UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.	))	**Docket No. ER06-18-000**

COMMENTS OF THE ORGANIZATION OF MISO STATES AND NOTICE OF INTERVENTION

I. Introduction

On October 7, 2005, the Midwest Independent Transmission System Operator ("MISO" or "Midwest ISO") submitted to the Federal Energy Regulatory Commission ("FERC" or "Commission") proposed revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariffs ("EMT") in compliance with the Commission's July 8, 2004 Order in *Midwest Independent Transmission System Operator*.[1] MISO's proposed revisions address the transmission planning process and cost allocation for certain types of transmission projects.

The October 7 filing is arranged in 6 parts. Specifically, the filing consists of the following sections:

(1) Attachment FF – the MISO's transmission planning protocol;
(2) Attachment GG – the network upgrade charge associated with the network upgrades listed in Table 2 of the attachment;
(3) Schedule 26 – the implementation schedule for the formula rate being calculated in Attachment GG;
(4) Proposed revisions to Attachment N and Attachment X - Attachment N of the Tariff originally addressed cost recovery for direct assignment facilities in addition to network upgrades driven by load growth. Attachment X originally provided for full repayment of all costs paid for by an interconnection customer. The October 7 filing states that both of these attachments have been modified to be consistent with the new proposed Attachment FF[2];

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[1] *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61, 027 (2004) (July 8 Order)
[2] Transmittal Letter, at 24

(5) Proposed revisions to Schedules 7, 8 and 9. According to the October 7 filing, the three schedules were revised to allow adjustment of the rates collected under those service schedules to account for those amounts collected under Schedule 26.[3]; and

(6) New definitions for Module A of the EMT. According to the October 7 filing, the proposed Attachments FF, GG and Schedule 26 utilize some new defined terms that need to be added to Module A of the EMT.[4]

On October 14, the Commission issued a notice of the October 7 filing and set October 28, 2005, as the deadline for comment and protest.

The Organization of MISO States ("OMS") herein submits its Comments.

The OMS recognizes the lengthy, difficult, and contentious nature of the stakeholder process that led up to MISO's October 7 filing. The OMS notes that there was significant stakeholder compromise within the process and good faith attempts by the Midwest ISO to achieve consensus. Despite MISO's efforts, and the efforts of all the various stakeholders and state commissions, consensus among stakeholders was not entirely reached and as such, the OMS expects certain elements of MISO's October 7 filing to be protested.[5]

On balance, the OMS generally supports most of the policy proposal in the October 7 filing taken as a package, noting, however, the implications of using the MTEP 05 as the basis for the Attachment FF-1 Exclude List. In that regard, the OMS's recommendations are mostly in the nature of clarifications or suggestions for consistency.[6] [7]

[3] Transmittal Letter, at 24

[4] Transmittal Letter, at 25

[5] The Indiana Utility Regulatory Commission observes that it is aware that the FERC and stakeholders are looking for the OMS to assert leadership in this area and suggest that rejection, modification, or continued stakeholder debate has a distinct potential for causing this precarious compromise to disintegrate. The Indiana Commission emphasizes that stakeholders are rightfully desirous of greater certainty.

[6] The Montana Public Service Commission is increasingly concerned that it is not able to quantify impact, either costs or benefits, to affected Montana ratepayers from the proposed cost allocation method, and, therefore, is unable to support a particular cost allocation methodology at this time

[7] The Illinois Commerce Commission and the Public Service Commission of Wisconsin do not subscribe to this paragraph.

After review of the October 7 filing, the OMS has identified the following issues and recommendations for the Commission's consideration. Each of these points is discussed at greater length in its own subsection in the body of this document.

II. Statement of Issues

1. MISO's Past MTEP Planning Process, MISO's Proposed MTEP Planning Process, and Implications of these Processes for MISO's Proposed Attachment FF-1 Exclude List

- Certain Elements of MISO's proposed process for identifying baseline reliability projects are vague and should be clarified.

- The nature of baseline reliability projects is vague, and this vagueness introduces a lack of clarity about the basis on which other projects will be included in the MTEP and be subject to cost sharing.

- MISO's statements about the classification of projects on the Attachment FF-1 Exclude List and the actual classification of projects on the Exclude List are not consistent.

- The nature of the process used to develop the MTEP 05 Plan has created some difficulties in developing a universally accepted "Exclude List" that will establish the starting point for the new cost allocation policy.

- Based on the above considerations, several OMS members support an alternative to MISO's proposed "Exclude List" for determining which transmission projects will be eligible for MISO's proposed cost sharing formula.[8]

2. Other Issues and Recommendations

- MISO's proposal to offer an "Option to Fund" could create discriminatory opportunities for vertically-integrated transmission owners.

- It is unclear whether MISO's proposed tariff language concerning cost allocation for generator-related transmission upgrades allows for network resource designation of any time length or requires a term of at least one year.

[8] Supporting this issue are the Iowa Utilities Board, the Minnesota Public Utilities Commission, the Minnesota Department of Commerce, the South Dakota Public Utilities Commission and the Public Service Commission of Wisconsin.

- MISO should adopt language concerning deferral and displacement that is consistent for baseline reliability projects and generator interconnection-related projects.

- The Midwest ISO Board of Directors should approve significant changes to a transmission expansion plan in the same manner or process as it approves the underlying plan.

- The Commission should encourage MISO to develop and file a replacement approach for cost allocation of regionally beneficial projects before October 7, 2006, if possible.

- The Commission should consider whether an effective date earlier than the February 4, 2006 effective date proposed by MISO is feasible.

- The Illinois Commerce Commission does not support the load ratio share approach for designing the rate recovery for the 20% system-wide cost allocation component.

The principal recommendation advanced by six OMS members is for the Commission to initiate a closed-ended, mediated/arbitrated stakeholder process or processes with FERC oversight and MISO participation to examine: (1) the difference of opinion between MISO and some parties on whether MTEP 05 has captured all of the baseline reliability projects that will occur within the five-year planning horizon of MTEP 05;[9] and (2) whether the failure to distinguish in MTEP 05 between projects that would now fit the proposed definition of Baseline Reliability and projects that would now fit the proposed definition of Regionally Beneficial affects the "fairness" of MISO's proposed exclude list.[10]

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[9] The MTEP 05 document itself provides several indications that projects of the same vintage and level of development as those included in Attachment FF-1 will soon be forthcoming (see, e.g., MTEP-05, pp.20-37).
[10] This recommendation is advanced by the Michigan Public Service Commission, the Missouri Public Service Commission, the Nebraska Power Review Board, the North Dakota Public Service Commission, the Pennsylvania Public Utility Commission, and the Illinois Commerce Commission.

Four OMS members would alternatively recommend that the Commission substitute an "Exclude List" limited to projects with in-service dates before January 1, 2007.[11] This proposal is fully developed and discussed in more detail in Section III.F.

The Indiana Utility Regulatory Commission generally supports the policy proposal in the October 7 filing taken as a package and recommends its acceptance. The Indiana Commission's views are more fully explained in Appendix A. The Indiana Utility Regulatory Commission and the Montana Public Service Commission sought to file the technical comments contained in Section IV.B through IV.F as just that, technical comments. [12]

As noted above, the OMS is not protesting the October 7 filing. The OMS recognizes that some of its individual members may make separate submissions to the Commission regarding the October 7 filing. The OMS wants to clearly state that by endorsing these Comments and the positions identified therein, the individual state commission members of the OMS are not taking a position on the issue of retail rate recovery of the cost components addressed in MISO's October 7 filing.

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[11] This is the position of the Iowa Utilities Board, the Minnesota Public Utilities Commission, the Minnesota Department of Commerce, the South Dakota Public Utilities Commission and the Public Service Commission of Wisconsin.

[12] The Montana Public Service Commission notes that while the proposal mentioned in the previous paragraph identifies a much more objective standard to determine which projects would go on the exclude list and which would proceed to consideration for cost-sharing, that proposal risks the imposition of additional costs on affected Montana ratepayers without the Montana Commission being able to identify any offsetting benefits to those same Montana ratepayers.

The Montana Public Service Commission does not support the proposal supported by six commissions because it appears to be working at cross purposes. That view first criticizes MISO's Transmission Expansion Plan for 2005, and then supports using that flawed process as the foundation for the cost –sharing program. If the planning process requires considerable improvement, should the OMS then support the tariff filing on which it is based? In addition, OMS is asking the Commission to initiate a mediated arbitrated stakeholder process to examine the planning process and the contents of Attachment FF-1. The Montana Commission is concerned that upon OMS entering into mediation for re-examining the list of projects exempt from MISO cost sharing, the state regulators may be viewed as pre-approving certain projects to be constructed in their respective states. Mediation at the Commission must not impair the ability of state regulators to make local decisions regarding those projects listed in Attachment FF-1.

III. Discussion of MISO's Past MTEP Planning Process, MISO's Proposed MTEP Planning Process, and Implications of these Processes for MISO's Proposed Attachment FF-1 Exclude List

A. Certain Elements of MISO's Proposed Process for Identifying Baseline Reliability Projects are Vague and Should be Clarified.

Attachment FF describes the process by which the Midwest ISO will determine which transmission upgrade projects will qualify as Baseline Reliability Projects. Specifically, Attachment FF states,

> The Transmission Provider shall test the MTEP for adequacy and security based on all applicable criteria, and under likely and possible dispatch patterns of actual and projected Generation Resources within the Transmission System and of external resources, and shall produce an efficient expansion plan that includes all Baseline Reliability Projects determined by the Transmission Provider to be necessary through the planning horizon of the MTEP.[13]

This description appears to use the final product—the MTEP—as the basis for testing for reliability deficiencies in the system. Instead, this section should be clarified to explicitly define the "Base Case" used in the MTEP process to identify deficiencies in the existing transmission system. Then the words "Base Case" should be substituted for "MTEP" in the above description.

The words "all applicable criteria" appears to refer back to the definition of Baseline Reliability Projects as those upgrades "required to ensure that the Transmission System is in compliance with applicable reliability requirements of NERC, regional reliability councils, or successor organizations, Transmission Owners' planning criteria, filed with federal, state or local regulatory authorities, and applicable federal, state and local system planning and operating reliability criteria."[14] This broad and varied list of "all applicable criteria" opens the door for the inclusion into the base case of stronger or otherwise non-uniform reliability criteria that may

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[13] Attachment FF, Section II.A.1, underlining added.
[14] Attachment FF, Section II.A.1

only be needed for the local system and do not otherwise provide regional benefits. In addition, by including all such non-uniform criteria, the possibility exists for gaming by either a Transmission Owner or a state to propose stronger reliability criteria in order to get projects or portions of projects included as Baseline Reliability Projects that would not otherwise qualify for cost sharing. In this respect it is important that Attachment FF include uniform reliability criteria to be used as the basis for determining Baseline Reliability Projects across the Midwest ISO.

Once reliability deficiencies are identified, the next step should be the development of alternative solutions for correcting these deficiencies. Attachment FF simply states that the Midwest ISO "shall produce an efficient expansion plan." What do these words specifically mean? Does "efficient" mean "least cost," and if so, least cost among what set of alternatives? This description should be expanded to set out both the process and the criteria by which Baseline Reliability Projects are determined. For example, after identifying reliability deficiencies in the Base Plan, the Midwest ISO could solicit possible solutions to these deficiencies from the Transmission Owners and other entities interested in building transmission, evaluate these alternatives by comparing them to one another along with other possible solutions developed by Midwest ISO Staff and choosing the least-cost alternatives. This type of process would more clearly define what is meant by the words "efficient expansion plan."

The OMS recommends that the Commission direct MISO to work with stakeholders to eliminate the vagueness in its Baseline Reliability Project identification process.

B. The Nature of Baseline Reliability Projects is Vague and this Vagueness Introduces a Lack of Clarity About the Basis on Which Other Projects Will be Included in the MTEP and be Subject to Cost Sharing.

Another reason for the importance of clearly specifying the process by which Baseline Reliability Projects are determined in the MTEP is that these projects become the basis on which all other transmission upgrades are included in the MTEP. MISO's proposed Attachment FF tariff language states,

> "Regionally Beneficial Projects are Network Upgrades that are proposed by the Transmission Provider, Transmission Owner(s), ITC(s), Market Participant(s), or regulatory authorities as beneficial to one or more Market Participant(s) but that are not determined to be Baseline Reliability Projects or New Transmission Access Projects. Regionally Beneficial Projects may benefit Market Participants by supporting competition in bulk power markets, by expanding trading opportunities, or alleviating congestion beyond that achieved by Baseline Reliability Projects or New Transmission Access Projects, or that otherwise provide sufficient benefits as determined by the Transmission Provider to justify inclusion in the MTEP."[15]

Thus, Regionally Beneficial Projects are any other projects included in the MTEP that are not Baseline Reliability Projects, new transmission access projects. Attachment FF goes on in its discussion of Regionally Beneficial Projects to set out the process by which such projects are proposed and ultimately included in the MTEP.

> After the Transmission Provider has initially drafted the Baseline Reliability Plan, the Transmission Provider, Transmission Owner(s), ITC(s), Market Participant(s), or regulatory authorities may propose to include Regionally Beneficial Projects in the MTEP. The Transmission Provider will then perform a case-by-case identification of the potential benefits associated with proposals for Regionally Beneficial Projects *(i.*e., reliability, economic, policy, and economic development) in order to facilitate the potential inclusion of such projects into the MTEP. Regionally Beneficial Projects will be included in the MTEP only after cost responsibility for such projects has been determined in accordance with Section III.A.2.f. of this Attachment FF and after Transmission Provider Board approval, as set forth in Section V.[16]

Attachment FF goes on to state if a Regionally Beneficial Project "defers or displaces the need for a less costly Baseline Reliability Project, the costs of the Regionally Beneficial Project up to the costs of the deferred or displaced Baseline Reliability Project shall be allocated consistent with the cost allocation for the Baseline Reliability Project."[17] Because Regionally

[15] Attachment FF, Section II.B
[16] Attachment FF, Section II.B
[17] Attachmet FF, Section III.A.2.f.

Beneficial Projects can displace Baseline Reliability Projects and thereby in part receive cost sharing as proposed in the October 7 filing, it becomes even more critical that Attachment FF is clear regarding the process by which the Midwest ISO will determine Baseline Reliability Projects and that these projects have been evaluated as least-cost among a reasonable set of alternatives.

C. MISO's Statements About the Classification of Projects on the Attachment FF-1 Exclude List and the Actual Classification of Projects on the Exclude List are not Consistent.

MISO's October 7 Transmittal Letter describes the stakeholders' deliberations on the "starting point" issue of how to begin application of the new cost sharing policy on a going forward basis.[18] The Transmittal Letter describes MISO's decision to apply the new policy to all "newly identified needs in the next MTEP cycle after the filing of the current proposal."[19] MISO then states, "This approach would have the effect of not applying the policy to any projects that were already approved by the Midwest ISO Board of Directors <u>as Planned Projects</u> in the MTEP 05 on June 16**,** 2005."[20] Specifically, MISO's proposed tariff language states,

> The cost allocation provisions of this Attachment FF shall not be applicable to transmission projects identified in Attachment FF-1, which is based on the list of <u>projects designated as Planned Projects</u> in the MTEP approved by the Transmission Provider Board on June 16, 2005 (MTEP 05).[21]

Despite MISO's above statement, the OMS notes that Attachment FF-1 "exclude list" does not contain only "planned" projects.[22] Indeed, the last two pages of Attachment

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[18] Transmittal Letter, at 12
[19] Transmittal Letter, at 12
[20] Transmittal Letter, at 12. Emphasis added.
[21] Section III.A.2.b of Attachment FF on Original Sheet No. 1841, underlining added.
[22] MISO could counter-argue that, rather than stating that all Attachment FF-1 projects are "planned" projects, the tariff language actually states that all Attachment FF-1 projects are "**based on** the list of projects designated as Planned Projects in the MTEP." Such a counter-argument would be semantic. MISO's tariff language should clearly describe the nature of the projects on Attachment FF-1 without recourse to semantics.

FF-1 (Original Sheet Nos. 1875-1876) contain thirty-seven projects that are clearly labeled "Proposed" in the MTEP 05 Status column.

OMS understands that MISO's intent may be for Attachment FF-1 to include all MTEP 05 "planned" projects and the MTEP 05 "proposed" projects that, arguably, could have been classified during the MTEP 05 planning process as "planned" due to the closeness of their in-service dates or other criteria. However, using that approach may introduce additional complications, because there is some debate about whether the Midwest ISO Boards' acceptance of MTEP 05 conveys the Board's official direction to the transmission owners to move forward with just the projects classified as "planned" in MTEP 05 or also those projects (or a subset of those projects) classified in MTEP 05 as "proposed." In any event, at a minimum, it appears that either the language on proposed Original Sheet No. 1841 of the tariff or the entries on Original Sheet Nos. 1875-1876 of Attachment FF-1 need to be changed because these two parts of the proposed tariff are not consistent as filed.

D. Four OMS members believe that Attachment FF-1 does not necessarily capture all of the Baseline Reliability transmission upgrades that will occur within the five-year planning horizon of MTEP 05 or shortly thereafter.[23]

In its October 7, 2005 filing, MISO proposes to make any project not listed in Attachment FF-1 eligible for the proposed cost allocation method. In the view of the four commissions sponsoring this section, a fundamental problem with this proposal is that MTEP 05 is the basis for the projects listed in Attachment FF-1. Basing the projects that will be excluded from eligibility for MISO's proposed cost allocation method (i.e., Attachment FF-1) on projects

[23] This section represents the views only of the Iowa Utilities Board, the Minnesota Public Utilities Commission, the Minnesota Department of Commerce, the South Dakota Public Utilities Commission and the Public Service Commission of Wisconsin.

included in MTEP 05 is problematic because projects of the same vintage and level of development will not be similarly eligible to receive regional cost allocation. That problem exists because MTEP 05 does not necessarily capture all of the transmission upgrades that will occur in the same general span of time.

Although the majority of projects included in Attachment FF-1 are located in Wisconsin, several States are not far behind Wisconsin in significant transmission expansion. The MTEP 05 document itself provides several indications that projects of the same vintage and level of development as those included in Attachment FF-1 will soon be forthcoming for construction in several States in the MISO footprint. [24]

First, it is important to note that, according to MISO, "MTEP 05 identifies expansion needed for a planning horizon extending through the peak season of 2009."[25] Nonetheless, according to MISO, "[t]his analysis was performed using traditional pre-market dispatch assumptions."[26] Additionally, notwithstanding the reference to the peak season of 2009, MISO states that for MTEP 05, "[s]ummer assessments were performed for the summers of 2003 and 2004."[27]

As MISO observes, "[t]he planning process is a continual one, and even as this MTEP 05 is distributed, the planning staff is preparing a review of the planned 2011 system, and operational studies for the summer and winter 2005 seasons."[28] Had MISO used a longer planning horizon[29] and considered Day 2 generation dispatch assumptions, MTEP 05 very likely

[24] See, generally, MTEP 05 pp. 20-37.
[25] MTEP 05, p. 2
[26] MTEP 05, p. 20
[27] MTEP 05, p. 20
[28] MTEP 05, p. 20
[29] At MISO's Annual Stakeholder Meeting on September 14, 2005, OMS publicly encouraged MISO to explore expanding the MTEP planning horizon to ten years, which is the type of planning OMS would favor if such planning proves cost-effective.

would include several additional projects of roughly the same vintage and stage of development as those included in MTEP 05.

E. The Nature of the Process Used to Develop the MTEP 05 Plan Has Created Some Difficulties in Developing a Universally Accepted "Exclude List" that Will Establish the Starting Point for the New Cost Allocation Policy.

As described above, Attachment FF indicates that the regional/sub-regional cost allocation provisions proposed in the October 7 filing will not apply to transmission projects listed in Attachment FF-1. The OMS points out that MTEP 05 was not developed using the same planning process as that which is found in Attachment FF and proposed to be used on a going-forward basis. MISO's planning process has continually evolved and Attachment FF reflects this evolution and describes the improved planning process that MISO now proposes to employ in future plans.

To the contrary, MTEP 05 used a process that was more heavily weighted toward a bottom-up, rather than a top-down approach to planning. The Midwest ISO did not start with a "Base Case" that only included the existing system and use that case to determine reliability deficiencies. Rather, MTEP 05 included the planned projects submitted by Transmission Owners along with any proposed projects submitted by Transmission Owners that were needed to correct any reliability deficiencies found by the Midwest ISO planning Staff after it had included the planned projects as an update to the existing power system in its planning models. Nor did the Midwest ISO determine that the planned projects of the Transmission Owners were a least-cost method for solving any reliability deficiencies. Thus, any of these planned projects could encompass what are now being called Regional Beneficial Projects, and could be in part, displacing least-cost Baseline Reliability Projects. In this respect, it is important to recognize that the projects on Attachment FF-1 have not undergone the rigorous scrutiny required to determine whether a project is, in fact, a Baseline Reliability Project, as that term is now being used.

This circumstance about the nature of the MTEP 05 planning process raises questions about using the result of that process to determine projects that will not qualify in part or in total for regional cost sharing associated with Baseline Reliability Projects.

The Midwest ISO's October 7 Transmittal Letter states:

> One company, for example currently has identified projects for the planning horizon through 2009 amounting to thirty-eight percent (38%) of the total anticipated investment for all Midwest ISO member systems for the same period. Some stakeholders referred to this situation as certain systems being in a "catch-up" mode in reference to the concern that not all transmission systems may have been planned to the same standards in years prior to joining the Midwest ISO. Of paramount concern to many stakeholders was the prospect of cost sharing one particularly large-scale project planned for the Wisconsin system that has already received state regulatory approvals necessary to proceed with construction of the project. The task force discussed possible means of identifying currently anticipated projects that may represent long standing needs that might have been completed by now and therefore would not be subject to cost sharing. These stakeholder efforts did not yield a method that stakeholders could agree on or uniformly support.[30]

Stakeholders were concerned that portions of the Midwest ISO had to bring their part of the transmission system up to the same level of reliability as other parts of the system and this was reflected in the disparity of projects approved as planned projects by the Midwest ISO Board in MTEP 05. Since Baseline Reliability Projects were not identified in MTEP 05, there is currently no way to determine for certain that some Transmission Owners are in fact in "catch up mode". However, the Midwest ISO Staff believed that by excluding all of the projects identified in MTEP 05 from cost sharing, it had dealt with the possibility of "catch up" projects in a non-discriminatory manner. In this regard, the Midwest ISO Transmittal Letter states:

> A stakeholder proposal that appealed to the Midwest ISO staff as an equitable way to resolve this critical "starting-point" issue was to begin application of the

[30] Transmittal Letter, page 12

> new cost sharing policy on a going forward basis to all newly identified needs in the next MTEP cycle after the filing of the current proposal. This approach would have the effect of not applying the policy to any projects that were already approved by the Midwest ISO Board of Directors as Planned Projects in the MTEP 05 on June 16, 2005. The Midwest ISO considers this policy as non-discriminatory in nature since all entities represented their system needs to the Midwest ISO in the MTEP 05 planning process under the same rules and without any advance knowledge of the nature of any emerging cost sharing policies or principles. A minority of stakeholders opposed this transition policy argument because the projects identified on their systems have considerable potential for providing benefits to others, and therefore should be subject to the cost sharing policy described herein. Other stakeholders, including the Midwest ISO staff, contend that this argument could also be made for projects that have already been committed as part of the existing Transmission System. As this policy was being developed on a "going-forward" basis, it was recognized that not all benefits of all projects will be captured by the new policy.[31]

The logic of not including the Attachment FF-1 projects as eligible for cost sharing is <u>not</u> that this list only includes Baseline Reliability Projects and therefore represents "catch up" projects. Instead, the MTEP 05 projects include planned projects that may or may not, in part or in total, meet Attachment FF's definition of Baseline Reliability Projects. Thus, it is possible that many of the projects on the Attachment FF-1 exclude list would not qualify for funding as Baseline Reliability Projects anyway. However, by excluding all MTEP 05 projects from possible funding as Baseline Reliability Projects, to the extent that any of these projects are needed to meet the reliability criteria and to the extent that there is need for any one system to "catch up" with other systems, the proposal appears to accomplish this exclusion of "catch up" Baseline Reliability Projects. However, the following problem was not considered or discussed in the RECB meetings. As the Midwest ISO moves to a least-cost determination of Baseline Reliability Projects for MTEP 06, it is unclear what happens if several of the MTEP 05 projects that are not built at that time are determined not to be Baseline Reliability Projects. Since the MTEP 05 projects have not undergone the scrutiny for Baseline Reliability Projects set out in

[31] Midwest ISO Cover Letter, pages 12-13

Attachment FF, it is likely that some of the MTEP 05 projects may not qualify as Baseline Reliability Projects.[32]

If this occurs, will the new Baseline Reliability Project in MTEP 06 qualify for cost sharing? If they do, can the Transmission Owner propose the original MTEP 05 project as replacing the Baseline Reliability Project in MTEP 06, and if so, does the MTEP 05 project then get credit for cost sharing for the costs of the Baseline Reliability Project that it has replaced with the MTEP 05 project? If not, there is a major disincentive for Transmission Owners to go forward with these projects. Also, if the Transmission Owner proposes the original MTEP 05 project as an alternative to a MTEP 06 Baseline Reliability Project, will the Transmission Owner receive FTRs for that portion of the project that is not determined to be needed for reliability, or alternatively, will any of the cost of the MTEP 05 project be eligible for a yet to be determined plan for regional cost sharing of Regionally Beneficial Projects? If so, what portion? If not, this is another major disincentive for Transmission Owners to go forward with the original MTEP 05 projects. All of these questions are unanswered by the October 7 filing, and yet have the potential to have significant impacts on the investment in the transmission system over the next several years.

The proposal to use MTEP 05 as the basis for the Attachment FF-1 exclude list projects may have some significant unintended consequences as discussed in this section. The OMS recognizes the difficulty and contentiousness involved in developing an exclude list of projects that will not be subject to the new cost allocation policy. The OMS recognizes that this issue took a disproportionate amount of time in the RECB stakeholder debate and that numerous

[32] Since these projects are not yet built, they would not be included in the Base Case for the MTEP 06 process, and without these projects it is likely that reliability violations will occur. There is little or no incentive for Transmission Owners to propose the excluded MTEP 05 projects as a proposed fix to the violation. Also, if an MTEP O5 project included upgrades significantly beyond what is needed to just correct the reliability issue, then the Midwest ISO should not choose that project as a Baseline Reliability Project.

alternative methods for developing an exclude list were discussed. Nevertheless, MISO's proposal to base the exclude list on the MTEP 05 planning process as proposed in Attachment FF-1 is not wholly satisfactory.

It is likely that other parties will propose, in this docket, alternative approaches for developing an exclude list. Until very recently, the OMS was not fully informed and aware of: (1) the nature of the MTEP 05 planning process; (2) the differences between the MTEP 05 planning process and the one that MISO now proposes to use on a going-forward basis; and (3) the implications of those differences. For these reasons, the OMS would be open to participating in a stakeholder process with FERC oversight and MISO participation to examine the "fairness" of MISO's proposed exclude list and to consider a full range of alternative exclude list proposals.[33]

F. As an alternative to MISO's proposed "Exclude List" for determining which transmission projects will be eligible for cost sharing according to the formula proposed by MISO in its October 7, 2005 tariff filing, the Commission should approve the following alternative.[34]

Because of the infirmities of MISO's proposed "Exclude List" discussed above, some OMS members propose the following alternative to MISO's proposed "Exclude List" for determining which transmission projects will be eligible for cost sharing according to the formula proposed by MISO in its October 7, 2005 tariff filing:

1. Projects with expected in-service dates before January 1, 2007 as listed in Attachment FF-1 in MISO's October 7, 2005 filing are ineligible for cost sharing according to the formula proposed by MISO in its October 7, 2005 tariff filing.

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[33] The recommendation contained in this paragraph represents the position of six OMS member commissions: the Michigan Public Service Commission, the Missouri Public Service Commission, the Nebraska Power Review Board, the North Dakota Public Service Commission, the Pennsylvania Public Utility Commission, and the Illinois Commerce Commission.

[34] This section represents the views only of the Iowa Utilities Board, the Minnesota Public Utilities Commission, the Minnesota Department of Commerce, the South Dakota Public Utilities Commission and the Public Service Commission of Wisconsin.

2. Transmission projects will be eligible for cost sharing according to the formula proposed by MISO in its October 7, 2005 tariff filing if they are 1) classified as "Baseline Reliability Projects," as defined in Attachment FF of MISO's October 7, 2005 tariff filing; 2) included in the most current Midwest Transmission Expansion Plan ("MTEP") approved by the Transmission Provider Board (i.e., the Midwest ISO Board of Directors); and 3) in service on January 1, 2007 or later.

3 Transmission projects will be eligible for cost sharing according to an existing applicable formula if they are 1) *not* classified as "Baseline Reliability Projects" or "New Transmission Access Projects,"[35] as defined in Attachment FF of MISO's October 7, 2005 tariff filing; 2) included in the most current MTEP approved by the Transmission Provider Board; and 3) in service on January 1, 2007 or later,. If, by January 1, 2007, no applicable formula exists for projects that are *not* classified as "Baseline Reliability Projects" or "New Transmission Access Projects," then such projects will remain eligible for cost sharing according to whatever applicable cost sharing methodology is established eventually.

Although there is no perfect way to determine cost sharing eligibility, this proposed alternative approach to eligibility for cost sharing has several salient features. First, under this alternative, those projects that will be eligible for cost sharing according to the method proposed in MISO's October 7, 2005 filing will be those included in MTEPs subsequent to MTEP 05. This is important given that MTEP 05 is fraught with problems with respect to determining cost sharing eligibility, as discussed above. Second, this alternative is clearly comprehendible,

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[35] This phrasing allows for the possibility that different types of "Regionally Beneficial Projects" could be established in the future. This phrasing is simply meant to avoid future confusion.

consistently applicable, and not unduly discriminatory. Third, this alternative provides appropriate incentives for transmission planning by transmission owners and for transmission owners to submit transmission plans for inclusion in future MTEPs. Fourth, according to the Commission's stated policy regarding RTO development, regional state committees like the OMS are appropriate vehicles for establishing cost allocation methods for new transmission facilities. As stated in the Commission's White Paper on Wholesale Power Market Platform (issued April 28, 2003), "costs of new transmission expansions will be recovered in accordance with the regional pricing policy, which may be informed by the appropriate regional state committee."[36] For these reasons, the OMS respectfully requests that the Commission approve this alternative rule for eligibility for cost sharing.

IV. Discussion of Other Issues

A. MISO's Proposal to Offer an "Option to Fund" Could Create Discriminatory Opportunities for Vertically-Integrated Transmission Owners. [37]

Section III.A.2.a of Attachment FF on Original Sheet No. 1841 states,

> Market Participant's Option to Fund**:** Notwithstanding the Transmission Provider's assignment of cost responsibility for a project included in the MTEP, one or more Market Participants may elect to assume cost responsibility for any or all costs of a Network Upgrade that is included in the MTEP.

The proposed Option to Fund has the potential to permit a Transmission Owner to act discriminatorily to the benefit of its own or its affiliated generators in the interconnection context or its own load or its affiliate's load in the network transmission service context vis-à-vis the generators or the load of non-affiliated companies. For example, a Transmission Owner could

[36] White Paper on Wholesale Power Market Platform, p. 8. In addition, the Commission undoubtedly recalls that a regional state committee developed Southwest Power Pool's cost allocation method for transmission upgrades.

[37] The Montana Public Service Commission states that all but four of the MISO states made a deliberate public policy choice to retain the model of vertically integrated, regulated electrical utilities believing that model provided superior advantages to a restructured environment. Montana believes that the OMS Board should make no comment to the FERC that advantages for those utilities be eliminated, and that, therefore, this entire paragraph should not be included within these comments.

elect to roll into its rates the transmission costs of its owned or affiliated generators or the transmission costs of changing network designations for its own load or affiliate's load, but decline to do so for non-affiliates. Such an outcome subjects the non-affiliates to an unduly-discriminatory cost allocation/recovery policy. Accordingly, the OMS recommends that the Commission require MISO to add language to this section of the tariff along the nature of the following,

> "to the extent that a Market Participant is a Transmission Owner that is vertically integrated either at the operating company level or at the holding company level and makes such an election to assume cost responsibility; after the initial election is made, all such elections must be made on a similar, consistent and non-discriminatory basis for all projects."

In short, the Transmission Owner will make the initial determination as to how it will address the issue of cost allocation/recovery, but will have to apply that same methodology to all projects, regardless of whether or not it is an affiliate.

B. It is Unclear Whether MISO's Proposed Tariff Language Concerning Cost Allocation for Generator-Related Transmission Upgrades Allows for Network Resource Designation of Any Time Length or Requires a Network Resource Designation Term of At Least One Year.

Section III.A.2.d of Attachment FF on Original Sheet No. 1844-1845 states,

> To the extent that the Interconnection Customer demonstrates at the time of Commercial Operation of the Generating Facility that the Generating Facility has been designated as a Network Resource in accordance with the Tariff**,** <u>or</u> that a contractual commitment has been entered into with a Network Customer for capacity, or in the case of an Intermittent Resource, for energy, from the Generating Facility for a period of one (1) year or longer . . .
> (underlining added.)

Because of the placement of the comma and the word "or", this tariff language essentially says that it is good enough for the generator to be designated as a Network Resource regardless of the length of that designation. The OMS understands that under MISO's existing EMT, Market Participants are permitted to change their Network Resource designation on as little as one day's notice. It is unclear whether or not a generator that is designated as a Network Resource for a Market Participant on the day that it makes the required demonstration to MISO, the generator is qualified for the new cost allocation policy for transmission upgrades. The OMS urges the Commission to seek clarification from MISO concerning its intent on this point.

C. MISO Should Adopt Language Concerning Deferral and Displacement that is Consistent for Baseline Reliability Projects and Generator Interconnection-Related Projects.

Section III.A.2.f of Attachment FF on Original Sheet No. 1850 states,

> In the event that a Regionally Beneficial Project defers or displaces the need for a less costly Baseline Reliability Project, the costs of the Regionally Beneficial Project up to the costs of the deferred or displaced Baseline Reliability Project shall be allocated consistent with the cost allocation for the Baseline Reliability Project.

The OMS notes that there is no language corresponding to this that is applicable to generator interconnection-related transmission upgrades and urges the Commission to require MISO to develop parallel language for that circumstance.

D. The Midwest ISO Board Should Approve Significant Changes to a Transmission Expansion Plan in the Same Way as it Approves the Underlying Plan.

Section V.C of Attachment FF on Original Sheet No. 1851-1852 states,

> Approval of the MTEP by the Transmission Provider Board certifies it as the Transmission Provider plan for meeting the transmission needs of all stakeholders subject to any required approvals by federal or state regulatory authorities.
>
> . . .
>
> The Transmission Provider Board shall allow the Transmission Owners, or other designated entity(ies), to optimize the final design of specific facilities and their in-service dates if necessary to accommodate changing conditions, provided that such changes comport with the approved MTEP and provided that any such changes are accepted by the Transmission Provider. Any disagreements concerning such matters shall be subject to the dispute resolution procedures of this Tariff.

The OMS is aware that many projects in MTEP 03 were eventually abandoned or otherwise significantly changed. Nevertheless, MISO Staff did not return to the MISO Board to have those significant changes approved by the Board. The approval by the MISO Board of the transmission projects in an MTEP is a very significant and important milestone. By providing approval, the Midwest ISO Board is directing transmission owners to expend best efforts to construct specific transmission projects as provided for in the Midwest ISO Transmission Owners' Agreement. If major changes, such as project additions or project deletions, are made to the transmission expansion plan, <u>those changes should also be taken to the MISO Board for approval</u>. Follow-up of this nature is critical in these circumstances because MISO Board approval of projects should be taken very seriously and detours from the plan directed by the MISO Board should be approved by the MISO Board. OMS recommends that the Commission direct MISO to make this change to the proposed tariff language.

E. The Commission Should Encourage MISO to Develop and File a Replacement Approach for Cost Allocation of Regionally Beneficial Projects Before October 7, 2006, if Possible.

MISO's proposed tariff language in the October 7 filing contains a section addressing Regionally Beneficial Projects which states,

> This Section is applicable until such time as alternative provisions are filed addressing Regionally Beneficial Projects, such filing to be made by the Transmission Provider within twelve (12) months from the date that this Attachment FF is filed.[38]

The OMS recognizes that development of a cost allocation policy for Regionally Beneficial Projects may be just as difficult and contentious as was development of a cost allocation policy for Baseline Reliability Projects and Generator Interconnection Projects. Nevertheless, the importance of further transmission infrastructure development warrants timely

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[38] Attachment FF, Section II.B

attention to this aspect of cost allocation. Indeed, certain parties may have preferred that the new cost allocation policy for Baseline Reliability Projects and Generator Interconnection Projects not go into effect until the new cost allocation policy for Regionally Beneficial Projects is developed. While the OMS does not take that position, a statement from the Commission about the importance of Regionally Beneficial Projects may be just the kind of encouragement needed by MISO and the stakeholders to complete the next phase of the cost allocation policy development on, or before, schedule.

F. The Commission Should Consider Whether an Effective Date Earlier than the February 4, 2006 Effective Date Proposed by MISO is Feasible.

In the Transmittal Letter, MISO requests an effective date for the tariff sheets of February 4, 2006.[39] To accommodate such a distant effective date, MISO requested extension of the Commission's typical sixty day standard.[40]

The OMS recognizes that MISO will need some time to develop software and implement the settlement mechanisms needed to collect allocated charges for projects and distribute them to the appropriate parties that are funding the projects. Nevertheless, time is of the essence for the policy changes in MISO's October 7, 2005 filing. Indeed, in its February 27, 2004 Comments on MISO's Large Generator Interconnection compliance filing, the OMS recommended that the new cost allocation policy for transmission upgrades associated with generator interconnections be made effective no later than December 1, 2004, stating,

> the cost allocation provisions in LGIA Sections 11.3 and 11.4 of Attachment X be treated as interim only and milestones be established by the MISO, its stakeholders and the OMS so that a replacement cost allocation policy for generator interconnections can be filed with the Commission no later than August 3, 2004 to be made effective no later than December 1, 2004.[41]

[39] Transmittal Letter, at 25
[40] Transmittal Letter, at 25
[41] Comments of the Organization of MISO States, at 2.

In its January 20, 2004 Compliance filing, MISO acknowledged the reasonableness of that schedule stating,

> The Task Force will be working on a specific schedule, in coordination with the OMS, with the goal of making an October 1, 2004 Tariff filing with the Commission seeking authorization to put Tariff changes in effect on December 1, 2004.[42]

In its Order addressing MISO's January 20, 2004 compliance filing, the Commission stated,

> Midwest ISO has established a task force on this issue with the goal of making an October 1, 2004 tariff filing with the Commission with a requested December 1, 2004 effective date.[43]

and,

> Midwest ISO outlines the actions it is taking to develop such a proposal, and while we will not impose a deadline for filing the proposal at this time, we expect Midwest ISO to work with stakeholders to meet its goal of having a permanent pricing policy in effect by December 1, 2004.[44]

The OMS wishes to remind the Midwest ISO and the Commission of the importance of replacing the existing flawed default cost allocation policy for generator interconnection-related transmission upgrades with an improved approach and urges the Commission to be cognizant of the need for promptness.

G. The Illinois Commerce Commission does not support the load ratio share approach for designing the rate recovery for the 20% system-wide cost allocation component.

The Illinois Commerce Commission does not support the load ratio share approach for designing the rate recovery for the 20% system-wide cost allocation component. Using load ratio share for that purpose is not a reasonable proxy for system-wide benefits from baseline reliability upgrades and generator interconnection-related transmission upgrades. The

[42] Midwest ISO Order No. 2003 Compliance Filing in ER04-458-000 at 29.
[43] 108 FERC ¶ 61, 027 (2004) at 9 citing Midwest ISO's Transmittal Letter to January 20 Filing at 28-29.
[44] 108 FERC ¶ 61, 027 (2004) at 13 citing Midwest ISO's Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 5.

Commission should replace that load ratio share aspect with either some measure of energy imports or some approach that reflects the incremental capacity deliverability resulting from upgrading transmission. MISO has provided no evidence and made no demonstration that any network upgrade anywhere in the MISO system benefits all load equally. Neither has MISO presented any evidence or made any demonstration that in aggregate and over time, transmission upgrades will benefit all load across the MISO grid in a comparable way. Transmission upgrades provide disproportionate benefits to zones that increase their imports as a result of the upgrade or zones that receive increased access to generating capability as a result of the upgrade. The load in exporting zones does not receive equivalent benefits from such upgrades. This is particularly the case in states such as Illinois where the generation is not owned within the vertically integrated utility structure. In a vertically-integrated utility structure, retail regulators can ensure that utility generator profits from off-system sales are used to offset increases in retail rates. That condition does not exist in restructured retail access states. MISO's proposed load ratio share rate design will impose costs on load in exporting zones without providing for commensurate benefits for load in exporting zones.

V. Notice of Intervention

Pursuant to Rule 214(a)(2) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(a)(2), the Organization of MISO States ("OMS") and its member state commissions file Notice of Intervention in this proceeding. Service of pleadings, documents, and communications should be made on the following:

William H. Smith, Jr.
Executive Director
Organization of MISO States
100 Court Avenue, Suite 218
Des Moines, Iowa 50309

VI. Conclusion

For the aforementioned reasons, the OMS requests that the Commission consider these comments when addressing the issues discussed above.

The OMS submits these comments because a majority of the members have agreed to generally support them. The following members generally support these comments, with the exceptions noted herein. Individual OMS members reserve the right to file separate comments regarding the issues discussed in these comments:

Illinois Commerce Commission
Indiana Utility Regulatory Commission[45]
Iowa Utilities Board
Michigan Public Service Commission
Minnesota Public Utilities Commission
Missouri Public Service Commission
Nebraska Power Review Board
North Dakota Public Service Commission
Pennsylvania Public Utility Commission
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Montana Public Service Commission abstains from this comment:

The Kentucky Public Service Commission and the Public Utilities Commission of Ohio do not participate in the comment for procedural reasons. The Manitoba Public Utilities Board did not participate in this comment.

The Minnesota Department of Commerce and the Iowa Consumer Advocate, as associate members of the OMS, participated in these comments and generally support these comments.

VII. Request for Waiver of Service

The OMS hereby respectfully requests waiver of the requirements set forth in 18 C.F.R. § 385.2010. The OMS has electronically served a copy of this filing upon all Midwest ISO

[45] The dissenting and concurring comments of the Indiana Utility Regulatory Commission are attached as Appendix A.

Members, Member representatives of Transmission Owners and Non-Transmission Owners, and the Midwest ISO Advisory Committee participants. In addition, the filing has been electronically posted on the OMS website at www.misostates.org under the heading "Filings to FERC" for other interested parties.

Good cause exists for granting this waiver due to the volume of interested parties in this matter, the limited resources available to make service, and the financial burden on the OMS in copying and mailing copies of this filing. Many parties, in fact, prefer receiving their copy in electronic format or from a website and are accustomed to electronic service on Midwest ISO dockets. Paper copies will be made available to any person upon request to the OMS office.

Respectfully Submitted,
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Dated: October 28, 2005

DISSENTING AND CONCURRING COMMENTS OF THE INDIANA UTILITY REGULATORY COMMISSION

The Indiana Utility Regulatory Commission ("IURC") urges the FERC to approve the Midwest ISO's filing but also generally endorses the technical amendments discussed in Section IV.B through IV.F above[46] suggested by the majority of OMS' States in the OMS filing.

The IURC does not think it would be helpful to the continuing development of sound wholesale markets that are operated or facilitated by the Midwest ISO and encouraging investment in transmission infrastructure for the FERC to overturn the stakeholder compromise that served as the foundation for the Midwest ISO's proposal. The Midwest ISO's proposal was achieved after prolonged and difficult debate.

The IURC believes that the Midwest ISO's filing should be viewed as an "entire" package and any attempt to open-up any aspect of the proposal has a significant potential for undoing the entire compromise package. For its part, the IURC is extremely reluctant to disturb this precarious balance. Rather, in this case, the IURC believes that the FERC and state commissions should, to the extent possible, support the stakeholder driven resolutions to these complex issues that were the basis of this compromise.

The Midwest ISO's stakeholders, in a series of votes,[47] generally recognized that the Midwest ISO tariff filing as the best solution to a very difficult problem. The stakeholders in the

[46] With regard to the first technical amendment (A), The IURC concurs with Montana that vertically-integrated utilities may have some advantages over other entities but the issue should be whether these are **undue** advantages. The majority's statement suggests that any advantage is inappropriate. With regard to Technical Amendment D, the OMS majority's filing lacks specificity and demands that the Midwest ISO achieve a degree of precision that is unrealistic.

[47] The stakeholders that participated in the RECB process approved the "Exclude List" on an overwhelming 39 to 5 vote. While this was the primary vote at issue for this filing, some other votes during this stakeholder process are also noteworthy. By a 37 to 8 vote, Midwest ISO RECB Task Force stakeholders voted to approve a Postage Stamp rate component based on a load-ratio share. On a 38 to 9 vote, the postage stamp threshold was approved at 345 kV lines and above. The stakeholders in the RECB, in a 28 to 16 vote, approved a 20% postage stamp component. By a 30 to 14 vote, stakeholders in the process agreed that network upgrades for 345 kV lines and above, that were driven by generator interconnections, would be eligible for regional cost-sharing. It should also be noted that these votes reflected a concern by the majority of those that were involved with the RECB that recognized the wide variability in current infrastructure investment -referred to as "catch-up."

RECB process voted by 28 to 10 with 7 abstentions that the Midwest ISO file, with the FERC, Attachment FF as amended at the September 16 RECB Task Force meeting. Stakeholders generally recognized that the primary advantage of the Midwest ISO's proposal was that no stakeholder knew that the MTEP05 would be used for the purpose of determining the transmission projects that would be eligible for funding by other transmission owners ("TOs") and those that would not be eligible. As a result, TOs and others could not "game" the result to the detriment of a solution that was in the best interest of the broader Midwest ISO region. Other means of developing an "exclusion list" were explored and all were found to be unsatisfactory in the stakeholder process, especially regarding the ability to game the results.

The Midwest ISO's filing, if approved by the FERC in a timely manner, will encourage the timely development of higher voltage transmission in a fair manner by, among other things, providing relative certainty concerning cost recovery. Delaying this process, in an effort to try to predict with precision such things as the ramifications for each entity, over a period of several years, is not feasible and would not eliminate controversy. There will always be some set of future projects that will result in one area paying more than another but, over a period of years, we would expect the financial implications to be reasonably balanced throughout all of the Midwest ISO region.

With the recognition by the stakeholders, after 19 months of intensive and often contentious discussions, after consideration of a broad array of options, determined that there was no perfect answer and that any solution would have a degree of arbitrariness, the IURC does not endorse sending this matter back to the stakeholder process. The IURC believes that any additional stakeholder process, including mediation, will prolong the process, engender additional acrimony, possibly delay construction of some transmission facilities, create a potential for TOs and others to game the proposal, and, the ultimate result is not likely to produce a superior result to the Midwest ISO proposal. For this reason, the Indiana Utility Regulatory Commission believes that the FERC should approve the Midwest ISO's filing.