

OMS Executive Committee Issues Regarding MISO's Proposal for Complying with FERC's March 22 Order on MISO's Order 1000 Compliance Filing¹

1. State Commission and OMS Participation in MISO's Competitive Process for Transmission Developer Selection

In response to Paragraph 351 of FERC's March 22 Order on MISO's Order No. 1000 compliance, MISO has proposed to remove the proposed tariff language that provides the states with an option to determine transmission developers for transmission projects where a federal right of first refusal has been removed. The OMS notes that, while Paragraph 351 prevents the states from explicitly selecting the transmission developer in MISO's competitive developer selection process, Paragraph 354 of Order No. 1000 addressed the role of state regulators in MISO's competitive process for the selection of transmission developers. In particular, Paragraph 354 states:

“We agree that, to the extent that state regulatory authorities want to participate, they are able to participate.”

And,

“The role of state regulatory authorities must be to provide guidance and recommendations and must be defined in the Tariff. For instance, a state entity or regional state committee can consult, collaborate, inform, and even recommend a developer that is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation, but the public utility transmission providers in a transmission planning region must make the selection decision with respect to the developer, not the state entity or regional state committee. (Emphasis added)”

Given the above, the OMS would like to work with MISO to develop specific tariff language regarding the role of states and the OMS in MISO's competitive process for selection of transmission developers for projects not subject to right of first refusal.

While the Commission order does not mandate that such tariff language be part of MISO's 120-day compliance filing, given the nature of the issue, it makes sense for MISO to work cooperatively with OMS to develop a proposal that could subsequently be vetted through the stakeholder process and incorporated into MISO's Order No. 1000 compliance filing.

Pursuant to the Commission's invitation in Paragraph 354 of the March 22 Order, the OMS, on behalf of its state commission members wishes to have a role and to have an option to participate in MISO's tariff and BPM language development for the competitive developer selection process.

The OMS wants to explore with MISO an option for embracing the full extent of OMS and state commission participation specified by the Commission in Paragraph 354 of the March 22 Order. To that

¹ Due to the timing for feedback, the full OMS Board of Directors was unable to review this document; however it has been reviewed and endorsed by the OMS Executive Committee.

end, the OMS is willing to work with MISO to develop a filing at FERC to implement such an OMS and state role.

2. Deletion of Proposed Section VIII.A of Attachment FF of the Tariff (State ROFR)

Per Paragraph 205 of FERC's March 22 Order on MISO's Order No. 1000 compliance, MISO proposes to delete proposed section VIII.A of Attachment FF of the MISO tariff that FERC determined would effectively add a federal right of first refusal for a new facility based on state law. While MISO's proposal may be sufficient to comply with the Commission's specific direction, it does not resolve potential confusion concerning how MISO intends to address situations where a transmission developer is selected by MISO through the competitive selection process and that developer is then not accepted by a state exercising its state statutory authority (e.g., siting and certification).

When such a circumstance arises, the OMS sees at least three possible actions that MISO might take including, but not limited to:

- (1) Select the "second-place developer" in the selection process and hope that the developer meets with the approval of the relevant state authority;
- (2) Perform another competitive selection process and select an alternative transmission developer and hope that developer meets with the approval of the relevant state authority; or
- (3) Consult with the state that rejected the developer initially selected by MISO². If the rejection is because of a state ROFR, then the state could identify which qualified developer(s) would be eligible to receive the approval of the relevant state authority, and then MISO could choose accordingly.³ If the rejection is due to other causes, then MISO should try to glean information from the state process and policy that could then be used to inform MISO's own selection process and increase the probability of subsequently selecting a candidate acceptable to the state.

The OMS believes that MISO should clarify how an alternative transmission developer will be selected if the initial developer selected by MISO is not approved by a state exercising its state-statutory authority. MISO should also clarify the impact that such a process would have on the cost allocation of the transmission project in question. Removing such ambiguity will help reduce or eliminate any potential confusion surrounding the question of how MISO will proceed with the selection of an alternative transmission developer in such circumstances. This kind of prior business certainty is needed to preserve the integrity of MISO's processes.

² Some states have pre-approval restrictions and will not be able to tell MISO which developer is eligible, given that the state authorization proceedings are subsequent to MISO's choice.

³ As stated in the Illinois Commerce Commission's Request for Rehearing in ER13-187, it is the ICC position that if MISO designates a developer that is not the product of MISO's competitive selection process; none of the costs for that project should be subject to regional cost sharing.

3. Weighting of Cost Factors in Project Evaluation

In its October 25, 2012 compliance filing, MISO proposed criteria weighting for new transmission line facilities and new substation facilities. In particular, the proposal put thirty percent weight on the cost criterion (inclusive of descriptive facility design).

In Paragraph 340 of FERC's March 22 Order on MISO's Order No. 1000 compliance, FERC directed MISO to:

“...revise its evaluation process to reflect greater weighting of costs in evaluating transmission developer bids in order to better reflect the relative efficiency and cost-effectiveness of any proposed transmission solution, or explain and justify why its proposed weighting of costs in the evaluation process complies with the requirements of Order No. 1000.”

In response to the directive in Paragraph 340, MISO states that it will further justify the current weightings for cost and other attributes of the proposal.

OMS believes that cost criteria are the most important elements in the project characteristics, in that they are the key determination in whether or not a proposal is the most efficient or cost-effective. Moreover, the projected costs of a project are related to the final costs that are ultimately paid by jurisdictional ratepayers. Selecting a given weight for cost factors can be a difficult task and would have direct correlation to the meaningfulness and accuracy of the initial bids as well as mechanisms related to cost tracking and cost control.

However, OMS wonders if the 30% value given by MISO for cost factors is appropriate.⁴ This is because the weight placed on cost factors may be an unrealistic measure to use when selecting the most cost-effective developer, if costs would change significantly later. Regardless of what percentage weight is put on the initial cost estimate during the developer selection process, the OMS would urge MISO to consider the inclusion of some sort of meaningful mechanism to hold bidders closer to their initial cost estimate, such as some sort of cost tracking or cost control measures that essentially incentivizes bidders to both (1) provide initial cost estimates in bids close to the final project cost and (2) remain relatively accurate with initial cost estimates.⁵

No matter what, MISO needs to provide additional explanation for how the proposed evaluation weighting process will evaluate the meaningfulness and accuracy of initial bids. If MISO continues down the path of providing only justification for the 30% weight given to cost factors, then OMS would request that MISO provide stakeholders with the “justification” language and materials intended for compliance with FERC's decision at the next scheduled PAC meeting where this discussion will occur.

⁴ As stated in its Comments filed with the Commission in ER13-187-000 on December 10, 2012, it is the ICC's position that the 30% weighting for cost-related factors is too low and does not properly capture the importance of project efficiency and cost effectiveness as recognized by the Commission in Order 1000.

⁵ OMS is also concerned that there may be an incentive for developers to increase costs for an economically justified transmission project right up to the point where the benefit-cost ratio is met, as the benefit-cost ratio being exceeded is the only current trigger for reevaluation.

4. Upgrade Definition (Twenty Contiguous Mile Threshold Issue)

In its October 25, 2012 compliance filing, MISO proposed to set a 20 contiguous mile threshold for assessing when a new transmission proposal would be considered an upgrade to the existing system and subject to ROFR retention. Under MISO's proposal if a new transmission proposal contains both new and existing transmission line sections, when the length of the new transmission line sections are less than 20 contiguous miles, then the proposal is considered an upgrade and can retain the ROFR.

Paragraph 215 of FERC's March 22nd Order directed MISO to:

“...justify its proposal or to instead revise its Tariff to delete the 20 contiguous mile threshold for identifying when a project that contains both upgrades to existing transmission facilities and new transmission facilities would qualify as a new transmission project.”

In response to FERC's statement, MISO is proposing to further justify the 20 contiguous mile threshold. OMS believes that justification alone is not sufficient to address FERC's concerns and would suggest that MISO, instead, discuss with stakeholders revisions to the upgrade definition.

In comments to MISO's October compliance filing, OMS expressed concern over the use of the word “contiguous” in MISO's proposed threshold and provided a suggested revision:

“...Application of this standard could allow a developer to divide up a project so that a small portion of the line is an existing line, provided that the new portions were less than 20 contiguous miles...If a 20-mile-standard is a reasonable threshold, the OMS believes the standard should be set at a total of 20 miles of new transmission line, regardless of whether those miles are contiguous or not. At the least, the OMS requests that FERC modify the MISO Compliance Filing to remove or clarify the continuity element. OMS December 10 Comments at 33.

OMS commented further, suggesting that in the alternative, MISO could consider not only a mileage threshold, but also a percentage threshold:

“...an alternative threshold that would count as an upgrade: (1) any upgrade that consists of five (5) miles or less of facilities in new rights-of-way, or (2) the new rights-of-way involved in the upgrade are less than 25% of the total mileage of the line, but the new portions would never exceed a total of twenty (20) miles. This approach would maintain upgrade status for relatively small projects (any with less than 5 miles of new right-of-way) and would address the concern that 25% of a project could be large (i.e., 25% of 200 miles if 50 miles) since the 20-mile cap would apply.” OMS December 10 Comments at 33-34.

OMS would like to reiterate our earlier comments on this issue and would urge MISO to revisit this issue with stakeholders at the next PAC meeting. If however, MISO continues down the path of merely submitting a justification for the 20 contiguous mile threshold, then OMS would request that MISO provide stakeholders with the “justification” language and materials intended for compliance with FERC’s decision at the next scheduled PAC meeting. OMS would also like to ask that MISO provide specific reference to an OMS and FERC concern about the potential for gaming and how this concern would be alleviated under MISO’s current language. MISO’s justification for making sure this would not occur under the proposed threshold language would be requested.