UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

E.ON Climate & Renewables North America, LLC, et al.	))	**Docket No. EL11-30-000**
	)	
v.	)	
	)	
Midwest Independent Transmission System Operator, Inc.	))	

MOTION FOR LEAVE TO INTERVENE AND COMMENT
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 comment in support of the complaint in the above-captioned proceeding. On March 22, 2011, an ad hoc coalition of renewable electric generation developers called The Midwest Generation Development ("MGD") Group filed a Section 206 complaint concerning the Midwest Independent Transmission System Operator's ("MISO") generator interconnection upgrade payment options.[1]

Under MISO's current tariff, a transmission owner ("TO") can chose either of two options by which an interconnecting generator can pay for the construction of network upgrades. Option 1 amounts to the generator repaying the cost of the interconnection though monthly fees based on a formula in Attachment GG of MISO's tariff. Under Option 2, which is more consistent with Order No. 2003, the generator pays for 100% of the upgrade costs and is only refunded the

[1] *Complaint and Request for Expedited Commission Action of the Midwest Generation Development Group,* Docket No. EL11-30-000 (March 22, 2011). ("MGD Complaint")

percentage it is due (for example, under the current methodology, for lines 345 kV and above, the interconnecting generator will be refunded 10%). It is completely at the discretion of the TO as to which option will be used to finance the network upgrade. Further, Option 1 amounts to a greater cost to the generator than an identical upgrade paid for under Option 2.

EPSA agrees with the MGD Complaint that Option 1 amounts to unjust and unreasonable pricing under MISO's tariff and affords TOs an opportunity for discriminatory or preferential behavior. EPSA therefore supports MGD's request that the Commission order MISO to remove Option 1 from its tariff and only allow for the straightforward financing of network upgrades that Option 2 provides, which is consistent with Order No. 2003.

I. MOTION TO INTERVENE & COMMUNICATIONS

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers as a sector, which accounts 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.[2]

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

[2] 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.

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. COMMENTS IN SUPPORT OF THE MGD COMPLAINT

EPSA supports the MGD Complaint for the following reasons: (1) it is historically unclear why Option 1 has been included in MISO's cost allocation methodology at all; and, (2) leaving the option of how a generator should pay for its interconnection upgrades solely to a TO creates unduly discriminatory circumstances. For these reasons, EPSA agrees with the MGD Complaint that the simplest solution would be to direct MISO to remove Option 1 from its tariff altogether.

A. THE HISTORY OF OPTION 1

Option 1 was first included in MISO tariff filings in 2005. In the context of larger discussions concerning cost allocation, the necessity of the two options was never addressed. As the MGD Complaint correctly points out, there have been three major dockets in the last six years concerning MISO's cost allocation methodology and interconnection service – ER06-18-000; ER09-1431-000; and, ER10-1791-000. None of those dockets addresses the question of *why* Option 1 is necessary or even viable.

In 2005, in Docket No. ER06-18-000, MISO made the first mention of Options 1 and 2. That filing simply states:

> The method of payment of the portion of the Project Cost of the Generator Interconnection Project that will be paid by the Interconnection Customer to the Transmission Owner constructing the project will be either to fund the project construction costs and receive a repayment of the costs to be home by the pricing zone Transmission Customers; or to fund the project construction costs and receive repayment of the entire amounts funded, and then pay a monthly fixed charge to recover the costs to be borne by the interconnection Customer. The Transmission Owner may elect one of these options.[3]

Barring the actual proposed tariff sheets in that filing, there is no further mention of the two options. There is no explanation as to why Option 1 was necessary or included or, as the MGD complaint points out, why it is a just and reasonable way to assign cost to transmission customers. The subsequent Commission order makes no mention of Options 1 and 2.[4]

In the two more recent proceedings, which sought to upgrade the cost to generators from 50% to 90-100% on interconnection projects, the payment options were merely updated with new percentages and numbers to reflect payment percentages. No changes were made to the basic nature of the

[3] *Midwest Independent Transmission System Operator, Inc. submits proposed revisions to the Open Access Transmission and Energy Markets Tariff re its Cost Allocation Policy*, Docket No. ER06-18-000 (October 7, 2005), p. 20.
[4] *Order on Technical Conference, Rehearing, Clarification, and Compliance,* 117 FERC ¶ 61,241 (February 29, 2006).

options. The last time MISO mentions changing the options was in 2009, when the ISO proposed to change the 50% reimbursement policy for network upgrades. In that filing, MISO stated:

> The Tariff retains, but revises, the existing two options that the Transmission Owner may elect for collection of the costs of the project. Under the first option, the Transmission Owner will repay the Interconnection Customer 100% of the costs, and then assess the Interconnection Customer a monthly charge to recover the appropriate share of the project cost, i.e., either 90% for projects rated at or above 345 kV or 100% for projects below 345 kV. 61 This subsection adds that the 10% of project costs associated with Network Upgrade facilities of voltage classes 345 kV or above that are not recovered from the Interconnection Customer shall be allocated on a system-wide basis and recovered pursuant to Attachment GG of the Tariff.
>
> Under Option 2, the Transmission Owner will repay 10% of the project costs associated with that portion of the project rated 345 kV or above to the Interconnection Customer. As with Option 1, the 10% of project costs associated with Network Upgrade facilities of voltage classes 345 kV or above that are not recovered from the Interconnection Customer shall be allocated on a system-wide basis and recovered pursuant to Attachment GG of the Tariff.[5]

These two paragraphs do not explain nor justify the continuation of Option 1. This is a simple update to a tariff that had included the two options since 2006 (which were neither explained nor justified in 2006 either). And in the 2010 proceeding MISO only stated that Option 1 or Option 2 would be elected by a transmission owner early on during negotiation of the interconnection agreement; but this too did not address the basic nature of Option 1.[6] Likewise, the

[5] *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), pp. 15-16.
[6] *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).

subsequent Commission orders in both the 2009 proceeding and the 2010 proceeding do not evaluate the basic nature of the two options.[7]

It is not surprising that the Commission did not address Options 1 and 2 in any of the major orders addressing MISO's cost allocation methodology. Commenters simply did not focus on the options issue, and thus, potential problems were not highlighted for Commission attention. In 2005, and in every cost allocation proceeding since, much of the focus has been on what percentage generators pay versus socializing the cost of upgrades to the region. The *way in which* generators pay was not as prevalent in cost allocation proceedings as *how much* they pay. EPSA commented in all of the above proceedings concerning cost allocation in MISO and the two options detailing how to pay for generator interconnection were never the focus of EPSA's comments. In the instant complaint, MGD has brought to light a glaring problem with a sleeping provision in the MISO tariff that may not have received enough attention in previous FERC proceedings. However, as the companies that make up MGD have found in recent practice, especially now that interconnecting generators pay 90-100% of upgrade costs, Option 1 is untenable. [8] EPSA agrees with the arguments in Sections A and B of the complaint that Option 1 presents a price deviation from a similar upgrade that would be financed under

[7] *Order Conditionally Accepting Tariff Amendments and Directing Compliance Filing,* 129 FERC ¶ 61,060 (October 23, 2009); and *Order Conditionally Accepting Tariff Revisions,*133 FERC ¶ 61,221 (December 16, 2010).
[8] See MGD Complaint at fn. 46.

Option 2. Thus, EPSA agrees that Option 1 rate pricing is unjust, unreasonable and unduly discriminatory.[9]

B. ALLOWING TRANSMISSION OWNERS SOLE DISCRETION IS UNDULY DISCRIMINATORY

The most objectionable and discriminatory language of the current Option1/Option 2 provision is that the tariff states: "one of the following two options will be elected *by the Transmission Owners* constructing the project."[10] Though it has never been properly explained in the record at FERC, there may ostensibly be some scenario where Option 1 to finance a transmission upgrade over a longer period of time via monthly installments could appeal to both generation and transmission owners. However, as the tariff is currently written, transmission owners have the sole discretion over which option is exercised. Further, as the MGD Complaint points out, there is no guidance or oversight from an independent entity as to when Option 1 would apply versus Option 2. Because Option 1 represents a significantly larger amount of money for the same interconnection upgrades, it is inappropriate and improper that the generator paying the bill should have no input into whether the upgrade is paid for up front or over a longer, more expensive monthly payment plan.[11] Assuming, for the sake of argument, that Option 1 represents some need that MISO has never fully

[9] See MGD Complaint, pp. 19-30.
[10] MGD Complaint citing tariff language, p. 14. (emphasis added)
[11] Given real concern about rising infrastructure costs and sending proper signals for critical investment decisions, the Commission should be especially mindful of assessing non-elective costs to generators for a project that could be paid for in a more direct, comprehensive manner. See: *EPSA Statement on Costs of New Generation Investment*, (June 19, 2008) Available at: http://www.epsa.org/forms/documents/DocumentFormPublic/view?id=C49E00000001

explained, the option should only be exercised when and if both the transmission provider and the transmission customer agree on such a payment plan.

Otherwise, there is no reason not to adhere to Option 2, where the interconnecting generator pays 100% of the cost of the upgrades up front and is only refunded any amount due according to the tariff provisions. For the reasons set forth in the MGD complaint, including the fact that forcing unaffiliated generation into a payment plan that amounts to paying more for the same upgrades under Option 1 and allowing its own affiliated generation potentially to pay less under Option 2, EPSA agrees that Option 1 should not be an option at all. As the MGD Complaint explains in Section C, any construct where TOs are allowed to impose payment and pricing deviations on their customers at their own discretion is discriminatory and contrary to Order No. 2003.[12]

[12] MGD Complaint, pp. 31-34.

III. 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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April 11, 2011

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., April 11, 2011.

NEBagot

Nancy Bagot, VP Regulatory Affairs