

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

Midcontinent Independent System Operator, Inc. and MISO Transmission Owners)	Docket Nos. ER13-187-003
)	ER13-187-004
)	

COMMENTS OF THE ORGANIZATION OF MISO STATES

Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, and the Notice issued by the Commission on July 22, 2013, establishing August 21, 2013, as the deadline for intervention and comment in these proceedings, the Organization of MISO States (“OMS”) respectfully submits the following comments in the above-captioned docket regarding the regional Order 1000 compliance filings submitted to the Commission by the Midcontinent Independent System Operator, Inc. (“MISO”) and the MISO Transmission Owners (“MISO TOs”) on July 22, 2013, (“July 22 Filing”) pursuant to the Commission’s March 22 Order in this proceeding.¹

On December 10, 2012, the OMS filed a Notice of Intervention and Comments in this docket and therefore is a party to this proceeding.

I. BACKGROUND

In accordance with Order 1000,² MISO made a compliance filing on October 25, 2012. On December 10, 2012, OMS submitted a Notice of Intervention and Comments in response to MISO’s October 25 filing. Issues addressed in the OMS’s comments include *Mobile-Sierra* arguments raised by MISO and its Transmission Owners (“TOs”), the unique role of state

¹ *Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶ 61,215 (2013) (“March 22 Order”).

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, (“Order 1000”), FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

commissions and the enhanced authority proposed by MISO, the scrutiny of costs, the reevaluation process, the interaction of Commission-approved returns on equity on the competitive bidding process, certain issues regarding affiliate utilities, multi-transmission owner zones and upgrades to existing facilities.³

In its March 22 Order, the Commission approved MISO's compliance filing, but conditioned its approval on further revisions and an additional compliance filing.⁴ On April 22, 2013, OMS filed a Request for Clarification and Rehearing, specifically challenging the Commission's requirement that MISO remove certain language regarding state statutes on an incumbent transmission owner's right of first refusal, as well as the lack of clarity regarding the terms and conditions for transference of selected developer bids to successors.⁵ The OMS Request for Clarification and Rehearing is still pending before the Commission.⁶

MISO's July 22 Filing is in response to the Commission's directives in the March 22 Order and contains proposed revisions to MISO's Module A (Common Tariff Provisions), Attachment FF (Transmission Expansion Planning Protocol) of MISO's Open Access Transmission Tariff ("Tariff") and proposed revisions to the MISO Transmission Owners Agreement. MISO and the MISO TOs requested that the proposed Tariff revisions be made effective on June 1, 2013.

II. COMMENTS

The following Comments do not address all the issues raised in the March 22 Order or MISO's July 22 Filing.

³ *Comments of the Organization of MISO States under ER13-187*, FERC Accession Number 20121210-5151 (Dec. 10, 2012).

⁴ March 22 Order, at P 222.

⁵ *Request for Clarification and Rehearing of Organization of MISO States under ER13-187*, FERC Accession Number 20130422-5108 (Apr. 22, 2013).

⁶ In making these Comments, the OMS does not relinquish any of the issues preserved in its Request for Rehearing.

A. Acknowledgment of Applicable Laws and Regulations Effect on Eligibility⁷

In its March 22 Order, the Commission rejected proposed tariff revisions that used state right of first refusal statutes to determine whether a transmission owner could be designated by MISO to construct, own, and operate a new transmission project. The Commission noted, however, that “[w]hile state laws and regulations may not be used to automatically exclude bids to develop more efficient or cost-effective transmission solutions to regional transmission needs, it is not necessarily impermissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process.”⁸

In its compliance filing in Commission Docket No. ER13-187-003, MISO deletes language that has been interpreted by the Commission as creating a federal right of first refusal and proposes new language that not only assures the inclusion of “Applicable Laws and Regulations” in the transmission planning process, but also recognizes the effect of “Applicable Laws and Regulations” in the eligibility of a particular project in the competitive bidding process. This new proposed language properly acknowledges both the concern to open the development of new transmission projects to competition and the recognition of state and local jurisdictional authority. OMS encourages the Commission to approve this language.

B. MISO’s Proposed Qualification Standards Could Potentially Foreclose Competition.

1. The July 22 Filing Is Unclear about Who Is Responsible for Ensuring the Reasonableness of the Interconnection Requirements and Standards of the Transmission Owning Incumbent.

Section VIII.B.3(g) of the July 22 Filing states:

g) The Qualified Transmission Developer Applicant must make a written commitment, signed by an authorized representative of the Qualified

⁷ The Illinois Commerce Commission does not agree with the OMS position on this issue and intends to file separate comments detailing the ICC’s position on this issue.

⁸ March 22 Order, at P 206.

Transmission Developer Applicant, that, if it is selected as a Selected Transmission Developer, it shall comply with current requirements and standards regarding the interconnection of transmission facilities published by each Transmission Owner to which New Transmission Line Facilities and/or New Substation Facilities will interconnect including, but not limited to, those standards and requirements required for compliance with the applicable NERC Facilities Design, Connections, and Maintenance (“FAC”) Reliability Standards.

The proposed subsection (g) appears to place a significant burden on potential non-incumbent transmission developers that could potentially be used by incumbent transmission owners to foreclose competition from non-incumbent transmission developers. In particular, it is unclear who is responsible for ensuring the reasonableness of the interconnection requirements and standards of the transmission owning incumbent. Interconnection requirements and standards that are overly-difficult (or impossible) to comply with will likely reduce the number of potential competitive transmission developers. Accordingly, the OMS believes that such responsibility appropriately belongs in the hands of MISO. However, if the Commission believes otherwise, the OMS would urge the Commission to ensure that the interconnection requirements and standards of incumbent transmission owners are not used to foreclose competition from non-incumbent transmission developers.

2. Placing Project Implementation Requirements and O&M Requirements as Part of the Applicant Qualification Process Is Premature.

In general, the “Project Implementation Requirements” for Qualification Applicants in Section VIII.B.4 and the O&M Requirements for Qualification Applicants in Section VIII.B.5 of Tab A in the July 22 Filing appear to be more appropriately required as part of a developer’s bid proposal on an actual project, rather than at the developer qualification stage. For example, Section VIII.B.3 requires the Qualification Applicant to submit written commitments addressing general developer requirements. While, in many cases, requiring these commitments seems overly onerous, at least MISO can check the box on whether the Applicant satisfied the

requirement or not. In contrast, the paragraphs in Section VIII.B.4 and Section VIII.B.5 require the Applicant to submit voluminous documentations regarding the ability of the Applicant to develop and maintain transmission projects. At some point, MISO will have to perform an evaluation of a potential developer's ability to develop and maintain transmission projects. While such an evaluation could occur either during the Applicant qualification process or as part of the project evaluation process, the scope and scale of a proposed transmission project should be one of the main factors on which MISO's assessment of a potential developer's ability to develop and maintain that transmission project should be based. As such, it appears to be premature for MISO to assess an Applicant's ability to develop and maintain transmission projects at the Applicant Qualification stage. Accordingly, the requirements in Section B.4 are more appropriately placed in the Bid Evaluation Section.

C. Transmission Proposal Deposits

1. MISO Should Eliminate as Much Uncertainty as Possible Regarding Costs Associated with Bid Submission.

Section VII.C.2.b of Tab A in the July 22 Filing addresses the issue of "Transmission Proposal Deposits" which requires a \$100,000 deposit for each proposal submitted. The section provides that, if MISO's cost for evaluating the proposals exceeds the sum of the deposits, then MISO will surcharge the shortfall on a pro rata basis to all of the project applicants. The OMS acknowledges that any surcharge not allocated to project applicants is likely to be recovered through MISO's uplift charge. However, the OMS is concerned that this surcharge proposal creates an unnecessary uncertainty for prospective bidders who will not know beforehand the costs for which they might be liable for when submitting a bid. Such uncertainty will likely have a detrimental impact on the willingness and ability of developers to submit transmission projects to MISO for evaluation. While it is unrealistic to expect MISO to know the exact cost of

evaluating the transmission proposals that it receives, MISO nevertheless should have a reasonable estimate of what the cost for evaluating potential transmission projects will be.

Accordingly, the OMS would expect that MISO should be able to provide potential developers with a relatively accurate estimate of their share of the total project evaluation costs and any potential surcharge. Requiring MISO to provide such an estimate should help to reduce any uncertainty faced by prospective bidders regarding the cost of having their project(s) evaluated by MISO.

2. MISO Should Clarify its Refund Process Under Proposed Section VII.C.2.b.

Section VII.C.2.b addresses refunds if MISO's evaluation cost is less than the sum of the deposits. Specifically, the section states,

Any funds remaining after the evaluation of all New Transmission Proposals submitted in response to a Transmission Proposal Request, including refunds to New Transmission Proposal Applicants who are judged unqualified by the Transmission Provider, shall be refunded on a pro rata basis to each New Transmission Proposal Applicant within thirty (30) days following the designation of the Selected Transmission Developer. (Underlining added)

The OMS notes that the July 22 Filing defines the term "New Transmission Proposal Applicants as:

1.455d New Transmission Proposal Applicant Version: 1.0.0 Effective: 6/1/2013

A Qualified Transmission Developer or Transmission Owner qualified under Section VIII.B.2.b of Attachment FF that submits a New Transmission Proposal in response to a Transmission Proposal Request.

The OMS also notes that the July 22 Filing defines "Qualified Transmission Developer" as:

1.528a Qualified Transmission Developer Version: 1.0.0 Effective: 6/1/2013

A Transmission Owner, ITC, or Non-owner Member that submits a Transmission Developer Application and is subsequently found by the Transmission Provider to meet the minimum requirements for a Qualified Transmission Developer as outlined in Section VIII.B of Attachment FF of the Tariff.

MISO's reference here to New Transmission Proposal Applicants who are judged unqualified is misplaced. Section VII.C.2.b is about proposal deposits and refunds, not Applicant qualifications. Instead, MISO should address issues associated with the qualification of potential transmission developers in Section VIII.B of Attachment FF, which deals specifically with the qualification of potential transmission developers.

MISO needs to clarify its proposal in this instance. If it is MISO's intent to allow unqualified transmission developers to submit transmission proposals, MISO should clarify how such a provision will work within its proposed construct. The OMS acknowledges that the developer qualification process under Section VIII.B requires a non-refundable deposit of \$20,000 and that Section VII.C.2.b requires a \$100,000 deposit for each New Transmission Proposal. If under such an arrangement, a Transmission Developer Applicant submits a New Transmission Proposal and is later determined to be unqualified, that applicant should not have to wait up to 30 days after the designation of the Selected Transmission Developer by MISO to receive its refunded deposit. Indeed, the project evaluation and developer selection process could take as long as six months, which appears to be an unreasonable amount of time for a potential developer that was disqualified prior to the transmission proposal evaluation process to wait for its refund.

D. The OMS's Concerns Regarding MISO's Proposed 20-mile Contiguous Threshold for Upgrades Remain Unaddressed.

Section VIII.C.1.1.1 of MISO's October 25 Filing states:

Combination of Upgrades and New Facilities. If a proposed transmission project includes a combination of new transmission line sections and upgrades to

existing transmission line sections, and the new transmission **line sections are less than twenty (20) contiguous miles in total length, construction of the new transmission line sections will be considered a transmission upgrade** for the purpose of retaining a right of first refusal. In either event, upgrades made to the existing transmission line sections will be considered transmission upgrades for the purpose of retaining a right of first refusal. (Underlining added)

In its comments regarding the October 25 Filing, the OMS, expressed concern regarding the use of the word “contiguous”⁹ in the definition above. The Commission’s March 22 Order agreed with the OMS, stating:

...However, we agree with protestors that MISO has not provided sufficient support to demonstrate that the proposed threshold of 20 contiguous miles is appropriate. For instance, we agree with Organization of MISO States that **MISO’s proposal could allow a large new transmission project that is almost entirely made up of new transmission segments to be categorized as an upgrade so long as no new segment of the project is more than 20 contiguous miles.** In addition, we are concerned that certain projects under the 20 contiguous mile threshold could potentially qualify as an MVP or MEP...¹⁰ (underlining added)

In response to the March 22 Order, MISO makes the following statements:

“The contiguity requirement is also reasonable because non-contiguous small new transmission line segments on a Transmission Owner’s existing transmission line would be significantly inefficient to implement by collectively considering each segment to be a separate new transmission line project to be owned by a different entity or entities.”¹¹

“The Commission expressed concern that the 20-contiguous-mile threshold could result in treating as an upgrade a large project composed mostly of segments of less than 20 miles...”¹²

MISO’s explanation for retaining the contiguity aspect of the threshold still does not address the OMS’s concern. OMS agrees with MISO that small, non-contiguous new line segments on existing Transmission Owners lines should not be opened for competitive bid. To do so would seem unreasonable and inefficient. However, that does not mean that segments

⁹ OMS Comments in Docket No. ER13-187, at 32.

¹⁰ March 22 Order, at P 216.

¹¹ July 22 Filing, at 10.

¹² *Id.*

need to only be contiguous to be effective in this case. OMS believes that if MISO were to establish a total mileage threshold of 20-miles for an entire project, then that would be a reasonable approach. Including the term “contiguous” opens up the possibility that a large project could have multiple contiguous sections that are less than 20-miles in length. Unless MISO specifies that there can only be a certain number of those contiguous segments in a single project, then the OMS’s concern could become a reality.

OMS would therefore request that the Commission direct MISO to either revisit this concern, or if MISO still wishes to retain the word “contiguous,” add language that further limits how many “20-contiguous mile” segments would be allowed for one project to still be considered an upgrade.

E. The OMS Supports MISO’s Proposed Revisions to its Tariff and Transmission Owner’s Agreement Regarding the OMS.

As required by the March 22 Order, MISO has proposed the following revisions to Section 1.474a of Module A of the Tariff and Article II, Section VI.C and Section I.H of Appendix K of the Transmission Owners Agreement: (1) that the OMS Committee shall be “an autonomous and self-governing body;” and (2) that the OMS Committee shall be funded “with the costs recovered from Transmission Customers under Schedule 10 of the Tariff.” OMS supports these revisions as being compliant with the prior OMS Comments and the March 22 Order. Consequently, the Commission should approve these changes.

III. CONCLUSION

Wherefore, for all of the reasons explained above, the OMS urges the Commission to consider the above comments. The OMS submits these comments because a majority of the members have agreed to generally support them. Individual OMS members reserve the right to

file separate pleadings regarding the issues discussed herein. The following members generally support these comments:

Arkansas Public Service Commission
Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Kentucky Public Service Commission
Louisiana Public Service Commission
Michigan Public Service Commission
Minnesota Public Utilities Commission
Mississippi Public Service Commission
Missouri Public Service Commission
Montana Public Service Commission
City of New Orleans
North Dakota Public Service Commission
South Dakota Public Utilities Commission
Public Utility Commission of Texas
Wisconsin Public Service Commission

The Manitoba Public Utilities Board did not participate in these comments.

The Minnesota Department of Commerce, as an associate member of the OMS, participated in these comments and generally supports these comments,

Respectfully Submitted,

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Dated: August 21, 2013

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 St. Paul, Minnesota, this 21st day of August, 2013.

William H. Smith, Jr.
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