UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System	)	
Operator, Inc. and the MISO	)	Docket No. ER19-1124
Transmission Owners	)	Docket No. ER19-1125

NOTICE OF INTERVENTION AND LIMITED PROTEST OF THE MICHIGAN PUBLIC SERVICE COMMISSION

The Midcontinent Independent System Operator, Inc. ("MISO") and certain MISO Transmission Owners (jointly "Applicants") are proposing revisions to Attachment FF of the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff ("Tariff"), as well as a new Tariff Attachment FF-7. Specifically, the Applicants propose to: 1) modify the cost allocation method for Market Efficiency Projects ("MEPs"); 2) lower the voltage threshold for MEPs from 345 kV to 230 kV and add two new metrics for project cost-benefit analyses; and 3) create a new project category, Local Economic Projects ("LEPs"), formalizing the criteria currently used to identify non-categorized projects (categorized as economic "Other" projects) in the transmission-planning process.

While the Michigan Public Service Commission ("MPSC") supports most of the Applicants' proposals, it files this Limited Protest to the proposed cost-allocation method for the new LEP category. The allocation method conflicts with the Federal Energy Regulatory Commission's ("FERC" or "Commission") transmission-planning and cost-allocation principles contained in Order Nos. 890 and 1000. Without revisions to the proposed LED cost-allocation method, the method could lead to

discriminatory pricing in some Transmission Pricing Zones ("TPZs") and to free riders in other zones.

The Applicants' LED proposal also adds another hurdle to LEP approval, which is intended to ensure an LEP benefits TPZs where a project is located 1.25 times more than it costs these zones. This additional hurdle leaves an unclear path to approval for lower-voltage economic transmission projects that benefit MISO's footprint as a whole but do not benefit the zones where the project is located.[1]

I. NOTICE OF INTERVENTION

The MPSC is a constitutionally established agency in the State of Michigan, created by 1939 Public Act 3. MICH. COMP. LAWS § 460.1 *et seq*. The MPSC is the Michigan regulatory agency having jurisdiction and authority to control and regulate rates, charges, and conditions of service for the retail sale of natural gas and electricity in the State of Michigan. The MPSC is also a "state commission" as defined in 16 USC § 796(15) and 18 CFR § 1.101(k) and has an interest in this proceeding that cannot be adequately represented by another party.

As a state commission, the MPSC enters this Notice of Intervention. Copies of all pleadings, correspondence, and other communications concerning this proceeding should be directed to:

[1] Consistent with Rules 211 and 214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214(a)(2) (2018), the MPSC files its Notice of Intervention and Limited Protest.

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II. LIMITED PROTEST

Under the Applicants' proposal, economic transmission projects between 100 and 230 kV would be categorized as LEPs, and these projects' costs would be allocated exclusively to the TPZs where the projects are located, without considering the benefits to other TPZs in MISO's footprint. This cost-allocation method does not conform to the beneficiary-pays principle in Order 1000—the principle that costs must be allocated in a way that is roughly commensurate with benefits—since some TPZs that benefit from a project would likely not be assigned any costs. The Applicants propose to carve out a voltage-based exception to this fundamental cost-allocation requirement, but this exception is not supported by the available evidence. Although the Applicants claim that sub-230 kV projects are less likely to provide regional benefits, they provide no technical analysis to support this claim.

The Applicants' proposal also erects an additional hurdle to approving economic transmission projects below 230 kV not present for projects 230 kV and above. In order for transmission projects to qualify as LEPs, they would have to benefit the MISO footprint and TPZs where they are located 1.25 times more than they cost. This is the 1.25 benefit-cost test. At best, this proposal does not conform

to the Commission's transmission-planning principles[2]; at worst, this proposal is potentially discriminatory. Finally, the proposal does not have the support of a substantial portion of affected state authorities.

A. The proposed LEP cost-allocation method conflicts with Order No. 1000's beneficiary-pays, cost-allocation principle.

Commission Order No. 1000 requires that regional cost-allocation methods each adhere to six cost-allocation principles. The first cost-allocation principle states that "costs must be allocated in a way that is roughly commensurate with benefits."[3] The Commission held, "[T]he one factor that it weighs when considering a dispute over cost allocation is whether a proposal fairly assigns costs among those who cause the costs to be incurred and those who otherwise benefit from them."[4] It went on to say that "departure from cost causation principles can result in inappropriate cross-subsidization."[5]

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[2] Order 890 lays out these transmission-planning principles. See *In re Preventing Undue Discrimination and Preference in Transmission Service*, Docket No. RM05-17-000, 118 FERC ¶ 61,119 (2007) (Order No. 890), *aff'd on reh'g and clarified*, 121 FERC ¶ 61,297 (2007) (Order No. 890-A), *aff'd and further clarified*, 123 FERC ¶ 61,299 (2008) (Order No. 890-B).

[3] *In re Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Docket No. RM10-23-000, 136 FERC ¶ 61,051 at P 622 (2011) (Order No. 1000), *aff'd and clarified,* 139 FERC ¶ 61,132 (2012) (Order No. 1000-A), *aff'd on reh'g and clarified,* 141 FERC ¶ 61,044 (2012) (Order No. 1000-B), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC,* 762 F.3d 41 (D.C. Cir. 2014).

[4] *Id.* at P 623.

[5] *Id.*

The Applicants' proposed process for determining and assigning benefits and costs for MEPs satisfies the first cost-allocation principle. MISO will determine which TPZs will benefit from a project and by how much. It then assigns the project costs in proportion to a TPZ's net benefits. It is clear how this proposed method allocates costs for transmission projects roughly commensurate with the benefits received. It is equally clear how the proposed cost-allocation method for the LEP category does not.

Under the proposed process for determining and assigning benefits and costs for LEPs, the footprint-wide benefits must be 1.25 times greater than the costs. But in the LEP process, in contrast to the MEP process, MISO would then focus exclusively on TPZs where the project is located; MISO would not evaluate other TPZs that would benefit or allocate costs to these zones in proportion to the net benefits received. Instead, the Applicants propose to allocate 100 percent of the project costs to the TPZs where the project is located—regardless of how many other TPZs may benefit and by how much.

There is no way to rationalize assigning 100 percent of the cost to the TPZs that physically host a project. This method cannot be said to assign costs roughly commensurate to the net benefits received; it is obvious it does not. A transmission project's voltage level and geographic location should not be used to waive this cost-allocation requirement.

B. The proposed LEP cost-allocation method is not supported on the record.

The Applicants offer no evidence-based justification for why the costs of sub-230 kV economic projects should be allocated only to TPZs where the project is physically located. Many TPZs could see net benefits from these projects, so all net-benefitting TPZs should be allocated a share of the costs. The alignment of the proposed MEP cost-allocation method with Order No. 1000 and the beneficiary-pays principle is clear and logical: costs are spread to net beneficiaries in proportion to their benefit. The Applicants offer no compelling or evidence-based reason why diverging from this Order 1000-compliant method is just and reasonable, more accurately assigns costs to beneficiaries, or is in the public interest in any way. Instead, the Applicants rely on a policy-based justification for their proposal without evidentiary support to determine whether these policies are really being advanced. They argue that their proposed LEP cost-allocation method is cost based for the following reasons:

1) their method is consistent with how economic "Other" projects are currently allocated;

2) costs will only be allocated to a local pricing zone if it is shown that the zone's benefits will be 1.25 greater than the costs; and

3) projects operating at a voltage below 230 kV are less likely to provide benefits that are truly "regional in scope."[6]

There are at least three reasons why these arguments are insufficient to justify not allocating costs fairly to all net beneficiaries. First, consistency with the

[6] Docket Nos. ER19-11254 & ER19-1125, Tab A, Jesse Moser testimony, at 31 (Tab A, Moser).

"Other" cost-allocation method is not beneficial (the Applicants' proposal would nearly eliminate economic projects in this category) because the "Other" category is a catchall for non-categorized projects, and the Applicants have not explained why LEPs should be treated like non-categorized projects. On the other hand, consistency with the proposed MEP cost allocation, which uses the same benefits metrics as LEPs,[7] is far more desirable from a benefits, transmission-planning, and cost-transparency perspective.

Second, although the additional hurdle discussed below would prevent a project from being classified as an LEP if the overall benefits to the zones where it is located do not pass the 1.25 benefit-cost test,[8] allocating costs exclusively to TPZs where a project is located could prevent highly beneficial economic projects from being implemented by leaving a gap for sub-230 kV economic projects that have benefits concentrated beyond the TPZs where they are located. A transmission owner is not likely to build a sub-230 kV economic project if a significant amount of the benefit goes to another TPZ while the TPZ where the project is located is assigned all the costs.

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[7] Docket Nos. ER19-1124 & ER19-1125, Transmittal Letter (February 25, 2019), at 34.

[8] Arguments in favor of the 1.25 benefit-cost test conflate achieving benefits 1.25 in excess of costs with having costs allocated roughly commensurate with benefits. These are separate principles laid out in Order 1000. Benefits 1.25 in excess of costs is the maximum ratio allowed by Order 1000 to be used as a minimum benefits threshold to determine which facilities have sufficient net benefits to be included in a regional plan for purposes of cost allocation.

Finally, the rationale that sub-230 kV projects are less likely to provide regional benefits is inadequate because: 1) the Applicants offered no technical analysis in their filing, or the lengthy stakeholder process leading to the filing, showing this to be true; 2) MISO's prior analyses show far-reaching benefits for small-scale sub-230 kV projects[9]; and 3) "regional in scope" is an undefined and irrelevant threshold since only benefitting TPZs should be allocated costs. Furthermore, requiring a project's benefits to be "regional in scope" is a threshold even higher-voltage MEPs are not expected to meet.

In a 2016 FERC case, MISO, PJM, and their stakeholders performed a Targeted Market Efficiency Project analysis and Quick Hit Study to identify transmission projects that could remedy interregional congestion issues.[10] These studies identified geographically distant TPZs receiving benefits from sub-230 kV economic projects, using only the Adjusted Production Cost Savings metric.[11] Additional metrics meant to capture additional benefits from economic transmission projects, as the Applicants propose in this case, will likely increase the potential for TPZs beyond the physical location of projects to receive net benefits.

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[9] *N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator*, Docket No. EL13-88-000, 155 FERC ¶ 61,058 at p 131 (2016) (NIPSCO Order) ("We find that a majority of the identified Quick Hit projects are rated below 345 kV (i.e., 138/161 kV) and cost less than $5 million (with several costing only several hundred thousand dollars). In fact, the Quick Hit Analysis identified interregional economic transmission upgrades: (1) below $1 million; and (2) 138 kV and above with significant economic benefits to both RTOs."), *aff'd on reh'g and clarified*, 158 FERC ¶ 61,049 (2017).

[10] *Id.* at p 100 n175 (2016).

[11] *Id.* at p 131.

FERC agreed in the NIPSCO proceedings that projects 100 kV and above can provide interregional benefits—in other words, benefits that are outside the host TPZ.[12] If projects at 100 kV can provide benefits to another RTO, it is safe to assume that they could provide benefits to other TPZs within their own planning regions.

C. The Applicants propose an additional hurdle that limits the transmission projects eligible to qualify as LEPs.

The Applicants' proposal erects an additional hurdle to approving economic transmission projects below 230 kV that is not present for projects 230 kV and above. This hurdle relates to how MISO determines whether a project qualifies as an LEP. Under the Applicants' proposal, once the benefits of a project are determined from each metric, they are combined to determine the benefits for both the MISO footprint and the TPZs where the project is physically located. If the sum of the benefits for the footprint *and* each TPZ in which the LEP is located is at least 1.25 times greater than the allocated costs, then the project qualifies as an LEP and its costs will be allocated to the TPZs where it is located. This is different than the MEP process, which evaluates whether a project qualifies as a MEP based *only* on the sum of the benefit metrics for the MISO footprint.[13]

This additional hurdle to ensure an LEP benefits *the host zones* 1.25 times more than it costs these zones leaves an unclear path to approval for sub-230 kV

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[12] *Id.*

[13] MISO's Transmittal Letter at 12–13.

economic transmission projects where the benefits are 1.25 times greater than the costs *in non-host zones*. It is possible that a project benefiting the MISO footprint and one or more zones could be located in a zone that does not benefit from the project or benefits little. There may be good reasons to locate the project in that zone, even though other zones are the primary beneficiaries. Under the Applicants' proposal, however, that project would not qualify as an LEP because the sum of the benefits for the MISO footprint and each TPZ where the project is located is not at least 1.25 times greater than the allocated costs.

Under this scenario, there are two possible outcomes. First, the sub-230 kV economic transmission project may be abandoned, as Order 890 contemplates when costs are not assigned to beneficiaries. This would deprive the non-host TPZs the potential benefits of sub-230 kV projects located outside their borders and deprive them of the ability to share the costs among all net beneficiaries. Second, the project may be implemented as a vague economic "Other" project and the costs allocated to TPZs where it has already failed the 1.25 benefit-cost test for LEPs, creating fertile ground for a Section 206 complaint to the Commission.

Neither outcome benefits the region. For interregional transmission projects, FERC has rejected a 1.25 benefit-cost test, which it referred to as a "triple hurdle," that was beyond each region's own test[14]; for regional projects, it should likewise reject the additional hurdle of a 1.25 benefit-cost test for TPZs that is beyond the regional test. In Docket No. EL13-18-000, "MISO and PJM . . . identified several

[14] See *NIPSCO Order* at pp 131–132.

transmission projects in the Quick Hit Analysis that will relieve congestion and benefit both MISO and PJM but did not meet the 1.25 benefit-to-cost ratio for the combined region under the JOA."[15] Although these projects did not meet this interregional standard, FERC found the regional benefit sufficient to approve them.

For projects that "MISO and PJM each find provides sufficient benefits to its individual region," FERC found there was no reason to use "a separate interregional benefit-cost analysis."[16] In the same way, if a project benefits MISO's footprint as a whole, there is no need to combine the benefits from each TPZ where a project is located to determine whether the project passes a 1.25 benefit-cost test. The benefit each zone receives may affect whether the zone is allocated costs—if LEP costs are allocated to zones like MEP costs are allocated, as the MPSC recommends—but the allocation should not affect whether a project qualifies as an LEP.

D. There is the potential for discrimination and free riders.

In Order 890, the Commission held that "in an era of increasing transmission congestion and the need for significant new transmission investment," the Commission could not "rely on the self-interest of transmission providers to expand the grid in a nondiscriminatory manner."[17] What the Commission said then is just as true today. Today, the electric industry is undergoing a rapid evolution that could result in increased transmission congestion and the need for increased

[15] *Id.* at p 132.

[16] *Id.*

[17] Order No. 890 at p 422.

transmission investment. Greater use of renewable resources, energy storage, electric vehicles, and distributed resources will all require grid modifications, and in many instances grid expansions, with technologies and in voltages and places that cannot be predicted.

New investment is particularly important to open urban areas to new resources. As the Commission has found, "Transmission congestion has created fairly small local load pockets in primarily urban areas . . . ."[18] This continues to be true. In fact, there is increasing need to transport renewable resources from areas favorable to those resources to these load pockets. To meet this need, transmission operators must consider large-scale (345 kV+) transmission projects, but it is sometimes feasible, and it is certainly more cost effective, to build lower-voltage upgrades in targeted congested areas. Unfortunately, the Applicants' proposal would restrict lower-voltage upgrades when the benefits lie primarily outside the zone where the project is located. This could lead transmission owners to scrap these upgrades and instead focus on other projects that offer fewer overall, but more local, benefits.

There is no way to tell how electrical topography and congestion on the MISO transmission system will impact where potential LEPs are located. LEPs could be sited repeatedly in certain TPZs and not ever in others—forcing some zones to consistently pay the costs of transmission that is benefitting others. In this way, the proposed LEP cost-allocation method could discriminate against some zones in

[18] *Id.* at p 59.

favor of others. It could also encourage free riders since some TPZs would likely benefit from projects that they did not pay for. Moreover, a TPZ may become congested, not because of the generation and load separation in the immediate area, but because of overall power flows on the MISO system and the Eastern Interconnection. This is yet another reason why geography should not drive the criteria and cost-allocation method for economic transmission projects 100 kV and above. Rather, costs should be spread proportionately to all beneficiaries no matter how far the distance.

Conforming the LEP cost-allocation method to the proposed MEP cost-allocation method, which follows beneficiary-pays principles, will resolve concerns about potential discrimination and free riders.

III. CONCLUSIONS AND RECOMMENDATION

The MPSC commends MISO for engaging in an inclusive stakeholder process to discuss these critical cost-allocation issues. The MPSC supports most of the Applicants' proposals, but it asks the Commission to require MISO to modify the LEP cost-allocation method to conform to the MEP cost-allocation method so that costs are assigned proportionately to all net-benefitting TPZs. This would be a clear and consistent cost-allocation method that is aligned with Order 1000 cost-allocation principles. If a TPZ benefits, a TPZ should pay. Conforming the LEP method to the MEP method would also eliminate the problematic 1.25 benefit-cost test for LEPs, which could hinder economic transmission projects based entirely on geography for low-voltage projects below an arbitrary voltage threshold.

The cost-allocation component of the Applicants' LEP proposal has divided the MISO stakeholder community, including state regulators who may be reluctant to site projects if the costs are not assigned proportionately to all net beneficiaries. This is true even if the TPZ where the project is located would receive benefits 1.25 in excess of costs since costs would still not be allocated roughly commensurate with benefits.

For these reasons, the MPSC respectfully asks the Commission to approve the Applicants' proposals with the changes that the MPSC has recommended to their proposed LEP cost-allocation method.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

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