

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

Midwest Independent Transmission)	Docket Nos.	ER11-1844-001
System Operator, Inc.)		ER11-1844-002

**CONDITIONAL REQUEST FOR REHEARING OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. AND
THE NEW YORK TRANSMISSION OWNERS**

Pursuant to Rules 212 and 713 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) and the New York Transmission Owners (“NYTOs”),² hereby respectfully submit their conditional request for rehearing of the Opinion in the captioned dockets.³

NYISO and the NYTOs ask that the Commission consider this rehearing request only to the extent that the Midwest Independent Transmission System Operator, Inc. (“MISO”),⁴ the International Transmission Company (“ITC”) (together, “Joint Applicants”) or other parties file requests for rehearing or clarification that challenge this Commission’s determination in the Opinion that the Joint Applicants did not demonstrate that their filing (the “Application”) to revise MISO’s Open Access Transmission, Energy, and Operating Reserve Markets Tariff to establish a methodology to recover costs of ITC’s Phase Angle Regulating Transformers (the “ITC PARs”) was just and reasonable. If no such rehearing or clarification request is filed,

¹ 18 C.F.R. §§ 385.212 and 385.713 (2016).

² The NYTOs include: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; Power Supply Long Island; and Rochester Gas and Electric Corporation.

³ *Midwest Indep. Transmission Sys. Op., Inc.*, 156 FERC ¶ 61,202, Opinion No. 550 (2016) (the “Opinion”).

⁴ Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

NYISO and the NYTOs will file promptly a notice of withdrawal of this conditional rehearing request pursuant to Rule 216.⁵

I. BACKGROUND AND INTRODUCTION

In the Opinion, the Commission properly held that the proposed cost allocation reflected in the Application had not been shown to be just and reasonable. The Opinion based this holding on the combination of the following two factors that the Presiding Administrative Law Judge (the “Presiding Judge”) considered in the Initial Decision (“ID”) in this proceeding:⁶

1. The lack of a joint planning effort among MISO, PJM and NYISO regarding the ITC PARs.⁷
2. Selected findings from the ID that the Joint Applicants failed to show that NYISO or PJM will benefit from the operation of the ITC PARs.⁸

Beyond these two factors, the ID contained numerous other findings, not cited or discussed in the Opinion, confirming a lack of benefits to NYISO and PJM. Additionally, the ID made several other findings (unrelated to the lack of benefits) that would independently support a determination that the proposed cost allocation was unjust and unreasonable, and unduly discriminatory and preferential. These additional findings from the ID (not mentioned in the Opinion) are described below. The record in this proceeding is replete with compelling evidence (beyond the evidence upon which the Commission relied) that the proposed cost allocation is unjust, unreasonable, unduly discriminatory and unduly preferential. In addition, the Opinion found to be moot certain arguments of the Joint Applicants regarding other findings addressed in

⁵ 18 C.F.R. § 385.216 (2016).

⁶ *Midwest Indep. Transmission Sys. Op., Inc.* 141 FERC ¶ 63,021 (2012) (the “ID” or “Initial Decision”).

⁷ See Opinion at PP 103-104.

⁸ See *id.* at P 125. The Opinion also states that “to the extent that Joint Applicants may have demonstrated some benefit to NYISO or PJM from the operation of the ITC PARs, we find that any such benefit does not outweigh the considerations discussed above that counsel against Joint Applicants’ proposal.” *Id.*

the ID, in light of the Commission's determination that the proposed cost allocation had not been shown to be just and reasonable.⁹

NYISO and the NYTOs are filing this rehearing request as a precautionary measure, to be considered only if the Joint Applicants or others file a rehearing or clarification request challenging the holding of the Opinion that the proposed cost allocation had not been shown to be just and reasonable. If any such rehearing requests are filed, it would be error for the Commission not to address and consider the ID's other record-based findings that confirm: (i) a lack of benefit to NYISO and PJM, and (ii) the unjust and unreasonable, unduly discriminatory and unduly preferential nature of the proposed cost allocation. It would also be error, in those circumstances, for the Commission not to address and consider the issues that were resolved adversely to Joint Applicants in the ID that the Commission found in the Opinion to be moot.

These findings from the ID, individually and collectively, demonstrate the profound infirmity of the Application and why it should be soundly rejected. Indeed, as discussed below, the Commission is obligated to ensure its decisions are "reasoned, principled, and based upon the record" by considering all of the relevant information and articulating "a rational connection between the facts found and the choices made."¹⁰ Thus, the Commission is obligated to consider and address the additional findings discussed herein, especially if it is inclined to reverse its holdings in the Opinion.

⁹ See *id.* at P 135.

¹⁰ *Williston Basin Interstate Pipeline Co. v. FERC*, 165 F. 3d 54, 60 (D.C. Cir. 1999). See also *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983) (finding that an agency must make a reasoned determination based upon the information before it).

II. STATEMENT OF ISSUES AND SPECIFICATION OF ERROR

In accordance with Rule 713(c)(1) of the Commission's Rules of Practice and Procedure,¹¹ NYISO and the NYTOs submit the following specifications of error and statement of issues, to be considered only in the circumstances described above.

A. Specification of Errors

If a rehearing or clarification request is filed that seeks to overturn the ruling of the Opinion that the proposed cost allocation had not been shown to be just and reasonable:

1. It would be error for the Commission to fail to consider and address in its Opinion additional findings of the Presiding Judge, not cited in the holding of the Opinion, that the ITC PARs do not benefit NYISO or PJM.
2. It would be error for the Commission to fail to consider and address in its Opinion numerous other findings in the ID that support a holding that the proposed cost allocation had not been shown to be just and reasonable, and not unduly discriminatory and preferential.
3. It would be error for the Commission to fail to consider and address the issues deemed moot in the Opinion.

B. Statement of Issues

1. Whether a failure by the Commission on rehearing to consider and address in a reasoned decision the substantial record evidence (and corresponding ID findings) demonstrating that neither NYISO nor PJM benefit from the ITC PARs would be arbitrary, capricious, and contrary to the record in these proceedings. *See Williston Basin Interstate Pipeline Co. v. FERC*, 165 F. 3d 54 (D.C. Cir. 1999); *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).
2. Whether a failure by the Commission on rehearing to consider and address in a reasoned decision numerous other findings in the ID that support the Commission's determination that the proposed cost allocation had not been shown to be just and reasonable – and that demonstrate that the Application is unduly discriminatory and preferential – would be arbitrary, capricious, and contrary to the record in these proceedings. *See Williston Basin Interstate Pipeline Co. v. FERC*, 165 F. 3d 54 (D.C. Cir. 1999); *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

¹¹ 18 C.F.R. § 385.713(c)(1) (2016).

3. Whether a failure by the Commission on rehearing to consider and address in a reasoned decision the matters deemed moot in the Opinion would be arbitrary, capricious, and contrary to the record in these proceedings. *See Williston Basin Interstate Pipeline Co. v. FERC*, 165 F. 3d 54 (D.C. Cir. 1999); *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

III. ARGUMENT

This conditional rehearing request is premised throughout on the principle – enunciated in judicial precedent – that the Commission is obligated to ensure its decisions are “reasoned, principled, and based upon the record,”¹² based upon “substantial evidence,”¹³ by considering all of the relevant information and articulating “a rational connection between the facts found and the choices made.”¹⁴ For example, the court in *Williston Basin* found that the Commission must use record evidence to reach its conclusions.¹⁵ There, the Commission did not explain or support its decision to depart from the data in the record to reach its unsupported determination, and the court remanded back to the Commission.¹⁶ As in the *Williston Basin* decision and its progeny, the Commission here must make a reasoned decision relying upon the record evidence before it.

As applicable to the context of this proceeding, the Commission appears to have relied – in paragraphs 103-104 and 125-131 of the Opinion – on a limited number of the findings of the ID in holding that the proposed cost allocation had not been shown to be just and reasonable. NYISO and the NYTOs presume that the Commission may have referred explicitly to the selected findings because these were sufficient to make a dispositive ruling. However, the record

¹² *Pa. Office of Consumer Advocate v. FERC*, 131 F.3d 182, 185 (D.C. Cir. 1997).

¹³ *Sithe/Independence Power Partners, L.P., v. FERC*, 165 F.3d 944, 948 (D.C. Cir. 1999). *See also* 16 U.S.C.S § 8251(b) (2016).

¹⁴ *Williston Basin Interstate Pipeline Co. v. FERC*, 165 F.3d 54, 60 (D.C. Cir. 1999). *See also FERC v. Elec. Power Supply Ass’n*, 136 S. Ct. 760, 782 (2016) (finding that an agency must provide a “rational connection between the facts found and the choice made”); *Motor Vehicle Mfrs. Ass'n. of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983) (finding that an agency must make a reasoned determination supported by the record evidence).

¹⁵ *Williston Basin*, 165 FERC 165 F.3d at 64.

¹⁶ *Id.*

is replete with additional testimony and factual evidence found by the Presiding Judge to demonstrate in a multitude of respects that the proposed cost allocation is unjust, unreasonable, unduly discriminatory and unduly preferential. Accordingly, under the judicial precedent discussed above, if the Commission issues an order in response to a request for rehearing or clarification challenging the holding of the Opinion, the Commission would be obligated to consider and address in a reasoned decision the remaining elements of the record below and associated findings, which strongly compel a Commission holding that the proposed cost allocation is unjust, unreasonable, unduly discriminatory and unduly preferential.

The remainder of this conditional rehearing request highlights the additional record evidence and associated ID findings that the Commission would be obligated to consider and address in a reasoned decision if the circumstances described above should arise.

A. The Commission is required to consider and address additional findings of the Presiding Judge, not cited in the holding of the Opinion, that the ITC PARs do not benefit NYISO.

If the Joint Applicants or others file for rehearing or clarification challenging the Commission's determination that the Joint Applicants' proposed cost allocation had not been shown to be just and reasonable, the Commission is required to consider and address in a reasoned decision the additional findings of the Presiding Judge (and associated record evidence), not cited in the holding of the Opinion, that NYISO does not benefit from the ITC PARs. While the Commission noted in summary paragraphs some of the ID's findings discussed below, it is not clear that the Commission specifically considered these findings in holding that the proposed cost allocation had not been shown to be just and reasonable.

These other findings – not explicitly relied upon – provide additional and independent justifications for the Commission to hold that the proposed cost allocation is unjust, unreasonable, unduly discriminatory and unduly preferential. The ID's additional findings

confirming record evidence that the NYISO would not benefit from the ITC PARs are set forth below.

1. The ITC PARs were intended to reduce ITC thermal overloads, not to benefit others.

The Presiding Judge found credible Staff’s testimony that the “Joint Applicants have failed to show that the benefits of the ITC PARs flow to NYISO or PJM.”¹⁷ As support for this conclusion, the Judge agreed with Staff testimony, based on record evidence, that “ITC PARs were intended as replacement PARs and were designed to reduce thermal overload on the local ITC system to be reliable.”¹⁸ Thus, the benefit of reduced ITC thermal overload was found to accrue solely to the ITC system. While the Opinion cites to this finding in its summary of the ID,¹⁹ it is not clear that the Commission relied on this finding and testimony in its holding. This testimony, and associated record evidence, further demonstrates that the proposed cost allocation has not been shown to be just and reasonable, and not unduly discriminatory or preferential.

2. The Joint Applicants did not produce a cost allocation study that would measure or consider benefits.

The ID found persuasive MISO’s witness’s admission that the “Joint Applicants did not perform a study using production cost models, as that would measure benefits of the PARs, a total different aspect of cost allocation, inconsistent with [the witness’s] view of the ITC PARs as a reliability project.”²⁰ In other words, the Joint Applicants did not attempt to study whether the ITC PARs would benefit NYISO because the Joint Applicants viewed ITC PARs as a “reliability project” that is not based upon a “beneficiary pays” theory.²¹ Thus, a benefits

¹⁷ *Id.* at P 741.

¹⁸ *Id.*

¹⁹ *See* Opinion No. 551 at P 105, n.204.

²⁰ ID at P 738.

²¹ *Id.*

determination was not made. Although the Opinion cites to this finding in its summary of the Initial Decision,²² it is not clear that the Commission relied upon this admission in its holding that the Joint Applicants did not establish that the ITC PARs benefit NYISO.²³

3. The Joint Applicants did not provide any evidence of multi-regional benefits.

The Presiding Judge agreed with Staff that “the Joint Applicants [] provided no evidence of multi-regional benefits of the ITC PARs.”²⁴ Staff’s witness testified “that there was no evidence of benefits to NYISO or PJM, much less to other regions.”²⁵ Additionally, the Presiding Judge agreed with Staff in noting that the ITC PARs were “meant to benefit ITC, not neighboring regions,” evidenced by the ITC PARs in MTEP06 being “modeled to relieve the thermal overload on the ITC system.”²⁶ The Commission did not discuss these critical findings in its Opinion that demonstrate the Joint Applicants did not show – or attempt to show – that NYISO benefits from the ITC PARs.

B. The Commission is required to consider and address additional findings of the Presiding Judge, not cited in the holding of the Opinion, that support the conclusion that the proposed cost allocation is unjust, unreasonable, unduly discriminatory and unduly preferential.

If the Joint Applicants or others file for rehearing or clarification challenging the Commission’s determination that the Joint Applicants’ proposed cost allocation had not been shown to be just and reasonable, the Commission must consider and address in a reasoned decision the additional findings of the Presiding Judge (and associated record evidence), not cited in the holding of the Opinion, that support the conclusion that the proposed cost allocation

²² See Opinion No. 551 at P 105, n.204.

²³ See *id.*

²⁴ ID at P 887.

²⁵ *Id.*

²⁶ *Id.*

is unjust, unreasonable, unduly discriminatory and unduly preferential. To do otherwise would be error. These other ALJ findings – not explicitly relied upon by the Commission – provide additional reasons to hold that the proposed cost allocation is unjust, unreasonable, unduly discriminatory and unduly preferential. The pertinent additional findings from the ID, based on record evidence, are set forth below.

1. **The proposed cost allocation grants IESO and customers in MISO outside of the ITC zone an undue preference over NYISO and PJM.**

The Presiding Judge determined that the operation of ITC PARs “unduly discriminates against NYISO and PJM in favor of IESO [the Independent Electricity System Operator].”²⁷ Although “MISO’s own analysis indicat[es] that IESO is the greatest contributor to the Lake Erie loop flows, [the Joint Applicants’ proposal] fails to make any cost allocation to IESO.”²⁸ The Presiding Judge agreed with NYISO that the Joint Applicants’ proposal requires NYISO and PJM customers to “pay for costs that are caused by the IESO”; specifically, the “IESO region’s generation-to-load flows are the single largest contributing factor to Lake Erie loop flows, causing more than half (55%) of all Lake Erie loop flow.”²⁹ Additionally, the proposal did not consider costs that PJM incurred to “reduce its contribution to Lake Erie loop flows or the costs associated with such measures.”³⁰

As the ID explained, Commission precedent holds that a “public utility may not exclude from cost allocation a customer, or a class of customers, that caused the public utility to incur such costs in the first place.”³¹ Accordingly, the Joint Applicants’ proposal to allocate costs to

²⁷ *Id.* at P 673.

²⁸ *Id.*

²⁹ *Id.* at P 674.

³⁰ *Id.* at P 676.

³¹ *Id.* at P 677, citing *Ameren Services Co. v. Midwest Independent Transmission System Operator, Inc.*, 121 FERC ¶ 61,205 (2007).

NYISO and PJM that IESO and its customers caused was found to be unjust, unreasonable, and unduly discriminatory, and conflicted with cost responsibility principles that require MISO customers to share the cost burden.³²

The Presiding Judge also ruled that the Application's proposed cost allocation grants customers in MISO outside of the ITC zone an undue preference.³³

2. ITC unilaterally decided to assume a contractual obligation to install the ITC PARs.

As the Presiding Judge correctly found, ITC's incurrence of the costs of the ITC PARs was caused by ITC's unilateral decision to assume a contractual obligation to install the ITC PARs after "considering all other alternatives and evaluating expected benefits to ITC's system."³⁴ The Joint Applicants failed to show that loop flow caused by NYISO or PJM contributed to the need that the ITC PARs were installed to address. The Presiding Judge accordingly properly held it was "inappropriate to allocate the costs of the ITC PARs to NYISO or PJM based on cost causation principles."³⁵

Furthermore, the Joint Applicants did not provide "credible and persuasive evidence of NYISO and PJM's actual contribution" to Lake Erie loop flow.³⁶ In other words, the Joint Applicants did not present evidence that the replacement PARs were constructed to address Lake Erie loop flow caused by PJM and NYISO.

³² *Id.* See also PP 678-680 (finding that cost responsibility principles require that a share of the cost of the ITC PARs must be assigned to MISO customers, and that Staff's argument was correct that MISO's cited legal precedent to support its cost allocation proposal was inapposite because it "involved a negotiated agreement that the parties had voluntarily entered into. There is no such agreement involved herein.").

³³ *Id.* at PP 671, 678.

³⁴ *Id.* at P 724.

³⁵ *Id.* at P 724.

³⁶ *Id.* at P 725.

3. **The Joint Applicants did not provide cost causation studies; thus, it is impossible to know relative contributions to loop flow at any point during the time that ITC seeks to charge NYISO and PJM for the ITC PARs.**

The Presiding Judge found that the Joint Applicants did not support their claim that the proposal is “roughly commensurate with causation because they have not performed any study of cost causation, benefits, beneficiaries, reliability or economics.”³⁷ Thus, as discussed above, the Joint Applicants did not show that benefits accrue to NYISO or its customers from ITC PARs. Moreover, the Presiding Judge found that the Joint Applicants did not perform any “study of scheduled transactions covering the time when they contracted to build the PARs, and that analysis of scheduled transactions in the future is impossible.”³⁸ Because the Joint Applicants did not present this information, the ID concludes that “it is impossible to know relative contributions to loop flow at any point over the next 48 years that ITC seeks to charge NYISO and PJM for the ITC PARs.”³⁹

4. **The ITC PARs’ Operating Instructions and the MISO Tariff unduly discriminate against NYISO.**

The Presiding Judge found that the ITC PARs’ Operating Instructions unduly discriminate against NYISO and PJM because such instructions “provide[] for operation of the ITC PARs to benefit the MISO and IESO systems only and to exclude NYISO and PJM from the decision making process.”⁴⁰ Further, “several provisions of the Operating Instructions require, or at least permit, MISO and IESO to operate the Michigan-Ontario PARs in a manner that favors themselves and their customers over NYISO and PJM.”⁴¹ As NYISO explained in its

³⁷ *Id.* at P 728; *see also id.* at P 729.

³⁸ *Id.* at P 730.

³⁹ *Id.*

⁴⁰ *Id.* at P 681.

⁴¹ *Id.* at P 684; *see also id.* at PP 685-687.

Brief Opposing Exceptions, the Operating Instructions provide MISO and IESO broad discretion to suspend normal operation of the Michigan-Ontario PARs to address reliability concerns, possible future reliability concerns, or anomalous market results that occur in the MISO or IESO control areas. The same treatment is not available for reliability concerns or market anomalies that occur in the NYISO or PJM control areas.⁴² As the Presiding Judge found, “the Joint Applicants’ proposed multi-regional operation of the PARs would ultimately be under the Joint Applicants’ and IESO’s sole control and discretion.”⁴³ It would therefore be unduly discriminatory, preferential and prejudicial to allocate the cost of the ITC PARs equally between and among NYISO, MISO, PJM and IESO.

Further, the Presiding Judge held that the proposed MISO Tariff revisions are unduly discriminatory against NYISO because “(1) they do not provide for temporary suspension of normal operation of the PARs in the event of anomalous market results in NYISO [], but permit such action in the case of the MISO and IESO markets, and (2) they require NYISO [] to continue to pay for the ITC PARs when their operation is suspended to address market anomalies or reliability issues in MISO’s or IESO’s markets.”⁴⁴

5. Ignoring PJM’s and NYISO’s effective loop flow mitigation solutions, while crediting IESO, is unduly discriminatory and preferential.

A Staff witness testified that NYISO has an effective loop mitigation solution in place in the way of “market-based” methods to control loop flows; specifically, NYISO “uses a tariff-driven market-based method that restricts loads on certain paths.”⁴⁵ Despite this alternative solution, the proposed cost allocation method does not account for the positive mitigation effect

⁴² *Id.* at P 688.

⁴³ *Id.* at P 682.

⁴⁴ *Id.* at P 688.

⁴⁵ *Id.* at P 764, citing Ex. S-6 at 21:2, 22:2, 22:21, 23:7).

of NYISO's market-based solution.⁴⁶ Moreover, MISO's methodology does not allocate any of the costs of the ITC PARs to IESO, despite the fact that IESO is the largest contributor to loop flow.⁴⁷

The Presiding Judge found this testimony to be credible and persuasive, concluding that NYISO has "effective loop flow mitigation solutions in place in the way of 'market-based' methods to control loop flows," yet the Proposal does not give any "credit for NYISO's [] transmission facilities and market initiatives that also reduce Lake Erie loop flow."⁴⁸ More specifically, the Presiding Judge found elsewhere that NYISO and PJM had built PARs on their systems that help to control Lake Erie loop flow, but that Joint Applicants' cost allocation proposal gave NYISO and PJM no credit.⁴⁹ In sum, the Presiding Judge found that the cost allocation proposal is unduly preferential, prejudicial, and discriminatory.⁵⁰

C. The Commission is required to consider and address the issues found moot in the Opinion.

In the event that the Joint Applicants or others file for rehearing or clarification, and the Commission subsequently issues an order on rehearing, the issues termed "moot" in the Opinion⁵¹ would clearly no longer be moot. In those circumstances, the Commission would be required to consider and address those issues in a reasoned decision. The Commission should

⁴⁶ *Id.* at P 765.

⁴⁷ *Id.* at P 766. Additionally, the Staff witness testified that the "Michigan-Ontario interface consists of four tie lines that connect ITC and Hydro One's transmission systems," and that these "facilities operate in unison as a flowgate to control the total flow through the interface." *Id.* at P 245. She explained that "all PARs in the Eastern Interconnection, including those located in New York at the NYISO/PJM border, the NYISO/IESO border, and in New York City, affect power flows over the Michigan-Ontario interface." *Id.* at P 248.

⁴⁸ *Id.* at P 780.

⁴⁹ *Id.* at P 676.

⁵⁰ *Id.* at P 780.

⁵¹ *See* Opinion at PP 133-136.

affirm the findings in the ID regarding these issues. The issues denominated as moot in the Opinion are set forth below.

1. Failure to submit cost of service data.

The Presiding Judge found that the Joint Applicants violated Commission policy that prohibits using “stale data to justify a rate of return” by failing “not only to submit, but to convincingly establish, the depreciation rate, return on equity, or capital structure that was used to calculate the revenue requirement that the Joint Applicants seek to recover from NYISO.”⁵² In other words, the Joint Applicants did not adhere to the Commission’s cost of service regulations that required them to provide this information; thus, the Joint Applicants did not meet their burden of proof for cost recovery.⁵³ The Opinion found that failing to comply with the Commission’s regulations by not providing required cost of service data is a moot issue because of the determination that “the proposed cost allocation has not been shown to be just and reasonable.”⁵⁴

2. Whether the Joint Applicants showed that the benefits of the ITC PARs are roughly commensurate with costs to be allocated.

The Commission found moot the issue of whether *any* cost allocation of the ITC PARs to NYISO and PJM and their customers (or others) is appropriate, based upon cost causation/incurrence and/or beneficiary pays principals or on other considerations and, if so, whether the proposed cost allocation is roughly commensurate with other specified factors.⁵⁵

⁵² ID at P 667.

⁵³ *Id.* at PP 667-668.

⁵⁴ Opinion at P 133.

⁵⁵ *Id.* at P 135.

3. **Findings of fact regarding contributions to loop flow, the DFAX study, and whether the filing creates a service obligation of MISO and ITC to NYISO, PJM, or their customers.**

The Commission found to be moot certain findings of fact relating to contributions to loop flow, the DFAX study, and whether the Application creates a service obligation of the Joint Applicants to NYISO, PJM, or their customers because of its overall conclusion that the proposed cost allocation was not just and reasonable.⁵⁶

IV. CONCLUSION

As explained herein, NYISO and the NYTOs are filing this rehearing request as a precautionary measure, to be considered only if the Joint Applicants or others file a rehearing or clarification request challenging the holding of the Opinion that the proposed cost allocation had not been shown to be just and reasonable.

For the reasons described herein, if those circumstances arise, NYISO and the NYTOs respectfully request that the Commission consider and address, in a reasoned decision, the findings and record evidence discussed herein that were not explicitly relied upon in the holding of the Opinion, and continue to find that the proposed cost allocation has not been shown to be unjust and unreasonable, and to find that the proposed cost allocation has also not been shown to be not unduly discriminatory or preferential.

⁵⁶ *Id.*

In the event that the Joint Applicants or others do not file for rehearing or clarification, NYISO and the NYTOs will file promptly a notice of withdrawal pursuant to Rule 216.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Rensselaer, NY this 24th day of October 2016.

/s/ John C. Cutting

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