

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

<b>Midwest Independent Transmission System Operator, Inc.</b>	) ) ) ) )	<b>Docket No. ER09-1431-000</b>
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**MOTION FOR LEAVE TO INTERVENE AND PROTEST  
OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. §§ 385.211 and 385.214 (2009), the Electric Power Supply Association (EPSA) respectfully files for leave to intervene and comment in the above-captioned proceeding. On July 9, 2009, the Midwest Independent Transmission System Operator (MISO) filed amendments to its Open Access Transmission Energy and Operating Reserve Markets Tariff (Tariff) to revise its cost allocation methodologies on an interim basis with respect to network upgrades for generation interconnection projects meeting MISO's Regional Expansion Criteria and Benefits (RECB) standards (July 9 Filing). MISO's July 9 Filing proposed an effective date of July 10, 2009, noting that MISO would work with stakeholders to find a permanent solution within one year.

**I. MOTION TO INTERVENE & COMMUNICATIONS**

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible

facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers.<sup>1</sup>

Many of EPSA's members are interconnected with and/or are pursuing interconnection to the grid in MISO, and as such represent a significant portion of the supply capacity in that region. EPSA members have been active participants in MISO's stakeholder processes and EPSA has participated in many of the Commission's proceedings on MISO issues. As a result, EPSA has a direct and substantial interest in the instant proceeding that cannot be adequately represented by any other party, and allowing EPSA to actively participate in this proceeding would be in the public interest. Accordingly, EPSA respectfully requests that the Commission grant this timely motion to intervene.

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

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## II. INTRODUCTION

At present, MISO's cost allocation mechanism for interconnection upgrades allows for 50 percent of the costs of network upgrades for a generator interconnection project to be repaid to the generator, as long as it is designated as a network resource or enters into at least a one year contract. The cost

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<sup>1</sup>The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

allocation mechanism also delineates between interconnection to large lines (345 kV and above) and interconnection with smaller regional lines. As MISO explained in its July 9 Filing, when a generator interconnects to a large transmission line, some of the refund costs are distributed to all of the MISO pricing zones on a postage stamp basis. However, in the case of interconnections to lines less than 345 kV, the entire generator repayment is allocated to the pricing zone in which the line is located.<sup>2</sup> With the large scale increase in proposed resources that are located distant from load within the MISO footprint, MISO now asserts that its current interconnection cost allocation scheme is no longer appropriate.

At least two transmission owners within the MISO footprint have cited “the greatly disproportionate allocation to their respective zones” related to the increase in wind resources within their service areas as the basis for threatening to withdraw from MISO unless the interconnection cost allocation mechanism is altered.<sup>3</sup> In response, MISO has filed an interim proposal not fully deliberated through the ongoing RECB dialogue or MISO committee process on cost allocation policy to allocate between 90 and 100 percent of all interconnection costs (with arguably no clear path to reimbursement of those costs) to generators interconnecting within the MISO footprint until MISO stakeholders develop an alternative cost allocation methodology. Specifically, for the next year, MISO has proposed that interconnection costs to lines smaller than 345 kV will no longer be shared equally (50/50 cost split) between interconnecting generators and

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<sup>2</sup> July 9 Filing, Transmittal Letter at 5.

<sup>3</sup> *Id.* at 6.

transmission owners within the pricing zone. Instead, all of the costs associated with interconnection would be borne by the generator.<sup>4</sup> Moreover, MISO has proposed to decrease the amount of the interconnection costs that generators will be repaid for interconnection to larger lines from 50 percent to 10 percent.

### **III. PROTEST**

EPSA and its membership recognize that MISO is trying to find a solution to a very real problem in this proceeding. However, MISO's interim proposal to allocate the entire cost of interconnection to generators is confusing, and seemingly offers no clear compensation to those generators. Thus, MISO's July 9 Filing seemingly contradicts the pricing principles established by the Commission in Order No. 2003. It would therefore effectively delay all new generation projects within the MISO footprint until new cost allocation rules are developed, including resources necessary to meet existing renewable portfolio standards within the MISO region.

The Commission should reject MISO's interim proposal and require a more specific solution both in the interim and in the long term. MISO needs to clearly paint a nexus between the 100 percent generator-pays model and a better mechanism for generators to be fully compensated for any interconnection costs through transmission credits. Further, MISO should resolve all timing and uncertainty issues that might result from having an interim interconnection cost allocation structure in place for only one year that may discourage necessary generation from developing during that time. In reality, this proposed interim solution is a MISO-wide solution to a problem that only involves two transmission

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<sup>4</sup> *Id.* at 15.

owners' zones. MISO should be directed to work with stakeholders toward a permanent solution and address the interim problem with the two affected transmission owners. Otherwise, for all the reasons here noted, necessary new generation may not be developed in the next year throughout the MISO footprint. In any event, any new interconnection cost allocation scheme should only apply to new project proposals going forward.

There are, in fact, more viable solutions which MISO may consider in developing an equitable solution to the current cost allocation problem. The possible solutions include providing interconnection customers with transmission rights across the transmission lines they construct, or altering the methodology for allocating costs of sub-345 kV transmission upgrades only. The Commission should make clear that any solution MISO stakeholders ultimately approve must comply with prior precedent and not unduly harm interconnection customers.

#### **A. MISO'S INTERIM PROPOSAL SEEMINGLY CONTRADICTS ORDER NO. 2003**

MISO argues that “the interim changes simply bring the MISO in line with the allocation rules approved for other [Regional Transmission Organizations (RTOs)].”<sup>5</sup> This is seemingly untrue – if the MISO proposal were approved as the July 9 Filing describes it, MISO's policy would represent the most restrictive interconnection policy in the United States (this includes both regions inside of RTOs and regions with bilateral markets).<sup>6</sup> Although MISO alleges that its

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<sup>5</sup> *Id.* at 17.

<sup>6</sup> Even regions outside RTOs are subject to Order No. 2003 comparability standards. See *generally Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (“Order No. 2003”), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶

proposal is in line with the cost allocation policies established by other RTOs, that does not seem to be the case based on an arguable lack of commensurate compensation for interconnection development.

Order No. 2003 granted RTOs deference to construct their own interconnection pricing policies so that those policies would reflect regional needs and local considerations.<sup>7</sup> However, those policies are still subject to Commission approval, and must comply with the Commission's general pricing policy.

MISO's July 9 Filing describes a system where all network upgrade costs are assigned to the interconnection customer, but does not clearly provide interconnection customers that fund network upgrades any type of refund or other valuable transmission rights to compensate them for their unreimbursed costs. EPSA notes that Section III.A.2.d of Attachment FF states that interconnection customers may receive financial transmission rights (FTRs) or other rights for unreimbursed costs pursuant to Section 46 of the Tariff, but it is not at all clear that interconnection customers are eligible to receive FTRs or long-term transmission rights (LTTRs) under this provision.<sup>8</sup> Moreover, even if

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31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>7</sup> Order No. 2003 states that:

For a Transmission Provider, such as an RTO or ISO, that is an independent entity, the Commission continues to allow flexibility regarding the interconnection pricing policy that each independent entity chooses to adopt, subject to Commission approval.

Order No. 2003 at P 698.

<sup>8</sup> Section 46 of the Tariff states that:

The Transmission Provider shall issue deem and eligible [sic] to receive FTRs and LTTRs to the Market Participants that fund

such customers were eligible in theory for FTRs or LTTRs under Section 46, many generators would not be in practice because customers arguably must take long-term point-to-point transmission service to receive these rights and the associated compensation.<sup>9</sup> Consequently, a substantial portion of interconnection customers funding upgrades may not receive any compensation whatsoever for their unreimbursed costs if they do not take such transmission service, in particular, merchant generators that sell directly into the MISO markets and generators with long-term power purchase agreements in which the offtaker is responsible for transmission service. In any case, EPSA members that participate in MISO have reported that MISO's approach to compensating

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(pay for construction of) Network upgrades **and elect not to receive credits**, if eligible, under Attachment FF of this Tariff.

*Id.* (emphasis added). In other words, customers funding upgrades are eligible for FTRs or LTTRs only if they (1) are eligible to receive credits, (2) but have elected not to accept them. Interconnection Customers are not eligible to receive credits for the unreimbursed costs, and consequently, they do not have the choice of accepting or rejecting such credits. EPSA notes that the formulation in MISO's Business Practice Manual is somewhat different than in the Tariff. See *Business Practices Manual: Financial Transmission Rights (FTR) and Auction Revenue Rights (ARR)* §§ 3.25 and 4.9 (Jan. 6, 2009). In any case, the tariff language governs in the event of conflict with a manual.

<sup>9</sup> Section 46.1 of the MISO Tariff provides that FTRs and LTTRs granted pursuant to Section 46 will remain in effect only until the end the current annual allocation period for Auction Revenue Rights ("ARRs"); after that FTRs and LTTRs are to be converted into ARR in the next Annual ARR Allocation period pursuant to Section 43.2.4 of the MISO Tariff. The ARR allocation process consists of Stage 1A and Stage 1B for nomination and allocation of ARR (as well as a Stage 2, which governs the allocation of revenues from FTR auctions, although a market participant must have been allocated ARR in Stage 1). In both Stage 1A and Stage 1B, market participants are eligible to nominate Candidate ARR or "CARR" based on the "reservation MW quantity for each of the applicable annual or longer Firm Point-To-Point Transmission Service entitlement." MISO Tariff §§ 43.2.4.a.i and 43.2.4.b. Thus, Section 43.2.4 does not provide for a customer to nominate and receive ARR based solely on the amount of transmission capacity created by the network upgrades it has funded; it must also take long-term point-to-point transmission service using the upgrades to be eligible for ARR. In addition, Section 46 provides that "[t]he in-service date of the network upgrades must coincide with the start date of the Point-To-Point Service for which the FTRs and LTTRs are requested pursuant to this Section." This suggests that Section 46 FTRs and LTTRs must be requested as part of point-to-point transmission service and that there is no entitlement to such rights apart from the associated transmission service.

customers that fund upgrades is an ad hoc process at best and that further refinement is necessary.

MISO's proposal in the July 9 Filing is in direct opposition with the principles FERC specified in Order Nos. 888 and 2003 to the extent that it would not provide interconnection customers compensation for customer-funded upgrades. In Order No. 2003, the Commission laid out a number of reasons for requiring that generators (a.k.a. interconnection customers) be repaid interconnection costs. For example, consistent with the Commission's long-held policy of prohibiting "and" pricing for transmission service, the repayment/crediting policy ensures that interconnecting generators will not be charged twice (*i.e.*, pay both incremental costs and average imbedded costs) for the use of the Transmission System. Order No. 2003 goes on to note that even in RTOs where generators are required to pay for interconnection without repayment from the transmission owner (such as in a "but for" pricing model), "the Interconnection Customer [then] is allowed to receive well-defined capacity rights that are created by the upgrades."<sup>10</sup> MISO's proposal as it is written and understood by MISO market participants makes mention of no such compensation to the interconnection customer. The sole justification advanced

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<sup>10</sup> Order No. 2003 at P 700. Further FERC's rules for long-term transmission rights (LTTRs) do require compensation. The Commission regulations state that:

Long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions.

18 C.F.R. § 42.1(d)(3) (2009). FERC's transmission credit policy has withstood court challenges and has been upheld at the D.C. Circuit Court.

by MISO for the 100 percent generator-pays model is that certain transmission owners were threatening to withdraw from the RTO.

In fact, the pricing policies of the other RTOs that MISO points to in its transmittal letter<sup>11</sup> all offer some sort of clear transmission credit to compensate interconnection customers for their contribution to improving the transmission system. MISO would become the *only* system in the country where an interconnection customer appears to receive nothing in exchange for funding transmission upgrades,<sup>12</sup> as MISO makes no mention of its own crediting policies in its July 9 Filing, which, as discussed above, appear to not provide any compensation to all, or at least a substantial portion of, interconnection customers. These credit opportunities were not raised in discussion at the stakeholder level either.

MISO must include a detailed description of how its policies will compensate interconnection customers for required network upgrades with transmission upgrade credits (which must be repaid within 5 years if not applied toward transmission service), or other compensation such as FTRs, LTTRs, or ARRs. Further, MISO should provide clarifications to Sections 43 and 46 and Attachment FF of the MISO Tariff regarding the eligibility of interconnection customers that fund upgrades for compensation in the form of FTRs, ARRs, and LTTRs and the process for obtaining such compensation.<sup>13</sup>

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<sup>11</sup> See July 9 Filing, Transmittal Letter at 18-19.

<sup>12</sup> Even the Entergy transmission system, long considered the most restrictive system in the country, provides generators with transmission rights under Attachment T to the Entergy OATT.

<sup>13</sup> Additionally, as a stipulation to the acceptance of this proposed filing the Commission should require MISO to address the free-rider/late-comer issues. These issues result when interconnection customers that fund network upgrades are not credited or compensated by later users of the facilities that they have funded.

## **B. CERTAIN TRANSMISSION OWNERS HAVE MADE THREATS WITHOUT OFFERING VIABLE SOLUTIONS**

As MISO explains in its transmittal letter, two of its transmission owners – Otter Tail Power Company (Otter Tail) and Montana-Dakota Utilities (MDU) – have threatened to withdraw from MISO if the issue of disproportionate cost allocation to their pricing zones is not resolved.<sup>14</sup> However, neither allocating 100 percent of interconnection costs to generators across the entire RTO nor the withdrawal of these two transmission zones is viable. As discussed above, a 100 percent generator-pays allocation without explicit provision for transmission credits in MISO's Tariff is a violation of FERC Order No. 2003 and a detriment to necessary development in the region. Additionally, Otter Tail and MDU could likely not sustain the development of new resources as stand-alone transmission territories. Moreover, were Otter Tail and MDU to withdraw from MISO, they would immediately become subject to the Commission's *pro forma* Open Access Transmission Tariff, including the requirement that they provide a dollar-for-dollar refund of all network upgrades funded by new interconnection customers. Further, with both companies leaving MISO's expansive balancing area and each becoming their own balancing area again, this would require them to manage intermittent energy interconnected to their systems on their own, which may exacerbate challenges to system reliability.

MISO has noted concern that its existing membership and configuration be preserved so that power from the aforementioned regions be able to reach the MISO system and help all states in the footprint meet renewable portfolio

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<sup>14</sup> MISO July 9 Filing, Transmittal Letter at 6.

standards. Conversely, Otter Tail and MDU ought to be concerned that, without the access to MISO ancillary services and reliability, those regions might not be able to reliably operate the new resources within their areas. Withdrawing from MISO will create complicated, jagged seams, over which the retreating transmission owners will be forced to sell their power and negotiate some sort of ancillary services contract.

### **C. MISO'S PROPOSAL DISCOURAGES POWER PRODUCERS FROM DEVELOPING IN THE REGION**

Moving from a 50 percent cost allocation split to a 100 percent generator-pays structure that does not clearly offer transmission credits as compensation creates a significant barrier to entry for all types of new generation, including both conventional and renewable generation projects. The MISO proposal is manifestly confusing to generators with projects currently going through the MISO interconnection process. The result of accepting an interim proposal to directly assign all interconnection costs to interconnection customers would lead to the wholesale delay of both new and existing generation projects until after the interim period ends, when ostensibly a more equitable cost allocation methodology is adopted. It is counterintuitive for a company to move forward with a development project bound by a temporary, entirely new cost structure that may bear no relation to the permanent cost allocation methodology. Additionally, many projects currently in development already have binding contracts or deposits that could be forfeited as a result of delays occasioned by this sudden switch in interconnection cost assignment policy. Clearly, any

generator that seeks to continue the interconnection process during the interim period would be at a significant competitive disadvantage.

Recent Commission policy encourages regions to find *solutions* to barriers that impede desired resource development, not to inhibit it.<sup>15</sup> Approving MISO's interim proposal here would, in fact, discourage independent power producers and merchant generators of all fuel types. In addition, several states in the MISO region have renewable portfolio standards.<sup>16</sup> It is important that the Commission reject MISO's interim proposal in favor of the more localized approach discussed in Section B of these comments in order to help stay on track in meeting these RPS requirements.

#### **IV. GOING FORWARD – GUIDANCE FOR MISO'S INTERIM AND PERMENANT SOLUTIONS**

##### **A. POSSIBLE ALTERNATIVES TO MISO'S INTERIM PROPOSAL**

Because there is a real problem here, if an interim solution must be implemented, it must ensure that the MISO footprint remains intact and stakeholders have time to come up with a permanent compromise without instituting an untenable one year environment. MISO's proposal, as it was written and filed, is not viable. While the current proposal is untenable, EPSA proposes that the Commission provide MISO with specific guidelines in developing any solution.

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<sup>15</sup> For example, see the order approving transmission incentive rates on the Chinook Power Transmission and Zephyr Power Transmission lines in the Northwest. At the February 19, 2009 Commission Meeting, Chairman Wellinghoff noted that these orders were especially significant for renewables. *Chinook Power Transmission, LLC and Zephyr Power Transmission, LLC*, 126 FERC ¶ 61,124, *on reh'g*, 128 FERC ¶ 61,074 (2009).

<sup>16</sup> *Comments of the Organization of MISO States*, Docket No. AD09-4-000 (filed Dec. 5, 2008).

Any interim fix proposed by MISO should be narrowly tailored to address the problem faced by Otter Tail and MDU. Thus, any interim solution should be limited in geographic scope, and address the specific concerns over integrating wind resources into the zonal generation mix. Instead of addressing these narrow problems, the MISO proposal alters the interconnection cost allocation methodology for the entire MISO footprint for both small and large lines because two transmission owners have threatened to withdraw. It makes far more sense for MISO to work out a settlement with the isolated affected transmission owners and generators than to harm interconnection customers throughout the entire MISO footprint.

The Commission should direct MISO to consider temporary alternatives to its current proposal, including altering the allocation of costs applicable to transmission upgrades within the affected areas. The current approach would delay all new generation projects within the MISO footprint; instead, any interim plan should address the cost allocation problem within Ottertail and MDU rather than require interconnection customers to bear the sole burden of alleviating the cash-crunch faced by certain MISO transmission owners.

The Commission should reject MISO's proposal and direct the RTO to work out a more localized settlement with the affected transmission owners and other affected stakeholders in that zone until a permanent solution can be established.

## **B. NECESSARY REQUIREMENTS FOR MISO'S PERMANENT SOLUTION TO GENERATOR INTERCONNECTION COST ALLOCATION**

MISO has proposed to develop a permanent solution through its stakeholder process for filing with FERC and implementation in one year. As MISO works through its stakeholder process, it is important to ensure that a fair and balanced compromise is reached. Possible solutions include altering the cost allocation methodology for local network upgrades or clearly providing interconnection customers with a valuable transmission right in exchange for initially funding network upgrades. Other regions (including PJM Interconnection, L.L.C. and the Southwest Power Pool, Inc. (SPP)) have developed straightforward mechanisms for compensating generators for network upgrade costs in an equitable manner, pursuant to the principles enumerated in Order No. 2003.

It is critical that whatever solutions eventually form in the RECB task force, there be ample opportunity for consideration and discussion at the Advisory Committee level.<sup>17</sup> It is also essential that MISO find a solution to this problem that represents a compromise among all stakeholder interests. The interim solution proposed in the instant proceeding represents a heavy tilt towards the wishes of transmission owners who had threatened to leave the organization if the allocation problem was not expeditiously resolved. However, it is entirely possible to reach a compromise on interconnection allocation issues. Other

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<sup>17</sup> In MISO's Order No. 719 compliance proceeding, EPSA has noted concern for MISO's stakeholder process, in that too many decisions are made at lower-level, unweighted working group levels without leaving enough time for discussion at the advisory committee level. As MISO works in that proceeding to improve its governance and stakeholder relations, it is important to offer a fair and balanced approach in this proceeding. *See Motion for Leave to Intervene and Comment of the Electric Power Supply Association*, Docket No. ER09-1049-000 (filed May 26, 2009).

regions around the country are dealing with similar issues. The Commission recently approved an SPP interconnection cost allocation scheme to which various working committees of SPP stakeholders unanimously agreed.<sup>18</sup> While SPP's "base-plan" funding approach may or may not be a reasonable solution for the MISO region, the extensive stakeholder process SPP followed to allow all parties to reach agreement is notable.

Further, the timing of the interim mechanism and how it interplays with the permanent mechanism could present a serious problem. It is essential that any new interconnection cost allocation scheme should only apply to new project proposals going forward and not to projects that are in the queue already, as studies and cost estimations are already complete for those projects as discussed above. The only fair approach would be to reject this interim solution in favor of the more complete solution to the cost allocation issues facing the MISO footprint.

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<sup>18</sup> *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,283 at P 8 (2009).

## V. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission grant its motion for leave to intervene in this proceeding and consider the comments herein.

Respectfully submitted,



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August 13, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments by via email or postal mail upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., August 13, 2009.

A handwritten signature in black ink, appearing to read "N. Bagot", with a horizontal line extending to the right from the end of the signature.

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Nancy Bagot, VP Regulatory Affairs