. 2010);

the Tariff is ambiguous, the Commission still should reject the Petition because its other arguments fail on the merits.[134]

1. Course of Dealing Evidence

a. Comments and Protests

64. The IMM states that describing its monitoring of MISO's transmission planning activities as "unsolicited," as MISO does, is misplaced and untrue. The IMM states that MISO does not "solicit" its monitoring work, particularly because in this instance MISO is the target of its monitoring efforts. Nevertheless, the IMM claims that MISO initiated meetings with, and requested presentations from, the IMM regarding its findings as to MISO's transmission planning activities, which the IMM argues demonstrates that MISO believed these activities to be within the scope of the IMM's duties. The IMM contends that this constitutes extrinsic "course of dealing" evidence that should be "dispositive" as to the interpretation of the Tariff.[135]

b. Answers

65. MISO and MISO TOs argue that the IMM provides no evidence that it has engaged in reviewing and monitoring of MISO's transmission planning activities prior to 2020.[136] MISO states that it has no invoices from the IMM prior to 2023 identifying transmission planning activities and that, prior to 2023, the IMM made no recommendations on MISO's annual State of the Market Report involving transmission

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ISO New England, Inc., 172 FERC ¶ 61,251 at P 26; *Cal Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,168 at P 7)).

[134] *Id.* at 12. *See also* Consumer Alliance Protest at 8 (arguing that, to the extent the Commission finds ambiguity, that ambiguity should be resolved in favor of more expansive monitoring, in light of the Commission's overarching obligation to protect customers from unjust, unreasonable, or unduly discriminatory or preferential rates) (citing MISO, FERC Electric Tariff, Module D, § 1 (31.0.0); *Xcel Energy Servs. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016)).

[135] *Id.* at 13-15 & n.18 (citing *ANR Pipeline Co. v. FERC*, No. 24-60222, 2025 WL 1473790, at *2 (5th Cir. May 22, 2025); *Univ. of Tex. Sys. v. United States*, 759 F.3d 437, 445 (5th Cir. 2014) (quoting Restatement (Second) of Contracts § 202(4)); *Mont.-Dakota Utils. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 190 FERC ¶ 61,168, at P 45 (2025)).

[136] MISO Answer at 26-27 (citing IMM Protest at 3, 13, 20-21, 23); MISO TOs Answer at 21 (quoting IMM Protest at 14 n. 18).

planning.[137] The IMM disputes this statement, arguing that its invoices reference the IMM's review of the LRTP process as far back as late 2021 and that prior to that it had tracked and reviewed MISO's work on MVPs and the MTEP.[138]

2. Structure of the Tariff

a. Comments and Protests

66. The IMM questions the relevance of two of MISO's assertions regarding the structure of the Tariff. First, the IMM argues that, while it is true that the Tariff and TOA assign MISO the responsibility for transmission planning, this is irrelevant because the IMM is monitoring MISO's transmission planning activities, not itself engaging in transmission planning.[139] Second, the IMM contends that the recovery from MISO ratepayers of market monitoring and transmission planning costs under different schedules is irrelevant because, under MISO's theory, all monitoring of MISO actions would be out of scope because the costs of the action being monitored are recovered under a different schedule than are market monitoring costs.[140]

67. Some commenters agree with the IMM as to the structure of the Tariff. For example, the PJM IMM argues that the IMM's activities involve recommendations and input on MISO's transmission planning efforts that are clearly within the scope of the IMM's Tariff-defined responsibilities and do not amount to engaging in transmission planning or making final decisions on transmission plans.[141] The Mississippi Commission and OMS similarly assert that, while the IMM is not a transmission planner, it is appropriate for the IMM to weigh in on certain aspects of MISO's transmission planning process.[142]

68. Some commenters agree with MISO as to the structure of the Tariff. For example, MISO TOs agree with MISO's assertion that other parts of the Tariff establish no role for

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[137] *Id.* at 26-27.

[138] IMM Answer at 9 (explaining that, for example, the IMM previously provided recommendations regarding the inclusion of high-cost, must-run generators in MISO's planning analysis after Entergy's integration in MISO more than a decade ago).

[139] IMM Protest at 15-16.

[140] *Id.* at 16.

[141] PJM IMM Comments at 4-5.

[142] Mississippi Commission Comments at 3; OMS Comments at 4.

the IMM in the transmission planning process. MISO TOs state that Appendix B of the TOA establishes that the "planning function of MISO shall be the responsibility of the MISO Planning Staff"[143] and that, in both the TOA and Attachment FF to the Tariff, the IMM is not mentioned among the entities with whom MISO is required to consult in developing MISO's transmission plan.[144] Similarly, EEI argues that the Commission has authorized RTOs to serve as independent, exclusive arbiters of transmission planning within their footprints, noting that the Commission declined to require an independent third-party coordinator to be part of RTO transmission planning.[145] EEI contends that allowing the IMM to have a formal, compensated role in transmission planning would be duplicative of MISO's role, which would result in confusion, uncertainty, and delay and run the risk of circumventing decades of Commission precedent vesting ultimate responsibility for transmission planning with RTOs.[146]

69. ACEG contends that MISO demonstrates that the Tariff contemplates the recovery of costs for services by the IMM through a different schedule than for transmission planning. ACEG argues that this validates MISO's assertion that the Tariff does not contemplate transmission planning and monitoring by the IMM and that the IMM should not be reimbursed for such activities.[147]

b. Answers

70. MISO states that Commission regulations and the Tariff explicitly task MISO with independently addressing transmission planning, expansion, and upgrade issues within the MISO region.[148] MISO states that the Tariff specifically lists roles for MISO and other entities in the planning process and thus, pursuant to the principle of contract interpretation that listing one thing in a contract suggests that those not listed were

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[143] MISO TOs Comments at 11 (citing MISO Petition at 20).

[144] *Id.* at 12 (citing MISO Petition at 20-21 (citing MISO, MISO Rate Schedules, MISO TOA, app. B (36.0.0), § VI; MISO, FERC Electric Tariff, attach. FF (93.0.0), § I.C)).

[145] EEI Comments at 6 (citing Order No. 890, 118 FERC ¶ 61,119 at P 567; Order No. 890-A, 121 FERC ¶ 61,297 at P 188; Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,164).

[146] *Id.* at 6-7. *See also* ACEG Comments at 5; ITC Comments at 4.

[147] ACEG Comments at 4 (citing Petition at 12-13); MISO TOs Comments at 8-9 (citing MISO, FERC Electric Tariff, Schedule 10 (32.0.0); *id.* Schedule 17 (37.0.0)).

[148] MISO Answer at 12-13 (citing 18 C.F.R. § 35.34(k)(7) (2024)).

expressly excluded, the Commission should construe the Tariff as excluding the IMM from such activities, including in a monitoring function.[149]

71. MISO TOs agree with EEI that Commission precedent provides that RTOs like MISO are meant to be sole authorities that govern transmission planning[150] and further contend that Appendix B of the TOA and Attachment FF to the Tariff clearly provide MISO with sole authority over transmission planning without requiring consultation with the IMM.[151]

72. The IMM disagrees with MISO's and the MISO TOs' assertion that the IMM's interpretation of section 53.1.e is inconsistent with other Tariff provisions that govern transmission planning. The IMM argues that the fact that the IMM's authority granted in section 53.1.e is not mentioned elsewhere is not sufficient to invalidate that section.[152]

3. Market Monitoring Units Policy Statement, Order No. 719, and Commission Regulations

a. Comments and Protests

73. A number of commenters disagree with MISO that Commission precedent suggests that market monitors have no role to play in transmission planning or make arguments about the Market Monitoring Units Policy Statement, Order No. 719, or Commission regulations. For example, Colorado Consumer Advocate argues that MISO seeks to establish a false dichotomy between "market monitoring" and "transmission monitoring" that cannot be found in the Market Monitoring Units Policy Statement. Rather, they contend that the Market Monitoring Units Policy Statement clearly included transmission oversight within the IMM's functions when it stated that market monitors "should evaluate the effectiveness of the markets in signaling needed investment in generation, *transmission*, and demand response infrastructure."[153] ISO-NE IMM cites the

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[149] *Id.* at 13 (citing *Morrison v. Sears, Roebuck & Co.*, 354 S.E.2d 495, 498 (N.C. 1987)).

[150] MISO TOs Answer at 18 (citing EEI Comments at 6 (quoting Order No. 2000, FERC Stat. & Regs. ¶ 31,089, at 31,164).

[151] *Id.* at 18-19 (citing MISO, MISO Rate Schedules, MISO TOA, app. B, § IV (36.0.0); MISO, FERC Electric Tariff, attach. FF, § I (93.0.0)).

[152] IMM Answer at 3.

[153] Colorado Consumer Advocate Comments at 6 (quoting Market Monitoring Units Policy Statement, 111 FERC ¶ 61,267 at P 7) (emphasis in original).

same passage in conjunction with the Commission's statement that market monitors should "provide the comprehensive market analysis critical for informed policy decision making," and on this basis it contends that MISO's argument that the IMM has no authority to monitor MISO's transmission planning is overbroad.[154] Joint Consumer Advocates contend that MISO's reliance on a 20-year old Commission policy statement to support its reasoning that transmission monitoring is outside the scope of the IMM's duties fails to recognize the distinction between transmission *planning* and monitoring the *effects* of transmission planning on the market.[155]

74. Colorado Consumer Advocate further argues that Order No. 719 also clearly linked independent market monitors to transmission components within wholesale market structures when the Commission explained that Order No. 719 was "making reforms to improve the operation of organized wholesale electric markets in the areas [such as market monitoring policies]."[156] OMS states that the Petition arises due to LRTP, which raises questions not contemplated when the IMM role was first defined, prior to the market reforms in Order Nos. 719 and 1000.[157] OMS argues that Order Nos. 719 and 1000 establish that the IMM's role in this context is advisory and notes that states value the critical transparency into market operations that the IMM provides.[158]

75. ISO-NE IMM quotes the Commission's regulation stating that, "to ensure that the [RTO] provides reliable, efficient and not unduly discriminatory transmission service, [it] must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements, and propose appropriate actions."[159] ISO-NE IMM argues on this basis that monitoring an RTO's transmission planning activities falls within the permissible scope of a market monitor's responsibility because long-term transmission planning implicates "efficiency improvements" and has a direct impact on the markets that the IMMs monitor on a day-to-day basis.

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[154] ISO-NE IMM Comments at 3-4 (citing Market Monitoring Units Policy Statement, 111 FERC ¶ 61,267 at PP 1, 7).

[155] Joint Consumer Advocates Comments at 5-6.

[156] Colorado Consumer Advocate Comments at 6 (quoting Order No. 719, 125 FERC ¶ 61,071 at P 2).

[157] OMS Comments at 4-5.

[158] *Id.* at 2.

[159] ISO-NE IMM Comments at 3 (quoting 18 C.F.R. § 35.34(k)(6)).

76. Other commenters agree with MISO that the Commission's precedent suggests that market monitors are not intended to monitor transmission planning efforts. For example, EEI argues that the Market Monitoring Units Policy Statement and Order No. 719 task market monitors with monitoring market participant behavior, identifying ineffective market rules, and reviewing the performance of markets and, accordingly, EEI argues that the Commission did not envision a role for market monitors in transmission planning activities.[160]

4. IMM's Prior Statements

a. Comments and Protests

77. The IMM contends that it is not acting as an ITM and thus contends that arguments it made in previous proceedings advocating for an ITM are irrelevant to its understanding of the Tariff. The IMM avers that, in contrast to the high-level oversight exercised by the IMM, an ITM would provide more granular, independent oversight, including monitoring engineering studies, transmission project selections, transmission project cost estimates, and cost changes that occur during transmission project construction. The IMM argues that it has the skills to conduct the high-level oversight and monitoring of MISO's transmission planning activities that it has undertaken, including raising its concerns over MISO's capacity expansion modeling and benefit analyses.[161]

78. The Mississippi Commission agrees with the IMM and asserts that the Petition confuses the IMM's monitoring of MISO's transmission planning activities with the concept of an ITM.[162] The Mississippi Commission states that the IMM is not a transmission planner and is not operating as an ITM. The Mississippi Commission therefore contends that there is no need for the IMM to review potential transmission investments from a technical perspective or a cost perspective, such as which transformers should be used, which rights-of-way are needed, the correct voltage for these lines, whether lines should be constructed overhead or unground, and whether the costs of projects are overstated.[163]

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[160] EEI Comments at 4-5 (citing Market Monitoring Units Policy Statement at P 5; Order No. 719, 125 FERC ¶ 61,071 at P 341). *See also* MISO TOs Comments at 13-14.

[161] IMM Protest at 20-22.

[162] Mississippi Commission Comments at 3.

[163] *Id.* at 3.

79. MISO TOs agree with MISO, however, and argue that Potomac has acknowledged that the limited functions fulfilled by market monitors do not overlap with the role of an ITM by stating that market monitors' scope is generally limited in the planning horizon.[164]

b. Answers

80. MISO argues that Potomac's testimony before the Commission on the role of the IMM undermines the IMM's position because it is devoid of any specific discussion of the IMM's role in monitoring or otherwise engaging in MISO transmission planning activities.[165] MISO further contends that the IMM's actions in fact go beyond the high-level oversight of transmission planning described by the IMM. MISO argues that the IMM's focus on the development of Futures, including its proposal of an "IMM Future 2A," are an example of a transmission planning activity.[166] MISO asserts that the IMM's activities attempt to implement a form of an ITM for MISO when the Commission has not required such oversight for MISO or any other RTO/ISO.[167] The IMM argues that its comments on MISO's Future 2A do not constitute transmission planning. The IMM further claims that the fact that generation investment forecasting that the IMM conducts as part of its regular analysis of market performance is also used in transmission planning does not make such analysis transmission planning.[168]

81. MISO argues that, although it is true that the IMM has never advised states or utilities to change their integrated resource plans, the IMM has recommended changes to the generation used in MISO's Futures that would not have met members' resource planning goals and has assumed that MISO members would change their resource

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[164] MISO TOs Comments at 12-13 (citing MISO Petition at 23 (quoting IMM, Reply Comments, *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, Docket No. RM21-17-000, at 2 (Nov. 11, 2021)).

[165] MISO Answer at 9-10 (citing Prepared Direct Testimony of David B. Patton, Ph.D. on Behalf of the Midwest Independent Transmission System Operator, Inc., Docket No. ER04-691, at 3-4 (Mar. 31, 2004)).

[166] *Id.* at 19-20.

[167] *Id.* at 25.

[168] IMM Answer at 9-10.

plans.[169] MISO notes that OMS states in its comments that "key for OMS, is that certain decisions, such as transmission line siting, resource adequacy assumptions, evaluation of state policies, and integrated resource planning, are appropriately reserved to states and their utilities, including considerations of economic development, local reliability, generation siting, and resource mix decisions."[170] MISO argues that the IMM's transmission planning comments and their impacts on members' plans run counter to this caveat. MISO also states that these comments illustrate that the IMM lacks the expertise and independence to undertake transmission planning monitoring.[171] PIOs agree that the IMM is overreaching when it tries to override the use of MISO's LRTP methodology that was developed in collaboration with stakeholders, including state regulators, and that uses state-approved resource additions and retirements.[172] PIOs further agree with the assertion by MISO and some commenters that the IMM is not a transmission planner nor an ITM, and thus the IMM does not have appropriate expertise to have an authoritative voice over MISO's transmission planning process.[173]

82. The IMM disputes MISO's and the PIOs' claims that it has a bias toward market-based perspectives and against forward-looking planning, arguing that transmission planning should be informed by and coordinated with the market participants' decisions facilitated by the markets.[174]

5. Other RTO Markets' Market Monitors

a. Comments and Protests

83. The IMM argues that its interpretation of the Tariff is bolstered by the fact that market monitors in other RTO regions monitor the RTO's transmission planning activities. The IMM cites Potomac's public policy transmission project analysis work as

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[169] MISO Answer at 20-21 (quoting IMM Tranche 2 Comments) (other citations omitted).

[170] *Id.* at 22-23 (quoting OMS Comments at 4 & n.4).

[171] *Id.* at 23-24.

[172] PIOs Answer at 5.

[173] *Id.* at 3-4 (citing Petition at 8, 29-30; OMS Comments at 2, 6; Mississippi Commission Comments at 3).

[174] IMM Answer at 5-7 (quoting MISO Answer at 6; citing PIOs Answer at 6-7).

the NYISO Market Monitoring Unit and the PJM market monitor's transmission planning recommendations in PJM's most recent State of the Market Report.[175]

b. Answers

84. MISO asserts that approaches in NYISO and PJM have no bearing on the IMM's role in MISO, as those tariffs differ from MISO's Tariff. MISO notes that the NYISO tariff explicitly authorizes its market monitor to engage in transmission monitoring.[176] MISO also states that, while it takes no position on whether the PJM market monitor's planning-related recommendations in its State of the Market Reports are permissible, those recommendations were less significant than the IMM's actions in MISO, which "fall on the wrong side" of "permissible market monitor activities that may relate to the wholesale markets, and impermissible transmission planning activities," if such a line exists.[177]

85. MISO TOs assert that NYISO's tariff includes explicit reference to monitoring transmission planning functions, which demonstrates that when a tariff is explicit, unlike MISO's Tariff, an RTO's market monitor may have clear authority to monitor transmission planning.[178] MISO TOs argue that this kind of evidence does not support the IMM's and other commenters' arguments about MISO's Tariff because, as the Commission has made clear, a specific market monitor's authority is based on the applicable RTO or ISO's specific tariff.[179] The IMM argues that the existence of more detailed language in another region, such as NYISO, does not affect Module D's express grant of authority to the IMM to monitor MISO's actions that affect markets.[180]

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[175] IMM Protest at 22-23. *See also* ISO-NE IMM Comments at 6-7 (providing examples of instances in which the ISO-NE IMM has advocated its positions with respect to transmission matters).

[176] MISO Answer at 25 (citing Petition at 22-23; NYISO, NYISO Tariffs, NYISO OATT, attachs. Y, FF; *N.Y. Indep. Sys. Operator*, 151 FERC ¶ 61,040, at P 16 (2015)).

[177] *Id.* at 26. *See also* MISO TOs Answer at 19-20.

[178] MISO TOs Answer at 20 (citing NYISO, NYISO Tariffs, NYISO OATT, attach. O, § 30.4.6.8.5 (assigning responsibility of drafting a Public Policy Transmission Planning Report to NYISO's Market Monitoring Unit for "review and consideration of any impact on the ISO-administered markets of regulated transmission solutions. . . .")).

[179] *Id.* at 21.

[180] IMM Answer at 3.

D. Other Considerations

1. Comments and Protests

86. Several commenters assert that the Commission should preserve the IMM's independence in monitoring MISO's markets,[181] for reasons that include the IMM's ability to provide transparency[182] and objective analysis of MISO's planning process,[183] assumptions,[184] and initiatives,[185] thereby protecting customers from harm that could result from economically inefficient results, such as investment in extraneous transmission projects[186] or unreasonable retail costs.[187] OMS states that MISO is free to consider or disregard stakeholder input as advisory—including that of the IMM—but that the IMM provides an essential check on MISO initiatives.[188]

87. Illinois AG asserts that drawing a line between "solicited" and "unsolicited" IMM activities endangers IMM independence.[189] Illinois AG states that the IMM is not "similar to any other independent consultant engaged by MISO"[190] because the Commission has taken action to protect IMM independence.[191] The Mississippi

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[181] *E.g.*, Consumer Alliance Protest at 10; Illinois AG Protest at 4-5; Joint Consumer Advocates Comments at 2-3; Mississippi Commission Comments at 1; OMS Comments at 2.

[182] *E.g.*, OMS Comments at 5.

[183] *E.g.*, Mississippi Commission Comments at 4; OMS Comments at 2-3.

[184] *E.g.*, Mississippi Commission Comments at 4.

[185] *E.g.*, OMS Comments at 2-3.

[186] *E.g.*, Joint Consumer Advocates Comments at 5.

[187] *E.g.*, Mississippi Commission Comments at 4.

[188] OMS Comments at 5. *See also* Mississippi Commission Comments at 4.

[189] Illinois AG Protest at 4-5.

[190] *Id.* at 5, 7 (quoting Petition at 17).

[191] *Id.* at 5 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,156; Order No. 719, 125 FERC ¶ 61,071 at P 339 ("Removing the [Market Monitoring Unit] from reporting to management will give it the separation needed to foster independence."); *id.* P 360 (providing that, while an RTO is able to require its market monitor to provide a

Commission states that the IMM has no financial interest that would affect its objectivity, in contrast to other MISO stakeholders, which, the Mississippi Commission contends, have various transmission, generation, and environmental policy goals and are affected by different benefits and costs in different ways.[192]

88. Some commenters request that the Commission's decision on the petition be narrowly tailored to MISO and the Tariff. OMS urges the Commission to clarify the IMM's role in transmission planning in a way that preserves its essential advisory function while respecting state jurisdiction.[193] Colorado Consumer Advocate requests that to the extent the Commission finds merit to any aspect of MISO's Petition, it should take great care to limit any declarations or rulings to specific language in the MISO Tariff and avoid sweeping findings or conclusions that would threaten consumers outside the MISO footprint.[194]

89. Commenters also raise arguments about whether the IMM is competent to be an ITM,[195] whether MISO would benefit from an ITM,[196] whether the IMM's monitoring of

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draft market monitoring report for the RTO's review and comment, the market monitor "is free to disregard any suggestions with which it disagrees")).

[192] Mississippi Commission Comments at 1-2. *See also* Consumer Alliance Protest at 13.

[193] OMS Comments at 6.

[194] Colorado Consumer Advocate Comments at 8.

[195] *E.g.,* Consumer Alliance Protest at 17-18; ISO-NE IMM Comments at 4-5; MISO Transmission Customers Comments at 14-15; Mississippi Commission Comments at 3; OMS Comments at 4; PJM IMM Protest at 7-10. *See also* Colorado Consumer Advocate Comments at 6-7 (arguing that there is no basis for MISO's contention that market monitors lack the core competencies to monitor transmission planning activities); ITC Comments at 6 (arguing that MISO's contention that the IMM is not competent to be an ITM is not relevant to this proceeding and that cost management issues, including a potential ITM, are at issue in an open docket more appropriate for addressing an issue of industry-wide importance) (citing *Pub. Serv. Co. of Colo.*, 173 FERC ¶ 61,044, at P 19 n.55 (2020) (taking no position on issues beyond the scope of a petition for declaratory order); Notice Inviting Post-Technical Conference Comments Regarding Transmission Planning and Cost Management, Docket Nos. AD22-8-000 et al. (Dec. 23, 2022)).

[196] Advanced Energy Comments at 3-4.

MISO's transmission planning has resulted in significant costs,[197] whether the IMM's role will increase regulatory or litigation risk,[198] and how the Commission's decision on the Petition could impact stakeholder and consumer advocate participation in RTO processes.[199]

2. Answers

90. MISO contests the IMM's characterization of the MISO transmission planning process as lacking independence. MISO notes that the MTEP is a transparent, independent planning process that the Commission accepted as just and reasonable.[200]

91. MISO further argues that protests and comments advocating for or against the establishment of an ITM in MISO, or the expansion of the IMM's role, should be rejected as beyond the scope of this proceeding.[201]

E. MISO's Proposal for a Third Party Auditor

1. Comments and Protests

92. Some commenters find MISO's proposal for a third-party auditor unnecessary and potentially redundant of the IMM's current responsibilities. Illinois AG states that MISO's commitment to engage an independent third party for review of transmission planning contradicts MISO's sensitivity to costs, would be duplicative, and confirms the importance of the IMM's transmission-related monitoring and evaluation.[202] Illinois AG asserts that MISO's suggestion should not preclude the current IMM from providing input where transmission planning cost-benefit analyses require consideration of the impact on and interaction with MISO's wholesale electricity markets. Illinois AG states that any such independent third party would likely benefit from the IMM's input as much

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[197] *E.g.,* Consumer Alliance Protest at 18-19; Illinois AG Protest at 8-9.

[198] *E.g.,* EEI Comments at 8.

[199] *E.g.,* Consumer Alliance Protest at 11-12; EPSA Comments at 3.

[200] MISO Answer at 28-30.

[201] *Id.* at 32 (citing *Rockies Express Pipeline LLC*, 160 FERC ¶ 61,127, at P 36 (2017); *ITC Grid Dev., LLC*, 154 FERC ¶ 61,206, at P 45 (2016)).

[202] Illinois AG Protest at 9.

as any other stakeholder.[203] ISO-NE IMM asserts that a market monitor's role in monitoring the impacts of transmission planning on the wholesale markets is separate and apart from the role of a third party expert who is solicited and retained by an RTO to provide an opinion on transmission planning and that stakeholders may benefit from both perspectives.[204]

93. Similarly, OMS argues that—while transparency and independent review are important—duplicative oversight may add cost without value.[205] OMS states that the IMM's work to date has incurred minimal cost. OMS asserts that expanded evaluation should be carefully weighed to avoid setting precedent that could limit IMM independence, invite misapplication of the IMM's role by unduly limiting or expanding it, or engage a third-party transmission monitor without proper process.[206] Likewise, Consumer Alliance states that, if MISO hires an independent auditor, which is not necessary or prudent, selection must occur through a stakeholder process, not by MISO. Consumer Alliance also states that the role and objectives of the independent auditor must be established in the Tariff and that audits should be filed with the Commission.[207] Consumer Alliance comments on the functions that it believes should be within the independent auditor's role.[208]

94. MISO TOs request that the Commission disregard issues pertaining to third-party assessments, arguing that these issues are beyond the scope of the Petition's specific request that the Commission confirm the compensatory activities of the IMM.[209] MISO TOs note that the Commission generally takes no position on issues beyond the scope of a petition for declaratory order.[210]

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[203] *Id.*

[204] ISO-NE IMM Comments at 2.

[205] OMS Comments at 6.

[206] *Id.*

[207] Consumer Alliance Protest at 20.

[208] *Id.* at 20-21 (citing *Transmission Plan. & Cost Mgmt.*, Industrial Customer Organizations Comments, Docket No. AD22-8-000, at 9 (filed Mar. 23, 2023)).

[209] MISO TOs Comments at 14-15.

[210] *Id.* (citing *Sw. Power Pool, Inc.*, 182 FERC ¶ 61,016, at P 39 (2023) (finding party's concerns regarding the level of compensation applicable under the filed rate outside the scope of petition); *Pub. Serv. Co. of Colo.*, 173 FERC ¶ 61,044 at P 19 n.55

2. Answers

95. PIOs argue that the IMM has demonstrated a bias against forward-looking transmission planning and many of the benefit metrics used by MISO to make investment decisions.[211] Accordingly, PIOs contend that the preferred path forward would be for MISO to engage an independent third party to assess and validate the sufficiency of the processes used to capture the value of transmission and to evaluate key benefit metrics in MISO's cost-benefit analysis.[212]

III. Discussion

A. Procedural Matters

96. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

97. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant WEC Utilities' late-filed motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

98. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers of MISO, MISO TOs, PIOs, and the IMM because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

99. In its Petition, MISO requests guidance from the Commission that the IMM's monitoring of MISO's transmission planning activities is outside of the scope of the IMM's authority under the Tariff and that therefore MISO is not obligated to reimburse

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(taking no position on issues beyond the scope of a petition for declaratory order); *Rockies Express Pipeline LLC*, 160 FERC ¶ 61,127 at P 36 (declining "to hypothesize" on a different scenario than that presented in the petition for declaratory order)).

[211] PIOs Answer at 6 (citing, *e.g.*, MISO IMM Comments on LRTP Tranche 2 Benefit Metrics, Potomac Economics (May 29, 2024), https://cdn.misoenergy.org/20240529%20LRTP%20Workshop%20Item%2002%20IMM%20Presentation633033.pdf).

[212] *Id.* at 7.

the IMM for these monitoring activities. As further discussed below, we find that the guidance sought by MISO is inconsistent with the plain language of the Tariff.

100. As an initial matter, we agree with MISO that the Tariff gives rise to and defines the scope of the IMM's authority. The Commission and courts have consistently found that market monitors are limited to the authority and the scope of services established in the tariffs and agreements for their respective markets.[213]

101. To interpret tariffs, the Commission addresses first whether the relevant provision unambiguously addresses the matter at issue, where the provision is understood according to its plain meaning as drawn from the text and its context.[214] In this instance, we find that section 53.1.e and 50.1 of Module D unambiguously address MISO's request in the Petition.

102. In relevant part, section 53.1.e of Module D states:

> The IMM will achieve the purposes and objectives of this Plan through review and analysis of . . . actions affecting the competitiveness, economic efficiency and proper operation of the Markets and Services, including but not limited to[] the following to the extent each may be deemed relevant to the purposes and objectives of this Plan by the IMM:
> . . .
> e. Competitive or other market impacts of . . . rules, standards or procedures, or any other Transmission Provider action[] governing or affecting any of the Markets and Services . . . .[215]

103. In relevant part, section 50.1(5) of Module D states:

> This Plan is intended to provide for the independent, impartial and effective monitoring of and reporting on:
> . . .

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[213] *See, e.g.*, *Old Dominion*, 892 F.3d at 1233-34; *Delaware Public Advocate*, 3 F.4th at 469; *West Virginia Commission*, 186 FERC ¶ 61,163 at P 85.

[214] *OG&E*, 11 F.4th at 827.

[215] MISO, FERC Electric Tariff, Module D, § 53.1.e (40.0.0). *See supra* P 7 & n.13 (defining "Plan" and "Markets and Services," respectively).

> (5) adequacy and effectiveness of any . . . action that affects the competitiveness or economic efficiency of the Markets and Services.[216]

Section 50.1 also provides that:

> The Plan is intended to protect and foster competition, while minimizing interference with open and competitive markets.

104. We find that section 53.1 unambiguously authorizes the IMM to review and analyze actions that affect the competitiveness, economic efficiency, or proper operation of the Markets and Services, and directs the IMM to focus on the competitive or other market *impacts* of any MISO action governing or affecting any of the Markets and Services.[217] We also find that MISO's transmission planning is an action that affects its Markets and Services, and that section 53.1.e unambiguously authorizes the IMM to review and analyze the competitive or other market impacts of MISO's transmission planning. Section 50.1(5) further reinforces this understanding by stating that the Plan is intended to provide for the independent, impartial and effective monitoring of and reporting on the adequacy and effectiveness of any action that affects the competitiveness or economic efficiency of the "Markets and Services."

105. We find that the relevant purpose and objective of the IMM's review and analysis under section 53.1.e is provided by section 50.1—to protect and foster competition while minimizing interference with open and competitive markets. Therefore, section 53.1.e authorizes the IMM to review and analyze the competitive or other market impacts of MISO's transmission planning activities to the extent that doing so protects and fosters competition while minimizing interference with open and competitive markets.

106. Further, we see no conflict between our finding here and the fact that the Tariff empowers MISO, not the IMM, to conduct transmission planning. The Tariff does not permit the IMM itself to conduct transmission planning. Rather, as discussed above, we find here that the Tariff authorizes the IMM to review and analyze MISO's transmission planning activities and emphasizes that the IMM should consider the competitive or other market *impacts* of any MISO action governing or affecting any of the Markets and Services. Furthermore, we see no conflict between our finding here and the fact that the costs of transmission planning and of market monitoring are recovered under separate schedules to the Tariff. The cost recovery of transmission planning under Schedule 10 of the tariff is not relevant to the instant proceeding.

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[216] *Id.* § 50.1(5) (31.0.0).

[217] *Id.* § 53.1.e (40.0.0).

107. Further, we do not agree with MISO that this represents an unfair, unusual, absurd, or improbable construction of section 53.1.e or that we have read into the provision what is not there. We similarly disagree with MISO that we have in effect amended the Tariff in the absence of MISO making a filing under FPA section 205. Instead, in response to MISO's Petition, we have interpreted the Tariff and nothing more.

108. We disagree with MISO and MISO TOs that our interpretation elevates general terms over specific terms. The *Honeysuckle Solar* case cited by MISO TOs is distinguishable, for example, because in that instance, there were two cost allocation provisions, only one of which could control.[218] Here, by contrast, section 53.1.e is a more general provision than others in section 53.1, but it does not, in fact, conflict with the more specific provisions of section 53.1. For example, nothing in our interpretation of section 53.1.e set forth above undermines the IMM's authority under section 53.1.a to review and analyze the schedules and offers submitted for and actual dispatch of generation resources.[219]

109. Additionally, we disagree with MISO TOs that our interpretation here renders the rest of section 53.1 of Module D superfluous. We read section 53.1 as a broad statement of purpose that is intended to ensure that the IMM provides for the monitoring of and reporting on the adequacy and effectiveness of actions that affect the competitiveness or economic efficiency of the Markets and Services.[220] That interpretation does not undermine the force and applicability to the IMM of section 53.1's more specific provisions governing and emphasizing the discrete conditions, functions, and actions for the IMM to monitor.[221] This interpretation also does not undermine any other provision of Module D.

110. We disagree with MISO TOs that the interpretation we adopt here has no limiting principle, and we do not believe that the interpretation we adopt here risks the IMM involvement in "any business area within MISO." Section 53.1 ensures that the IMM will review and analyze MISO's actions to the extent that they "affect[] the competitiveness, economic efficiency and proper operation of the Markets and Services . . . ."[222] Similarly, section 53.1.e directs the IMM to primarily focus on the competitive or other market impacts of relevant MISO actions. We think these

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[218] *See Honeysuckle Solar*, 191 FERC ¶ 61,085 at PP 70-72.

[219] MISO, FERC Electric Tariff, Module D, § 53.1.a (40.0.0).

[220] *Id.* § 50.1(5) (31.0.0).

[221] *Id.* § 53.1 (40.0.0).

[222] *Id.* § 53.1 (40.0.0).

parameters both implement the plain language of MISO's tariff and provide reasonable bounds to the IMM's activities.

111. For the foregoing reasons, we deny MISO's Petition. Because we find that the Tariff is unambiguous, we need not address parties' arguments as to extrinsic evidence or broader issues of Commission policy.[223]

112. Finally, given that MISO does not request that the Commission assess specific past activities undertaken by the IMM, we take no position herein as to whether each of the specific monitoring activities conducted by the IMM as set forth in this record is consistent with Module D, and therefore appropriately billed. While MISO, the IMM, or other entities can seek subsequent clarity, consistent with our ruling herein, about whether a particular IMM activity is appropriately billed, we strongly encourage parties with further disputes to instead collaboratively work together to resolve such disputes, including consulting the Commission's Dispute Resolution Service.[224]

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[223] *Iberdrola Renewables, Inc. v. FERC*, 597 F.3d 1299, 1304 (D.C. Cir. 2010) ("If a contract is not ambiguous, extrinsic evidence cannot be used as an aid to interpretation."); *Cal. Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,168, at P 7 (2012) ("The plain language of the tariff controls—not an interpretation based on a claim that the provision is ambiguous."); *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229, at 61,755 (2000) (citing *Boston Edison Co. v. FERC*, 856 F.2d 361, 367 (1st Cir. 1988) (holding that the plain and unambiguous language of the contract excludes consideration of extrinsic evidence)).

[224] *See* FERC, *Alternative Dispute Resolution at FERC*, https://www.ferc.gov/alternative-dispute-resolution.

The Commission orders:

MISO's Petition is hereby denied for the reasons discussed in the body of this order.

By the Commission. Chairman Christie is concurring with a separate statement attached.
Commissioner Rosner is concurring with a separate statement attached.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc. Docket No. EL25-80-000

(Issued July 18, 2025)

CHRISTIE, Chairman, *concurring*:

1. I concur with the legal finding herein that the MISO tariff allows the MISO Independent Market Monitor (IMM) to analyze and critique the competition effects of MISO's transmission proposals on MISO's markets. That transmission planning affects RTO markets is factually undeniable and thus makes this order an easy legal call. Moreover, the many special interest groups which have lobbied for ever more transmission spending driven by transmission planning regulations have long argued that FERC has the legal authority to impose transmission planning regulations such as Orders No. 1000 and 1920 because transmission planning affects rates, *ergo* FERC has authority under the Federal Power Act to impose ever more expansive planning requirements on transmission providers, RTO and non-RTO alike. By similar logic, analyzing and critiquing the impact on rates of an RTO's transmission planning and proposals clearly fall within the core duties of a market monitor.

2. Beyond the legal issue decided herein, it should be emphasized that the dispute that instigated this order did not arise in a vacuum. The past four years have seen the fastest rise in consumers' monthly power bills in the past 25 years, and the relentless

increase in monthly power bills continues.[1] Millions of Americans are struggling to pay their monthly bills.[2]

3. Despite the understandable concern and publicity over capacity market auction results in MISO and PJM over the past year,[3] *transmission* costs are the single biggest

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[1] *See, e.g.*, Noah Schwartz, *Requests for utility rate hikes reach $29B in 2025 – report*, S&P Global Market Intelligence, July 10, 2025 ("The report noted that *utilities' transmission spending increases* and extreme weather events have been drivers of the rate spikes.") (emphasis added); *see also Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, Order No. 1920, 187 FERC ¶ 61,068 (Christie, Comm'r, dissenting at P 15 & nn.49-54) (citations omitted) (Order No. 1920 Dissent), *order on reh'g*, Order No. 1920-A, 189 FERC ¶ 61,126 (2024), *order on reh'g*, Order No. 1920-B, 191 FERC ¶ 61,026 (2025), https://www.ferc.gov/news-events/news/e-1-commissioner-christie-dissent-transmission-planning-and-cost-allocation-rule; Robert Walton, et al., *9 US electric power sector issues to watch in 2025*, Utility Dive, Jan. 8, 2025 ("The price U.S. consumers pay for electricity will continue to ascend in 2025, driven by a range of factors including rising demand, *transmission and distribution cost increases* . . . ."), https://www.utilitydive.com/news/electric-power-sector-issues-to-watch-prices-demand-reliability-renewables-nuclear-vpp-transmission/736492/; U.S. Energy Information Administration, *U.S. electricity prices continue steady increase*, May 15, 2025, https://www.eia.gov/todayinenergy/detail.php?id=65284; Herman K. Trabish, *The regulator's dilemma: balancing grid modernization with rising power bills*, Utility Dive, July 15, 2025 ("[C]ustomer electricity prices are up 4.5% nationally, almost twice the 2.4% national inflation rate, according to the June Bureau of Labor Statistics Consumer Price Index."), https://www.utilitydive.com/news/utility-regulators-paradox-modernization-electricity-affordability/751526/.

[2] *See, e.g.*, Amanda Durish Cook & Tom Kleckner, *Overheard at 10th Annual GCPA MISO-SPP Forum*, RTO Insider, Mar. 12, 2024, https://www.rtoinsider.com/73311-overheard-10th-annual-gcpa-miso-spp-forum/.

[3] *See, e.g.*, Amanda Durish Cook, *MISO Summer Capacity Prices Shoot to $666.50 in 2025/26 Auction*, RTO Insider, Apr. 28, 2025, https://www.rtoinsider.com/104023-miso-summer-capacity-prices-2025-26-auction/; Ethan Howland, *MISO summer capacity prices jump to $666.50/MW-day as power supplies shrink*, Utility Dive, Apr. 29, 2025 https://www.utilitydive.com/news/miso-capacity-auction/746576/; Devin Leith-Yessian, *PJM Capacity Prices Spike 10-fold in 2025/26 Auction*, RTO Insider, July 30, 2024, https://www.rtoinsider.com/84356-pjm-capacity-prices-spike-2025-26-auction/; Ethan Howland, *PJM capacity prices hit record highs, sending build signal to generators*, Utility Dive, July 31, 2024, https://www.utilitydive.com/news/pjm-interconnection-capacity-auction-vistra-

driver of skyrocketing monthly power bills[4] and have been for years. Transmission costs are driven not by the price of fuels such as natural gas, coal or oil, which change literally

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constellation/722872/.

[4] *See, e.g.*, Order No. 1920 Dissent at P 15 (citing, *inter alia*, Zach Bright, *Electricity prices rise faster than inflation*, EnergyWire, Apr. 12, 2024 ("The Bureau of Labor Statistics found that electricity prices rose 5 percent over the past year. *That's higher than the overall consumer price index (3.5 percent) and any other single commodity, like food . . . and gasoline . . . .*") (emphases added), https://www.eenews.net/articles/electricity-prices-rise-faster-than-inflation/; *Electricity Inflation 30% Higher Than CPI Over Last 12 Months*" Electricity Transmission Competition Coalition, Apr. 10, 2024 ("Electricity inflation remains the highest consumer goods cost among the items in the Consumer Price Index according to the latest release of data by the Bureau of Labor Statistics. . . . The price of electricity has soared because of the *accelerating cost of transmission . . . .*" (emphasis added)), https://electricitytransmissioncompetitioncoalition.org/electricity-inflation-30-higher-than-cpi-over-last-12-months/; State of the Market Report 2020, PJM Market Monitor, Vol. I, at 17, Table 8 (showing that in 2020, the PJM Market Monitor reported that the cost of transmission exceeded the cost of capacity for the first time), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2020/2020-som-pjm-vol1.pdf; Jim O'Reilly, *Led by AEP and Duke, transmission growth poised to rebound from dip in 2022*, S&P Global Market Intelligence, Nov. 15, 2023 (showing bar graph providing that aggregate transmission rate base grew from $61.4 billion in 2012 to $163.1 billion in 2022, demonstrating that, nationally, transmission rate base nearly tripled in a decade), https://www.spglobal.com/marketintelligence/en/news-insights/research/led-by-aep-and-duke-transmission-growth-poised-to-rebound-from-dip-in-2022); *see also* Devin Leith-Yessian, *Rising Transmission Costs in PJM Concern Consumer Advocates, Enviros*, RTO Insider, Dec. 16, 2024, https://www.rtoinsider.com/94060-rising-transmission-costs-pjm-concern-consumer-advocates-enviros/; Noah Schwartz, *Requests for utility rate hikes reach $29B in 2025 – report*, S&P Global Market Intelligence, July 10, 2025 ("Utility rate hike requests and approvals have reached approximately $29 billion in the first half of 2025, more than doubling the total from the year-ago period, according to a July 10 report from PowerLines. . . . The report noted that utilities' transmission spending increases and extreme weather events have been drivers of the rate spikes."), https://www.capitaliq.spglobal.com/web/client?auth=inherit#news/articleabstract?id=91494944; *compare* State of the Market Report 2023, PJM Market Monitor, Vol. II, Section 1, at 18, Table 1-9, https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2023.shtml, *with* State of the Market Report 2014, PJM Market Monitor, Vol. II, Section 1, at 16, Table 1-9, https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2014/2014-

hourly and are set in global markets, but by capital expenses ("capex"), which are a result of intentional planning and intentional policy decisions, in this case by the management of MISO.

4. MISO has proposed a new tranche of transmission projects, which carries a huge "capex" price of $21.8 billion dollars.[5] And as those of us who have sat on many CPCN cases know, the original sticker price of an asset to be constructed is merely a fraction of the ultimate cost to consumers, because financing costs, such as return on equity ("ROE"), over the life of the project will be added in, and the ultimate price will be several multiples of the sticker price. And to make things worse for the consumers we are supposed to protect, for many years FERC has inflated those financings costs for transmission assets by handing out RTO adders and other "FERC candy."

5. So to his credit, MISO's IMM has stepped up and provided a critique of the assumptions and calculations used by MISO to develop and attempt to justify this latest costly tranche of transmission projects. Since the transmission planning that produced this tranche obviously affects the rates consumers pay, this is exactly what the MISO IMM and any market monitor should do.

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som-pjm-volume2-sec1.pdf, *with* State of the Market Report 2013, PJM Market Monitor, Vol. II, Section 1, at 12, Table 1-9, https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2013/2013-som-pjm-volume2-sec1.pdf, *and* State of the Market Report 2019, PJM Market Monitor, Vol. II, Section 1, at 18, Table 1-10, https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2019/2019-som-pjm-sec1.pdf (demonstrating that for PJM, the largest RTO by load in the country, the transmission component of wholesale power costs has essentially *tripled* over the past decade, from just $5.65/MWh in 2013 to $16.54/MWh in 2023 and that transmission now constitutes almost a third of wholesale power costs, up from approximately 10% just a decade earlier).

[5] *See, e.g.*, *LSP Transmission Holdings II, LLC*, 191 FERC ¶ 61,222, at P 4 (2025) ("On December 12, 2024, the MISO Board of Directors (Board) approved the first phase of the second LRTP Tranche, termed 'Tranche 2.1,' which includes 24 Multi-Value Projects across 323 facilities located entirely within MISO's Midwest Subregion, with an estimated cost of $21.8 billion." (footnote omitted)); Michelle Wilson, *Transforming the Grid: MISO's $21.8 Billion LRTP Tranche 2.1 Portfolio*, MISO, Sept. 25, 2024, https://www.misoenergy.org/meet-miso/media-center/miso-matters/transforming-the-grid-misos-$21.8-billion-tranche-2.1-transmission-portfolio.

6. It is no coincidence that the IMM's actions herein are strongly defended by state regulators and consumer advocates.[6] Speaking personally from experience, during my 17 years as a state commissioner in PJM, it was state regulators and consumer advocates who consistently defended the role of the PJM IMM in bringing inconvenient facts to light, as well as a different analysis of those facts, when rent-seeking special interests wanted the IMM muzzled or fired. That does not mean that the IMM's analysis or conclusions about facts cannot be questioned. They surely can (and I have disagreed with the PJM IMM's conclusions on many occasions). But as former U.S. Senator Daniel Patrick Moynihan once said, "You are entitled to your own opinion. But you are not entitled to your own facts." The role of an IMM requires courage and a willingness to put his job on the line by bringing to light uncomfortable (for some) facts and drawing conclusions about those facts that he is prepared to defend forthrightly. The MISO IMM has done so here and he should be recognized and applauded.

For these reasons, I respectfully concur.

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Mark C. Christie
Chairman

[6] *E.g.*, Colorado Consumer Advocate Comments at 6-8; Illinois AG Protest at 2-4; Joint Consumer Advocates Comments at 2-6; Mississippi Commission Comments at 1-4; OMS Comments at 3-4.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc. Docket No. EL25-80-000

(Issued July 18, 2025)

ROSNER, Commissioner, *concurring*:

1. I concur in today's order denying MISO's petition for declaratory order because I agree that the plain reading of MISO's Tariff allows MISO's IMM to review and analyze the competitive or other market *impacts* of MISO's transmission planning activities to the extent that doing so protects and fosters competition while minimizing interference with open and competitive markets.

2. I write separately to state my belief that a strong working relationship between an RTO and its market monitor is essential. I am disappointed that the parties here turned to the Commission to settle a dispute that, in my opinion, they should have resolved themselves.

3. Of course, I am fully committed to working with my colleagues to address questions like the one here when they are presented to the Commission, and I will do so without hesitation. However, in a situation like this one, which is essentially a contractual dispute, the best outcomes are achieved when the parties reach agreement among themselves—not when the Commission is asked to interpret decades-old language. When parties ask the Commission to answer a "yes or no" question, they forfeit the opportunity to reach a compromise solution that results in better outcomes for everyone involved. So, I encourage parties to take full advantage of the Commission's Dispute Resolution Service to seek such a compromise. The team working in that office has a positive track record of bringing parties together with durable solutions.

4. On the substance of this petition, I also write separately to emphasize my view that the market monitor's work with respect to MISO's transmission planning activities should be focused on reviewing and analyzing the competitive or other market *impacts* of transmission plans to the extent that doing so protects and fosters competition while minimizing interference with open and competitive markets. Put simply, the market monitor's work should be grounded in analyzing the *results* of the transmission planning process, and my vote to deny this petition is not a basis to create new duties for the market monitor that are akin to those of an independent transmission monitor. While I have an open mind on the merits of independent transmission monitors, it is not lost on me that this Commission considered, at length, whether to require independent

transmission monitoring in the multi-year Order No. 1920 Long-Term Regional Transmission Planning rulemaking process, and the Commission did not reach consensus on that issue. Thus, it would be wrong to interpret today's order as creating an independent transmission monitor in MISO.

For these reasons, I respectfully concur.

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David Rosner
Commissioner

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