

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

Midwest Independent Transmission)	
System Operator, Inc., and the MISO)	Docket No. ER13-708-000
Transmission Owners)	

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

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214(a)(2), the Organization of MISO States (“OMS”) respectfully submits the following comments on the January 4, 2013, filing by the Midwest Independent Transmission System Operator, Inc. (“MISO”) and the MISO Transmission Owners (“TOs”) (collectively, “Filing Parties”) of a Settlement Agreement recognizing the OMS and providing the OMS with an enhanced role in determining transmission cost allocation methodologies to be filed under Section 205 of the Federal Power Act (“January 4 Filing”). The Commission noticed January 25, 2013, as the deadline for filing comments and protests on the Settlement Agreement. On January 24, 2013, the Commission granted the OMS Motion for an Extension of Time and extended the deadline for filing comments for all parties to February 8, 2013.

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 files 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:

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The OMS is a non-profit, self-governing organization of representatives from each state¹ with regulatory jurisdiction over entities participating in the 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. It is important to note that the OMS is not a public utility under the definitions of the Federal Power Act and is not authorized to make filings pursuant to Section 205² of this Act.³

II. Background

The January 4 Filing advances a conversation that has been ongoing for over a year among OMS membership, the retail regulators of the Entergy companies, MISO, and the TOs. These discussions were recently summarized for the Commission in OMS's Comments on MISO's Order 1000 Compliance Filing.⁴ The discussions covered a more explicit role for the OMS in the MISO transmission planning process and enhanced directive filing rights under Section 205. Discussion of enhanced roles for the OMS was occasioned by Order 1000 and by the decision of the Entergy Companies to join MISO, as well as the continuing evolution of MISO and the role of state regulators in MISO's processes.

As indicated, the OMS and Entergy Regional State Committee ("ERSC") held several discussions on the Section 205 filing rights of regulators during 2012, seeking to harmonize the absence of such rights in the OMS with the rights package held by ERSC.

¹ The use of the term "state" or "states" means all retail regulators of utilities within MISO, including the City of New Orleans.

² 16 U.S.C. § 824d.

³ By contrast, the Commission has approved enhanced filing rights for the SPP Regional State Committee and for the Entergy Regional State Committee. *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 219, *order on reh'g*, 109 FERC ¶ 61,010 (2004); *Entergy Arkansas, Inc., et al.*, 133 FERC P 61,211, at ¶¶ 5 and 15.

⁴ Notice of Intervention and Comments of the Organization of MISO States, filed December 10, 2012, in Docket No. ER13-187.

MISO and the TOs were invited to participate in those discussions. The series of talks led to the OMS adopting, on August 16, 2012, a Proposal for Enhanced Authority for Determining Cost Allocation Methodologies to Be Filed Pursuant to Section 205 of the Federal Power Act (“OMS Proposal”).⁵ On the same date the OMS adopted a related proposal related to a more explicit role in the MISO transmission planning process. MISO filed to implement the concepts in the proposal regarding transmission planning in its Order 1000 Compliance Filing in Docket No. ER13-187, which is still pending before the Commission.

The OMS Proposal was not accepted by MISO and the TOs, and further discussions led to OMS adopting a counterproposal on August 30, 2012.⁶ MISO and the TOs also did not accept the OMS counterproposal. Subsequently, MISO made a compliance filing with the Arkansas Public Service Commission on August 31, 2012, which advanced a more limited set of authorities to direct Section 205 filings for the OMS.⁷ That set of directive filing authorities is generally what has been presented to the Commission in the January 4 Filing.

The January 4 Filing includes recognition of the OMS in the Transmission Owners’ Agreement (“TOA”). The TOA as originally filed in 1998, and as subsequently amended, provided for the “State Regulatory Authorities” as a stakeholder sector but did not mention OMS. That silence reflects only that the OMS was not established until 2003. Since its inception, the OMS has served as the vehicle through which the members of the state regulatory sector have chosen to operate in the MISO stakeholder process. The January 4 Filing also creates the right for OMS to direct certain Section 205 filings by MISO (generally referred to as “Section 205 filing rights” throughout these

⁵ The OMS Proposal can be found at:

http://www.misostates.org/images/stories/Filings/OMS_Proposal_for_Enhanced_Authority_for_Filing_under_Section_205_as_amended_August_16_2012.pdf

⁶ OMS Counterproposal for Enhanced Authority for Determining Cost Allocation Methodologies to Be Filed Pursuant to Section 205 of the Federal Power Act. It is posted at:

http://www.misostates.org/images/stories/Filings/MISO_Filing_OMSSection205CounterproposalWithLettertoJBearModified30August2012.pdf

⁷ *In the Matter of a Show Cause Order Directed to Entergy Arkansas, Inc., Regarding Its Continued Membership in the Current Entergy System Agreement, or any Successor Agreement Thereto, and Regarding the Future Operation and Control of Its Transmission Assets, Arkansas PSC Docket No. 10-011-U.*

comments). As mentioned, the OMS currently possesses no Section 205 filing rights; thus the January 4 Filing would create a role for OMS that does not now exist.

III. The Enhanced Role of State Commissions and State Committees with Respect to Transmission Cost Allocation

The OMS supports an enhanced role for state commissions and regional state committees with respect to Section 205 filing rights. However, with respect to the January 4 Filing, the OMS wishes to reiterate some observations and concerns that were identified in the OMS Comments on MISO's Order 1000 compliance filing and address several concerns with the Filing Parties' proposal to grant the OMS Section 205 filing rights.

A. The Commission Has Recognized the Unique Role of the State Regulatory Commissions in Order 1000 Compliance Processes.

The Commission has recognized and acknowledged the important and unique⁸ role of state commissions and state committees, such as the OMS, in implementing the transmission planning and transmission cost allocation goals of Order 1000. The Commission affirms that state regulators play a crucial role in transmission planning and cost allocation and that the role of state regulators is unique and distinctly different from the roles played by other stakeholders.⁹ As a result, the Commission "encourage(s) proposals that seek to establish a formal role for state commissions in the regional transmission planning process."¹⁰ The Commission reasonably concluded that the differences between state utility regulators and other stakeholders may well lead to a regional transmission planning process to treat state utility regulators differently than other stakeholders."¹¹

Although the Commission declined to dictate a particular role for state regulatory commissions, the Commission expressed a willingness to consider proposals where state committees were given a decision-making role in the regional transmission planning and cost allocation processes. The Commission clearly envisions a process that provides state

⁸ Order 1000-A at P 291

⁹ Order 1000-A at P 293

¹⁰ Order 1000-A at P290

¹¹ Order 1000-A at P293

commissions a formal role that is distinct and different from the role of other stakeholders and enables state commissions (and the OMS) to act in conjunction with MISO while providing state commissions an opportunity to make decisions about which projects will be placed in the transmission plan and how costs of such projects will be allocated.

B. MISO’s Proposal Relating to State Regulators

1. The OMS Supports the Establishment of the OMS Committee

In the January 4 Filing, MISO proposes to establish the OMS Committee, composed of the members of the Organizations of MISO States established pursuant to the bylaws of the Organizations of MISO States, having the responsibilities and rights defined in Section I.B of Attachment FF of the Tariff.¹² The OMS supports establishment of the OMS Committee.

2. The OMS Supports Authority for the OMS to Direct Certain Section 205 Filings by MISO.¹³

The January 4 Filing sets forth a process by which the OMS would be able to request that MISO file alternative tariff provisions when MISO proposes changes to its regional transmission cost allocation methodologies involving all MISO transmission project types featuring regional cost allocation, except Baseline Reliability Projects. While the January 4 Filing is correct that “OMS, MISO, and MISO’s Transmission Owners worked diligently to reach common ground”¹⁴ on the issue of OMS authority to direct MISO to submit certain Section 205 filings under certain circumstances, the OMS is not a signatory to the settlement agreement filed with the January 4 Filing and is concerned with the limited nature of some of the proposals made therein.

a. The OMS’s Section 205 Filing Rights Should Not Be Contingent on MISO Making a Filing.

Perhaps the most troubling provision of the January 4 Filing is found in section II.E.3.(e), that states:

¹² It is important to note, however, that the OMS was formed by its state and provincial members on their own initiative, and that the MISO Tariff cannot unilaterally assign responsibilities to the OMS or define the outer limits of OMS’s authority.

¹³ Shorthand phrases such as “OMS’s Section 205 filings rights” are used with full understanding that any filings under discussion would be made by MISO at the direction of the OMS.

¹⁴ Exhibit No. MTO-2, at 1.

At the end of the stakeholder process the Midwest ISO will either file with FERC a new transmission cost allocation methodology, a change to an existing transmission cost allocation methodology or will provide the OMS Committee with a written explanation of its decision not to file changes to the Tariff. If the Midwest ISO does not file changes to the Tariff, no OMS alternative cost allocation methodology will be filed with FERC by the Midwest ISO.¹⁵

This phrase can be used to neutralize any Section 205 filing rights otherwise granted by the proposal to the OMS. In other words, MISO could prevent an OMS proposal by declining to make any filing; if an OMS proposal cannot be submitted to the Commission as a Section 205 filing, it would have to be made as a Section 206 complaint with a much heavier burden. Such a provision greatly diminishes any Section 205 filing right granted to the OMS and the OMS recommends that this limitation be eliminated. Consistent with statements by the Arkansas Public Service Commission in Order No. 72 of its Entergy Docket,¹⁶ the OMS supports further discussions within the MISO stakeholder community, as well as initiating FERC settlement procedures, regarding the appropriate balance between MISO, the TOs and the OMS regarding Section 205 filing rights. The January 4 Filing is a first step in the right direction, and should be reviewed not solely as a means to integrate the Entergy Companies into MISO, but also in light of the Commission's requirements in Order 1000. The OMS supports a FERC settlement process to further clarify these roles and enhanced authorities.¹⁷

b. The Midwest ISO Should Not be Allowed to Arbitrarily Determine what Support It Will Provide the OMS.

The OMS is concerned with proposed section II.E.3(i) of the January 4 Filing, which states that:

The Midwest ISO shall provide the technical and financial support it deems necessary and appropriate to fulfill its obligations under Article II, Section E.3 of this Appendix K in order for the OMS Committee to make an appropriate

¹⁵ Section II.E.3.(e), emphasis added.

¹⁶ Docket No. 10-011-U, issued October 26, 2012.

¹⁷ In addition, the language in proposed Appendix A, Section II.E.3(a) should be clarified with respect to when a stakeholder process is required. The only circumstance under which a stakeholder process must be initiated is that circumstance delineated in Subsection II.E.3(a)(ii).

showing in support of the justness and reasonableness of any proposal provided by the OMS Committee pursuant to Article II, Section E.3 of this Appendix K.¹⁸

The phrase “it deems necessary and appropriate” was not included in MISO’s August 31, 2012, compliance filing with the Arkansas Commission, and the OMS is uncertain why it was included in the January 4 Filing. This phrase can be used to marginalize any Section 205 filing rights authority otherwise granted to the OMS, if MISO declines – as “inappropriate” – to provide the OMS with the technical and financial support necessary to show that the OMS Section 205 filing is just and reasonable. Accordingly, the words “it deems” and “and appropriate” should be removed from the first sentence of the section, so that the section reads as:

The Midwest ISO shall provide the technical and financial support ~~it deems necessary and appropriate~~ to fulfill its obligations under Article II, Section E.3 of this Appendix K in order for the OMS Committee to make an appropriate showing in support of the justness and reasonableness of any proposal provided by the OMS Committee pursuant to Article II, Section E.3 of this Appendix K.

c. The OMS’s Section 205 Filing Rights Should Not Be Contingent on the Integration of Entergy Arkansas.

Section II.E.3(e) of the January 4 Filing states:

The provisions in Article II, Section E.3 of this Appendix K are contingent upon successful integration of Entergy Arkansas transmission, generation, and load into the Midwest ISO’s markets, including receipt of any final authorization of FERC necessary to accomplish such integration.

The OMS’s Section 205 filing rights authority should not be contingent on the integration of the Entergy operating companies into the MISO markets. The OMS has consistently stated that the integration of the Entergy Companies into MISO was but one reason for pursuing enhanced state regulatory authority. Other, independent reasons exist, including FERC Order 1000’s contemplation of enhanced state authority with respect to cost allocation and transmission planning, that counsel in favor of enhanced state authority. Given that fact, making the grant of enhanced authority over cost allocation contingent upon successful Entergy integration is ill-advised. Further, if the concepts OMS has outlined are good policy with the Entergy Companies as MISO members, they are good policy without the Entergy Companies as MISO members.

¹⁸ Section II.E.3(i), emphasis added.

Including such a contingency does not properly recognize or acknowledge the independent reasons for granting the state regulators enhanced authority.

d. The OMS's Section 205 Filing Rights Authority Should Not Exclude All Baseline Reliability Projects ("BRPs").

MISO's proposed language in Section E.3.b would limit the OMS's authority to "new regional projects, other than Baseline Reliability Projects." In the OMS Proposal, OMS's Section 205 filing rights authority included Baseline Reliability Projects ("BRPs") 345 kV and above. The OMS Proposal of August 16, 2012, exempted BRPs below 345 kV in recognition of a stated concern by the settling parties regarding reliability projects for which the TOs bear NERC responsibility. Although the OMS counterproposal of August 30, 2012, further compromised by exempting all BRPs, that compromise was made in the context of trying to reach agreement with MISO and the TOs, which did not happen. The OMS believes excluding all BRPs is unnecessarily limiting. The Section 205 filing rights authority should be applicable to projects with broader multi-state cost allocation, reflecting the reason for a regional state committee like OMS in coordinating among the state commissions within MISO's footprint. The OMS recommends that its Section 205 filing rights authority apply to any new regional project that would have any portion of costs shared across more than one zone, other than BRPs below 345 kV.¹⁹ Under this proposal, the OMS would not have Section 205 filing rights authority for BRPs below 345 kV that have limited regional cost sharing based on LODF calculations.

¹⁹ The Illinois Commerce Commission and the Texas Public Utility Commission do not concur with this section. They would alternatively state:

MISO's proposed language in Section E.3.b. would limit the OMS's authority to "new regional projects, other than Baseline Reliability Projects." This restriction is unnecessarily limiting. The OMS's Section 205 directive authority should apply to any new project eligible for regional cost allocation, i.e., any project eligible to have costs allocated outside the zone in which the project will be physically located. As MISO filed it on October 25, 2012 in Docket No. ER13-187-000, the yellow light option for OMS in the transmission planning context does not exclude Baseline Reliability projects or even a subset of Baseline Reliability projects. Rather the yellow light authority applies to all "Network Upgrades eligible to receive regional cost allocation under Attachment FF." (See, MISO's proposed Section I.B of Attachment FF) The OMS's 205 directive authority should apply in a parallel fashion to cost allocation for any new project eligible for regional cost allocation and the Commission should make that change.

IV. The Standard Of Review Proposed By The TOs And MISO In Section 4.2 Of The Settlement Agreement Should Be Clarified.

In addition to the above matters, OMS is also concerned that a portion of the settlement documents may not accurately represent the intentions of MISO and the MISO TOs, and should be amended to accurately reflect their intentions and avoid potential future confusion. The language of Section 4.2, in MISO Exhibit MTO-3 is problematic.

First, the mechanics of the paragraph are unclear. OMS believes the two sentences in Section 4.2 have different functions. The first states a standard of review for both MISO and MISO TOs seeking to propose modifications to the Settlement Agreement outside the Appendix K procedure in the Transmission Owners Agreement. The second sentence states a standard of review for changes or revisions to the Settlement Agreement coming from FERC or any third-parties, such as OMS. However, the phrase “any modification to this Settlement Agreement” in the first sentence appears to functionally overlap with and subsume the changes or revisions subject to the review standard proposed in the second standard. This overlap could create interpretative confusion as to which standard of review is actually intended, and should be eliminated by an appropriate revision.

Second, the phrase “‘ordinary’ just and reasonable standard of review as clarified by *Morgan Stanley*” used in the second sentence is not clear to OMS. OMS understands that the phrase is intended to reflect the basic, equitable or fairness standard of “just and reasonable,” in contrast to the more stringent “public interest” standard in the first sentence. The problem is that *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1*, 554 U.S. 527, 546-47 (2010), does not so clearly distinguish the differences in the standards of review. The decision states the “*ordinary mode . . . is to look at whether the rates seriously harm the public interest,*” thus equating the word “ordinary” with the heightened standard. *Id.* (emphasis added). OMS believes that use of “ordinary” in conjunction with the specific reference to *Morgan Stanley* creates an unneeded risk of future controversy as to the applicable standard of review. The distinction in the second sentence should be more fully clarified, for example, by using the phrase “less stringent” before “ordinary” to distinguish between the two standards of review.

V. Conclusion

The OMS recommends Commission adoption of the above-proposed changes to the January 4 Filing.

In addition, the OMS urges the Commission to review the January 4 Filing within the multiple contexts of integrating the Entergy Companies into MISO, the section 205 filing rights granted to the ERSC and SPP RSC, the Commission's requirements under Order 1000, and the Commission's observations after ten years of experience of regional state committee operations in several RTO/ISO regions, and the OMS's performance specifically. If, as recommended by the OMS, the Commission finds that the multiple policy considerations require that the OMS's filing rights be expanded, either in accordance to the above-proposed changes to the January 4 Filing or to correspond to those of the SPP RSC and ERSC, it should set this filing for settlement judge procedures.

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 pleadings regarding the issues discussed herein. The following members generally support this request:

- Illinois Commerce Commission
- Indiana Utility Regulatory Commission
- Iowa Utilities Board
- Kentucky Public Service Commission
- Michigan Public Service Commission
- Mississippi Public Service Commission
- Missouri Public Service Commission
- Montana Public Service Commission
- City of New Orleans
- Public Utility Commission of Texas
- Wisconsin Public Service Commission

The Louisiana Public Service Commission abstained from voting on this pleading. The Manitoba Public Utilities Board took no part in preparing this pleading and therefore abstains.

The Minnesota Public Utilities Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission, abstain, stating:

After extensive discussions on the scope of Section 205 filing rights, the OMS offered its August 30th proposal. In reaching that proposal, states were asked to compromise, so the final proposal was not every state's first

choice on every issue. However, there was agreement that the August 30th proposal was viable and would advance the efforts to enhance states' authority. On the 205 issue, in particular, OMS agreed to respect MISO's independence. During the months from that time until the January 4th filing, OMS voiced no change in position on these issues. Presumably, relying on the credibility of the OMS's public statement, the MISO and TOs incorporated the essence of the OMS August 30th proposal in their January 4th filing. Yet in the present comments, OMS raises objections to several of the very points in its public statement. To reverse course now, without having even implemented the terms adopted in August, nor having any evidence that approach would prove unworkable, is wrong. Even if it turns out there is a demonstrable problem to be solved, the path forward is not immediately to FERC, but first with those who were granted 205 filing rights when MISO was formed. For OMS to take this action now is not in the best interests of OMS, nor the broader stakeholder community. Reversals on positions OMS offered in negotiations tarnishes its standing as the MISO Regional State Committee, and makes OMS look indecisive and, worse, unreliable. It is not a position we can adopt on principle. We do not see this action as serving the public interest. Therefore, the MPUC, NDPSC, and SDPUC must abstain.

Respectfully Submitted,

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Dated: February 8, 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 8th day of February, 2012.

William H. Smith, Jr.

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