

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

Midcontinent Independent
System Operator, Inc.

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)

Docket No. ER14-1736-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF THE ORGANIZATION OF MISO STATES**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.212, the Organization of MISO States (“OMS”) respectfully submits the following comments in the above-captioned docket in response to the filing submitted to the Commission by the Midcontinent Independent System Operator, Inc. (“MISO”) on July 16, 2014 (“July 16 Request for Clarification”) requesting clarification or, in the alternative, rehearing regarding certain aspects of the Commission’s *Order Accepting and Suspending Proposed Tariff Revisions and Establishing Hearing and Settlement Judge Procedures*.¹

I. MOTION FOR LEAVE TO ANSWER

Pursuant to Rule 212,² OMS respectfully requests leave to file this Answer. Generally, an answer to comments or a protest is not permitted;³ however, the Commission allows such answers when the answer provides useful and relevant information that will assist the Commission in its decision-making process,⁴ corrects factual inaccuracies and clarifies the

¹ *Midcontinent Independent System Operator, Inc.*, 147 FERC ¶ 61,206 (2014) (“June 16 Order”).

² 18 C.F.R. § 385.212 (2013).

³ 18 C.F.R. § 385.213(a) (2013).

⁴ See e.g., *Pioneer Transmission, LLC v. Northern Indiana Public Service Co. and Midwest Independent Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,057 at P 93 (2012); *Midwest Independent Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,285 (2010); *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 at P 19 (2010), *reh’g*

issues,⁵ assures a complete record in the proceeding,⁶ provides information helpful to the disposition of an issue,⁷ or permits the issues to be narrowed.⁸

OMS submits that this Answer satisfies the above criteria by aiding the Commission in its decision-making process, clarifying the record, assuring a complete factual record in the proceeding and providing information helpful to the disposition of the issue of whether the compliance filings submitted in these dockets constitute formula rate protocols that are just and reasonable and not unduly discriminatory.

II. ANSWER

A. BACKGROUND AND SUMMARY

MISO states that the July 16 Request for Clarification is submitted to ensure that the Transmission Surcharge proposed in this docket (“Cost Recovery Filing”) matches the amounts invoiced by Southwest Power Pool, Inc. (“SPP”) under a non-conforming service agreement unilaterally filed by SPP in Docket No. ER14-1174-000 (“SPP Service Agreement”), which was made effective by the Commission as of January 29, 2014, subject to hearing and refund.⁹

MISO states that the Cost Recovery Filing was intended to protect MISO from exposure to charges under the SPP Service Agreement, including penalties and interest.¹⁰ MISO further

denied, 137 FERC ¶ 61,075 (2011) (accepting answers that “provided information that assisted us in our decision making process”); *Duke Energy Kentucky, Inc.*, 122 FERC ¶ 61,182 at P 25 (2008) (accepting answers in proceeding on Wholesale Distribution Service agreements that “provided information that assisted us in our decision-making process”); *Tallgrass Transmission, LLC et al.*, 125 FERC ¶ 61,248 at P 26 (2008); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,083 at P 23 (2007) (answer to protests permitted when it provides information to assist the Commission in its decision-making process).

⁵ See e.g., *Entergy Services Inc.*, 123 FERC ¶ 61,227 (2009).

⁶ See e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at P 62,443 (1998), *reh’g denied*, 89 FERC ¶ 61,246 (1999); *Morgan Stanley Capital Group, Inc. v. New York Independent Sys. Operator, Inc.*, 93 FERC ¶ 61,017 at P 61,036 (2000) (accepting an answer that was “helpful in the development of the record...”).

⁷ See e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at P 61,287, n. 11 (1999).

⁸ See e.g., *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at P 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at P 62,323, n. 1 (1998).

⁹ July 16 Request for Clarification, at 1.

¹⁰ July 16 Request for Clarification, at 1.

states that by setting the Cost Recovery Filing for hearing, the June 16 Order undermined this critical goal, creating considerable uncertainty and a potential mismatch between any charges that SPP ultimately may be authorized to collect from MISO and the charges that MISO ultimately may be permitted to recover from its customers, including any cost allocation mechanism used for this purpose.¹¹ To address this deficiency, MISO requests the Commission to clarify that:

- (1) MISO is permitted to defer its collection of such charges until the cost allocation mechanism is finalized; or, alternatively, no refunds to MISO customers will be required in this proceeding if the proposed cost allocation mechanism is modified;
- (2) MISO is entitled to recover the entire cost that may be incurred under the SPP Service Agreement; and
- (3) Any MISO obligation to flow to its customers any SPP refunds that may be ordered in the SPP Service Agreement proceeding is contingent on MISO's receipt of these refunds from SPP.¹²

Finally, MISO states that if the Commission declines to grant any of the above clarifications, MISO respectfully requests rehearing.¹³

B. COMMENTS

1. MISO's request to be exempted from re-settling with its own customers any over-payment amounts that it does receive from SPP is unreasonable.

The OMS notes Section II.A of the July 16 Request for Clarification, where MISO expresses a concern that if MISO begins to collect the Transmission Surcharge, as provisionally put in effect by the June 16 Order, but the allocation mechanism is subsequently changed as the result of the settlement or hearing process in this docket, MISO will be required to reallocate the

¹¹ July 16 Request for Clarification, at 1-2.

¹² July 16 Request for Clarification, at 2.

¹³ July 16 Request for Clarification, at 2.

collected charges among various groups of its customers.¹⁴ The July 16 Request for Clarification proceeds to state that the Commission should defer MISO's collection of the Transmission Surcharge until the allocation mechanism is determined or, alternatively, the Commission should clarify that MISO should not be required to resettle if the allocation mechanism is changed.¹⁵ In other words, MISO is requesting in this "alternative" clause that the Commission clarify that: "if the initially proposed cost allocation mechanism is modified, MISO will not be required to refund any amounts that it already collected and escrowed or distributed to SPP."¹⁶

The concern underlying this "alternative" request for clarification by MISO is unclear. If the Commission determines in the JOA dispute settlement case that the MISO has correctly compensated SPP, but that MISO recovered those amounts from MISO customers using an improper recovery mechanism, then all MISO will need to do is reconcile its collections from MISO customers. This would require MISO to charge some MISO customers a bit more and refund it to those who were charged in excess under the improper cost allocation. All told, SPP would not need to be involved in this process.

If the Commission determines in the JOA dispute settlement case that MISO has not sufficiently compensated SPP, then MISO will need to recover the extra amounts from its customers using the cost recovery mechanism that FERC ultimately determines to be the appropriate mechanism. SPP would not need to be involved in this scenario either.

If the Commission determines in the JOA dispute settlement case that MISO has over-compensated SPP, then MISO will obtain from SPP those amounts that it over-paid to SPP and

¹⁴ July 16 Request for Clarification, at 5.

¹⁵ July 16 Request for Clarification, at 6-7.

¹⁶ July 16 Request for Clarification, at 6.

issue refunds to its customers using the cost allocation mechanism that the Commission ultimately determines to be appropriate. SPP would need to be involved in this scenario.

While it is reasonable for MISO to ask the Commission to clarify that MISO will not be required to refund over-payment amounts that it is not able to get back from SPP¹⁷, MISO's request to be exempted from re-settling with its own customers any over-payment amounts that it does receive from SPP is unreasonable.

2. FERC Should Direct MISO to Follow-through on Commitments it Made Earlier in this Proceeding to Remove Unjust and Unreasonable Tariff Language Applicable to Transmission Service Agreements That Do Not Exist

The OMS is also concerned that MISO does not intend to remove language from the tariff that it committed to in its answer to protests filed in this docket.

On April 17, 2014 MISO made its initial filing to revise the Tariff to permit MISO to recover the costs MISO incurs for taking transmission service on non-MISO transmission facilities:

MISO will charge all customers (1) the costs invoiced to MISO for Network Integration or Point-to-Point Transmission Service under the tariff of a transmission provider; (2) costs and charges assessed by a transmission provider pursuant to a Commission-approved service agreement, including interest, penalties, and other charges that may be invoiced by the transmission provider under its tariff; or (3) the cost of transmission capacity purchased, leased, or otherwise acquired by the MISO for and on behalf of its Market Participants, or other usage charges pursuant to a contract for services executed by the MISO for and on behalf of its Market Participants that has been filed and accepted by the Commission.¹⁸

Several parties responded that the above language was either overbroad or that MISO had not supported the inclusion of the language. In its limited protest to MISO's Cost Recovery filing, one of the OMS's members, the Mississippi Public Service Commission (MPCS), argued

¹⁷ July 16 Request for Clarification, at 7.

¹⁸ Cost Recovery Filing at 5.

that “MISO has not supported its proposal to include charges other than those arising out of the SPP Agreement in the Transmission Surcharge.”¹⁹ Several transmission owners also argued that MISO’s filing was overly broad because it would “apply to all charges that may be levied by other transmission providers in the future.”²⁰

MISO agreed with these arguments and committed to remove the aforementioned language. In its May 23, 2014 answer, MISO stated:

The MISO TOs and others specifically argue that the April 17 Filing is overly broad because it would “apply to all charges that may be levied by other transmission providers in the future.” The MISO TOs maintain that the proposed cost recovery mechanism should be limited to recover the amounts invoiced by SPP and that MISO should be required to file separately for authorization to recover any charges that may be assessed by other transmission providers in the future. MISO does not disagree with this suggested modification to the proposal. This issue has been raised in stakeholder discussions and **MISO commits to amend the proposal in a future compliance filing to allow only recovery of invoices propounded by SPP as a result of the SPP Service Agreement accepted by the FERC in Docket No. ER14-1174.**²¹

On June 16, 2014 FERC issued an order accepting and nominally suspending MISO’s Cost Recovery Filing, and setting the matter for hearing and settlement.²² FERC acknowledged MISO’s commitment to amend the proposal²³ and did not require that amendment as part of the compliance filing.

¹⁹ See Limited Protest of the Mississippi Public Service Commission, Docket No. ER14-1735-000, at t 2-4 (May 8, 2014) (citations omitted).

²⁰ See Motion to Intervene and Protest of the MISO Transmission Owners, Docket No. ER14-1736-000, at 5-6 (May 8, 2014).

²¹ See Motion for Leave to Answer and Answer of the Midcontinent Independent System Operator, Inc., Docket No. ER14-1736-000, at 4-5 (May 23, 2014) (emphasis added).

²² June 16th Order at ¶ 39.

²³ *Id.* at P 24.

On July 16, 2014 MISO made its compliance filing. That compliance filing did not include the changes that MISO committed to make in its May 23rd answer.

Then, along comes this MISO Motion. Instead of clarifying that MISO will make the amendment, MISO asks FERC to apply its clarification request to the other types of charges that MISO committed to remove from the Tariff.

At this time, the SPP Service Agreement is the only such agreement that has been accepted by the Commission. Accordingly, MISO's discussion in this Request is limited to the SPP Service Agreement, but to the extent the Commission decides to place in effect any other agreements of similar nature, **MISO requests that the clarifications sought herein be extended to such agreements as well.**²⁴

The OMS expects that when an RTO makes a commitment, e.g., in a pleading in a FERC docket, a FERC order is not required to enforce it. Notwithstanding communications with MISO, the MISO Motion suggests that MISO has no intention of fulfilling its commitment because it has asked FERC to expand the requested clarification to cover non-SPP transmission costs. The OMS requests FERC to deny MISO's request and direct the amendment to which MISO committed.

III. CONCLUSION

For the reasons explained above, the OMS requests that (a) the Commission not grant the "alternative" request in Section II.A of MISO's July 16 Request for Clarification and (b) direct MISO to follow-through on its prior commitment to remove unjust and unreasonable Tariff language applicable to Transmission Service Agreements that do not exist.

²⁴ July 16 Request for Clarification at 8 and footnote 19 (emphasis added).

The OMS submits this pleading by direction of its Executive Committee acting under Article VII of its bylaws on July 31, 2014.” Individual OMS members reserve the right to file separate pleadings regarding the issues discussed herein.

Respectfully Submitted,

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Dated: July 31, 2014

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 31st day of July, 2014.

William H. Smith, Jr.