

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

Midwest Independent Transmission System Operator, Inc.)))))	Docket No. ER10-1791-000
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**MOTION FOR LEAVE TO INTERVENE AND PROEST
OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 211, 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§385.211, 385.212 & 385.214 (2010), the Electric Power Supply Association (“EPSA”) respectfully files for leave to intervene and protest in the above-captioned proceeding. On July 15, 2010, the Midwest Independent Transmission System Operator (“MISO”) filed amendments to its Open Access Transmission Energy and Operating Reserve Markets Tariff to revise its transmission cost allocation methodologies.¹ MISO’s July 15 filing was submitted in compliance with an October 23, 2009 Commission order accepting an interim cost allocation methodology and directing MISO to work with stakeholders to develop a more permanent solution.²

EPSA’s comments herein are limited to one specific aspect of MISO’s July 15 proposal – that new transmission lines deemed “multi value projects” be partially funded through a per megawatt export charge to electricity leaving MISO. EPSA agrees with the concerns raised by MISO’s market monitor and

¹ *Midwest Independent Transmission System Operator, Inc et al Submits the Proposed Revisions to their ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff*, Docket No. ER10-1791-000 (July 15, 2010). (“MISO July 15 Filing”)

² *Midwest Independent Transmission System Operator, Inc.*, 129 FERC ¶ 61,060, Docket No. ER09-1431 (October 23, 2009).

independent consultants during the stakeholder process that such an export charge will result in rate pancaking and create a new, unnecessary seam along MISO's borders. Further, the calculation methods described in MISO's filing will certainly result in violations of MISO's OASIS rate posting requirements, placing transmission customers in the unjust and unreasonable circumstance of paying a charge that did not have a pre-specified price and accompanying terms and conditions posted.

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.³

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. EPSA also participated in Docket No. ER09-1431-000, which was a precursor to this proceeding. 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

³ 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.

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. BACKGROUND

Until last year, MISO's cost allocation mechanism for interconnection upgrades allowed 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 previous cost allocation mechanism also delineated between interconnection to large lines (345 kV and above) and interconnection with smaller regional lines. Under that structure, when a generator interconnected to a large transmission line, some of the refund costs were 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 was allocated to the pricing zone in which the line is located.⁴ With the large scale increase in proposed wind resources within the

⁴ *Midwest Independent Transmission System Operator, Inc et al Submits Amendments to Revise the Method of Allocating the Cost of Network Upgrades*, Docket No. ER09-1431-000 (July 9, 2009) Transmittal Letter, p. 5. ("MISO July 9 Filing")

MISO footprint, MISO found that the previous interconnection cost allocation scheme would no longer be appropriate.

On July 9, 2009, MISO filed an interim cost allocation proposal noting that the RTO would continue to work with stakeholders to find a permanent solution within one year. The Commission largely accepted MISO's interim proposal in its October 23, 2009 Order.

The instant proposal seeks to address the question of how to cope with the influx of renewable generation by creating a new category of transmission project – the multi value project (“MVP”). MISO describes MVPs as:

projects that enable the reliable and economic delivery of energy in support of documented energy policy mandates and address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple transmission zones.⁵

Further, MISO's proposal seeks to fund MVPs on a postage stamp basis across all load, as well as through export charges on a per megawatt basis on all electricity leaving MISO's system. EPSA's comments herein pertain solely to the export charge proposal, as it may create unjust and unreasonable rates, violate the spirit of Order No. 2000, and it certainly contravenes basic OAISIS requirements. Such an export charge seeks to solve an allocation problem by creating yet another seam and, by very definition, pancaking rates that will ultimately lead to higher cost electricity for MISO ratepayers.

⁵ MISO July 15 filing, p. 2.

III. PROTEST

MISO's explanation for including an export charge is that:

Specifically, the MVP cost allocation proposal includes this usage charge to mitigate the potential free rider issue that would result if external loads under renewable portfolio standard mandates significantly benefit from the transmission infrastructure expansion associated with MVPs, but did not have to bear any of the costs of that transmission infrastructure expansion.⁶

While it is true that there will be several wind and other renewable projects that will qualify as MVPs, thus allocating the cost of interconnection to the entire footprint, MISO's solution implicates all exporters of power, not just MVP "free riders." Thus, traditional generation not qualifying as an MVP and therefore paying for its own transmission upgrade will also have to pay an export charge. Further, generation that has previously been exporting power into other markets will now have a higher delivered cost for its energy exports. In this case, MISO has crafted a not-so-elegant solution to the problem. The fix for the "free ride" concern is not to institute a blanket export tax on all generators. This will only serve to raise the overall price of electricity, put exports at a competitive disadvantage in other markets and amount to ultimate double payments for end-use consumers.

The most compelling arguments against an export charge are the related issues of creating seams and rate pancaking. These are fundamental issues that have been clearly defined in FERC policy since Order No. 2000. During the stakeholder process leading up to MISO's proposal, both the independent market monitor ("IMM") and an independent consulting company hired by MISO (LECG)

⁶ MISO July 15 Filing, Tab D, pg 5, Q&A.

warned MISO against the export charge concept as a means for funding transmission projects for those very reasons.⁷ Further, the calculation of the export charge violates MISO's OASIS posting requirements and the institution of a charge with the stated reason of allocating costs to load outside of the MISO footprint violates the MISO/PJM Joint Operating Agreement ("JOA"). The portion of MISO's proposal that seeks to institute an export charge should be rejected.

A. Rate Pancaking

Order No. 2000 describes rate pancaking as something that "occurs when a transmission customer is charged separate access charges for each utility service territory the customer's contract path crosses."⁸ Elimination of rate pancaking for large regions has been described as "a central goal of the Commission's RTO policy" and was certainly a condition of MISO's approval as an RTO at its inception.⁹ The export charge being proposed in the instant proceeding is, by very definition, creating rate pancaking. It is a charge being

⁷ These presentations occurred during a meeting of MISO's Regional Expansion Criteria & Benefits (RECB) Task Force on June 10, 2010. Dr. Patton as the IMM gave remarks and summarized them in a written document that can be found here: http://midwestmarket.org/publish/Document/345da0_1299503ccb2_-7f5f0a48324a/Summary%20of%20IMM%20Comments%20on%20Cost%20Allocation%20Proposal%20from%20June%2010%20Meeting.pdf?action=download&_property=Attachment

Susan Pope and Scott Harvey from LECG wrote a detailed paper and gave a power point presentation, which can be found at the following two links: LECG (Scott Harvey & Susan Pope) June 10 Presentation: http://www.midwestiso.org/publish/Document/15cf2f_128d94d853e_-7d800a48324a/Item%2003a%20-%20Comments%20on%20MVP%20Transmission%20Cost%20Alloc_Jun%2009.pdf?action=download&_property=Attachment

LECG June 10 Recommendations Paper:

http://www.midwestiso.org/publish/Document/15cf2f_128d94d853e_-7db40a48324a/Item%2003a%20-%20Evaluation%20of%20MVP%20Transmission%20CA%20Design.pdf?action=download&_property=Attachment

⁸ Order No. 2000: Regional Transmission Organizations, 89 FERC ¶ 61,285, Docket No. RM99-2-000 (December 20, 1999), p. 516.

⁹ Ibid.

levied simply because electricity is passing from one RTO's service territory to another RTO's service territory. If the Commission were to approve MISO's export charge proposal without modification it would not only be counter to the RTO policies laid out in Order No. 2000, but it would set a dangerous precedent whereby other RTOs could follow suit and drive up the costs of delivered electricity astronomically. It is important to keep in mind as the Commission considers the seams issues discussed below that, at its base, MISO's export charge is contrary to Commission regulations.

B. Seams

MISO has stated on numerous occasions and in numerous proceedings that it is dedicated to reducing or eliminating seams.¹⁰ Indeed, the Commission has been well aware since Order No. 2000 that eliminating seams should be one of the core goals of an ISO. In fact, Order No. 2000 specifically noted in its discussion of seams issues that "an RTO proposal must explain how the RTO will ensure the integration of reliability and market interface practices."¹¹ The instant proposal, which would essentially erect a new seam, includes little to no discussion of the market interface between MISO and neighboring regions, dismissing any disadvantage exporters might have in other regions as necessary

¹⁰ See: *Midwest Independent Transmission System Operator, Inc et al submits proposed revisions to the Joint Operating Agreement*, Docket Nos. ER05-6-108 et. al. (January 28, 2009).; *Comment of Midwest Independent Transmission System Operator, Inc*, Docket No. ER08-1281-004 (February 2, 2010); *Planning Update: ATC Costomer Meeting Power Power Point* (November 19, 2009), slide 10. Available here: http://www.atcllc.com/oasis/Custom_Notices/NCM_EIPC111909.pdf
Press Release: Midwest ISO, PJM and TVA make Grid Reliability Progress with Multi-Regional Data Exchange Agreement, (May 24, 2004). Available here: http://www.midwestiso.org/publish/Document/573257_ffef0fcee0f_-7f650a531528/20040524122934MISOPJMTVA_data.pdf?action=download&_property=Attachment

¹¹ Order No. 2000, p. 495.

to fixing the MVP “free rider” problem discussed above. Further, there is no discussion of the effect on consumers both within MISO and in neighboring RTOs, especially if other RTOs follow suit and institute import or export charges of their own. Finally, market and dispatch inefficiencies will result from the newly constructed seam.

Exporters of power from MISO would now be at a clear disadvantage in the markets outside MISO where they seek to sell power. MISO has stated that it wishes to ensure that “a portion of the MVP costs are allocated to external loads that benefit from the MVP projects.”¹² However, this may not be helpful if these charges cause the cost of delivered electricity of MISO exports to rise. Generators currently exporting electricity to other markets are doing so at prices that are competitive in those other markets; an extra charge on imports puts all generation that leaves MISO at a competitive disadvantage. LEGC reported during the MISO stakeholder process that an export charge “could impact the economic viability of generation.”¹³ So, if a generator in MISO exports power to PJM and it is no longer able to offer economically competitive prices because of the export charge, customers in PJM will begin to purchase power produced domestically within their own RTO or from other neighboring markets. Thus, the portion of MVP costs that were supposedly allocated to external loads so that those loads would not be “free riders” would not be collected in sufficient amounts or at all. It follows to reason that instead of MISO gaining money from

¹² MISO Filing, Tab D, pg 5, Q&A.

¹³ LEGC June 10 RECB presentation, p. 4.

the loads of neighboring RTOs, generators would simply lose business that would've otherwise been economically viable.

Another way this charge could have a very real effect on rates (aside from those discussed in the rate pancaking section of these comments) is by instituting a new precedent for several if not all ISO/RTOs. In June 10 comments to a MISO stakeholder meeting discussing the proposal, the IMM stated the concern that “if the Midwest ISO levies a significant export charge for power leaving the Midwest ISO, our neighbors may do the same.”¹⁴ Dr. Patton continued to explain that because MISO is a net importer from most directions, end-use consumers in the MISO footprint would be far more harmed if neighboring RTOs levied an export charge on MISO consumers than they would benefit from MISO placing such a charge on outgoing power.¹⁵ At base, if MISO levies such a charge, and a neighboring RTO like PJM does the same thing, MISO customers would be harmed more than they would benefit. The MISO filing includes no discussion of coordination with neighboring RTOs on whether and if such similar charges may be considered. Thus, not only will MISO be erecting a new seam by instituting an export charge, it will be creating a seam that could well deepen if dueling charges are levied on exports from different RTOs. This violates the spirit of Order No. 2000, which stated, “we expect the RTO to work closely with other regions to address inter-regional problems and

¹⁴ Patton June 10 RECB Comment Summary, p. 2., see also LECG paper at p. 24: “The per megawatt hour MVP charge on exports will tend to raise the price of Midwest ISO generation relative to external generation having the same social cost.”

¹⁵ Ibid.

problems at the "seams" between the RTOs."¹⁶ There is no evidence that MISO has laid any ground work to ensure that PJM and other RTOs will not follow its lead and levy export charges of their own.

At the very heart of seams issues are reliability and market inefficiency concerns. Order No. 2000 stated that "[o]ne of our concerns about an RTO's scope is that the existing impediments to trade, reliability, and operational efficiency be eliminated to the greatest extent possible."¹⁷ The IMM and LECG had the same concerns during the stakeholder process concerning the export charge. Not only was there concern that such a charge could lead to inefficient or uneconomic dispatch,¹⁸ but there was concern that inefficient investment decisions would result. Dr. Patton noted that a blanket export charge for MVPs does not directly allocate the costs of new transmission to the new generation that is being built; thus, investors in the new resources cannot recognize the total costs of siting decisions (and will thus have no incentive to make efficient ones).¹⁹

The willful creation of a new seam is rarely, if ever, a good idea. In this case, creating a new seam via a per megawatt export charge will put generators exporting from MISO at a competitive disadvantage in other RTOs, it may create a precedent for other RTOs to institute similar charges (ultimately harming import-dependent MISO consumers), and, it will create both operational and investment inefficiencies. All of these problems were addressed in Order No.

¹⁶ Order No. 2000, p. 495.

¹⁷ Order No. 2000, p. 258.

¹⁸ LECG paper, p 27. LECG did note that these inefficiencies may be offset by benefits of the charge, but that it was hard to quantify either way.

¹⁹ Patton June 10 RECB Comment Summary, p. 2.

2000, which sought to avoid them in its discussion of seams. EPSA urges the Commission to reject the creation of a new seam through an export charge.

C. OASIS and JOA Violations

Finally, MISO's proposal violates its OASIS and JOA obligations. OASIS obligations should not be taken lightly, as transparency is a fundamental element of well-functioning competitive markets.²⁰ According to MISO's proposal, the usage rate on which the export charge is based will be calculated retroactively, based on monthly real-time export schedules and monthly actual energy withdrawals.²¹ Thus, the price of the charge will not be able to be calculated until after the month is over, after transmission customers have already incurred the charge and after end-use consumers have consumed the energy.

This type of retroactive ratemaking is contrary to OASIS posting requirements promulgated in 889 that transmission providers post prices and the terms/conditions associated with those prices.²² Further, it violates the guiding OATT principals promulgated in Order No. 888 that transmission system information be available on a timely basis.²³ Finally, it violates the basic transparency principle of Order No. 890.²⁴ Order Nos. 888, 889 and 890 were

²⁰ *Order No. 888: Transmission Open Access. Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 75 FERC Para 61,080, Docket Nos. RM95-8-000 and RM94-7-001 (April 24, 1996); *Order No. 889: Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct*, 75 FERC Para 61,078, RM95-9-000 (April 24, 1996), p. 1.; See also Order No. 2000 and EPSA's White Paper: Essential Elements of Well Functioning Competitive Wholesale Power Markets, available here: <http://www.epsa.org/forms/uploadFiles/611D000001A.filename.EssentialElements2.pdf>

²¹ See: MISO July 15 Filing, proposed Attachment MM, Part 4 (a) i.

²² Part 37.6(c) of the Commission's Regulations, 18 C.F.R. § 37.6(c)(1) (2010).

²³ Order No. 888, p. 285.

²⁴ Order No. 890: Preventing Undue Discrimination and Preference in Transmission Service, 18 CFR Parts 35 and 37, Docket Nos. RM05-17-000 and RM05-25-000 (February 16, 2007), at P. 435-443.

developed to allow market participants to make sound business decisions which ultimately benefit of end use consumers. Not knowing the export charge until potentially a full month after the generator has exported the power from MISO is not in the public interest and is contrary to Commission policy.

Not only does the export charge proposal violate MISO's OASIS obligations, but it also violates MISO's obligations under its JOA with PJM. MISO has stated in its filing that the reason for the export charge is to allocate costs to loads outside of the MISO footprint that will be benefiting from the network upgrades designated as MVPs.²⁵ However, the JOA states that projects affecting both RTOs are subject to the coordinated system planning process and, therefore, benefits must be quantified under the JOA's criteria to support any cross-border cost allocation.²⁶ MISO has made no mention of the JOA in its proposal and no attempt to quantify the benefits MVPs with PJM. Instead, MISO has allocated a cost to PJM load by taxing generators that wish to export power to that load.

The export charge is a violation of the MISO/PJM JOA and should be rejected on that basis, as well as the number of violations of Commission policy and precedent explained above. The export charge should not be part of the MVP allocation scheme; if MISO stakeholders do not want MVP projects to be allocated strictly on a postage stamp basis (as it would be if the export charge

²⁵ MISO July 15 Filing, Tab D, pg 5, Q&A.

²⁶ See: *MISO/PJM JOA, Article IX: Coordinated Regional Transmission Expansion Planning, Section 9.4.3.1 Criteria for Project Designation as a Cross-Border Project* (Last modified May 25, 2010). Available here: http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-76d90a48324a

were removed), stakeholders should work to come up with a more viable solution that does not violate OASIS, JOA and general rate transparency requirements.

IV. CONCLUSION

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

Respectfully submitted,

A handwritten signature in cursive script, reading "N. Bagot", is written over a horizontal line.

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September 10, 2010

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., September 10, 2010.


Nancy Bagot, VP Regulatory Affairs