

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

E.ON Climate & Renewables)	
North America, LLC, <i>et al.</i> ,)	
Complainants)	
v.)	Docket No. EL11-30-____
)	
Midwest Independent Transmission)	
System Operator, Inc.,)	
Respondents)	

**REQUEST FOR REHEARING
OF THE ORGANIZATION OF MISO STATES**

Pursuant to section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 825*l*, and Rule 713 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. § 385.713, the Organization of MISO States (“OMS”) seeks rehearing of the Commission’s October 20, 2011, order in this proceeding.¹ In the October 20 Order, the Commission granted the Complaint and Request for Expedited Commission Action filed by the Development Group (“Complaint”)² and ordered the Midwest Independent Transmission System Operator, Inc. (“MISO”) to remove Option 1 from Attachment FF of MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”). The October 20 Order failed to appreciate that the relief would harm other customers by forcing them to

¹ *E.On Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076 (2011) (“October 20 Order”)

² The Development Group consists of Clipper Windpower Development Co., Inc., E.ON Climate & Renewables North America, LLC, Horizon Wind Energy LLC, Iberdrola Renewables, Inc. and Invenergy Wind Development LLC and Invenergy Thermal Development LLC.

pay costs of Network Upgrades that would not have been constructed but for the need to interconnect an Interconnection Customer. Option 1 is consistent with the Commission's established cost causation principles. The Commission should grant rehearing of the Order 20 Order, and deny the Development Group's Complaint.

The OMS position with respect to this cost shift has been aligned with the position of the MISO Transmission Owners at earlier stages of this docket and in the rehearing request. For that reason, the OMS will avoid duplication in this pleading of arguments being made by the Transmission Owners.

In brief, the October 20 Order granted the relief requested in the Complaint, finding that requiring an Interconnection Customer to pay the costs under Option 1 after being refunded its initial prepayment is not just and reasonable, and ordered Option 1 "removed" from the Tariff. The Commission only briefly addressed the concerns that Option 1 protects the transmission owner or other ratepayers from having to shoulder the costs associated with the Network Upgrades constructed to allow the Interconnection Customer to interconnect, stating "such costs are reduced at the expense of interconnection customers who already incurred the risk of financing the network upgrades at the election of the transmission owner."³

I. SPECIFICATION OF ERRORS AND STATEMENT OF ISSUES

The Commission erred in determining that Option 1 is unjust and unreasonable because it requires the Interconnection Customer to pay the O&M and other costs associated with the Network Upgrades that would not have been built but for the need to

³ October 20 Order at P 40.

interconnect the Interconnection Customer?⁴ The Commission’s decision is inconsistent with basic causation principles and other decisions and constitutes reversible error. The Commission also failed to respond adequately to the arguments made by OMS and others that eliminating Option 1 would unfairly burden other customers.

II. THE COMMISSION SHOULD GRANT REHEARING OF ITS DETERMINATION THAT OPTION 1 IS UNJUST AND UNREASONABLE BECAUSE OPTION 1 REQUIRES AN INTERCONNECTION CUSTOMER TO PAY COSTS ASSOCIATED WITH THE NETWORK UPGRADES BUILT TO ACCOMMODATE ITS INTERCONNECTION.

In rejecting Option 1, the Commission disagreed with assertions of OMS and other parties that Option 1 is consistent with cost-causation principles and that eliminating it could adversely affect customers in other zones, especially those in zones with a high degree of generation relative to load.⁵ The Commission explained only that “such costs are reduced at the expense of interconnection customers who already incurred the risk of financing the network upgrades at the election of the transmission owner” and that the Commission was not required to accept a tariff provision that “creates opportunities for undue discrimination.”⁶

The Commission’s conclusion that it is unfair to require an Interconnection Customer to provide an upfront payment for which it is reimbursed and then required to pay the O&M, taxes and other components of the Option 1 charge is flawed.⁷ It is

⁴ October 20 Order at P 37.

⁵ OMS Comments at 6; MISO Answer at 10-16; Midwest ISO Transmission Owners Protest at 19-20, 25; Midwest ISO Transmission Owners Answer at 12-13

⁶ October 20 Order at P 40.

⁷ October 20 Order at P 37.

undisputed that the Network Upgrades are those facilities that would not have been constructed but for the need to interconnect an Interconnection Customer. In other contexts, the Commission has found requiring an Interconnection Customer to pay such costs is just and reasonable.⁸ The Commission's findings are also inconsistent with its recent determinations that costs are to be allocated in a manner that is at least roughly commensurate with benefits.⁹ The Commission failed to explain why it did not follow its own precedent or why these principles do not merit the rejection of the Complaint.

The Commission did not adequately respond to the cost causation arguments.¹⁰ The Commission's findings are therefore arbitrary, capricious, and not the result of reasoned decision making.

⁸ See *Midwest ISO Transmission Owners*, 133 FERC ¶ 61,196, at PP 41-42 (2010) (approving revisions to Attachment GG of the MISO Tariff that allocate a portion of depreciation expenses to Interconnection Customers).

⁹ See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, III FERC Stats. & Regs., Regs. Preambles ¶ 31,323 at PP 662 and 667 (2011) (approving cost allocation methodologies that require that costs be allocated to those that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits); see also *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890 at P 559, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,241, (stating that in evaluating a cost allocation proposal, the Commission will consider whether the "cost allocation proposal fairly assigns costs among participants, including those who cause them to be incurred and those who otherwise benefit from them"), *order on reh'g*, Order No. 890-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹⁰ To the extent the Commission's discussion in P 37 of the October 20 Order is intended to respond to the concerns about cost causation, this explanation is inadequate, for the reasons stated above.

III. CONCLUSION

For the reasons stated above, the Commission should grant rehearing of the October 20, reject the Complaint and allow Option 1 to remain in place in the Tariff as previously approved by the Commission.

The OMS submits this request because a majority of the members have agreed to generally support it. Individual OMS members reserve the right to file separate comments regarding the issues discussed. The Manitoba Public Utilities Board did not participate in this pleading.

Respectfully Submitted,
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Dated: November 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.
Dated at Des Moines, Iowa, this 21st day of November, 2011.

William H. Smith, Jr.