

**UNITED STATES OF AMERICA**  
**Before the**  
**FEDERAL ENERGY REGULATORY COMMISSION**

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Midcontinent Independent System Operator, Inc.	)	Docket No. ER13-1923-000
	)	
Louisville Gas and Electric Company	)	Docket No. ER13-1930-000
	)	
Ohio Valley Electric Corporation	)	Docket No. ER13-1940-000
	)	
Midcontinent Independent System Operator, Inc.	)	Docket No. ER13-1945-000
	)	
	)	(not consolidated)

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**NOTICE OF INTERVENTION AND COMMENTS**  
**OF THE ORGANIZATION OF MISO STATES**

Pursuant to Rules 211 and 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211 and 385.214(a)(2), and the Notice issued by the Commission on August 8, 2013, establishing September 9, 2013, as the deadline for intervention and comment in these proceedings, the Organization of MISO States (“OMS”) respectfully submits the following Notice of Intervention and Comments in the above-captioned dockets regarding the interregional Order 1000 compliance filings associated with, the Commission jurisdictional transmission providers enrolled in the Southeastern Regional Transmission Planning Region (SERTP)<sup>1</sup> and submitted to the Commission by the SERTP regions and Midcontinent Independent System Operator, Inc. (MISO) on July 10, 2013.

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<sup>1</sup> Utilities participating in SERTP include Duke Energy Carolinas, LLC; Duke Energy Progress, Inc.; Louisville Gas and Electric Company and Kentucky Utilities Company; Ohio Valley Electric Corporation, including its wholly owned subsidiary Indiana-Kentucky Electric Corporation; and Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, “Southern Companies”); Associated Electric Cooperative Inc.; Dalton Utilities, Georgia Transmission Corporation, the Municipal Electric Authority of Georgia, PowerSouth Energy Cooperative, the South Mississippi Electric Power Association, and the Tennessee Valley Authority.

## **I. 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 OMS submits its Notice of Intervention in the above-captioned proceedings. Service of all pleadings, documents, and communications in this matter should be made on the following:

William H. Smith, Jr.  
Executive Director  
Organization of MISO States  
100 Court Avenue, Suite 315  
Des Moines, Iowa 50309  
(515) 243-0742

The OMS is a non-profit, self-governing organization of representatives from each state<sup>2</sup> with regulatory jurisdiction over entities participating in MISO. The purpose of the OMS, acting as the regional state committee for the MISO region, is to coordinate regulatory oversight among the states; to make recommendations to MISO, the MISO Board of Directors, the Commission, other relevant government entities and state commissions as appropriate; and to intervene in proceedings before the Commission to express the positions of the OMS member agencies.

## **II. Background**

Order 1000 placed numerous compliance requirements on MISO and its neighboring transmission providers.<sup>3</sup> For example, Order 1000 requires both MISO and SERTP to address interregional transmission project coordination and cost allocation requirements between their respective regions. Before this filing, there has been no existing Joint Operating Agreement (“JOA”) between MISO and the SERTP regions. MISO and SERTP regions did reach

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<sup>2</sup> Includes the Province of Manitoba, Canada and the City of New Orleans.

<sup>3</sup> *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).

agreement on both interregional cost allocation and interregional coordination processes during this venture. Docket No. ER13-1923 is MISO's filing pertaining to the proposed agreement between MISO and SERTP regions. Docket Nos. ER13-1930 and ER13-1940 are the SERTP regions' filings pertaining to the proposed agreement between MISO and SERTP regions. Docket No. ER13-1945 was filed by MISO proposing revisions to Attachment FF (MISO's Transmission Expansion Planning Protocol) of the MISO tariff to identify the interregional coordination and cost allocation arrangements required under Order 1000.

### **III. Comments**

#### **A. Interregional Baseline Reliability Projects**

In its March 22 Order,<sup>4</sup> the Commission approved MISO's proposal to change the cost allocation for Baseline Reliability Projects (BRPs), which had been regionally cost shared beyond the project's local pricing zone, so that BRP costs are now only allocated to the local pricing zone. This means that BRPs no longer meet the Order 1000 definition of projects selected in a regional transmission plan for purposes of cost allocation. Interveners and commenters had alerted the Commission to the possibility that this cost allocation change could impact interregional transmission planning and cost allocation.<sup>5</sup> However, the Commission determined that the interregional impact of this decision was "beyond the scope" of that proceeding and "premature." This issue has now matured and the consequences of this decision are now becoming apparent.<sup>6</sup>

Order 1000 and Order 1000-A established that one of the requirements for a project to be considered as an interregional project with interregional cost allocation is that the project must be

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<sup>4</sup> *Midwest Independent Transmission System Operator, Inc., et al.*, 142 FERC ¶ 61,215 at ¶ 518 (2013) ("March 22 Order").

<sup>5</sup> *Id.*, at P 528.

<sup>6</sup> *Id.*

“selected in a regional transmission plan for purposes of cost allocation.”<sup>7</sup> Due to the March 22 Order, BRPs no longer meet that requirement.

Given these circumstances, there are three readily apparent options that the Commission might pursue<sup>8</sup>:

- (1) Approve the voluntary approach to cross-border BRP cost allocation proposed by MISO in its July 10 filing in ER13-1943; or
- (2) Retain the existing language in Section 9.4.3.2.1(as urged by PJM in its ER13-1944 filing and by the PJM Transmission Owners in their ER13-24 filing), but direct MISO to develop a regional cost allocation method for the interregional BRP allocated to MISO; or
- (3) Re-visit the regional cost allocation determination regarding BRPs made by the Commission in the March 22 Order.

Several OMS members favor Option 1; others favor Option 2. Neither position enjoys a majority of the 17 OMS members. The arguments for each of these two Options are presented. Option 3 listed above would involve Commission action outside these dockets and is not addressed further.

### **Arguments for Option 1:**

Of these three options, some OMS members recommend that the Commission pursue Option 1.<sup>9</sup> While some states support the concept of interregional reliability projects, they do not want the Commission to interject distortions that would inappropriately advantage interregional projects over similar and perhaps better regional projects. This would likely happen if interregional reliability projects are afforded cost sharing while regional reliability

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<sup>7</sup> Order 1000-A, at P 394, 423, 500, 506, and 628.

<sup>8</sup> The OMS readily acknowledges that other options may well exist.

<sup>9</sup> OMS members favoring Option 1 are: Illinois Commerce Commission, Iowa Utilities Board, Kentucky Public Service Commission, Minnesota Public Utilities Commission, Montana Public Service Commission, City of New Orleans, North Dakota Public Service Commission, South Dakota Public Utilities Commission, and Texas Public Utility Commission.

projects in MISO are not cost shared. The way to prevent such a distortion for MISO stakeholders is to have a consistent cost allocation for both regional and interregional reliability projects. In other words, MISO's regional allocation for its portion of the costs of the interregional reliability projects must be the same as MISO's cost allocation for regional reliability projects. This consistency on internal reliability cost allocation should not be construed as a constraint on the diversity of criteria for reliability project selection and cost allocation between RTOs that might be negotiated at different seams, but as a necessary measure to maintain the terms of MISO's tariff.

As an example of how MISO's proposal would work, consider the scenario where a MISO member and a SERTP member each have a pending reliability project. Through the joint planning process, MISO and SERTP identify an alternative interregional project that is more efficient and cost effective than the individual projects. In that case, the member participants would negotiate a cost allocation based on benefits. Given that the project is more efficient and cost effective, this should benefit both parties such that an agreement will be reached. To the extent that they cannot reach agreement, then each will still have the option of building the individual project to address the need for its customers - which is still demonstrated as a local customer/reliability need.

MISO's proposal for the SERTP seam is superior to creating a new reliability project category because MISO's proposal does not create an obligation for one utility to build a project for another utility when there is no benefit to it, and it does not require expensive cross-border studies every time a utility needs to replace a minor piece of transmission equipment that serves a reliability function. OMS states supporting Option 1 oppose these potential unintended consequences when SERTP and MISO utilities could instead negotiate on interregional projects

to solve identified reliability issues and perhaps develop cost allocations on a project-by-project basis.

### **Arguments for Option 2:**

Of these three options, some OMS members recommend that the Commission pursue Option 2.<sup>10</sup>

MISO's interregional compliance filings appear to meet most of the requirements of Order 1000 interregional transmission planning and cost allocation, but all have the same problematic issue regarding interregional cost allocation for cross-border BRPs. This issue is a direct result of the change in BRP cost allocation approved by the Commission in its March 22 Order.

Order 1000 and Order 1000-A established that one of the requirements for a project to be considered as an interregional project with interregional cost allocation is that the project must be "selected in a regional transmission plan for purposes of cost allocation."<sup>11</sup> Due to the March 22 Order, BRPs no longer meet that requirement and, under Order 1000 and Order 1000-A, can no longer be interregional projects. As a result, MISO has had to propose along all of its seams either the elimination of cross-border BRPs and interregional cost allocation for cross-border BRPs or to have no cross-border projects and no interregional cost allocation for such projects. Consequently, the change in BRP cost allocation, together with the Order 1000 interregional requirements, has led to the situation of Order 1000 eliminating interregional reliability projects, rather than its stated goal of encouraging such projects when they are more efficient or cost effective than regional BRPs.

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<sup>10</sup> OMS members favoring Option 2 are: Arkansas Public Service Commission, Indiana Utility Regulatory Commission, Michigan Public Service Commission, Missouri Public Service Commission, and Wisconsin Public Service Commission.

<sup>11</sup> Order 1000-A, at P 394, 423, 500, 506, and 628.

This leaves the Commission with an interesting conundrum in these proceedings. The Commission can: (1) change the Order 1000 requirement that interregional projects must be selected in a regional transmission plan for purposes of cost allocation; or (2) change the JOA between MISO and PJM to eliminate cross-border reliability projects and interregional cost allocation for such projects. MISO's proposal for negotiated cross-border reliability projects on its seam with PJM is one example of the various changes possible under Option 1. The Commission also has the options of ordering MISO to develop an interregional reliability project type with interregional cost allocation or the Commission developing such an interregional cost allocation based on the record before it. However, in both of these instances, the Commission would also likely need to amend the Order 1000 interregional requirement that interregional projects must be selected in both RTOs regional transmission plans for purposes of cost allocation or amend its March Order approving the elimination of cost sharing for MISO BRPs.

In light of the March 22 Order, there needs to be a workable solution to address the evaluation and cost allocation of interregional BRPs. Option 2 would provide such a solution.

In order to implement Option 2, MISO would need to develop a regional cost allocation methodology for the costs allocated to MISO for cross-border baseline reliability projects. To that end, the OMS members supporting Option 2 recommend that the Commission direct MISO to work with its stakeholders and OMS to develop a specific regional cost allocation method for the interregional reliability costs allocated to MISO.

In Order 1000, the Commission concluded:

[T]he absence of clear cost allocation rules for interregional transmission facilities can impede the development of such transmission facilities due to the uncertainty regarding the allocation of responsibility for associated costs. This may, in turn, adversely affect rates for jurisdictional services,

causing them to become unjust and unreasonable or unduly discriminatory or preferential.<sup>12</sup>

While the Commission allowed for different cost allocation methods between RTOs and for different types of transmission facilities, the Commission also stated that each cost allocation method must be determined in advance for each type of transmission facility.<sup>13</sup> The Commission further emphasized the importance of having an open and transparent stakeholder process and a transparent method for determining benefits and identifying beneficiaries.<sup>14</sup>

There are significant benefits to having a predetermined interregional cost allocation methodology for reliability projects. The Commission has identified a lack of clear interregional cost allocation rules as an impediment to constructing beneficial interregional projects. The OMS states supporting Option 2 agree that there are significant benefits to having a predetermined interregional cost allocation methodology for interregional reliability projects, as well as an open and transparent stakeholder process for determining the cost allocation methodology. Stakeholders involved in identifying and planning BRPs should have certainty during the planning process of how the costs of such projects would be allocated. As the Commission stated, “greater stakeholder access to cost allocation information will help aid in the development and construction of new transmission, as stakeholders will be able to see clearly who is benefiting from, and subsequently who has to pay for, the transmission investment.”

By requiring MISO to have the category of interregional reliability projects and a stakeholder process for establishing the appropriate cost allocation methodology for such

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<sup>12</sup> *Order 1000* at ¶ 579.

<sup>13</sup> *Id.* at ¶ 581.

<sup>14</sup> *Id.* at ¶¶ 668-669.

projects, the Commission will be enforcing the implementation of the cost allocation principles set out in Order 1000.

Stakeholders involved in identifying and planning interregional reliability projects could have certainty of how the costs of such projects would be allocated during the planning process:

**B. OMS Recommends That MISO Clarify How the Proposed Interregional Cost Allocation With SERTP Will be Applicable During the Entergy Integration in MISO**

OMS recommends that MISO clarify how the interregional cost allocation will be considered in relation to the FERC-approved five-year cost allocation process during the Entergy integration into MISO.<sup>15</sup> If any interregional projects are identified and approved between the Entergy region and SERTP, especially during the Entergy Transition period, then how will those costs be allocated amongst the MISO North and MISO South regions? For example, is it MISO and SERTP's intent that the costs of any interregional projects identified and approved during the five-year transition period will be allocated pursuant to the FERC approved five-year transition period method, such that any costs for an interregional project that terminates within the MISO North or South region would be borne by only the MISO North or South region, respectively?<sup>16</sup>

**IV. Conclusion**

Wherefore, for all of the reasons explained above, the OMS requests that the Commission issue its Order consistent with these comments. The OMS submits these comments because a majority of the members have agreed to generally support them. Individual OMS members

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<sup>15</sup> *Midwest Independent Transmission System Operator, Inc., et al.*, 139 FERC ¶ 61,056 (2012) (“April Order”).

<sup>16</sup> Southern Region Workshop Update, Planning Advisory Committee of MISO, 6/26/2013. <https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/PAC/2013/20130626/20130626%20PAC%20Item%2010%20Southern%20Region%20Integration%20Workshop%20Highlights.pdf>.

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  
Michigan Public Service Commission  
Minnesota Public Utilities 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 Louisiana Public Service Commission abstained from these comments. The Manitoba Public Utilities Board and the Mississippi Public Service Commission did not participate in these comments.

The Indiana Office of Utility Consumer Counselor, as an associate member of the OMS, participated in these comments and generally supports these comments.

Respectfully Submitted,

*William H. Smith, Jr.*  
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Dated: September 9, 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 Des Moines, Iowa, this 9th day of September, 2013.

*William H. Smith, Jr.*