

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

Midwest Independent Transmission)	
System Operator, Inc.)	Docket No. ER08-1169-000
Interconnection Queuing Practices)	

**MOTION OF THE ELECTRIC POWER SUPPLY ASSOCIATION
FOR LEAVE TO INTERVENE AND COMMENT**

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 (2006), the Electric Power Supply Association (EPSA)¹ respectfully files for leave to intervene and comment in the above-captioned proceeding. On June 26, 2008, the Midwest Independent Transmission System Operator (MISO) submitted a filing to the Commission proposing to revise interconnection queuing practices in Attachment X of MISO's Energy Markets Tariff (EMT). MISO's proposal consists of a four-phased process that relies on various milestones to allow projects to move forward in the queue. The proposal would also eliminate the Small Generator Interconnection Agreement in Attachment R of the EMT and integrate it into a revised general generator interconnection agreement in Attachment X. EPSA appreciates MISO's efforts on this issue and timely response to Commission directives to amend the queuing process.²

¹ 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.

² *Interconnection Queuing Practices Order on Technical Conference*, 122 FERC ¶ 61,252 (March 20, 2008). ("March 20 Order")

It is important to resolve this issue, especially in MISO, where the interconnection queue includes almost 72 gigawatts of potential projects and a large number of opportunities for the development of renewable resources.³ EPSA agrees that the current “first come, first served” approach to addressing transmission requests may have some flaws. However, MISO’s proposal does not yet strike the right balance between ensuring a level playing field among projects and ensuring that only viable projects utilize valued and necessary queue positions. Thus, the current proposal could discourage potential (and much needed) investment in transmission upgrades and new generation. While the queuing scheme needs to discourage placeholder would-be projects from clogging the queue, it should not be so excessively expensive or egregious as to deter viable interest in funding real transmission upgrades for the purpose of interconnection. Given the current reserve margins in MISO, the system cannot afford to potentially compromise new investment in the grid. While achieving the necessary balance of concerns through interconnection queue reforms is a difficult task, it is incumbent on MISO and its market participants to do so in a timely manner. While the current proposal contains some steps in the right direction, further discussion and consideration before the Commission is necessary. EPSA recommends that a technical conference be convened to thoroughly vet the proposal and alternatives so that an effective reform package can be developed and approved by FERC.

³ *Transcript: December 11, 2007 FERC Technical Conference on Interconnection Queuing Issues*, quoting Steve Kozey, page 68, line 14.

I. INTERVENTION AND COMMUNICATION

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.

Many of EPSA's members are interconnected with and/or are pursuing interconnection to the grid in MISO. 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, including transmission pricing and cost allocation. 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. EPSA respectfully requests that the Commission grant this timely motion to intervene.

Communications in connection with this filing should be addressed to:

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II. BACKGROUND & INTRODUCTION

On June 26, 2008, MISO filed a proposal to amend its queuing practices, pursuant to Commission directives discussed at the December 11, 2007 technical conference exploring regional queuing practices and formalized in the March 20, 2008 order directing each ISO to file a status report regarding efforts to revise their queues. MISO's new queuing scheme consists of four phases: (1) the Pre-Queue Phase; (2) the Application Review Phase; (3) the System Planning and Analysis Phase; and (4) the Definitive Planning Phase. MISO's filing proposes to move from a "first come, first served" approach to a "first ready, first served" approach. Conceptually, this is a step in the right direction as the "first come, first served approach" currently is not working. However there are several problems with how MISO would deem entities "ready" under this new proposal, which can create unduly discriminatory barriers to entry for independent developers and harm the competitive market in the region.

Order No. 2003 was implemented in order to ensure fairness and a level playing field among generation projects and transmission customers – a goal that must remain a core principle of any interconnection queuing procedure. Order No. 2003 did not anticipate the flood of renewable and other projects that have clogged interconnection queues, which have created a pressing need to change the queue management process. The "first come, first served" approach of Order No. 2003 was instituted so that RTOs could not unduly discriminate against one project or another by evaluating each project in the order it was received.⁴ At the

⁴ *Transcript: December 11, 2007 FERC Technical Conference on Interconnection Queuing Issues*, quoting Chairman Kelliher, page 4, lines 20-23.

December 11, 2007 technical conference, it became clear that this approach has become unfavorable in light of the extensive development currently needed and proposed across the country. At the December 11 technical conference, Iowa Utility Board Chairman John Norris observed that the approach creates “an unjust situation,”⁵ and “a serious impediment to the development of new generation resources.”⁶ The sheer volume of projects in the current MISO queue begs for a change in approach in order to facilitate infrastructure projects, both generation and transmission, in a timely and efficient manner.⁷ Indeed, the directives in the March 20 Order were predicated on the supposition that Order No. 2003 “has led to some unexpected consequences, particularly in transmission systems with numerous interconnection customers and limited excess transmission capacity.”⁸ Thus, EPSA supports MISO’s efforts to resolve this problem in a timely manner.

MISO’s answer to the transmission queuing problem is a new “first ready, first served” approach, which EPSA conceptually endorses. However, MISO’s concept of “ready” as outlined in its proposal may create unintended problems of its own, including creating a discriminatory atmosphere against independent or merchant developers planning to invest in the MISO footprint. EPSA asserts that many of the proposed financial milestones should not be offered as an alternative to procedural milestones, as this coupling creates procedural loops that

⁵ Id, page 31, line 23.

⁶ Id., page 14, lines 22-23.

⁷ Even after using techniques available under the current process to expedite current requests, it is estimated that the processing of requests would not be completed until 2050. *Testimony of Eric Laverty, Senior Manager of Transmission Access Planning for MISO*, Tab F of MISO’s Queue Reform Proposal, at p. 6.

⁸ March 20 Order at P. 15.

ultimately tilts the process against independent developers in an unduly discriminatory manner. The Commission has recognized that “it is critical that reforms applicable to future and early-stage existing interconnection requests provide customers with enough flexibility and information to respond to business uncertainties.”⁹ MISO’s proposal, while conceptually on the right track, is too rigid and does not afford the flexibility that the Commission recommended in the March 20 order. Order No. 2003 provides for regional flexibility that allows for solutions that can improve upon the pro forma interconnection agreement set forth in the order. If the markets are trying to get away from the “unjust situation” created by Order No. 2003, it is indeed critical that the solution be sufficiently flexible, so that much-needed generation and transmission investment in MISO is not discouraged. MISO’s proposal does include some positive elements and represents a necessary departure from the status quo; however it is clear that in order to strike the right balance and not harm investment in the market, more time must be spent refining these milestones and considering alternative options that may address the current problems. EPSA recommends that the Commission convene a technical conference to further vet MISO’s proposal so that the queuing process can be amended to both quickly process transmission requests and encourage investment in the MISO market.

III. COMMENTS

A. MILESTONES AND DEPOSITS ARE EXCESSIVE AND DO NOT NECESSARILY PROVE OR DISPROVE PROJECT VIABILITY

⁹ March 20 Order, P. 14.

The milestones and alternative deposits/securities in MISO's queue reform proposal are excessive. If implemented as written, this proposal will undermine development of new infrastructure in MISO. These requirements, coupled with the phase timelines, render the proposal unduly discriminatory against independent developers, instead favoring vertically-integrated utility development. While milestones are needed to address project viability for the maintenance of queue positions, the monetary and non-monetary milestones as proposed do not strike an appropriate balance with flexibility and, hence, pose potential threats to attracting new investment in generation and transmission in the region. These milestones need to be further discussed and revised. Additionally, there may be other means to resolve the interconnection queue backlog that should be considered as well.¹⁰ A FERC-led technical conference would allow full consideration and vetting of all viable options.

The monetary milestones in the proposal come in the form of deposits and security paid in lieu of producing some of the non-monetary milestones mentioned below. Interconnection customers must post additional (and potentially duplicative) deposits and security at multiple points in the process. The security deposits in lieu of producing other documents currently propose that the customer pay a security equal to one month of drive-out point-to-point transmission service and/or that an interconnection customer post security for the full cost of network upgrades. While EPSA understands the need to ensure that

¹⁰ For instance, project developers might be allowed to perform, or retain an independent third party to perform, needed studies in a timely manner, which would require access to accurate transmission system models. Also, MISO might consider changes to its engineering support resources or the retention of consultants in order to facilitate study completion. Such alternatives should be considered in tandem with interconnection milestones.

developers have serious intentions of following through with their projects (and the ability of financial commitments to indicate such intentions), the purpose of these requirements as structured appears to be punitive rather than evidentiary.¹¹ Deposits throughout the process for normal sized projects have increased by a factor of more than 10 from the current queuing process. These increases do not reflect actual study costs, however, as the deposits in Generator Interconnection Procedure Section 8.2 are at least twice the estimated actual study costs without explanation. The monetary milestones and securities proposed by MISO, especially in phases 2 and 4 of the queuing process, are excessive and therefore will fail to achieve the goal of cleaning up the queue. EPSA understands the need to identify that queue participants have a serious intent to develop, but it is unreasonable to ask for securities that would be more than the cost of the study for which the customer is queued. While these seemingly arbitrary amounts will deter frivolous projects from entering the queue, they run the risk of also deterring real investment in MISO's footprint. It is imperative that MISO develop financial milestones and securities amounts that strike the appropriate balance and relate to the cost of the studies being performed in each phase.¹²

The non-monetary milestones set forth in the proposal that create a problem almost exclusively come from phase 4, the Definitive Planning Phase.

¹¹ For example, the Interconnection Customer would be required to certify or re-certify site control on three different occasions, or instead post progressively larger amounts of security. See GIP Sections 3.3.1, 8.2, and 11.3.

¹² The Lavery affidavit shows that many of these securities measures passed by a very narrow margin at the MISO stakeholder level. A technical conference before FERC could refocus and flesh out these issues, especially now that other models (like the BPA model)for queue reform are beginning to surface that may not have been available while stakeholder discussions were progressing.

Phase 4(a) requires the interconnection customer to present a combination of documents that could include proving involvement in state resource adequacy plans, producing a power purchase agreement, and demonstration that generation turbines have been ordered. Often, these milestones cannot be achieved without first having a solid interconnection agreement, particularly for independent development projects, creating a circular problem in which a developer is unable to acquire or participate in any of the necessary requirements of the final stages of a project. Also, there are apparent inconsistencies among the timelines set forth by phases 3 and phases 4(a). Generator Interconnection Section 7.4 provides that the required Interconnection System Impact Study must be completed by MISO within 120 days of entering phase 4(a), but may take up to a year to complete in phase 3. There is no apparent justification for the time disparity. EPSA realizes that projects that jump directly to the Definitive Planning Phase, skipping the System Planning and Analysis Phase altogether, are “fast-tracked.” However, if the Interconnection System Impact Study can be completed within 120 days, why should it not always be completed in that timeframe regardless of the phase within which it occurs? Jumping past phase 3 has already afforded “fast-tracked” participants the ability to move ahead in the queue; there is simply no reason to process studies on a different – far longer – timeframe for participants simply because they are in phase 3.

B. THE PROPOSED NON-MONETARY MILESTONES CREATE A PROCEEDURAL TRAP FOR INDEPENDENT DEVELOPERS

While MISO's proposal promises to reduce the average time of a new project from 884 days to 459 days, the timelines in the proposal coupled with the unrealistic milestones described above create an inhospitable environment for new development.¹³ The proposed milestones coupled with the proposed timing also run the risk of creating a "catch 22" procedural loop, which could halt certain projects prematurely. Phase 4(a), the System Planning and Analysis Review, requires an interconnection customer to either post security for the full cost of Network Upgrades, proof of an offtake agreement or inclusion in a state resource adequacy plan, or demonstration that generation turbines have been ordered.¹⁴ The requirement here of an offtake agreement or inclusion in a state resource adequacy plan is not workable. Assuming that a generator should be able to get a power purchase agreement (PPA) from a load serving entity (LSE) in order to get an interconnection agreement is counterintuitive as LSEs are reticent to sign a PPA with a generator unless and until it has an interconnection agreement in hand. Further, some state planning processes specifically require advanced knowledge of system upgrades and an interconnection agreement before a new generation project can be considered a part of the resource adequacy plan.¹⁵ Thus, the requirements in phase 4(a) potentially create impossible procedural hurdles that will stymie any progress since new generation cannot obtain an interconnection agreement, nor a power purchase agreement, nor inclusion in its

¹³ Lavery Affidavit, p. 67.

¹⁴ The other choices in offered as an alternative will be discussed in Section C of these comments, as they may not pose timing issues, but due unduly favor incumbent utility development.

¹⁵ Additionally, certain merchant generation projects may not intend for their output to be fully contracted for prior to plant startup.

state's resource adequacy plan. This loop certainly needs to be remedied before the new interconnection queuing practices take effect, or the phase 4(a) "catch 22" could ostensibly make it impossible to site and develop new generation.¹⁶

C. QUEUE PROPOSAL IS UNDULY DISCRIMINATORY TO INDEPENDENT DEVELOPERS

EPSA is concerned that while perhaps unwittingly, MISO's proposal will be discriminatory against independent or merchant development. MISO's queue proposal creates an environment whereby utility-affiliated generation and transmission projects have a distinct advantage over independent developers. Especially in the Definitive Planning Phase, the requirements to be included in state resource plans and get offtake agreements with LSEs (or that, in the alternative, require the posting of excessive security) could be achieved by a state's incumbent utility, but is almost impossible for an independent generation developer to achieve without an express interconnection agreement already in place. Independent power producers and merchant developers may require proof of interconnection agreements or a reasonably reliable estimate of their costs to obtain financing, find purchasers for the proposed facilities or persuade state regulators to include the proposed facilities in state resource adequacy plans. In addition, the inability to suspend a project barring a *force majeure*, as proscribed in generator interconnection agreement 5.16.1, without potentially posting security equal to *double* the cost of Network Upgrades (an unrecoverable cost) will act as a significant deterrent to investment. If these deterrents to investment are allowed to become a part of MISO's queuing practices, vertically-integrated

¹⁶ With the exception of utility affiliated builds, which are often part of state processes from inception.

utilities will have clear advantages to develop new generation. EPSA believes it was not MISO's intention to create a non-competitive environment in its footprint through its queuing reform proposal. However, the likely unintended discriminatory consequences of the proposed Definitive Planning phase will harm the market and deter much needed investment in generation and transmission in MISO's footprint.

Not only could the potential discrimination negatively affect traditional independent generators, but it may well also have an impact on wind and other renewables, the bulk of which are being developed by independent developers.¹⁷ The requirements are unduly burdensome for wind projects for the same reasons that they are unduly discriminatory towards more traditional independent generators. The strict suspension regulations also might deter smaller renewables from developing in the MISO footprint on a larger scale, which would be detrimental in an area of the country that can sustain extensive wind development.

It is therefore imperative that these issues be resolved before MISO's "first ready, first served" proposal is put into place. It is in the best interests of all market participants to take the time to get these queuing reforms right so that investment in the market will not ebb. There was no Commission-imposed timeline for MISO to submit this proposal, so additional consideration and discussion among MISO, market participants and FERC staff can lead to the best reform in a reasonable and timely manner. EPSA, therefore, recommends that

¹⁷ "Current RPS standards in the Midwest ISO footprint mandate approximately 20 GW of renewable generation by 2025." Lavery Testimony, p. 10

the Commission convene a technical conference to further vet and refine the important issues discussed above. Not only could participants opine the merits of various aspects of MISO's proposal at that time, but the proposal could also incorporate reasonable and workable elements of other new queue management processes being developed concurrently around the country.¹⁸

IV. CONCLUSION

Wherefore, EPSA respectfully request that the Commission grant its timely motion to intervene and be made a party to this proceeding with all the rights pertaining thereto. EPSA also asks that the Commission consider the comments herein in order to strike an appropriate balance in the queuing process between discouraging frivolous transmission study requests while continuing to encourage much-needed investment in the grid. EPSA recommends that the Commission convene a technical conference on MISO's queue reform proposal.

Respectfully submitted,



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¹⁸ For example, see *FERC Declaratory Order on Bonneville Power Administration*, 123 FERC ¶ 61,264, Docket No. NJ08-7-000 (June 13, 2008).

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., June 17, 2008.



Nancy Bagot, VP Regulatory Policy