



**ORGANIZATION OF MISO STATES, INC.  
Board of Directors Meeting  
Conference Call Minutes  
October 17, 2013**

**Approved November 14, 2013**

Eric Callisto, Vice-President of the Organization of MISO States, Inc. (OMS), called the October 17, 2013 meeting of the OMS Board of Directors to order via conference call at approximately 1:00 p.m. (CDT). The following board members or their proxies participated in the meeting:

Randy Rismiller, proxy for John Colgan, Illinois  
Beth Roads, proxy for Kari Bennett, Indiana  
Libby Jacobs, Iowa  
Linda Breathitt, Kentucky  
Eric Skrmetta, Louisiana  
Regis Gosselin, Manitoba  
Sally Talberg, Michigan  
Burl Haar, proxy for David Boyd, Minnesota  
David Carr, proxy for Brandon Presley, Mississippi  
Robert Kenney, Missouri  
Kirk Bushman, Montana  
Phil Movish, proxy for Cynthia Hedge-Morrell, City of New Orleans  
Jerry Lein, proxy for Brian Kalk, North Dakota  
Greg Rislov, proxy for Gary Hanson, South Dakota  
Richard Greffe, proxy for Ken Anderson, Texas  
Eric Callisto, Wisconsin

Absent

Arkansas

Agency members participating

Linda Wagner – Illinois  
Noel Darce, Melissa Watson, Paul Zimmering – Louisiana  
Bill Bokram, Chris Devon, Jessica Govindan – Michigan  
Hwikwon Ham – Minnesota  
Adam McKinnie – Missouri  
Sara Cardwell – North Dakota  
Don Neumeyer, Julie Urban - Wisconsin

Others on the call

Julie Mitchell, Bill Smith – OMS Staff  
Valerie Lemmie – EISPC

The directors and proxies listed above established the necessary quorum for the meeting of at least nine directors being present.

## **Approval of Minutes from the September 19 and October 10 Board Meetings**

The minutes from the September 19th and October 10th Board Meetings were accepted as distributed.

## **Treasurer's Report**

There were no questions regarding the September 2013 Treasurer's report. It was accepted as distributed.

## **Review of the October 3 Executive Committee Meeting:**

This meeting was cancelled.

## **Executive Director's Report**

A written report was distributed prior to the meeting. Bill Smith highlighted the following:

- Minimum Offer Price Rule filing;
- FERC meeting mention of OMS 10<sup>th</sup> Anniversary;
- Julie Mitchell provided an update on the planning for the OMS Annual Meeting;

## **BUSINESS**

### **1. MISO Advisory Committee**

- Eric Callisto highlighted the following items on the October 23<sup>rd</sup> AC agenda:
  - Business profile from the environmental sector;
  - PAC report on MTEP, which the PAC voted to approve;
  - Update on the nominating committee;
- Hot topic response discussion:
  - Eric Callisto briefed the board on the hot topic and introduced the response document. Bill Smith provided historical background on the MAPP footprint and discussion about document followed. The suggested edits were adopted and the response was approved by the Board.

### **2. Discussion: MISO A/C 2014 Hot Topic Recommendations**

- Eric Callisto requested that suggestions for upcoming Hot Topics be forwarded to his office, Bill Smith, or Julie Mitchell within the next few days.

### **3. MISO Planning Advisory Committee**

- A written summary was distributed prior to the meeting. Julie Urban and Jessica Govindan summarized the issues covered in the PAC meeting. Eric Callisto provided some additional insight on the upcoming TRAAP process.

### **4. Status Update: OMS Resources Assessment Project**

- Eric Callisto provided an update on the status of this project. All of the data is in and being evaluated.

### **5. Update: Entergy Integration**

- Richard Greffe provided a brief update on the integration process.

### **6. Update: Eastern Interconnection Planning Process**

- Valerie Lemmie provided highlights of the upcoming EISPC council meeting on Oct. 28 and 29 in Washington, DC and gave a verbal update on the issues EISPC is working on.

## 7. MISO Formula Rate Protocols

- Eric Callisto introduced the draft comments and led discussion on them while Randy Rismiller provided high level background on the issue and comments.

**A roll call vote to approve the amended comments was taken.**

Arkansas – not voting  
Illinois – yes  
Indiana – yes  
Iowa – yes  
Kentucky – not voting  
Louisiana – yes  
Manitoba – abstain  
Michigan – yes  
Minnesota – yes  
Mississippi – yes  
Missouri – yes  
Montana – yes  
New Orleans – yes  
North Dakota – yes  
South Dakota – yes  
Texas – yes  
Wisconsin – yes

The amended comments were approved with 14 yes, 1 abstention and 2 not voting. Voting will be held open until noon on October 18<sup>th</sup> for vote changes.

## 8. Update: Staff Comments on Market Vision Principles

- These staff comments were filed and provided as meeting materials for reference.

## Updates and Work Group Status Reports

### Ad Hoc WG

- Beth Roads asked for guidance regarding the reply brief on the Minimum Offer Price Rule. The question was raised as to whether OMS should file its only brief or a joint reply brief with others. It was suggested that OMS file its own, but leave the option open to join others' filings if appropriate.

### Demand Response WG

- No report;

### Transmission Cost Allocation WG

- No report;

### Markets and Tariffs WG

- Written report;

### Resources WG

- Written report;

### Regional Planning WG

- Written report;

### Governance and Budget

- No report;

Seams WG

- No report;

**ADJOURNMENT**

The meeting of the OMS Board of Directors meeting adjourned at 2:40 pm CDT.

# *OMS*

**Organization of MISO States  
Report of the Treasurer  
Dr. David C. Boyd, Minnesota Public Utilities Commission  
to the  
Board of Directors  
Report for September 2013**

## CASH ON HAND

The beginning balance for the Wells Fargo Business Performance Savings Account on September 1 was \$25,326.24. Interest earned for this month totaled \$1.04 and there was no other activity. The September 30, 2013 ending balance was \$25,327.28.

The beginning book balance for the Chase Bank One Checking account on September 1 was \$103,652.02. The total disbursements from the checking account for September 2013 amounted to \$40,440.94. Deposits, interest and adjustments were \$60,001.18. As of September 30, 2013, the checking account bank balance was \$133,208.49 (with 14 check payments outstanding) and the book balance was \$123,212.26.

The total savings and checking account (book) balances as of September 30, 2013 is \$148,539.54.



**TREASURER'S REPORT**  
**Organization of MISO States**  
**September 30, 2013**

<b>Wells Fargo Business Performance Savings Account</b>
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Book Balance as of 8/31/13		\$	25,326.24
9/30/2013 DEP Interest on Savings		\$	1.04
			\$ 25,327.28

<b>Chase Bank One Commercial Checking with Interest</b>
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Book Balance as of 8/31/13		\$	103,652.02
9/9/13 ACH Midwest ISO		\$	60,000.00
9/30/13 DEP Interest on checking		\$	1.18
Total Deposits			\$ 60,001.18

**Checks and Charges**

Date	Check #	Descriptions	\$
9/12/13	EFT	Paychex Invoice (Aug P/R - fee waived as	-
9/12/13	E-Pay	Chase Bank Card	4,025.14
8/13/13	4375	VOID - InfoMax (Lost check; Void & Reissue pymt chk #4461)	(49.40)
9/9/13	4459	B. Smith - Travel Exp. 8/25-8/27	21.47
9/9/13	4460	D. Johnston - Travel Exp. 8/20-8/22	1,210.50
9/9/13	4461	InfoMax - toner (reissue of lost check #4375)	49.40
9/9/13	4462	WI PSC - D. Erwin - travel exp. 8/20-8/22	533.72
9/9/13	4463	WI PSC - G. Maly - travel exp. 8/20-8/22	315.66
9/9/13	4464	WI PSC - R. Pilo - travel exp. 8/20-8/22	306.33
9/12/13	4465	100 Court Investors - Office Rent & Pkg, Op. exp chrg	1,724.03
9/12/13	4466	B. Roads - Travel Exp. 8/20-8/22	869.58
9/12/13	4467	Combined Systems Technology - cloud storage	159.00
9/12/13	4468	Diversified Management Systems (web updates )	16.25
9/12/13	4469	IN OUCC - P. Sircar - travel exp. 8/20-8/22	825.67
9/12/13	4470	IN OUCC - R. Mork - travel exp. 8/20-8/22	850.46
9/12/13	4471	InfoMax - copier repair	196.25
9/12/13	4472	K. Bennett - Travel Exp. 8/20-8/22	872.78
9/19/13	4473	A. McKinnie - Travel Exp. 8/21-8/22	669.67
9/19/13	4474	B. Smith - WiFi reimbursement	67.99
9/19/13	4475	C. Garbacz - Advance for Oct. 2013 travel exp.	850.00
9/19/13	4476	Conference Suite - Aug. conf. calls (BofD, Exec., etc.)	763.44
9/19/13	4477	Customized Energy Solutions - Aug	3,500.00
9/19/13	4478	CenturyLink - office phone, fax, DSL, LD calls	227.80
9/19/13	4479	IUB - B. Mauch - travel exp. 8/21-8/22	429.73
9/19/13	4480	IUB - L. Jacobs - travel exp. 8/21-8/22	514.42
9/19/13	4481	WI PSC - E. Callisto - travel exp. 8/21-8/22	746.74
9/26/13	4482	C. Devon - Travel Exp. 9/19-9/20	938.35
9/26/13	4483	K. Bushman - Advance for Oct. 2013 travel exp.	650.00
9/26/13	4484	W. Cecil - Advance for Oct. 2013 travel exp.	608.00
9/30/13	EFT	Paychex Payroll net pay (ck.nos. 548-550)	9,942.12
9/30/13	EFT	Paychex Payroll Taxes	5,172.23
9/30/13	551	MG Trust (401(k))	1,002.14
9/30/13	552	MG Trust (401(k))	91.64
9/30/13	553	MG Trust (401(k))	2,339.83

Total Disbursements - Checks and Charges		\$	40,440.94
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CHECKING ACCOUNT BALANCE at 9/30/13

\$ 123,212.26

**TOTAL Certificates of Deposit, Savings and Checking Account Balances as of: 9/30/13**

\$ 148,539.54

<b>CHASE CHECKING ACCOUNT RECONCILIATION</b>
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Bank Balance 9/30/13	<u>\$ 133,208.49</u>
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Less Checks Outstanding

	<u>Check #</u>			
9/9/13	4462	WI PSC	\$	533.72
9/9/13	4463	WI PSC	\$	315.66
9/9/13	4464	WI PSC	\$	306.33
9/19/13	4473	A. McKinnie	\$	669.67
9/19/13	4475	C. Garbacz	\$	850.00
9/19/13	4479	IUB	\$	429.73
9/19/13	4480	IUB	\$	514.42
9/19/13	4481	WI PSC	\$	746.74
9/26/13	4482	C. Devon	\$	938.35
9/26/13	4483	K. Bushman	\$	650.00
9/26/13	4484	W. Cecil	\$	608.00
9/30/13	551	MG Trust (401(k))	\$	1,002.14
9/30/13	552	MG Trust (401(k))	\$	91.64
9/30/13	553	MG Trust (401(k))	\$	2,339.83

Total Outstanding Checks	<u>\$ 9,996.23</u>
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Book Balance 9/30/13	<u><u>\$ 123,212.26</u></u>
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## OMS Treasurer Report for Month of September 2013

### Wells Fargo Business Performance Savings Account

Beginning Balance	25,326.24	
Interest Earned this Month	1.04	
Ending Balance		<u><u>25,327.28</u></u>

### Chase Bank One Checking Account

Beginning Balance	103,652.02	
Total Disbursements	(40,440.94)	
Deposits/Interest/Adjustments	<u>60,001.18</u>	
Ending Book Balance		<u><u>123,212.26</u></u>
Bank Balance	133,208.49	
Outstanding Deposits	0.00	
Outstanding Checks	<u>(9,996.23)</u>	
Book Balance	<u><u>123,212.26</u></u>	

**Total Savings & Checking Balances as of September 30, 2013** 148,539.54

14 checks outstanding at 9/30/13



## Organization of MISO States

100 Court Avenue, Suite 315  
Des Moines, Iowa 50309

Phone: 515-243-0742  
Fax: 515-243-0746  
[www.misostates.org](http://www.misostates.org)

## **OMS Executive Director Report October 14, 2013**

### **FERC Orders and MISO Filings**

1. On September 19, FERC accepted MISO's calculation of Cost of New Entry (CONE) values for each of the proposed Local Resource Zones. Docket ER13-2187.
2. On September 19, FERC rejected a settlement between MISO and ATSI related to ATSI's move to PJM. Dockets ER11-3279 et al.
3. On September 19, FERC issued an order on rehearing on forecasting of variable energy resources. Docket RM10-11.
4. On September 26, FERC accepted MISO's proposed addition of two Local Resource Zones in the MISO South region. Docket ER11-4081-002.
5. On September 23, MISO and PJM filed a timeline for Joint and Common Market initiatives. Docket AD12-16.
6. On September 16, MISO filed its proposal to add a fourth state regulatory seat to the Advisory Committee for a Southern regulatory member. Docket Er13-2385.

### **OMS / MISO Activity**

1. On October 10, OMS filed comments on the scope of MTEP 14.
2. Resource Adequacy survey responses have been received by MISO and are being analyzed. Responses were nearly complete.
3. On October 4, OMS staff filed comments on MISO's Market Vision.
4. On October 11, OMS filed a brief arguing that FERC should not change its earlier order and should not require a Minimum Offer Price Rule in MISO's capacity auction. FERC Docket ER11-4081-001.

## **Public Relations**

### 1. Presentations:

- Bill Smith gave an OMS update to the OPSI annual meeting on October 9.
- The Black Sea Regulatory Initiative held a workshop Oct 1-4, addressing cross-border trading issues, energy efficiency, and market monitoring principles.

### 2. Pending speaking/meeting invitations:

- Bill Smith will attend and speak at a Keystone Center conference on Advancing Energy Innovation on October 16.
- Bill Smith has been invited to speak at an EUCI conference on Transmission Expansion in the Midwest on October 17.
- On October 28-29, Bill Smith will attend the EISPC meeting.
- On October 30-31, Bill Smith will attend the Midwest Governors Association meeting.
- Bill Smith has been invited to speak at an EUCI conference on capacity markets on November 7.

## **Upcoming dates:**

- Next regular OMS Board of Directors meeting: October 17, 2013, at 1:00 pm CT
- Next OMS Executive Committee meeting: October 31, 2013, at 1:00 pm CT
- Future OMS Board meetings: November 14, December 5
- Future OMS Executive Committee meetings: November 26 (Tuesday), December 19
- Next OMS meeting with IMM: October 22 during Annual Meeting
- OMS Annual Meeting, Carmel, October 22, 9:00 – 2:30

HOT TOPIC COMMENT  
October 23, 2013

Question #1. A number of the August 2013 Sector reports on governance indicated the desire to remove the requirement from the current Transmission Owners Agreement (TOA) “that a seat of the sector be assigned to an Owner who was a member of the Mid-Continent Area Power Pool (MAPP) as of March 1, 2000.” Given that all sectors (except for the Coordinating Sector) have this MAPP requirement, should the language simply be removed from the TOA? Are there alternative recommendations?

The OMS noted that several sectors mentioned in their August Hot Topic Comments that the MAPP sector designation should be dropped and that each sector should be relied on to determine the appropriate balance of representation to the Advisory Committee. The OMS understands the basis for this suggestion. One observation the OMS has with this suggestion is prompted by the possible Basin/WAPA/Heartland integration into the Southwest Power Pool. It seems quite possible this integration, if it is ultimately consummated, would raise seams issues for MISO, particularly the MISO region in and around the MAPP footprint. MISO may want to consider this as it looks at this issue.

Question #2. Currently the TOA states the MISO Board of Directors may revise or expand the stakeholder groups as circumstances and industry structures change. *[The Hot Topic notice then cites several examples of entities whose business is not clearly captured by an existing Sector definition]* Given these examples and the ever-changing industry structure and circumstances, what direction would you provide the Board with respect to adding/modifying the sectors?

The OMS recommends that a formal MISO stakeholder process be initiated to examine the pros and cons regarding various ways to enhance MISO’s governance process through the possible creation of new sectors, or re-defining or re-aligning existing sectors, to better match entity identities and business structures. The number of sectors and the sector definitions in MISO’s governance process have not significantly changed since MISO started up, but the industry has certainly not remained static. So to ensure a robust stakeholder process, the OMS recommends an Advisory Committee review of processes to ensure that sector definitions categorize MISO

stakeholders fairly and accurately, and that there are orderly means to determine when a modification may be needed and how that would best be accomplished. In addition, the AC should consider establishing general principles for sector engagement in MISO affairs in order to ensure meaningful participation by sector members and improved governance practices.

Question #3. Each sector according to the TOA “proposes their own methods of eligibility and voting and approval by the MISO Board of Directors of such procedures is not to be unreasonably withheld” but no sector to-date has ever presented their criteria to the Board (other than the TOA for the Transmission Owners Sector). As we review and discuss modifications and enhancements to the TOA with specific regard to governance, should it be required for each sector to provide to the MISO Board of Directors their eligibility, voting and any other pertinent criteria and if so at what periodicity? And if so, please describe what appeal rights should members be afforded in the event issues arise based on Board-approved sector criteria?

The OMS believes that given the advisory-only capacity of sector representatives to the Advisory Committee, there is no need for the MISO Board to expend its valuable time on internal sector governance processes. If sector voting was binding in the MISO process there might be a need to police the sector membership choices so that a small sector, for example, couldn't be over-run by a coordinated initiative of some other parties. However, the current structure makes that less likely, and seems able to accommodate minority perspectives on issues of importance to members and to the Board.

With that said, the OMS sees no harm in sectors periodically providing an explanation of their internal processes to the Board, for its information. The OMS recommends these reports be submitted annually. However, there seems to be no need, at this point, for Board approval of such processes.



## MISO Advisory Committee

Carmel, IN

October 23, 2013

10:00 am – 3:15 pm EPT

Dial-in and WebEx information available at [www.misoenergy.org](http://www.misoenergy.org)

### Agenda

- |  |                 |       |
|--|-----------------|-------|
| 1. Administrative Items  | Gary Mathis     | 10:00 |
| a. Welcome/ Roll Call  |                 |       |
| b. Review of Agenda  |                 |       |
| c. Review of Meeting Minutes   |                 |       |
| d. Review Action Items   |                 |       |
| 2. Business Profile: Environmental Sector  | Beth Soholt     | 10:10 |
| 3. Hot Topic: Governance   |                 | 10:25 |
| Opening Remarks: Steve Kozey*  |                 |       |
| 5 Minute presentations per Sector, including any Minority Opinions as determined by the Sector following with debate- style exchange |                 |       |
| a. IPP   |                 |       |
| b. OMS   |                 |       |
| c. Coordinating Members  |                 |       |
| d. Public Consumer Advocates   |                 |       |
| e. Transmission Owners   |                 |       |
| f. Munis/Coop/TDU  |                 |       |
| g. Power Marketers   |                 |       |
| h. Eligible End Users  |                 |       |
| i. Environmental   |                 |       |
| 4. Board Election Materials Update*  | Steve Kozey     | 11:40 |
| 5. Review 2014 Preliminary Capital Budget  | Jo Biggers      | 11:45 |
| 6. 2013 Budget Update  | Jo Biggers      | 11:55 |
| 7. Finance Subcommittee Update   | Melissa Seymour | 12:05 |
| LUNCH  |                 | 12:10 |
| 8. PAC Report on MTEP*   | Bob McKee       | 1:10  |
| 9. Advisory Committee Items  | Gary Mathis     | 1:25  |
| a. Establish AC Leadership Nominating Committee*   |                 |       |
| b. Nominating Committee of BOD Update*   |                 |       |
| c. Solicit ADR Nominations   |                 |       |
| d. Review of AC Management Plan  |                 |       |

√ Denotes Potential Voting Item

\* Denotes Report is Oral



- e. December Hot Topic Discussion
- f. 2014 Hot Topic Recommendations
- g. 2014 AC meeting schedule
- h. Solicit 2014 AC Members\*
- i. November Meeting Discussion\*

10. Standing Committee/Other Stakeholder Committee Reports

a. Steering Committee	Gary Mathis	1:50
b. RECB Task Force	Dan Kline	2:00
c. Reliability Subcommittee Update	Tony Jankowski	2:10
d. Planning Advisory Committee Update	Bob McKee	2:20
e. Market Subcommittee Update	Bill SeDoris	2:30
f. Stakeholder Governance Working Group	Bill SeDoris	2:40
g. Common Issues Meeting*	Bill SeDoris	2:45
h. OMS Update	Bill Smith	2:50
i. Transmission Owners Update*	Marlene Parsley	2:55

11. New Business All 3:05

12. Recap – Issues/Assignments Alison Lane 3:15

Rotating Agenda Team November: Mike Shields  
Steve Gaarde  
Kevin Murray

√ Denotes Potential Voting Item

\* Denotes Report is Oral



## 9/18/13 PAC Summary

- **What to expect at upcoming Planning meetings:**
  - October 16<sup>th</sup> PAC:
    - Discussion of MTEP 14 inputs/assumptions
    - Motion for Generator Interconnection BPM language
    - Continued discussion on various ongoing studies
  - November PAC:
    - Potential motion on MTEP 14 scope

For meeting materials, [click here](#). Next PAC meeting 10/16.

- **Motions:**
  - Approval of draft MTEP 13 Report for AC & MISO BOD approval in December
    - Motion passed (4.6 Yes, 0 No, 2.3 Abstain).
- **Order 1000 Regional and Interregional Planning Update:**
  - MISO focused on presenting current Interregional Coordination efforts (i.e., monthly staff calls) between MISO and its neighbors to the south (SPP) and east (PJM). Please see presentation materials for more details. MISO will give PAC monthly updates on the coordination efforts.
  - MISO will begin looking at the developer selection process over the next several months, how to implement, and creation of BPM language.
  - MISO acknowledged a desire to try and sync the timing of the Joint Planning Process (e.g., IPSAC) with MTEP, so both processes run concurrent. Also, MISO understands and claims to be looking into the issue many stakeholders have with a lack of consideration for cheaper economic solutions that don't meet MEP criteria for interregional consideration.
- **MTEP 13 Update:**
  - Substantive feedback was reviewed before the PAC voted to approve the draft report for AC and MISO BOD approval in December. MISO acknowledged some concerns about the past year's inputs and ongoing discussions about the futures, saying that for MTEP 14 MISO will consider similar concerns when beginning discussions about inputs. MISO also agreed with one sector's concern about the MTEP 13 futures being too similar.
  - MISO is also suggesting that three MEP's (currently in MTEP 13 Appendix B) may be approved in June 2014 as MTEP 13 projects. There is concern amongst the OMS WG staff.
- **MTEP 14 Scope:**
  - First PAC discussion of MTEP 14 scope. Initial scope proposal includes: 1) bottom-up NERC reliability; 2) Economic planning (MISO Midwest, South, Midwest to South); 3) Interregional; and 4) Targeted Studies (Northern Area Study Phase 2, Mid-West HVDC Interconnection Study, MN RPS Investigation). Commissioner Callisto asked if MISO's SSR studies will run parallel to MTEP 14, or if the cycle would allow SSR results to come inter-cycle so that the need for OOC would be diminished. MISO will think about it, but would hope any OOC from this process would be thoroughly vetted with stakeholders throughout the various studies.
    - *Feedback requested on any additional scope inputs: October 9*
- **EIPC Update and Next Steps:**
  - Presented the EIPC schedule for the 2013-2014 work plan. October PAC should have feedback on EIPC scenarios. Expect stakeholder input on scenarios following next month's PAC meeting.

- **MISO & PJM Generator Interconnection Process Coordination BPM language:**
  - MISO presented current coordination efforts with PJM regarding Generator Interconnection (GI) planning. Earlier discussions have gone through the IPTF and JCM meetings. In short, both RTOs have agreed to set data handoff dates when the RTOs will send models and results back and forth. PJM will study MISO generators when MISO DPP cycle study list is finalized and MISO will study PJM generators with signed PJM Facility Study Agreement. BPM language will be updated to reflect these. Potential motion on BPM at October PAC.
  
- **Top Down Planning Update:**
  - Discussion about steps to be undertaken to enhance the Top Down Planning process, in light of Order 1000, MEP facility/issue grouping, and potential MVP Portfolio 2. Steps to be discussed in upcoming months: id/select transmission issues for public policy; address seams issues/opportunities; stakeholder ability to propose solutions; developer selection; and reevaluation/milestone tracking of projects. MISO will have “standalone” discussions on solicitation of solution ideas and MEP facility/issue grouping, in light of stakeholder interest in these two topics over the last several months.

# **OMS Markets and Tariffs Work Group**

## **Feedback to MISO on Market Vision Elements**

**October 4, 2013**

On September 9 2013, MISO presented its MISO Market Enhancement Strategy proposal during the Market Vision Workshop. At the end of the meeting MISO requested comments from stakeholders on the proposal. In response, the OMS Markets and Tariffs Work Group staff (MTWG) respectfully offers these comments.

The proposal's elements are grouped into a Market Vision, four Guiding Principles, and seven Focus Areas. MTWG's first impression of the proposal is that many of the elements can be read to have more than one meaning. Therefore, clarification of concepts and specificity of some of the text would be helpful. Also, in some cases, more precise words are needed to provide clarity of purpose.

### **Market Vision**

**“Foster an economically efficient electric system while maintaining/improving reliability of the bulk electric system”**

A plain reading of the phrase “economically efficient electric system” is overly broad and can include non-FERC jurisdictional components of the electric system. Clearly, FERC has jurisdiction over interstate transmission rates and wholesale energy rates, so it follows that these would be an important part of MISO's vision. However, a broadly defined “economically efficient electric system” can include local distribution facilities, retail rates, and the various types of generation capacity. Use of that phrase leaves the MTWG concerned that MISO's vision may grow beyond FERC's jurisdictional responsibilities. The MTWG suggests revising the vision to say, “Foster a set of economically efficient wholesale electric markets and transmission services while planning for future transmission needs.”

### **Guiding Principles**

- **Support an economically efficient electric system that maximizes value to customers**

In this principle, “electric system” can be read to say MISO's authority and responsibilities include generation, local distribution system facilities, and end use equipment. In order to comply with the vision expressed above, this principle should support an economically efficient wholesale electricity and ancillary services market. Other components of the electric system do not fall within the realm of this vision or MISO's responsibility. Once this principle is more narrowly defined to focus only on wholesale electricity markets, the term “customers” will apply to the market participants. Other end use customers, such as retail customers, benefit from efficient wholesale electricity markets. However, state regulators are tasked with ensuring that their value is maximized.

- **Develop transparent market prices reflective of marginal system cost, and cost allocation reflective of cost-causation and service beneficiaries**

The concept of “transparent market prices” has different meanings depending on the market definition. The MTWG interprets this principle to mean that MISO will work towards price transparency to the extent that it improves the existing markets that it runs. The MTWG notes a perception that MISO-administered centralized markets will improve price transparency for the purchase, sale, and transmission of electric energy and capacity. Centralized capacity markets are not the only means to develop transparent prices. If the market is defined to include only transmission services, day ahead and real time energy and ancillary services, the language is reasonable and appropriate. However, if the principle is meant to apply to MISO’s development of a mandatory centralized capacity market, then this element is a nexus forcing change instead of being a principle, and may go too far if it ignores the necessary interplay with state-based regulation. The MTWG opposes such an extension of this principle.

The MTWG also notes that efficiency and marginal cost pricing of an assumed homogeneous product is not the only objective that was considered in the creation of self-scheduled energy commitments, policy driven intermittent resources, and FRAP in resource adequacy. Therefore, the application of the marginal cost concept should be carefully stated to reflect the constraints. It is important to remember that regulation of markets exists because of limitations (and sometimes flaws) in markets that can undermine achievement of the public interest.

- **Enable market participants to make efficient operational and investment decisions**

MISO’s use of the word “enable” in this principle is puzzling. The MTWG interprets this principle to refer to steps MISO can take to improve transparency and stability in wholesale electricity markets. In other words, market operations should be well understood and should not change drastically over time. This reduces uncertainty and provides market participants with the foundation to make decisions based on current and projected market conditions. MISO does not have an obligation to run any particular market participants’ business or even to help market participants make their business decisions. Rather, MISO’s obligation is to effectively set a foundational structure within which competitors can efficiently run their businesses.

Some MTWG members from the new MISO southern region assume that MISO business practices and markets will not change beyond that represented to them when they elected to join MISO. Alternatively, if the term has some other meaning, does MISO suggest changing its resource adequacy construct to a centralized capacity market such as the one to which the OMS objected? How will MISO use the new resource adequacy construct to “enable” a market participant? The MTWG therefore requests that MISO explain its intent behind this principle and the meaning of the word “enable” as used there.

As an alternative, the MTWG recommends that MISO drop this guiding principle from its Market Vision. The core message of this principle, as the MTWG interprets it, is covered in the previous principle. The MTWG feels that MISO should concentrate on improving its markets and leave the investment decisions of market participants to the market participants.

- **Maintain/improve reliability within the MISO footprint and interconnection**

The MTWG supports MISO's efforts to fulfill its obligations as reliability coordinator for the MISO footprint. However, the MTWG requests MISO to explain what it means by "improve reliability." Is this in the context of NERC reliability standards, or does it include something else? Does the use of the word "improve" imply that MISO intend to establish reliability levels above that which is required by the NERC reliability standards? If so, will MISO study the costs of such a change, and the net cost benefit to ratepayers? If MISO does intend to pursue reliability in excess of that which is required by NERC, the MTWG questions whether the cost would be beneficial to ratepayers. The MTWG therefore recommends that MISO also consider as part of this principle the economic considerations such as cost consequence or net benefits to ratepayers of excess reliability above that required by the NERC reliability standards.

## **Focus Areas**

- **Enhancing Unit Commitment and Economic Dispatch**

The MTWG interprets the word "enhancing" in this focus area to mean MISO's continuing efforts to develop concepts and products such as the proposed initiatives in the September 6<sup>th</sup> Draft Focus Area document. If this interpretation is correct, the MTWG is generally supportive of this objective. The MTWG recognizes that some OMS states have concerns with MISO's use of legacy state demand response programs as a market product.

- **Maximizing the Value of Existing Transmission Infrastructure**
- **Maximizing the Reliable and Efficient Use of Existing Transmission Infrastructure**

The MTWG notes the two versions of this Focus Area from the September 6<sup>th</sup> Draft Vision document and Draft Focus Areas document. As a general rule, the MTWG supports reliable and efficient use of the current transmission infrastructure.

The MTWG prefers "reliable and efficient use" instead of "value" to clearly distinguish the MISO societal objective (a 501(c)(4) non-profit organization that is tax exempt on the basis that it exists to provide a public or societal benefit) from what value means to others, such as transmission companies' profit maximization objective. The term "maximizing the value" could be interpreted by other stakeholders as maximizing some companies' revenues. Maximizing MISO transmission owners' revenues is not an appropriate goal for MISO management and is contrary to the characteristics and functions specified for RTOs in FERC Order 2000.<sup>1</sup>

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<sup>1</sup> RM99-2-000 (December 20, 1999), Order No. 2000, 89 FERC ¶ 61,285.

- **Increasing Efficiency of Prices during Scarcity Events**

As a general rule, the MTWG supports MISO's efforts to increase efficiency of prices. The MTWG also appreciates MISO's efforts to address momentary real time shortages (that are arguably not scarcity events) via improved resource commitment and dispatch using pricing algorithms such as ELMP and ramp capability enhancement.

The MTWG notes diversity in stakeholder views regarding exactly how to increase efficiency of pricing during true scarcity events. Some OMS states, for example, have concerns with how MISO might use legacy state demand response programs as a wholesale market product.

- **Increasing Efficiency of the Energy Market Seams**

The MTWG interprets this focus area to promote increasing energy market efficiency at the seams. If MISO's intent goes beyond energy markets, then the MTWG requests a more detailed explanation from MISO as to its intent. Additionally, the MTWG encourages MISO to take into consideration congestion and coordination discussions with its neighbors in pursuing seams efficiencies.

- **Streamlining Market Processes to Reduce Transaction Costs**

As a general proposition, the MTWG supports streamlining market processes to reduce transaction costs. However, if MISO intends to include supporting a specific market expansion (such as marketizing additional products) as part of the focus areas, the MTWG would urge MISO to provide a more detailed explanation as to its intent in that regard.

- **Enhancing the Efficiency of Investments in Renewables and Supporting Infrastructure**

The MTWG recommends that this vision element be deleted in its entirety. The other vision elements provide a comprehensive set. If it is not deleted, the MTWG offers the following comments.

The MTWG is supportive of MISO's efforts to enhance the efficiency of renewables particularly improving their dispatchability and general integration in MISO's markets. However, such an objective should not be used by MISO to provide rationale for regional integrated resource planning or to justify mandatory centralized capacity markets.

Similarly, MISO does not always need to take on the responsibility and collectivize the pursuit of transmission infrastructure to enable individual load serving entities to meet their individual obligations to purchase renewables. Efficiency can often be achieved by allowing infrastructure costs to be factored into commodity and capacity contracts between willing buyers and willing sellers.

- **Enhancing the Efficiency of Investments for Resource Adequacy**

The MTWG recommends that this vision element be deleted in its entirety. The other vision elements provide a comprehensive set. If it is not deleted, the MTWG offers the following comments.

If this focus area is intended to help the states with their resource adequacy responsibility, then the MTWG appreciates the support. However, the MTWG questions whether such support necessitates a separate focus area.

The MTWG interprets this vision element as MISO working towards favoring certain types of resources over other resources, or certain competitors over other competitors, which would compromise MISO's independence and conflicts with MISO's role as an independent administrator. The MTWG recommends that MISO concentrate on getting the market right, and leave the efficiency of investments to the market participants.

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

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Midcontinent Independent System Operator, Inc.	) )	Docket No. ER13-2379-000
Midcontinent Independent System Operator, Inc., (Northern Indiana Public Service Company)	) ) )	Docket No. ER13-2376-000
Midcontinent Independent System Operator, Inc. (Vectren)	) )	Docket No. ER13-2375-000
Entergy Services, Inc.	)	Docket No. ER13-948-000
ITC Holdings Corp., <i>et al.</i>	)	Docket No. ER12-2681-002
Midwest Independent Transmission System Operator, Inc., <i>et. al.</i>	) )	Docket No. EL12-35-000

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**COMMENTS OF THE ORGANIZATION OF MISO STATES**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.211, the Organization of MISO States (“OMS”) respectfully submits the following comments in the above-captioned dockets in response to the filings submitted to the Commission by the Midcontinent Independent System Operator, Inc. (“MISO”),<sup>1</sup> the MISO Transmission Owners (“MISO TOs”), Vectren Energy Delivery of Indiana, Inc. (“Vectren”), Northern Indiana Public Service Company (“NIPSCO”), Entergy Services Inc. (“Entergy”) and the ITC Midsouth Operating Companies (“ITC Midsouth”) on September 13, 2013.

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<sup>1</sup> MISO states that it submitted the filing to comply with the May 16 Order and solely in its role as administrator of the Tariff. See, September 13 Filing, at 2.



The OMS filed a Notice of Intervention and Motion for Extension of the Date for Comment on September 20, 2013, and therefore, is a party to these proceedings.

## **I. SUMMARY OF THE OMS'S POSITION AND RECOMMENDATIONS**

The Commission has found that the current MISO formula rate protocols are not just and reasonable and do not ensure just and reasonable rates.<sup>2</sup> Accordingly, the Commission directed MISO and its transmission owners to submit revised formula rate protocols.<sup>3</sup> The proposed revisions submitted to the Commission by the filing parties on September 13 include protocols for transmission owners ("TOs") using both forward-looking projections and historical data, respectively, to derive their formula transmission charges. The OMS makes the following observations and recommendations concerning these filings.

The effective date of January 1, 2014 requested by the TOs must be rejected and the refund effective date of May 23, 2012, that was established by the Commission in the May 17 Order<sup>4</sup> and confirmed in the May 16 Order,<sup>5</sup> must be respected. The Commission has found that the formula rates that have been in use since May 23, 2012, are unjust and unreasonable. Therefore, the Commission should apply the newly approved protocols retroactively to the period between May 23, 2012 and January 1, 2014 to the extent possible.

The OMS proposes several modifications to the update/true-up timelines proposed in the companies' September 13 Filings. In particular:

- (1) The TOs should be required to provide notice of the formula rate update/true up posting and the open public meeting;

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<sup>2</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) at P 1 ("May 16 Order").

<sup>3</sup> May 16 Order, at P 1.

<sup>4</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012) at P 25 ("May 17 Order").

<sup>5</sup> May 16 Order, fn 10.

- (2) The TOs should be required to hold their informational meetings within 30 days of posting their annual update/true-up, but no earlier than 10 days following such posting;
- (3) The Commission should require a joint meeting and joint information exchange process that incorporates all of the TOs charging shared transmission project costs;
- (4) The deadline for submitting informal challenges should not close before the deadline for the TO to respond to information requests closes; and
- (5) The informational report described by the Commission in its May 16 Order should be divided into two parts: one part to be submitted to the Commission at the beginning of the update/true-up process and another to be submitted at the end of the protocol process.

The transmission owners using forward formula rate protocols do not propose a uniform practice with respect to the extent that the protocol process would apply to the cost projection phase. The OMS supports the process proposed by NIPSCO in this regard and recommends that the Commission direct the other transmission owners to modify their proposals so that the protocol process will cover the forward cost projection phase.

The Commission cannot rely entirely on Interested Parties to insure that formula rates are just and reasonable. The burden to review the annual formula rate submissions does not rest with Interested Parties alone. While interested parties do have a role in raising issues about the justness and reasonableness of the formula rate charges, the Commission has the ultimate responsibility for that determination. Accordingly, Commission Staff should be explicitly included in the term “Interested Party” and the Commission should encourage or require Commission Staff to participate in the MISO TOs’ update/true-up process.

The OMS proposes several modifications to the challenge processes included in the companies’ proposed protocols. Specifically:

- (1) The proposed protocol language unreasonably limits the scope of information that may be requested by Interested Parties and the challenges that they may make and the OMS proposes a corrective modification;
- (2) The proposed protocols contain language requiring all formal challenges to “be filed under and satisfy all requirements established under 18 C.F.R. § 385.206.” Such a requirement would conflate the filing requirements for complaints under Section 206 of the Federal Power Act and the standard for formal challenges under the formula rate protocol process, with the result being an improper shifting of the burden of proof. Accordingly, the OMS recommends that the Commission direct MISO and the TOs to delete reference to 18 C.F.R. § 385.206 as the filing requirement standard applicable to formal challenges; and
- (3) The Commission should direct MISO and the TOs to remove from their proposed protocols, any language requiring that Interested Parties first file an informal challenge with the TO before filing a formal challenge with the Commission.

The OMS provides two recommendations concerning the information exchange process:

- (1) MISO and the TOs should modify the formula rate protocols to explicitly include provisions regarding procurement methods and cost control methodologies; and
- (2) The Commission must reconcile the treatment of confidential data and the need to provide information to interested parties. In addition, the protocols should include an explicit provision permitting confidential information to be used as the basis for formal challenges.

The proposed protocols would have the formula rate charges become final after the protocol period ends for a given rate year. The OMS recommends instead, that the protocols be modified so that if an error is found in the current year’s formula rate update/true up, and that error is subsequently determined to also exist in either of the last two years’ formula rate update/true up, then that error can be corrected and trued-up for those two years as well. Such a provision would limit the review and challenge of past updates to just the input that is in continuing error, while still providing necessary ratepayer protection.

The proposed protocols contain language that implies that MISO “approves” the formula rate updates. Given that MISO’s role is essentially limited to verifying the TOs’ calculations, the Commission should direct MISO to delete or modify the language characterizing its role as “approving” TOs’ formula rate updates.

The Commission instructed that the protocols must provide for identification of any reorganization or merger transaction and explain the effect of the accounting for such transactions on inputs to the formula rate. However, the filing parties propose to limit their compliance with this Commission directive only to reorganizations or mergers that require submission of a filing under section 203 or 205 of the Federal Power Act. The OMS recommends that the Commission direct the filing parties to delete this qualification so that the protocols will address all reorganizations or mergers, not just those required to be filed under section 203 or 205 of the FPA.

## **II. BACKGROUND**

On May 17, 2012, the Commission issued an order in Docket No. EL12-35-000 that initiated an investigation of formula rate protocols under the MISO tariff, pursuant to section 206 of the Federal Power Act<sup>6</sup> to determine whether those protocols are sufficient to ensure just and reasonable rates.<sup>7</sup> In particular, the Commission instituted a paper hearing process to investigate MISO’s formula rate protocols in three areas: scope of participation, transparency and challenge procedures.<sup>8</sup> The May 17 Order also established a refund effective date “at the earliest date possible, which will be the date the notice of initiation of the investigation in Docket No. EL12-

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<sup>6</sup> 16 U.S.C. § 824e, (2006)

<sup>7</sup> May 17 Order, at P 1.

<sup>8</sup> May 17 Order, at P 8.

35-000 is published in the *Federal Register*.”<sup>9</sup> Such notice was issued in the *Federal Register* on May 23, 2012, establishing that date as the refund effective date in this case.<sup>10</sup>

For the twelve months following the May 17 Order, parties to this proceeding filed briefs, reply briefs, and other pleadings with the Commission. In particular, the OMS filed its Initial Brief on June 20, 2012 and its Reply Brief on July 12, 2012.

On May 16, 2013, the Commission issued an *Order on the Investigation of Formula Rate Protocols* finding that the MISO *pro forma* formula rate protocol and the individual company formula rate protocols are insufficient to ensure just and reasonable rates. The Commission directed MISO and the individual MISO transmission owners with formula rate protocols on file with the Commission to file revised formula rate protocols by July 15, 2013.<sup>11</sup>

On June 5, 2013, MISO and the MISO TOs submitted to the Commission a *Motion for Extension of Time and Request for Expedited Action* (“June 5 Motion”). Therein, they requested a 60-day extension of the compliance filing deadline established by the May 17 Order, to September 13, 2013. Their Motion stated that MISO and the MISO TOs request the additional time to “coordinate with each other” and express a goal of “developing uniform or reasonably consistent protocols for both historical and forward-looking formula rates.”<sup>12</sup>

On June 11, 2013, the OMS filed its *Response of the Organization of MISO States to Motion for Extension of Time and Request for Expedited Action of the MISO Transmission*

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<sup>9</sup> May 17 Order, at P 25. On May 17, 2012, the Commission also issued, in Docket No. EL12-35-000, a separate *Notice of Initiation of Proceeding and Refund Effective Date* that states that, “The refund effective date in Docket No. EL12-35-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the Federal Register.”

<sup>10</sup> May 16 Order, fn 10.

<sup>11</sup> May 16 Order, at P 1.

<sup>12</sup> June 5 Motion, at 3. It is notable that the protocols actually filed by the MISO Transmission Owners on September 13, 2013 are not “uniform,” although the Transmission Owners may argue that they are “reasonably consistent.”

*Owners and Midcontinent Independent System Operator, Inc.* (“OMS Response”). Therein, the OMS expressed no opposition to the requested extension, but recommended that “MISO and its individual transmission owners should use the additional time for meaningful consultation with their retail regulatory agencies, and with other stakeholders, to shape acceptable protocols consistent with the Commission’s order.”

On June 12, 2013, the Commission issued a *Notice of Extension of Time* extending the filing deadline to September 13, 2013. The Commission stated that its decision to grant the extension was based on consideration of the Filing Parties’ stated intent to use the extra time “to develop a compliance proposal that is most beneficial to MISO, its transmission owning members, customers and other stakeholders.”<sup>13</sup>

On September 13, 2013, the companies submitted their filings, as described below.

On September 13 and September 16, the Commission issued separate Notices setting October 4 as the comment deadline in the above-captioned proceedings.

On September 20, 2013, in the above-captioned proceedings, the OMS filed a Notice of Intervention and Motion for Extension of the Date for Comment. On September 26, 2013, the Commission issued a *Notice of Extension of Time* extending the comment deadline to October 18, 2013.

### **III. SUMMARY OF THE SEPTEMBER 13 FILINGS**

The May 16 Order found that the current MISO formula rate protocols are not just and reasonable and do not ensure just and reasonable rates. The Commission directed MISO and its transmission owners to submit revised formula rate protocols. In response to the Commission’s

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<sup>13</sup> Docket No. EL12-35, *Notice of Extension of Time*, June 12, 2013, at 1.

direction, MISO and the majority of its TOs submitted a filing in Docket No. ER13-2379-000 (“MISO/TOs Filing”) that proposes two types of protocols. The first type of protocol applies to TOs using historical data in deriving their revenue requirement, but do not have a company-specific Attachment O formula rate template. This is referred to as the *pro forma* protocol. The second type of protocol is company-specific and applies to TOs that use a forward-looking rate formula template.

In Docket No. ER13-2375-000, Vectren and MISO submitted revisions to the Vectren forward-looking formula rate protocol found in Attachment O of the MISO tariff (“Vectren Filing”).

In Docket No. ER13-2376-000, NIPSCO and MISO submitted revisions to the NIPSCO forward-looking formula rate protocol found in Attachment O of the MISO tariff (“NIPSCO Filing”).

In Docket No. ER13-948-000, Entergy submitted a letter informing the Commission of the Entergy Operating Companies’ intention to adopt the proposed *pro forma* protocol submitted by MISO and the MISO TOs in Docket Nos ER13-2379-000 for companies using a historical test-year.<sup>14</sup> (“Entergy Filing”)

In Docket No. ER12-2681-002, ITC Midsouth submitted a filing stating that the ITC Midsouth Operating Companies will utilize forward looking formula rate protocols that are essentially identical to the forward looking formula rate protocols filed by MISO and the MISO TOs in Docket No ER13-2379-000 for ITC’s existing MISO operating companies.<sup>15</sup> (“ITC Midsouth Filing”)

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<sup>14</sup> Entergy Filing, at 1.

<sup>15</sup> ITC Midsouth September 13, 2013, Filing in Docket No. ER12-2681-002, at 3.

In Docket No. EL12-35, the Michigan South Central Power Agency submitted a filing stating that, while it is one of the TOs listed in the caption of the May 16 Order, it does not have any protocols to revise at this time. Montezuma Municipal Light & Power and Tipton Municipal Utilities filed a letter committing to comply with the formula rate protocols in the MISO/TOs Filing, as they may be adopted or modified by the Commission. Finally, Muscatine Power & Water filed a letter informing the Commission that they intend to continue to utilize the MISO *pro forma* formula rate protocols as they may be adopted or modified by the Commission.

The OMS has not confirmed whether all of the transmission-owning companies having a compliance obligation pursuant to the Commission's May 16 Order have submitted protocols to comply.<sup>16</sup>

#### IV. COMMENTS

**A. The Effective Date of January 1, 2014, as Proposed by the Transmission Owners, Must Be Rejected and the Refund Effective Date of May 23, 2012, That Was Established by the Commission in the May 17 Order and Confirmed in the May 16 Order Must Be Respected.**

In the May 17 Order, the Commission recognized that in a case such as this where the Commission institutes a Section 206 investigation on its own motion, Section 206(b) of the Federal Power Act ("FPA"), requires that the Commission establish a refund effective date that is no earlier than the date of publication of the notice of the Commission's initiation of its investigation in the Federal Register, and no later than five months after the publication date.<sup>17</sup> The Commission also stated that consistent with its general policy of providing maximum protection to customers, the refund effective date in this case would be set at the earliest date possible, which was to be the date the notice of the initiation of the investigation in Docket No.

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<sup>16</sup> The OMS urges the Commission to obtain such confirmation from the appropriate party or parties.

<sup>17</sup> May 17 Order, at P 25; 16 U.S.C. § 824e(b).



EL12-35-000 is published in the Federal Register.<sup>18</sup> Footnote 10 of the May 16 Order notes the fact that the May 17 Order established a refund effective date and makes clear that the applicable refund effective date for the compliance protocols ordered by the Commission is May 23, 2012.

The MISO/TOs, NIPSCO and Vectren filings all request an effective date of January 1, 2014, for the proposed tariff changes to the MISO protocols.<sup>19</sup> The MISO/TO Filing parties contend that, given MISO's current annual formula rate update process and the time required for the information exchange and challenge procedures, it will not be possible to implement the new protocols prior to that date.<sup>20</sup> The MISO/TO Filing parties further assert that if the Commission issues an order within sixty days of the September 13 filing (e.g., by November 13, 2013), all procedural dates provided in the revised protocols for the 2012 and 2013 cycles (other than the January 31, 2014 informational filing date) would have passed and that it would be impossible to apply the procedures and deadlines in the new protocols, as proposed, prior to the annual update and true-up to occur June 1, 2014.<sup>21</sup> Furthermore, MISO/TOs state that, because the informational filing will be made after the end of the time period allowed for parties to review the updates and for TOs to respond to information and document requests, the first informational filing cannot be submitted until January 31, 2015.<sup>22</sup> The NIPSCO Filing makes a similar argument, stating that with a January 1, 2014 effective date, the formula rate protocols will be applicable for the first subsequent annual update/true-up. The Vectren Filing provides no explanation or rationale for its request to set an effective date of January 1, 2014. All of the

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<sup>18</sup> May 17 Order, at P 25.

<sup>19</sup> MISO/TOs Filing, at 19, NIPSCO Filing, at 7 and Vectren Filing, at 5.

<sup>20</sup> MISO/TOs Filing, at 20.

<sup>21</sup> MISO/TOs Filing, at 20.

<sup>22</sup> MISO/TOs Filing, at 20.

filings assert that the proposed effective date would be “consistent with” the Commission’s notice requirements in 18 C.F.R § 35.3.<sup>23</sup>

The OMS acknowledges the procedural peculiarities which prevent MISO and the MISO TOs from going back in time to take specific actions on specific dates as described in the MISO/TOs and NIPSCO Filings in support of the requested effective date of January 1, 2014. However, the Commission properly established the refund effective date of May 23, 2012, pursuant to the requirements of Section 206 of the FPA. Indeed, the purpose of these proceedings is to correct the flawed formula rate protocols that the Commission found to be unjust and unreasonable as currently constituted.<sup>24</sup> Under Section 206 of the FPA, whenever the Commission determines a rate, charge, or classification, or any rule regulation, practice or contract affecting such rate, charge or classification to be unjust and unreasonable, the Commission must fix by order the just and reasonable rate. By setting May 23, 2012 as the refund effective date, the Commission established that date as the date that the “fixed” protocols are to be effective.<sup>25</sup>

MISO and its TOs cannot ignore the refund effective date that the Commission properly established pursuant to its authority and its obligation under FPA Section 206.<sup>26</sup> Accepting the Filing Parties’ proposed effective date of January 1, 2014, without acknowledgment of the period between May 23, 2012 and December 31, 2013, would not provide “maximum protection to

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<sup>23</sup> MISO/TOs Filing, at 19, NIPSCO Filing, at 7 and Vectren Filing, at 5.

<sup>24</sup> May 16 Order, at P 1.

<sup>25</sup> See, *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,191 (2009) (“San Diego Gas Order”) (Commission explicitly rejects argument that section 206(a) only allows the Commission to order prospective changes in existing rates and tariffs as of the date an existing rate, tariff or charge is found be unjust and unreasonable, i.e. as of the date of a Refund Order. Commission finds that a “common sense application of sections 206(a) and (b) taken together, as intended by Congress, is that the Commission resets the just and reasonable rate as of the refund effective date.”)

<sup>26</sup> See, *San Diego Gas Order*, at P 21, 23 and 28.

customers” from the unjust and unreasonable formula rate protocols currently in the MISO tariff, but would effectively equate to a Commission acceptance of those unjust and unreasonable rates for the locked in period.<sup>27</sup> Accordingly, the Commission cannot, without imposing additional measures, accept the January 1, 2014 effective date requested by the Filing Parties. Rather, the Commission must acknowledge the May 23, 2012 refund effective date which was properly and correctly established in the Commission’s May 17 Order. To do otherwise would permit the charges produced and levied by the formula rate process between May 23, 2012 and December 31, 2013 to be unjust and unreasonable due to the deficiencies identified by the Commission in MISO’s formula rate protocols with respect to scope of participation, transparency and challenge procedures. The Commission cannot simply overlook that unjust and unreasonableness due to the timing and process issues cited by the filing parties.

A potential solution to this conundrum would allow Interested Parties, after the update/true-up posting for the first rate year established under the new protocols, to also have the ability to make information requests on the two immediately prior years’ formula rate updates and information as applicable to any formula rate charges billed on or after the refund effective date of May 23, 2012. Furthermore, Interested Parties should have the ability to make both Informal and Formal Challenges to the annual updates for which charges were levied under the formula rate on or after May 23, 2012. The timeline for the information exchange and challenge process for the applicable previous rate years could run concurrently with the timeline for the immediately applicable rate year.

Given that the time period between May 23, 2012 and December 31, 2013 has specifically been determined to have unjust and unreasonable formula rate protocols in effect, it

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<sup>27</sup> May 17 Order, at P 25.

is both appropriate and reasonable to apply as much of the new formula rate protocol process as possible to the formula rate updates used to produce charges billed during that period (regardless of whether such charges were levied as a result of the revenue requirement projection process for utilities using a forward-looking formula rate template or as a result of the rate update process employed by utilities using the historical formula rate template). Taking such steps would not constitute retroactive ratemaking because notice was provided by the Commission in the form of establishment of the refund effective date.<sup>28</sup> Moreover, this solution would give meaning to the Commission's establishment of the refund effective date and would provide customers with some protection, while acknowledging that the Commission's goal of "maximum protection to customers" may not be possible for the locked in period. On the other hand, to ignore the Commission's properly established refund effective date and to set January 1, 2014 as the effective date for the new protocols would not provide customers any protection with respect to transmission charges levied under the formula rates between the period of May 23, 2012 and December 31, 2013.

**B. Recommended Modifications to the Proposed Protocol Process Timeline.**

**1. The TOs or MISO Should Be Required to Provide Notice of the Formula Rate Update/True Up Posting and the Open Public Meeting.**

In its Initial Brief, the OMS explained that "Notice is a fundamental element and prerequisite to the opportunity for interested parties to participate in the formula rate update process."<sup>29</sup> The Commission identifies "notice" as the first, and most basic, element of the "reason for including formula rate protocols in formula rates for transmission service."<sup>30</sup>

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<sup>28</sup> See, San Diego Gas Order, at P 28 and 33.

<sup>29</sup> OMS Initial Brief in Docket No. EL13-35, at 10.

<sup>30</sup> May 17 Order, at P 10.

Yet, the proposed protocols make no provision for notifying potentially interested parties of the formula rate update/true up postings. Rather, the TOs propose in the protocol language only to “cause such information to be posted on the MISO website and OASIS.”<sup>31</sup>

With respect to the transmission owners’ annual rate update meeting, the proposed protocol states only that “The Transmission Owner shall provide notice on MISO’s internet website and OASIS of the time, date, and location of the Annual Meeting.”<sup>32</sup>

In its Initial Brief, the OMS stated that “after-the-fact posting of transmission rates on the MISO OASIS website does not constitute adequate notice.”<sup>33</sup>

The OMS recommends that the Commission direct MISO and the TOs to amend their proposed protocols to provide notice to potentially interested parties. In particular, the OMS recommends that notice of an annual formula rate update/true up be provided within ten days of such posting and notice of the annual open meeting provided no less than seven days prior to such meeting. Mere posting does not constitute notice. Consequently, the OMS recommends that the Commission require MISO to provide electronic notice of each transmission owner’s formula rate update/true-up.<sup>34</sup> MISO proposes to define “Interested Party” as including, but not limited to, “customers under the Tariff, state utility regulatory commissions, OMS, consumer advocacy agencies, and state attorneys general.”<sup>35</sup> Accordingly, the OMS recommends that each of those parties be electronically served notice of formula rate update/true ups and annual meetings. In addition, any other party attending a transmission owner’s annual meeting or any

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<sup>31</sup> MISO/TOs Filing, Exhibit I Section II.B.

<sup>32</sup> MISO/TOs Filing, Attachment O/Formula Rate Protocols, at Section II.E.

<sup>33</sup> OMS Initial Brief in Docket No. EL13-35, at fn 36.

<sup>34</sup> The OMS notes that MISO routinely gives electronic notice of each filing it submits to the Commission to all “Tariff Customers, MISO Members, Member Representatives of Transmission Owners and Non-Transmission Owners, the MISO Advisory Committee participants, as well as state commissions within the Region.”

<sup>35</sup> MISO/TOs Filing, Attachment O/Formula Rate Protocols, at Section II.E.

other party asserting status as an Interested Party should be added to the service list for subsequent notices.<sup>36</sup>

**2. The TOs Should be Required to Hold their Informational Meetings within 30 Days of Posting their Annual Update/True-up, But No Earlier than 10 Days Following Such Posting.**

The OMS is concerned that under several of the proposed protocols, there is too much time between the dates that the annual update/true-up must be posted and when the TOs must hold their informational meetings. For example, pursuant to the proposed MISO/TOs timeline, the TOs must post their update/true-up by June 1 of each year, but are not required to hold their informational meeting until October 1.<sup>37</sup> Under that timeline, Interested Parties could be required to wait, at the TO's discretion, up to 120 days to clarify their understanding of the contents of the TO's annual update/true-up and to discuss at an open meeting any concerns that they may have regarding a TO's annual update/true-up. This 120 day lag is a problem because, while the proposed timeline does allow Interested Parties to submit information requests to the TOs after the update/true-up is posted, Interested Parties may not fully understand the update/true-up until after the informational meeting and then may have new or additional questions or concerns.

If a TO waits until October 1 to hold its informational meeting, the period for Interested Parties to seek information necessary to allow them to understand or challenge the update/true-up would effectively be dramatically shortened. The information exchange period ends on

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<sup>36</sup> The Commission has approved such notice requirements in other formula rate protocols. For example, Attachment H-14A of PJM's tariff is the formula rate protocol for the AEP East Companies. Section 1.b. of Attachment H-14A requires the company to give "notice to Interested Parties that an open stakeholder meeting will be held" (Section 1.f(i)) and requires the company to "send an e-mail or other electronic communication to all Interested Parties that have previously requested such notification through procedures to be established by AEP that informs the recipient that the Annual Update is available . . .".

<sup>37</sup> MISO/TOs Filing, at 4.

October 1 - the latest date that a TO may hold its open informational meeting. As such, a TO could hold its informational meeting on October 1 and not be obligated to provide any additional information, should questions arise during the open meeting, because the information exchange period will have officially ended. If an Interested Party is able to submit an information request between when the open meeting concludes and before the information exchange period ends, the proposed timeline allows up to 15 days for the TOs to provide the requested information to an Interested Party. Assuming the TO takes the full 15 days to provide the requested information, the timeline would leave Interested Parties with only approximately two weeks to process the information and determine if an informal challenge is warranted; and sixty days to craft a formal challenge to submit to the Commission. Thus, by delaying the holding of the open meeting, a TO could dramatically affect an Interested Party's rights, not only with respect to information requests, but the subsequent informal and formal challenge processes as well.

In addition, the proposed information exchange protocols in the MISO/TOs Filing and the NIPSCO Filing require that the parties making informational requests "make a good faith effort to submit consolidated sets of information and document requests that limit the number and overlap of questions to the maximum extent practicable."<sup>38</sup> While such a provision will simplify the TO's task of providing the information to Interested Parties, it places an unrealistic burden on Interested Parties, given the number of transmission customers and other potentially interested parties for each TO. As a practical matter, it is highly unlikely that individual Interested Parties will know any of the following information necessary to coordinate information requests before the Annual Meeting:

- (1) the identity of all other Interested Parties;

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<sup>38</sup> Section III.A of Exhibit I and Exhibit II of the MISO/TOs Filing and Section IV.E of the NIPSCO Filing.

- (2) if other Interested Parties share any of their concerns; or
- (3) which, if any, other Interested Parties share their same concerns.

The TOs' expectation that Interested Parties coordinate information requests becomes even more impractical given that the number of potentially Interested Parties will increase exponentially when the costs of a project that is shared across the MISO footprint are evaluated. Finally, and to the main point of this section, requiring Interested Parties to consolidate their data requests becomes even more unworkable the closer the TO holds its informational meeting to the end of the informational exchange period.

For all these reasons, the deadline for TOs to hold their open informational meetings must not be too close to the end of the information exchange period.

The OMS is also concerned that a TO not schedule the open meeting too soon after the formula rate update/true up is posted. If interested parties do not have sufficient time to review the posted materials, they will not be able to ask informed questions at the open meeting.

Given these two constraints, the OMS recommends that the Commission require the TOs to hold their informational meetings no later than 30 days after posting their update/true-up and no earlier than 10 days of such posting. Holding the informational meeting within that 20 day period will provide sufficient time for Interested Parties to analyze the update/true-up, formulate questions, meet with the TO to discuss the update/true-up and any concerns that they may have and then spend the rest of the information exchange period exchanging information with the TO to address any remaining concerns that they may have with the update/true-up. As explained above, holding the open meeting earlier in the process would not provide sufficient time for review of the posted materials and allowing TOs to wait until closer to the end of the information exchange period to hold their informational meeting unfairly shortens the exploratory period for



Interested Parties. A lack of information flow between the TO and Interested Parties will likely result in an increase in the number of informal challenges with the TO and complaints that ultimately end up before the Commission. Accordingly, the Commission should require all the TOs using formula rates to hold their informational meetings within 30 days of posting their update/true-up, but no earlier than 10 days of such posting.<sup>39</sup>

Finally, it is unrealistic to expect Interested Parties to coordinate their information requests. As such, the OMS recommends that the Commission delete the provisions obligating Interested Parties to coordinate their information requests, particularly if the Commission chooses not to adopt the OMS's recommendation that TOs hold their public meeting within thirty days of the posting date.

### **3. The Commission Should Require a Joint Meeting and Joint Information Exchange Process that Incorporates all of the TOs Charging Shared Transmission Project Costs.**

MISO's transmission cost allocation rules feature transmission cost sharing for Multi-value projects ("MVP"), market efficiency projects ("MEP"), and some baseline reliability projects (BRP"). In particular, one hundred percent of MVP costs are shared regionally (including on energy imports other than those to the PJM region) and the costs of MEPs of 345 kV and above are 20 percent regionally shared, with the remainder shared amongst floating sub-regions. BRP cost sharing is dependent on the date of project approval, voltage level and other

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<sup>39</sup> There is precedent for the time period proposed by OMS for the TO's annual informational meeting. For example, Attachment H-14A of PJM's tariff is the formula rate protocol for the AEP East Companies. Attachment H-14A requires AEP to hold its stakeholder meeting "no earlier than ten (10) business days from the date of posting of the Annual Update and no later than June 25 [30 days after the date of posting]." (Section 1.f(i)). Similarly, Commonwealth Edison's protocol, Attachment H-13B of PJM's tariff requires that "The Annual Meeting shall take place no sooner than ten (10) days after posting of the notice and no later than thirty (30) days after the Publication Date." (Section 1.e)

characteristics. So, while investments in these projects are undertaken by particular transmission owners, at least some of their costs are borne broadly.

Traditionally, prior to transmission cost sharing, a transmission customer concerned about transmission costs could focus on its local transmission owning utility, and ignore all others. With regional cost sharing, assuring the reasonableness of each transmission owner's costs for shared cost projects is important to each transmission customer in the MISO region and, to the extent they bear MVP costs, customers in other regions.

Under these circumstances, the OMS recommends that a joint open informational meeting be held each year where all transmission owners charging shared project costs could explain to all interested parties how these costs are reflected in the formula rate update/true up. Such a joint and centralized meeting would streamline the review that an interested customer would otherwise have to undertake by separately participating in each MISO TO's annual meeting.

Adopting this recommendation for a joint centralized annual open meeting to review the charges (including prudence) for all cost shared transmission projects would not otherwise affect the material that would be covered in each individual TO's open meeting.<sup>40</sup> Similarly, the information exchange and challenge process could proceed under the rules established for each TO in the Attachment O protocol. For ease of administration, it may be convenient for MISO to host or otherwise facilitate such a joint centralized meeting.

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<sup>40</sup> Regardless of whether or not the Commission adopts the OMS's recommendation for a centralized open meeting for shared transmission project costs, but especially if the Commission does not adopt such recommendation, the OMS urges the Commission to require each TO to enable teleconference call-in capability for its annual meeting.

**4. The Deadline for Submitting Informal Challenges Should Not Close Before the Deadline for the TO to Respond to Information Requests Closes.**

Section III.B of the MISO/TOs proposal requires the TO to respond to all information and document requests by December 1. At the same time, Section IV.A. requires Interested Parties to notify the TO by November 1, in writing, of any specific Informal Challenges. On November 1, the window of opportunity closes for an Interested Party to submit an Informal Challenge. The OMS is concerned about that date because if information is withheld by the TO until after that date, the Interested Party could have its informal challenge rights foreclosed. This concern is particularly acute if the Commission accepts the TOs' proposal to forbid parties from filing a formal challenge unless it is preceded by an informal challenge (discussed in Section IV.E.3 below). For these reasons, the OMS recommends that the Commission require the TOs to keep the window for submitting informal challenges open until at least two weeks after the TO has responded to all information requests.

**5. The Informational Report Described by the Commission in its May 16 Order Should be Divided into Two Parts: One to be Submitted to the Commission at the Beginning of the Rate Update/True-up Process and Another to be Submitted at the End of the Protocol Process.**

With respect to informational filings, the Commission's May 16 Order states:

[W]e will require that MISO's formula rate protocols include a requirement that transmission owners make annual informational filings of their formula rate updates with the Commission. [Footnote]<sup>41</sup>

This informational filing must be made following the time period allowed for parties to review the updates and for transmission owners to respond to

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<sup>41</sup> Except as provided otherwise in the utilities' tariffs or protocols, the Commission will consider these informational filings to be just that, informational. Challenges to the implementation of the formula rates or to the formula rates themselves should be made through the challenge procedures discussed below or in a separate complaint, as appropriate.

information and document requests, and must include any corrections or adjustments made during that period.<sup>42</sup>

In compliance with this directive, the TOs propose to submit their informational filings to the Commission on January 31, following the completion of the protocol process for a particular year.

The OMS notes the Commission's statement that "staff reviews informational filings that the Commission requires be made"<sup>43</sup> and the Commission's statement that the annual informational filings will promote broad participation by interested parties, "including the Commission."<sup>44</sup> Nevertheless, the OMS is concerned that, if the notice to the Commission Staff about a TO's formula rate update/true up comes only at the end of the protocol process when the TO provides its informational report, then the Commission Staff review that the Commission has promised, and the Staff participation that the Commission has suggested, may not be as robust or as informed as it otherwise would be if Commission Staff participated in the protocol process for the TO's formula rate update/true up concurrent with the other interested parties.

Consequently, the OMS recommends that the informational report described by the Commission in its May 16 Order be divided into two parts: one to be submitted to the Commission at the beginning of the TO's formula rate update/true-up process and another to be submitted at the end of the protocol process. The report submitted at the beginning of the process would include the five items enumerated by the Commission in Paragraph 92 of the May 16 Order, as well as any other information reasonably necessary for the Commission Staff to

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<sup>42</sup> May 16 Order, at P 92, emphasis added.

<sup>43</sup> May 16 Order, at P 88.

<sup>44</sup> May 16 Order, at fn 56.

understand the TO's formula rate update/true up.<sup>45</sup> The report submitted at the end of the protocol process would cover the other items discussed by the Commission, namely, any corrections or adjustments made during that protocol period and notes regarding any aspects of the formula rate or its inputs that are the subject of an ongoing dispute under the challenge procedures.<sup>46</sup>

Dividing the informational filing report in this way would be most useful to interested parties and would provide information about rate update/true-up postings to the Commission Staff in a timely way to enable their participation as well as providing the after-the-fact information the Commission needs to assess whether the protocol process for that TO for that rate year has worked. At the same time, it poses no additional burden (other than an additional electronic filing) to the TO, because the TO would be required to submit the same information to the Commission in any event.

**C. The Commission Should Reject the TOs' Proposal to Exclude the Forward Formula Rate Projection Process from the Protocol Process and the Commission Should Direct MISO and the TOs to Amend their Filings Accordingly.<sup>47</sup>**

In its Initial Brief, the OMS expressed concern regarding the protocol process for rate projections by TOs using a forward formula rate process. In particular, the OMS stated:

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<sup>45</sup> OMS originally made this recommendation in its Initial Brief at 17 stating, "The OMS recommends that each transmission owner be required to file its annual rate update proposal as an informational filing with the Commission."

<sup>46</sup> There is precedent for the two-stage informational filing process that OMS is recommending. For example, Attachment H-14A of PJM's tariff is the formula rate protocol for the AEP East Companies. Attachment H-14A requires AEP to submit its informational filing to the Commission on the date that the rate update is posted. (Section 1.b). In addition, if any changes need to be made to the annual update, as a result of the protocol process or otherwise, AEP will "file a correction to the Annual Update with the FERC as an amended informational filing describing the change(s) and the cost impact, and provide a copy of the amended informational filing to PJM for prompt posting by PJM." (Section 4.a). The OMS recommends that the Commission adopt a similar policy for the MISO TOs.

<sup>47</sup> [The Public Service Commission of Wisconsin does not join in this section of the Comments.](#)

Another concern is the just and reasonableness of the projections used in forward-looking formula rates. These projections are used as inputs, along with the FERC Form 1 data, and the forward-looking formula rate to establish the transmission charge. Transmission owners utilizing forward-looking formula rates only need inform interested parties what the projected inputs will be during an informational meeting and post them on their OASIS website. There is no provision for challenge, or involvement in adjustments, to projections by any other interested parties. Without any opportunity for interested parties to challenge or have input during the development of these forward-looking projections, the resultant forward-looking formula rate charges cannot be considered just and reasonable. [footnote omitted] For those reasons, forward-looking formula rate protocols should provide an opportunity for interested parties to challenge, or be included in the development of the transmission owners' projections that are used as inputs into forward-looking formula rates.<sup>48</sup>

In its May 16 Order the Commission noted the OMS's concern<sup>49</sup> as well as a transmission customer's similar statement of concern regarding TOs' forward cost projections.<sup>50</sup>

The customer explained that

interested parties have no means of testing whether such projections and the resultant charges are just and reasonable unless the Commission requires discovery procedures and challenge rights to be put in place. Absent such a requirement, inaccurate projections may force transmission customers to serve as an unwilling source of working capital.<sup>51</sup>

Despite these expressions of concern noted by the Commission, the MISO TOs that use a forward formula rate approach have not proposed a uniform practice regarding application of the protocol process to the annual rate projections.

The MISO/TO Filing explains their protocol proposal with respect to forward formula rate projections follows:

while the protocols filed here to comply with the May 16 Order address the calculation of the actual net revenue requirement and True-Up Adjustment for Transmission Owners that use a forward-looking Attachment O, the Filing Parties

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<sup>48</sup> OMS Initial Brief in Docket No. EL12-35, at 13-14.

<sup>49</sup> May 16 Order, at P 54.

<sup>50</sup> May 16 Order, at P 47.

<sup>51</sup> May 16 Order, at P 47.

are not submitting any substantive revisions to the provisions of these company-specific Attachment Os that relate to the derivation of the Transmission Owner's projected net revenue requirement. [footnote omitted] Individual Transmission Owners' existing Commission-approved protocols for the development of their projected net revenue requirement remain largely unchanged. Instead, the newly filed protocols apply to the determination of the actual net revenue requirement and True-Up Adjustment.<sup>52</sup>

Review of the various companies' proposed treatment of forward formula rate projections under the protocols reveals these differences. For example, MidAmerican's Attachment O formula rate protocol process excludes forward formula rate projections entirely. In contrast, the Ameren transmission companies (ATXI and AIC), as well as the ITC Holdings Corporation companies (ITC and METC), permit AIC, ATXI, ITC, and METC to explain and clarify its projected net revenue requirement and provide interested parties with the opportunity to seek information and clarifications from AIC, ATXI, ITC, and METC regarding the projected net revenue requirement. But, ATXI, AIC, ITC, and METC exclude all references to formula rate projections in the "Information Exchange Procedures" and "Challenge Procedures" sections of their proposed Attachment O protocols. Finally, forward formula rate projections are included in, and covered by, each of the sections of NIPSCO's Attachment O protocols dealing with open meetings, information exchange procedures and challenge procedures.

MISO and the MISO TOs justify their proposal to exclude forward formula rate projections from the protocol process. MISO and the MISO TOs provide the following rationale in an attempt to defend their position with respect to excluding forward formula rate projections from the protocols:

As the actual net revenue requirement after the Annual True-Up is based on actual data from the Applicable Forms, [footnote omitted] instead of projected data, and

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<sup>52</sup> MISO/TOs Filing, at 7-8, emphasis added.

represents the total costs that are ultimately collected from transmission customers, it is just and reasonable to apply the new protocols only to the actual net revenue requirement and True-Up Adjustment. Applying the new protocols to the calculations based on actual data will help reduce the burden on transmission customers, Transmission Owners, and the Commission, by avoiding disputes over projected costs or cost support that is only preliminary in nature, when the costs and rate impact may turn out to be different once the actual net revenue requirement and Annual True-Up is calculated.

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Additionally, transmission customers and Transmission Owners will continue to be protected because to the extent that charges resulting from the projected net revenue requirement result in either an over- or undercollection of the Transmission Owner's actual net revenue requirement, that difference will be reflected in a later year's net revenue requirement with the appropriate interest.<sup>53</sup>

The Commission should reject these rationalizations for excluding the forward cost projection process from coverage of the protocols. As the OMS pointed out in its Initial Brief, "the accuracy of the projection is important so as to minimize inter-generational inequity issues because the charges are based on the projection for the period of time until the projection is trued up."<sup>54</sup>

The concern with the lack of transparency in projected rate inputs goes beyond potential intergenerational inequities. There is an inherent incentive for TOs to inflate projected rate inputs. For example, a TO could inflate projections to increase cash flow and then adjust expenditures during the course of the year to avoid the over collection penalty. In short, as long as overall expenditures for the year reconcile, there would be no over-recovery at the time of true-up. As such, the interest assessed on over-recoveries in the true-up never becomes an issue and is therefore inadequate to curb the incentive to inflate projected rate inputs. A lack of transparency in projected rate inputs makes it difficult for federal and state regulators and other

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<sup>53</sup> MISO/TOs Filing, at 7-8, emphasis added.

<sup>54</sup> OMS Initial Brief in Docket No. EL12-35, at fn 45.



stakeholders to compare projections to actual expenditures in a meaningful way. This is a greater concern in jurisdictions that are not entirely vertically integrated. In these instances, O&M expenses are only reviewed in Attachment O through the existing formula rate process, which the Commission has determined does not result in just and reasonable rates. Any operational expenses and capital upgrades for TOs under Commission jurisdiction face little to no direct review by federal or state regulators. For example, the Michigan PSC has approved \$68 million in capital costs as part of state certificate of public convenience and necessity proceedings out of approximately \$2 billion of capital investments since 2003 in transmission included in charges to Michigan ratepayers. The MISO/TOs' reference to charging the "appropriate" interest rate on overcharges and undercharges, respectively, does not address these concerns. Furthermore, while it is important to try to establish interest rates for overcharges and undercharges so as to maximize utilities' incentives to accurately project costs, sole reliance on such mechanisms as a method to protect ratepayers would be misplaced. As the OMS explained in its Initial Brief, "Without any opportunity for interested parties to challenge or have input during the development of these forward-looking projections, the resultant forward-looking formula rate charges cannot be considered just and reasonable."<sup>55</sup>

The TOs' purported concern about an alleged additional burden being placed on transmission customers and the Commission if the TOs' forward projections are made subject to the formula rate protocol process rings hollow. There would be no additional burden. Nor would the TOs shoulder any additional jeopardy. Indeed, application of the protocol process to the TO's forward projections would provide an additional opportunity for the TO to consider

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<sup>55</sup> OMS Initial Brief in Docket No. EL12-35, at 13-14.

potential concerns of interested parties (particularly as to prudence) before subsequently proceeding to incur the expected costs.

For those reasons, the OMS recommends that the Commission direct MISO and all TOs using the forward formula rate process to revise their Attachment O protocols to make the formula rate projection step subject to all aspects of the protocol process: posting, open meeting, information exchange, challenge process, and informational filing.<sup>56</sup> The protocol process proposed by NIPSCO in this regard represents a good approach from which to start.

**D. Commission Staff Should Explicitly Be Included in the Term “Interested Party” and the Commission Should Encourage or Require the Commission Staff to Participate in the MISO TOs’ Update/True-Up Process.**

While the update/true-up process will allow Interested Parties to identify errors and questionable inputs in the TOs’ formula rates, the burden to review the annual formula rate submissions does not rest with Interested Parties alone. While interested parties do play a role in raising issues about the justness and reasonableness of the formula rate charges, the Commission has the ultimate responsibility for that determination. As such, the Commission cannot rely entirely on interested parties to fulfill the Commission’s obligation of ensuring that the charges resulting from the formula rates are just and reasonable. Accordingly, the OMS recommends that Commission Staff be explicitly included in the term “Interested Party” and that the Commission encourage or require Commission Staff to participate in the MISO TOs’ update/true-up process.

In its Initial Brief, the OMS explained,

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<sup>56</sup> There is precedent for requiring the MISO TOs to revise their proposed protocol to cover the forward cost projections as well as the true-up process. For example, Attachment H-14A of PJM’s tariff is the formula rate protocol for the AEP East Companies. Attachment H-14A provides that AEP’s Annual Review Procedures will cover “whether inputs to the true-up and projected ATRR are correct, prudent, and otherwise appropriate cost and revenue credits.” (Section 2.b).

Comprehensive and transparent rate protocols are a necessary, but not necessarily sufficient condition for ensuring the justness and reasonableness of formula rates. However, even if transparent and comprehensive formula rate protocols are in place, the Commission still has an obligation under the Federal Power Act to ensure that the charges flowing from the formula rate are, and remain, just and reasonable. That Commission obligation cannot be fulfilled merely by ensuring that interested parties have the opportunity to protect their individual interests by utilizing the formula rate protocol procedures. In addition to ensuring that comprehensive and transparent formula rate protocols are present in MISO's tariff, the Commission must take additional steps to independently ensure the continued just and reasonableness of charges imposed on transmission customers in the formula rate context.<sup>57</sup>

As the OMS pointed out in its Initial Brief, Commission Staff participation in the update/true-up processes of each of the MISO TOs could help the Commission fulfill its obligation to ensure that the charges flowing from the formula rate are, and remain, just and reasonable.<sup>58</sup>

#### **E. Recommended Modifications to the Proposed Challenge Process.**

##### **1. The Protocols Should Be Modified So That They Do Not Unreasonably Limit the Scope of Information Requests and Challenges That Interested Parties May Make.**

The proposed protocols arbitrarily limit the scope of information requested by Interested Parties and challenges that may be made by Interested Parties. For example, in the MISO/TOs Filing, Section III of both Exhibit I and Exhibit II details the information exchange procedures between the TO and Interested Parties. Section IV of both Exhibit I and Exhibit II details the challenge procedures. Likewise, in NIPSCO Filing, Section V of the proposed protocols details the challenge procedures. Both filings state:

Such information and document requests shall be limited to what is necessary to determine:

- (1) the extent or effect of a Material Accounting Change;

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<sup>57</sup> OMS Initial Brief in Docket No. EL13-35, at 21.

<sup>58</sup> OMS Initial Brief in Docket No. EL13-35, at 21.

- (2) whether the Annual Update fails to include data properly recorded in accordance with these protocols;
- (3) the proper application of the formula rate and procedures in these protocols;
- (4) the accuracy of data and consistency with the formula rate of the charges shown in the Annual Update;
- (5) the prudence of actual costs and expenditures; and
- (6) the effect of any change to the underlying Uniform System of accounts or the Applicable Form.  
(underlining added)

In the MISO/TOs Filing, these same six criteria are detailed in Section IV.D, which is prefaced with the statement that “Informal and Formal Challenges shall be limited to...”.

TOs should not be allowed to unreasonably limit the scope of information sought by Interested Parties and the basis on which an informal or formal challenge can be made by an Interested Party. As the Commission noted in the May 16 Order, TOs frequently possess the information necessary for an Interested Party to succeed in a complaint before the Commission, but retain discretion in providing that information and that such formal challenge procedures will ensure that a transmission owner’s possession of this information does not become, in practice, a means of including inappropriate costs in its annual update and collecting unjustified charges.<sup>59</sup> In order for informal and formal challenge procedures to be effective, Interested Parties will need to be granted significant leeway in regards to the information they seek from the TOs. Furthermore, given the interests of the TOs in this situation, the determination of whether or not an Interested Party’s concern is unreasonable or outside the scope of the update/true-up, should be determined by the Commission, not the TO.

If the TOs’ intent with the limiting language is to address concerns that Interested Parties are going to attempt to undermine the rate formula itself<sup>60</sup> through excessive data requests

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<sup>59</sup> May 16 Order, at P 120.

<sup>60</sup> As contrasted with the charges that flow from such formula.

outside the scope of the formula rate update/true-up, the OMS notes Section IV. K of both Exhibit I and Exhibit II in the MISO/TOs filing, which already provides sufficient protection against such concerns. Specifically, Section IV.K states:

No party shall seek to modify the formula rate under the Challenge Procedures set forth in these protocols and the Annual Update shall not be subject to challenge by anyone for the purpose of modifying the formula rate. Any modifications to the formula rate will require, as applicable, a Federal Power Act section 205 or section 206 filing.

The OMS acknowledges the Commission's practice and precedent that it is the formula itself that constitutes the rate.<sup>61</sup> The OMS's focus in these comments remains on the protocols by which the formula rate charges are developed and on those charges.

For all of the reasons discussed above, the Commission should require the removal from the proposed protocols of the language unreasonably limiting information requests and informal/formal challenges. Specifically, the OMS recommends that the phrase, "Such information and document requests shall be limited to what is necessary to determine" be changed to "Such information and document requests may include, but shall not be limited to the following". Similarly, the OMS recommends that the phrase, "Informal and Formal Challenges shall be limited to" be changed to "Informal and Formal Challenges may include, but shall not be limited to".

**2. The Commission Must Reject the Filing Parties' Proposal to Require All Formal Challenges to "be filed under and satisfy all requirements established under 18 C.F.R. § 385.206."**

In addition to the requirement that the protocols must include an informal challenge procedure, the Commission has determined that interested parties must be permitted to raise a formal challenge with the Commission. The Commission has made clear that, in such formal

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<sup>61</sup> May 16 Order, at P 120

challenges, the transmission owner - as the utility proposing to charge the updated or true-up rate - must bear the burden of demonstrating the correctness of its update/ true-up.<sup>62</sup>

Specifically, the Commission stated, “the transmission owner will bear the burden of demonstrating the justness and reasonableness of the implementation of its formula rate in the context of a formal challenge.”<sup>63</sup> This is distinctly different from the burden in an FPA Section 206 complaint case, where the complainant would bear the burden of proof to show that the update/true-up is unjust and unreasonable.<sup>64</sup>

Similarly, the Commission emphasized in its May 16 Order that interested parties must continue to have the option to make a formal challenge separate and distinct from a Section 206 complaint,<sup>65</sup> making clear that the processes, rules and standards for each are to be distinctly different.

However, the MISO/TOs and NIPSCO protocols each include provisions that require formal challenges to satisfy all requirements of the section of the Code of Federal Regulations (18 C.F.R. § 385.206) applicable to Federal Power Act Section 206 complaint cases.

Specifically, Section IV.B of both Exhibit I and Exhibit II in the MISO/TOs Filing states:

Formal Challenges shall be filed pursuant to these protocols and shall be filed under and satisfy all requirements established by 18 C.F.R. § 385.206.<sup>66</sup>

Likewise, Section 4.B. of the NIPSCO Filing states:

Formal Challenges shall be filed pursuant to these protocols and shall be filed under and satisfy all requirements established by 18 C.F.R. § 385.206.<sup>67</sup>

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<sup>62</sup> May 16 Order, P 120.

<sup>63</sup> May 16 Order, P 120. The Commission has made clear that “any challenge to the projected costs, True-Up Adjustment or Material Accounting Change would not require the complainant to bear the ultimate burden of proof.” See, *e.g.*, American Electric Power Service Corporation, 124 FERC ¶ 61,306 (2008), at P 36.

<sup>64</sup> 18 C.F.R. § 385.206.

<sup>65</sup> May 16 Order, at P 119 and 120.

<sup>66</sup> Emphasis added.

The application of the Federal rule establishing filing requirements for FPA Section 206 complaints to formal challenges under the formula rate protocol includes requirements of Section 206 complaints that are inapplicable to formal challenges. In particular, the application of such rules would shift the burden of proof in formal challenges under the formula rate protocol, in contravention to the Commission's rulings regarding burden of proof in formal challenges, as discussed in the May 16 Order.<sup>68</sup>

For example, the title of 18 C.F.R. § 385.206 is "Complaints" and Paragraphs (b)(1) and (b)(2) of 18 C.F.R. § 385.206 require the "complainant" to:

- (1) Clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements; and
- (2) Explain how the action or inaction violates applicable statutory standards or regulatory requirements.

First, formal challenges under the formula rate protocol cannot strictly be called "complaints," rather they are, more appropriately, "challenges." More importantly, Paragraphs (b)(1) and (b)(2) of 18 C.F.R. § 385.206 would improperly impose the burden of proof on the challenger.

Imposing the regulations and filing requirements for FPA Section 206 complaints on challengers under the formula rate protocols would conflate Section 206 complaints with formal challenges under the formula rate protocol in violation of the Commission's practice and precedent. Doing so would eliminate any distinction between the processes, rules and standards

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<sup>67</sup> Emphasis added.

<sup>68</sup> May 16 Order, at P 120.

to be applied to formal challenges as opposed to Section 206 complaints, contrary to the Commission's clear intent that these be separate and distinct options.

For these reasons, the OMS recommends that the Commission direct MISO and the TOs to delete any language that would require formal challenges to be filed under and satisfy all filing requirements applicable to Section 206 complaints.

### **3. An Informal Challenge Should Not Be a Prerequisite for Interested Parties to File a Formal Challenge.**

The OMS notes that the proposed protocols require Interested Parties to first file an informal challenge with the TO before filing a formal challenge.<sup>69</sup> While it is desirable to provide a TO with the opportunity to resolve an Interested Party's concern before proceeding to a formal challenge before the Commission, circumstances may exist that prevent parties from doing so. Indeed, under some of the proposed update/true-up timelines, the information exchange window could be compressed to the point where a comprehensive informal challenge may not be possible. As such, TOs should not be allowed to preclude the ability of Interested Parties to file formal challenges with the Commission. In this respect, the OMS notes the precedent established by Section 3.b of the challenge protocols on file for American Electric Power ("AEP") which state:

Parties shall make a good faith effort to raise all issues in a Preliminary Challenge prior to filing a Formal Challenge; provided, however, that a Preliminary Challenge shall not be a prerequisite for bringing a Formal Challenge. Failure to notify AEP East Companies of an issue with respect to an Annual Update shall not preclude an Interested Party from pursuing such issue in a Preliminary Challenge or Formal Challenge.

The OMS recommends that the Commission direct MISO and its TOs to remove from their proposed protocols, any language requiring that Interested Parties first submit an informal

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<sup>69</sup> MISO/TOs Filing, Exhibits I and II, Section IV.L.



challenge to the TO before filing a formal challenge with the Commission and to replace it with a provision like that in AEP's protocol.

## **F. Recommended Modifications to the Information Exchange Process.**

### **1. The TOs Should be Required to Provide Information on Procurement Methods and Cost Control Methodologies So That Interested Parties Have the Means to Assess Prudence.**

In its Initial Brief, the OMS emphasized the importance of having a formula rate protocol process in place sufficient to enable interested parties to assess, and challenge, the prudence of the costs sought to be flowed through the formula rate by the transmission utility. Specifically, the OMS stated,

Finally, since the Commission has ruled that transparency includes the provision of information sufficient for interested parties to assess the reasonableness and prudence of costs that are proposed to be flowed through the formula rate, the protocols must describe in detail the cost data that MISO and the transmission owners should be required to collect, compile and provide to interested parties. Particularly, as costs for new transmission investment rapidly increase, the transmission protocols must provide a meaningful forum to assess the prudence of costs. The opportunity for interested parties to challenge the prudence of costs can serve as a needed check on transmission owners' incentives to inflate their rate base. Reasonable measures for controlling costs in the context of new transmission investment are vitally important in a formula rate and CWIP environment where traditional tests of prudence, such as used and useful, are not applied.<sup>70</sup>

In the May 16 Order, the Commission shared the OMS's concerns with regard to prudence of costs. In addition to requiring that the protocols require the transmission utility to provide information and documents to enable interested parties to assess prudence of costs and expenditures and enabling interested parties to pursue informal and formal challenges regarding the prudence of utility costs and expenditures, the Commission stated as follows:

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<sup>70</sup> OMS Initial Brief in Docket No. EL12-35, at 14.

we find that during the review period, interested parties must be allowed to obtain upon request information on procurement methods and cost control methodologies used by transmission owners in order to facilitate interested parties' analysis of whether the transmission owners' costs were prudently incurred.<sup>71</sup>

OMS recommends that the Commission direct MISO and the TOs to explicitly include this provision regarding procurement methods and cost control methodologies directly in the formula rate protocols.

It is important for interested parties to specifically have the right to obtain this data. As the Commission made clear,

parties seeking to challenge the prudence of a transmission owner's expenditures must first create a serious doubt as to the prudence of those expenditures before the burden of proof shifts to the transmission owner.<sup>72</sup>

As the OMS explained in its Initial Brief, if an interested party is expected to carry this burden of first creating serious doubt about the prudence of a utility's expenditures, the interested party must be able to secure accurate and complete information from the utility. This includes information on procurement methods and cost control methodologies used by the utility.

For these reasons, the OMS recommends that the Commission reiterate the decision made in its May 16 Order and direct MISO and the transmission owners to submit protocol language that specifically provides to interested parties data and information on "procurement methods and cost control methodologies used by transmission owners."

## **2. The Commission Must Reconcile the Treatment of Confidential Data and the Need to Provide Information to Interested Parties.**

Section 4.G. of the NIPSCO Filing states:

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<sup>71</sup> May 16 Order, at P 90.

<sup>72</sup> May 16 Order, at P 121.

NIPSCO will cause to be posted on the MISO internet website and OASIS all information and document requests from Interested Parties and NIPSCO's response(s) to such requests. Such posting will be subject to all applicable confidentiality protections under the Tariff.

Similar language regarding confidentiality appears in the MISO/TOs Filing under Section III.C and Section IV.E. of Exhibit I and Exhibit II:

The Transmission Owner will cause to be posted on OASIS all information requests from Interested Parties and the Transmission Owner's response(s) to such requests. Such posting will be subject to all applicable confidentiality protections under the Tariff.

And,

[Transmission Owner] will cause to be posted all Informal Challenges from Interested Parties and [Transmission Owner's] response(s) to such Informal Challenges. Such posting will be subject to all applicable confidentiality protections under the Tariff.

The OMS acknowledges the Commission's past decisions regarding the treatment of confidential information. However, the language proposed by MISO and the TOs could result in Interested Parties not being granted access to information necessary to allow a proper and thorough analysis of the update/true-up or the crafting of meaningful Informal/Formal Challenges. For example, the OMS notes the instance where Southwestern Electric Cooperative was provided information by a TO, but was unable to use it to challenge an update because the TO had designated all of the information as "confidential". The concern here is significant, as it is the data and information that makes up the inputs to the formula rate components.

The Commission has, in other cases, approved protocol language that specifically permits an interested party to base its challenges on use confidential data provided by the TO. In particular, Commonwealth Edison's protocol provides that "In making or resolving any Preliminary or Formal Challenge under this Section, a party may rely on all information

provided by ComEd, including information provided under the terms of a confidentiality agreement or protective order. . .”<sup>73</sup>

If the Commission intends to rely heavily on Interested Parties to identify flawed updates and true-ups, then access to the confidential information by Interested Parties is critical. Moreover, the inability to access information necessary to address concerns with an update/true-up will likely result in increased formal challenges before the Commission. Accordingly, if the formula rate protocols are to be effective, the Commission must reconcile the proposed confidentiality language and the need of Interested Parties for access to information. In addition, OMS recommends that the Commission direct the TOs to include a provision enabling challenges to be based on confidential information, such as the provision cited above from the ComEd protocol.

#### **G. Finality of Formula Rate Charges.**

Section IV.I of Exhibit I and II of the MISO/TOs Filing and the NIPSCO Filing address the finality of a formula rate update and state:

Subject to judicial review of FERC orders, each Annual Update shall become final as to the Annual Transmission Revenue Requirement calculated for the Rate Year for which the Annual Update was calculated and no longer subject to challenge pursuant to these Annual Review protocols or by any other means by FERC or any other entity on the later to occur of (i) passage of the thirty (30) day period (or extended period, if applicable) for making a Formal Challenge if no such challenge has been made and FERC has not initiated a proceeding to consider the Annual Update, or (ii) a final FERC order issued in response to a Formal Challenge or a proceeding initiated by FERC to consider the Annual Update.

The OMS appreciates the TOs’ concern that they not be subject to continual review of past years’ updates/true-ups. However, at the same time, the TOs should not be allowed to keep

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<sup>73</sup> PJM Tariff, Attachment H-13B, at Section 3.g.

revenues that were collected under charges that were/are unjust and unreasonable due to the inclusion of improper formula rate inputs.

The Commission's long-standing precedent is that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at whatever time they discover errors in the inputs to or implementation of the formula. Indeed, customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.<sup>74</sup>

The Commission has made clear that “[w]hile prompt identification of disputes is certainly a reasonable goal to strive for, the Commission cannot allow utilities to recover excessive rates through automatic adjustment clauses because the customer did not complain in as prompt a manner as the company believes the customer should have.”<sup>75</sup> Similarly, the Commission has allowed review of potentially imprudent costs charged to customers in prior-year formula rates.<sup>76</sup> Accordingly, in that previous case, the Commission rejected the utility's proposal to limit the period of review to the prior 12 months. Furthermore, the Commission has ruled that it may order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate.<sup>77</sup>

On these bases, the OMS recommends that the Commission follow its established practices under the law and direct the TOs to remove the proposed language that would limit interested parties' rights to review past charges flowing out of the formula rate. The Commission has made clear in previous cases that it will not allow utilities to recover excessive rates through automatic adjustment clauses because the customer did not complain in as prompt a

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<sup>74</sup> *American Electric Power Service Corporation*, 124 FERC ¶ 61,306 (2008), at P 35.

<sup>75</sup> *North Carolina Electric Membership Cooperative v. Carolina Power & Light Co.*, 57 FERC ¶ 61,332, at 62,065 (1991)

<sup>76</sup> *See, e.g., Yankee Atomic Electric Co.*, 60 FERC ¶ 61,316, at 62,096-97 (1992)

<sup>77</sup> *See Appalachian Power Co.*, 23 FERC ¶ 61,032 at 61,088 (1983); *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062, at P 28 (2005); *Quest Energy, L.L.C. v. The Detroit Edison Co.*, 106 FERC ¶ 61,227, at P 21 (2004).

manner as the company believes the customer should have. If charges are found to have been incorrectly or inappropriately applied, affected customers should receive refunds. The TOs' proposal to change the Commission's established practice in this regard should not be accepted.

**H. The Commission Should Direct MISO to Delete Characterization of Its Role as "Approving" TOs' Formula Rate Updates.**

The "Transmission Provider Formulaic Rates Description" section of MISO's Attachment O contains the following sentence:

After the Transmission Provider has reviewed the templates for accuracy, it will issue a letter to each Transmission Owner informing them that the rates and revenue requirements resulting from the template was reviewed and approved by the Transmission Provider.<sup>78</sup>

The OMS wishes to call attention to the word "approved." In its May 16 Order, the Commission described MISO's function in reviewing the TOs' rate updates as follows:

MISO explains its review of transmission owners' populated formula rate templates. [footnote omitted] MISO states that it ensures that the populated Attachment O is populated in conformance with the Tariff by verifying that the amounts reported on the Attachment O correspond to the amounts reported on the FERC Form No. 1, Rural Utilities Service (RUS) Form 12 and Energy Information Administration (EIA) Form 412 financial statements. MISO states that it also verifies that any amounts not reflected in these financial statements are supported by other worksheets and will also require a transmission owner to provide supporting information in the event that there is a significant anomalous change in a line item as compared to the prior year. However, MISO states that any further review of accounting treatment of the inputs to FERC Form No. 1 is beyond the scope of MISO's review.<sup>79</sup>

The OMS does not believe that the role performed and actions taken by MISO, as described by the Commission, constitute "approval" of the TOs' formula rate charges. Nor does the OMS believe that MISO, as a public utility, should have responsibility for "approving" the charges that another public utility will collect from its customers.

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<sup>78</sup> MISO/TOs Filing, Attachment O/Formula Rate Protocols, Page 1 of 2.

<sup>79</sup> May 16 Order, at P 68.

In its Reply Brief, the OMS stated,

While MISO's review of a transmission owner's formula rate submission may ensure that the figures in the template match those in a FERC Form 1, it is not sufficiently rigorous to ensure that the inputs are both accurate and appropriate.<sup>80</sup>

The OMS explained that,

Contrary to the claims of MISO and other supporters of the current MISO Attachment O protocols, MISO's review appears to be largely clerical in nature and does not provide sufficient customer protection. While the OMS appreciates the review that MISO performs in the formula rate context, it appears that such a review is not sufficient to ensure that the resulting formula rate charges are just and reasonable.<sup>81</sup>

While restating here the OMS's appreciation of the role performed by MISO in its review of the TOs' formula rate updates, the OMS is concerned that retaining in the tariff the mis-characterization of MISO's role in that regard as "approval" could lead to future misunderstandings and disputes. To preclude such future misunderstandings and disputes, the OMS recommends that the Commission direct MISO to delete the words "and approved" from Attachment O. As an alternative to its primary recommendation for striking those words without replacement, the OMS would find acceptable replacing those words with a phrase such as "and accepted by the Transmission Provider in its role as administrator of the Tariff."<sup>82</sup>

### **I. The Proposed Qualification on Merger Reporting Should be Removed.**

The Commission's May 16 Order requires that the protocols "must provide for identification of any reorganization or merger transaction and explain the effect of the accounting for such transactions on inputs to the formula rate."<sup>83</sup> In response, the protocol

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<sup>80</sup> OMS Reply Brief in Docket No EL12-35, at 6-7, emphasis in original.

<sup>81</sup> OMS Reply Brief in Docket No EL12-35, at 7.

<sup>82</sup> This alternative language mirrors the language the MISO routinely includes in its filings associated with TOs' rates. For example, see the September 13 Filing, at 2.

<sup>83</sup> May 16 Order, at P 87.

proposed by the Filing Parties requires each TO's annual formula rate update to "[i]dentify any reorganization or merger transaction during the previous year that required submission of a filing under section 203 or 205 of the Federal Power Act and explain the effect of the accounting for such transaction(s) on inputs to the formula rate."<sup>84</sup> The Commission's Order clearly stated, "any reorganization or merger transaction." By qualifying their compliance proposal, the MISO TOs would remove the need to report reorganizations and mergers that do not require section 203 or 205 filings. Given the non-corporate nature of many MISO TOs, and the status of some as non-FERC-jurisdictional utilities, that loophole may be substantial. Accordingly, the OMS recommends that the Commission direct MISO to delete the words "that required submission of a filing under section 203 or 205 of the Federal Power Act" from this section.

## **V. CONCLUSION**

Wherefore, for all of the reasons explained above, the OMS requests that the Commission take these Comments into account in its determinations and implement the recommendations made herein regarding formula rate protocols.

The OMS submits this request because a majority of its 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:

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

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<sup>84</sup> MISO/TOs Filing, Attachment O/Formula Rate Protocols, at Section II.D.8.c (emphasis added).



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 took no part in preparing this pleading and therefore abstains.

The Indiana Office of Utility Consumer Counselor and the Minnesota Department of Commerce, as associate members of the OMS, participated in these Comments and generally support them.

Respectfully Submitted,

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

Dated: October 18, 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 18th day of October, 2013.

*William H. Smith, Jr.*

**1. MISO Market Enhancement Development Project**

**Status:** The work group provided comments to MISO on October 4<sup>th</sup>. The next meeting is Late October/November 2013, where MISO expects to seek further stakeholder feedback of its draft vision

At its September 6th Market Vision Workshop, MISO presented its draft strategy with a Market Vision, four Guiding Principles, and seven Focus Areas. MISO asked for feedback to refine these so it can work on a Market Enhancements Roadmap.

MISO extended the deadline for the Market Vision Focus Area Survey to September 20, so we sent another note to the work group inviting those that did not yet respond to do, and some additional states replied.

MISO extended the date for feedback on its Market Vision elements to October 4<sup>th</sup>. The work group held a call on September 27 and agreed to send comments to MISO from the work group. The work group prepared comments and sent them to MISO on October 4th. In the comments, we questioned the meaning of some of the elements, suggesting clarifying language, and requesting further explanation. We expressed concern with and opposed various elements that could mean developing a centralized capacity market. We also recommended eliminating one principle and two focus areas regarding “enhancing the efficiency of investments” as beyond MISO’s responsibility and possibly compromising MISO’s independence. For the Market Vision element, we recommended revising it to better clarify what MISO does, “Foster a set of economically efficient wholesale electric markets and transmission services while planning for future transmission needs.” Overall, the comments were consistent with the recent stakeholder response to 2012 IMM’s recommendations prioritization survey.

The comments are available on the OMS Staff Comments web page at [http://www.misostates.org/images/stories/Filings/staff\\_comments/StaffCommentsToMISOFromOMSMTWGMarketVision4October2013.pdf](http://www.misostates.org/images/stories/Filings/staff_comments/StaffCommentsToMISOFromOMSMTWGMarketVision4October2013.pdf)

**2. MISO October 1 MSC Meeting**

**Status:** The OMS M&TWG is monitoring.

Items covered include review of Stakeholder ranking of IMM State of the Market (SOM) Recommendations, IMM Seasonal Market Review, and IMM identified Narrowly Constrained Areas (NCAs) in the MISO Southern region.

Regarding the IMM SOM recommendations survey, after the work group met on September 11, agreed that each state should submit its own response, and discussed possible responses, several states responded to MISO on September 20. At the MSC meeting, MISO stakeholders gave highest priorities to improving dispatch efficiency and real-time operations (including development of ramp capability, look ahead capability, and MISO-PJM interchange optimization) and Energy Pricing and Transmission Congestion. Resource adequacy related items (capacity credit improvements and sloped demand curve) were identified as lowest priority.

**For those interested, please note the following MISO meetings:**

**MISO Board of Dirs Markets Committee** – bi-monthly meetings (10/23 next mtg)

**MISO Market Subcommittee** - monthly meetings (10/29 next mtg)

**MISO FTR Working Group** – monthly meetings (10/30 next mtg)

**Market Vision Workshops** – Next meeting (Late 10 or early 11)

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The **OMS Markets and Tariffs Work Group** covers: Energy and Operating Reserve markets, Market Monitoring and Mitigation. See

<http://www.misostates.org/index.php/work-groups-2/workscopereference/63-markets-a-tariffs-workscopereference>

[http://www.misostates.org/images/stories/work\\_groups/OMS2013WGOverviewForWebsiteRevised23August2013.pdf](http://www.misostates.org/images/stories/work_groups/OMS2013WGOverviewForWebsiteRevised23August2013.pdf)

Bill Bokram and Hwikwon Ham, Markets and Tariffs Work Group co-chairs

## **OMS Resources WG Report to OMS Board – October 17, 2013**

### **MISO-OMS Long-Term Resource Assessment Survey**

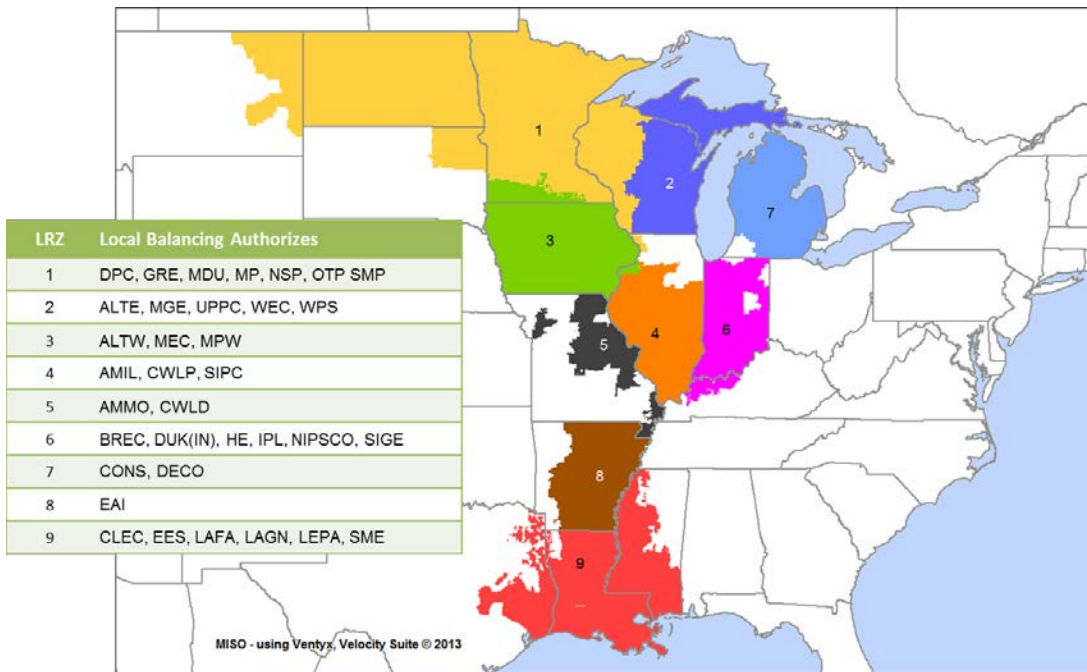
MISO received the final LSE set of data on October 4<sup>th</sup>. The data sets are being reviewed for completeness, accuracy, and assurance of no duplication. This step involves individual LSE contact for verification.

- **Demand:**
  - Some forecasts included transmission losses, some did not
    - The survey requested no transmission losses
    - Where no indication, the assumption will be none are included
  - Determine which EE/DR has been netted or not and incorporate submitted EE/DR accordingly
  - Account for coincidence to determine MISO coincident peak
- **Resources:**
  - Account for PPAs, retrofits, and retirements and new builds appropriately
  - Accurately calculate seasonal/annual resource values
- **Dissemination of Analysis**
  - Work to present findings and forward use of data in study sensitivities.

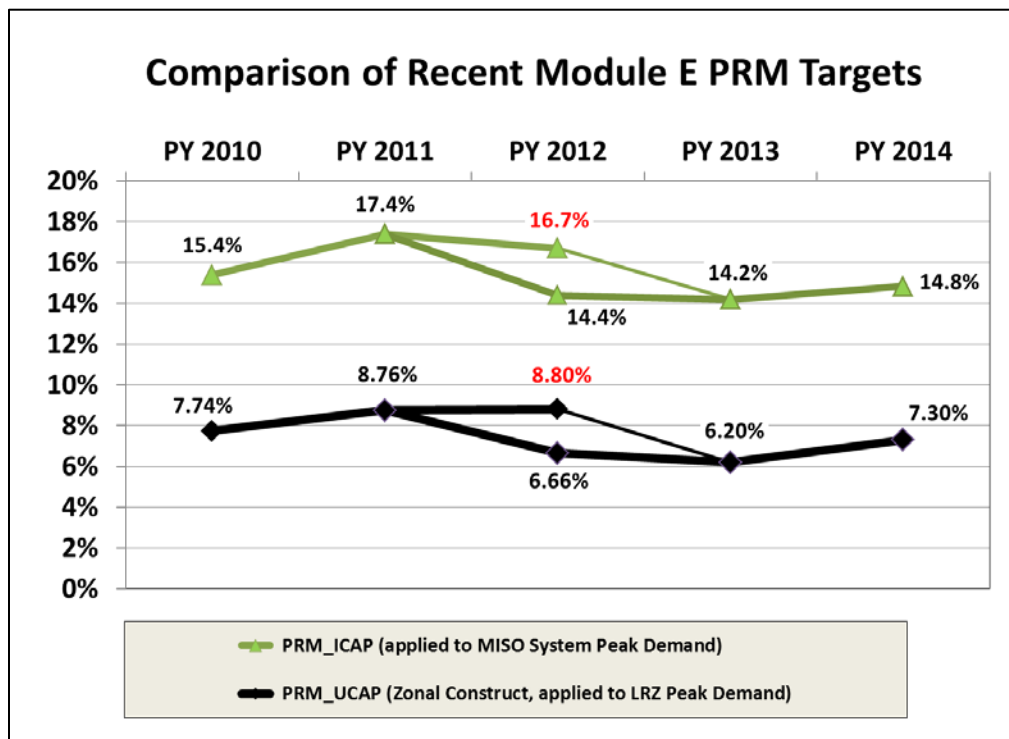
Approximately 95-97 % of the MISO load has been covered by the LSE's responses. The first summary set of information is being targeted for display for the October 31 SAWG.

### **MISO LOLE WG**

The Draft LOLE Study Report for the Planning Year 2014-2015 (PY 2014) will be presented at the next LOLE meeting October 21<sup>st</sup>. The LOLE analysis was enhanced in several ways including the Load Forecast Uncertainty calculation, and the how the individual Local Resource Zones (LRZ) are model in conjunction with the MISO load. The external resources are modeled more accurately. The transfer analysis of the LRZ for Capacity Import and Export Limits was improved. Below are the new LRZs:



The Module E Planning Reserve Margin comparison follows:



Below is the forecasted planning reserve margins:

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
PRM <sub>ICAP</sub>	14.8 %	14.9 %	15.0 %	15.1 %	15.1 %	15.6 %	16.0 %	16.4 %	16.8 %	17.3 %
PRM <sub>UCAP</sub>	7.3%	7.3%	7.2%	7.2%	7.2%	7.2%	7.3%	7.3%	7.3%	7.4%

Table 5-3: Future Planning Years 2018-2019 and 2023-2024 MISO System Planning Reserve Margins

By: Don Neumeyer, Co-Chair Resources Work Group.

**OMS Regional Planning Work Group**  
**Report to OMS Board of Directors – October 17, 2013**  
(Co-Chairs Jessica Govindan and Julie Urban)

**PAC Update**

The motion to approve the MTEP 13 draft report passed and will now go to the MISO BOD for approval in December. MISO presented current Interregional Coordination efforts and will continue to provide updates. MISO acknowledged the desire to sync the timing of the Joint Planning Process with MTEP, so the processes run concurrent. MISO claims to be looking into the issue many stakeholders have with a lack of consideration for cheaper economic solutions that don't meet MEP criteria for interregional consideration. MISO will also begin looking at implementation of the developer selection process and development of BPM language.

Steps to be undertaken to enhance the Top Down Planning process, in light of Order 1000, MEP facility/issue grouping, and potential MVP Portfolio 2 were discussed. MISO will have "standalone" discussions on solicitation of solution ideas and MEP facility/issue grouping. MISO presented current coordination efforts with PJM regarding Generator Interconnection planning. In short, both RTOs have agreed to set data handoff dates when the RTOs will send models and results back and forth.

The initial scope proposal for MTEP14 was presented and feedback was requested. MISO proposed three new initiative planning studies: Northern Area Study-Phase 2; Mid-West HVDC Interconnection Study and; the Minnesota RPS Investigation. Additional study proposals will be discussed at the upcoming PAC.

There will be two PAC motions in the October PAC. One is for approval of updates to the BPM language for Generation Interconnections and the other for approval of BPM Language for OMS Enhanced Planning Authority. In addition, to the discussion of scope proposals, MISO will begin the futures discussion for MTEP14.

**OMS MTEP14 Scope Proposals**

The OMS Board (acting as the OMS Committee) fulfilled its first planning enhancement opportunity by approving two study proposals developed by the RPWG for consideration in the MTEP14 Scope Proposal. The two studies include an analysis of import constraints between the local resource zones and analysis of transmission needs along the new seams created by the Entergy integration.

**MISO proposal of MTEP13 Appendix B MEPs coming up for approval in June 2014 as MTEP 13 projects**

During the last PAC meeting MISO mentioned that three Appendix B MEPs will be analyzed as possible Cross Border MEPs with PJM. These projects will be eligible for approval by the MISO BOD in June of 2014 but will be approved as MTEP13 MEPS. This process allows for retention of the ROFR for these projects. The WG participated in a phone call with MISO staff to express concerns about this process and the need for further discussion in the PAC and BPM language to clarify the process going forward. MISO mentioned they would begin the BPM language discussion in the November PAC.