

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

LSP Transmission Holdings II, LLC)	
Cardinal Point Electric, LLC)	
LS Power Midcontinent, LLC)	Docket No. EL19-79-000
)	
Complainants,)	
)	
Midcontinent Independent System)	
Operator, Inc.)	
)	
Respondent)	
)	
Midcontinent Independent System)	Docket Nos. ER19-1124-000
Operator, Inc.)	ER19-1125-000

**NOTICE OF INTERVENTION AND LIMITED COMMENTS
OF THE MICHIGAN PUBLIC SERVICE COMMISSION**

On June 5, 2019, LSP Transmission Holdings II, LLC (LSP Transmission), Cardinal Point Electric, LLC (Cardinal Point), and LS Power Midcontinent, LLC (LS Power) (Collectively LS Power) filed this Federal Power Act (FPA) Section 206 complaint against Midcontinent Independent System Operator, Inc. (MISO). It requests the Federal Energy Regulatory Commission (Commission) find that MISO's current planning process for Market Efficiency Projects (MEPs) is unjust and unreasonable because it does not provide a mechanism for MISO to plan for regionally beneficial economic projects that do not meet the 345 kV voltage threshold, and to require MISO to lower the voltage threshold for MEPs down to 100kV.

I. Notice of Intervention

The Michigan Public Service Commission (MPSC or Michigan PSC) 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:

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II. Background and Filing

This complaint stems from MISO and MISO Transmission Owners (TOs) recent Section 205 of the Federal Power Act (FPA) filing in Docket Nos. ER19-1124-000 and ER19-1125-000 where MISO and the MISO TOs proposed to modify the cost allocation and lower the voltage threshold to 230 kV for MEPs, and create a

new project category called Local Economic Project (LEPs) for economic transmission projects between 100 and 230 kV that would be ineligible for cost-sharing irrespective of identified benefits and beneficiaries. The MPSC filed an Intervention with Limited Protest in both dockets, protesting the proposed cost allocation for LEPs as inconsistent with cost causation and beneficiaries-pay principles.

LS Power also filed a protest to the MISO/TOs proposals, requesting that the Commission order MISO to lower the voltage level for MEPs to 100 kV and allocate project costs to all benefitting transmission pricing zones as was proposed by MISO/TOs for 230 kV+ projects.¹ Although the MPSC and LS Power protests differ in scope and substance, both parties requested that the Commission remedy the cost allocation methodology proposed by MISO/TOs to align with the beneficiaries-pay principle by allocating 100 – 230 kV project costs to all benefitting transmission pricing zones; how MISO/TOs proposed to allocate costs for 230kV+ projects.

The MISO South Regulators subsequently filed a Response to Comments and Protests, asserting that no protestor had demonstrated that the current MEP cost allocation methodology, or the Other project cost allocation methodology, were no longer just and reasonable; and argued that the protesting parties' requested relief is beyond the Commission's authority in responding to a Section 205 rate filing,

¹ Protest of LS Power, Docket Nos. ER19-1124 & EL19-1125, at 7-10, 20-25 (Mar. 27, 2019).

alleging that the requested remedies would “constitute an ‘entirely different rate’ than that proposed by MISO” and the TOs.²

The MPSC filed an Answer to the MISO South regulators pointing to the fact that the relief sought did not violate *NRG* as it was not entirely different from the original proposal, nor was it an entirely different rate design, but was rather a recommendation to assign costs and benefits for LEPs the same way the MISO/MISO TOs were proposing to assign costs and benefits for MEPs.³ LS Power’s Answer similarly asserted that its requested relief would not “employ a rate design that follows a ‘completely different strategy’ than, or is ‘methodologically distinct’ from [the] proposed rate,” but by contrast would conform the 100-230 kV cost allocation methodology with the rest of the MISO/TOs filing.⁴

However, in the present Complaint, LS Power requests that if the Commission agrees the relief sought by the protesting parties in the original MEP filings are outside of the scope of the Commission authority under Sec. 205 of the FPA, then the Commission could order the requested relief in response to this Sec. 206 complaint. LS Power asserts that under Sec. 206, the Commission could find

² Motion for Leave to Respond and Response of the MISO South Regulators, Docket Nos. ER19-1124 & ER19-1125, at 3-4, 14-15 (Apr. 11, 2019) (citing *NRG Power Mktg v FERC*, 862 F.3d 108, 115 (DC Cir. 2017) (*NRG*)).

³ The Michigan PSC’s Motion for Leave to Answer and Answer to the Response of the MISO South Regulators, Docket Nos. ER19-1124 & ER19-1125, at 3-4 (Apr. 19, 2019).

⁴ Motion to File Reply Comments and Limited Reply Comments of LS Power, Docket Nos. ER19-1124 & ER19-1125, at 16-17 (May 30, 2019) (quoting *NRG*, 862 F.3d at 115).

the present cost allocation methodology for sub-345 kV projects unjust and unreasonable, direct MISO to lower the voltage threshold for MEPs to 100 kV and submit a cost allocation method for 100 – 345 kV projects that reflects the fact that multiple transmission pricing zones can benefit from the project, and which allocates costs to beneficiaries in a manner roughly commensurate with the economic benefits received. On June 18, 2019, LS Power filed a motion pursuant to Rule 213 to extend its time to answer and consolidate the matter with Docket Nos. ER19-1124-000 and ER19-1125-000 due to common issues of law and fact. The Commission granted an extension of the answer deadline until July 24th on June 24, 2019.

Also, on June 24, 2019, the Commission issued a combined order in Docket Nos. ER19-1124-000 and ER19-1125-000 that rejected MISO's proposed tariff revisions and an order that rejected the MEP cost allocations in ER19-1156-000 due to the fact that they relied on the regional filing. With respect to the regional filing (ER19-1124), the Commission rejected the filing in part due to concerns with the new LEP category and the proposed cost-allocation method for this new category. The Commission also provided "guidance on how Filing Parties might refine their proposal if they choose to make a new filing with the Commission."⁵

⁵ *Midcontinent Independent System Operator*, Docket Nos. ER19-1124-000 & ER19-1125-000, 167 FERC ¶ 61,258 at P 1 (2019).

III. Argument

A. Michigan PSC position with respect to the Sec. 206 case

LS Power's principle argument is that the current MEP planning does not contain a mechanism for MISO to plan for regionally beneficial economic projects that do not meet the MEP 345 kV voltage threshold, and thus do not comport with the just and reasonable rates standard or Order 1000. Although economic projects below 345 kV can have regional benefits, they are currently categorized as Other Projects in the MISO planning process. LS Power argues that the lack of clear criteria and procedures for identifying or evaluating these projects, and cost allocating these projects only to the local pricing zone, unnecessarily causes free-riders, stifles competition that the Commission envisioned in Order 1000, and potentially raises costs.⁶

To remedy this issue, LS Power requests that the Commission should require MISO to utilize its existing criteria and procedures for MEPs by lowering the voltage threshold for MEPs down to 100 kV. LS Power asserts that the only reason to exclude projects below 345 kV from the MEP category is that the current cost allocation methodology allocates 20% of the project costs to the entire MISO region. LS Power asserts that the Commission could, however, require MISO to propose a separate cost allocation method for regionally beneficial economic projects below 345 kV, as it did for interregional projects on the PJM seam in a 2017 order on a

⁶ LS Power's Compl. at 2, 16, 27.

complaint by NIPSCO.⁷ LS Power points out that the Commission has found that it can find a tariff is no longer just and reasonable even though it initially found that it met that standard.

The Michigan PSC is primarily concerned with ensuring equitable cost-allocation for projects above and below the MEP threshold, and the Michigan PSC has not recommended changing that threshold.

B. Michigan PSC non-objection to LS Power’s Motion to Consolidate

When LS Power first filed its motion to consolidate this Sec. 206 case with the Sec. 205 dockets, the Michigan PSC did not object to the motion, but consolidation does not make sense now that FERC has rejected the applicants’ filings in Docket Nos. ER19-1124 and ER19-1125.

IV. Conclusion and Recommendation

In Docket Nos. ER19-1124-000 and ER19-1125-000, the Commission provided “guidance on how Filing Parties might refine their proposal if they choose to make a new filing with the Commission.”⁸ If the Filing Parties decide to revise and refile their Sec. 205 proposal in a new docket, consistent with this guidance, that proceeding would be an appropriate vehicle to propose a new construct that

⁷ *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), *aff’d on reh’g and clarified*, 158 FERC ¶ 61,049 (2017).

⁸ *Midcontinent Independent System Operator*, Docket Nos. ER19-1124-000 & ER19-1125-000, 167 FERC ¶ 61,258 at P 1 (2019).

complies with the beneficiary-pays principle in Order 1000 and with the Commission's guidance. If, however, the Filing Parties do not revise and refile their proposal, the present Sec. 206 case would likewise be an appropriate vehicle to address these issues. Should the Commission decide to act in the present case, the MPSC requests the following.

The MPSC reiterates its position that the cost allocation remedy requested by the MPSC Limited Protest in Docket Nos. ER19-1124-000 and ER19-1125-000 is not outside the scope of the Commission's authority under Sec. 205.⁹ However, given that the Commission has rejected the MISO/TOs' Sec. 205 proposal, the current cost allocation methodology for 100 – 345 kV projects remains in place. The MPSC asks the Commission to find this methodology unjust and unreasonable. The current cost allocation method, like the method proposed in Docket Nos. ER19-1124-000 and ER19-1125-000, is a barrier to economic transmission planning and violates the fundamental beneficiary-pays principle in Order 1000.

The MPSC also asks the Commission to require MISO to submit a compliance filing in the present docket to allocate costs for 100 kV-sub 345 kV projects the same way that MEP costs are allocated under the current construct so that project costs are assigned to all project beneficiaries. The compliance filing should include the following elements that were part of the Filing Parties' proposal in Docket Nos. ER19-1124-000 and ER19-1125-000 and that the Commission found to be reasonable

⁹ The MPSC's proposed remedy would have allocated costs for lower-voltage economic transmission projects the same way that costs are allocated for higher-voltage projects.

and beneficial: allocating Adjusted Production Cost Savings to Cost Allocation Zones;

1. adding two additional benefits metrics to its cost allocation method for MEPs;
2. ending the practice of assigning 20 percent of MEP costs on a postage-stamp basis across the entire MISO footprint;
3. lowering the MEP voltage threshold from 345 kV to 230 kV; and
4. exempting “Immediate Need Reliability” projects from competitive bidding.¹⁰

Respectfully submitted,

**THE MICHIGAN PUBLIC SERVICE
COMMISSION**

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Dated: July 24, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused the foregoing to be served **Notice of Intervention and Limited Comments of the Michigan Public Service Commission** electronically upon each party identified in the official service list compiled by the Secretary of FERC in **EL 19-79-000**.

Dated at Lansing, Michigan, this **24th** of **July, 2019**.

/s/ Pamela A. Pung
Pamela A. Pung

¹⁰ *Midcontinent Independent System Operator*, Docket Nos. ER19-1124-000 & ER19-1125-000, 167 FERC ¶ 61,258 at PP 113-122 (2019).