MISO Advisory Committee Hot Topic
FERC Order 1000
April 18, 2012

Response of the Organization of MISO States

The OMS submits the following response to the April MISO Advisory Committee Hot Topic Questions regarding FERC Order 1000. It should be noted that this hot topic response occurs during a period when Entergy seeks integration into MISO and when the cost allocation of Multi-Value Projects (MVPs) are the subject of pending litigation. These two issues are highly relevant to the questions posed in this Hot Topic, yet their fate remains uncertain.

Regional Planning and Cost Allocation

1. ***MISO's review of the regional Planning and Cost Allocation requirements of Order 1000 indicate that MISO is mostly compliant with those requirements today. What process changes, if any, do you think need to be made to fully comply with Order 1000 Regional requirements?***

OMS believes MISO is not yet fully compliant with Order 1000 and that there are still several process changes required to meet the Order 1000 requirements.[1] With respect to the regional planning process, the OMS believes that the key paragraphs from Order 1000 where MISO needs to focus its attention are paragraph numbers 65, 148, 150, 152, 153, 208, 209 (especially footnote 189), 400, and 502, some of which are discussed in the subsequent paragraphs. These are listed in their entirety in the accompanying endnotes to this document.

OMS believes it is necessary to engage the states more fully, as Order 1000 strongly encourages, and proposes that OMS have an enhanced role during the planning process.[2,3] Foundation for better state integration into the planning process can be found in the following specific references from FERC Order 1000. In Paragraph 208, the FERC notes:

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[1] The ICC believes that the issues discussed by the OMS in this section do not cover all of the matters on which MISO is not in compliance with Order 1000. The ICC elaborates on this point in its Supplemental Attachment.

[2] Given that the costs of MVP lines are allocated on a postage stamp basis, Illinois and Wisconsin believe that OMS should have a specific role in reviewing the MVP lines. One such option could be structured to provide OMS a veto over the portfolio of MVP lines. This veto would be exercised only by a supermajority of OMS members, would occur prior to the MISO Board of Directors vote for Appendix A determination for those lines, and would have to occur by a date certain prior to the scheduled MISO Board of Directors vote. The ICC would also support veto authority of this nature on a project-specific basis.

[3] OMS is still considering the specific method and needs more time to develop that specific role, especially since the Entergy integration effort is also ongoing.

> We allow for local and regional flexibility in designing the procedures for identifying the transmission needs driven by Public Policy Requirements for which potential solutions will be evaluated in the local or regional transmission planning processes." . . . "We therefore conclude that it is appropriate to require public utility transmission providers, in consultation with their stakeholders, to design the appropriate procedures for identifying and evaluating the transmission needs that are driven by Public Policy Requirements in their area, subject to our review on compliance.

Additional support comes from Paragraph 209 wherein the FERC indicates:

> Some public utility transmission providers might conclude, in consultation with stakeholders, to develop procedures that rely on a committee of load-serving entities, **a committee of state regulators**, or a stakeholder group to identify those transmission needs for which potential solutions will be evaluated in the transmission planning processes. [Emphasis added]

FERC further elaborates on the importance of input from state regulators in the planning process in Footnote 189 to Paragraph 209 where it specifically states:

> As noted below, we strongly encourage states to participate actively in the identification of transmission needs driven by Public Policy Requirements. Public utility transmission providers, for example, **could rely on committees of state regulators** or, with appropriate approval from Congress, compacts between interested states to identify transmission needs driven by Public Policy Requirements for the public utility transmission providers to evaluate in the transmission planning process. [Emphasis added]

In Paragraph 502, FERC also elaborates on how an enhanced role for state regulators would be in alignment with the requirement of Order 890 planning, namely:

> As explained above, [Order 1000] builds on Order No. 890's requirement that a public utility transmission provider have open and transparent transmission planning processes in which we encourage states or state committees to be involved.

An enhanced role for state regulators – through OMS – is a reasonable adjunct to the traditional final authority retained by individual states to approve ownership and siting of facilities that are planned to be physically located in their states.

OMS also has concerns with the current MISO Out-of-Cycle (OOC) process and believes it needs to be changed, with the addition of timing criteria to comply with Order 1000. Paragraph 150 in Order 1000 states:

> …stakeholders must be provided with an opportunity to participate in that [regional planning] process in a timely and meaningful manner. Therefore, we apply the Order No. 890 transmission planning principles to the regional transmission planning process, as reformed by this Final Rule. This will ensure that stakeholders have an opportunity to express their needs, have access to information and an opportunity to provide information, and thus participate in the identification and evaluation of regional solutions.

Paragraph 152 also states:

> …Additionally, absent timely and meaningful participation by all stakeholders, the regional transmission planning process will not determine which transmission project or group of transmission projects could satisfy local and regional needs more efficiently or cost-effectively.

Considering these Order 1000 paragraphs, OMS has a general concern related to the compressed schedule and applicability of the OOC process on candidate projects. OMS is concerned that there is a lack of distinction between candidate OOC projects that are smaller and more straightforward, likely requiring a shorter window of time for evaluation, than with those that are more complex.

Larger regional projects eligible for cost sharing may have numerous viable alternatives and require a longer time for sufficient, timely, and meaningful study and evaluation to recommend the best solution. However, currently OOC projects undergo a compressed schedule to study and evaluate candidate projects and alternatives. This creates the potential for the MISO Board to approve projects that may not be the best option because the compressed OOC schedule did not allow enough time for a full vetting of all of the possible options. Shortened and overlapping analysis of these OOC projects cause additional strain on MISO resources and subject matter experts who are relied on by stakeholders to perform the detailed analysis of the proposed projects.

OMS recommends that MISO consider incorporating timing criteria for all OOC proposals.[4] One suggestion would be to require a minimum of four months from when an OOC project is proposed to when MISO Board of Directors' approval of the project is expected. OMS also suggests that larger, complex projects with higher costs be given a longer minimum evaluation timing criteria, e.g., six months. This would allow MISO staff the necessary time to analyze the proposed projects and properly vet any and all alternatives to ensure that reliability of the system is not impacted and that the best solution is recommended for MISO Board approval. The addition of minimum timing criteria depending on the nature of the project and the number of alternatives also allows

[4] In previous Comments to FERC, the ICC has recommended elimination of the OOC tariff language. The ICC continues to support elimination of the OOC tariff provision.

stakeholders more time to be involved in the OOC planning analysis of projects, and better ensures that MISO continues to follow an open and transparent planning process as directed by FERC Order 890 and reinforced by Order 1000.

<u>Interregional Planning and Cost Allocation</u>

2. ***What key factors should be considered when addressing the interregional planning and cost allocation requirements of Order 1000? Are there areas where MISO should pursue reforms that go beyond the minimum requirements of the Order? For example, Order 1000 defines an interregional facility as one that terminates in two different regions; however, the current Joint Operating Agreement with PJM allows for an interregional (i.e. cost shared between the two regions) facility to be located solely within one region but shows benefits to both. What can MISO member utilities, interested stakeholders and state commissions do to move forward and/or enhance interregional planning?***

Key factors to be considered in this area include: 1) mechanisms for improving market transactions across MISO and other RTO regions, 2) improvements in transactions between MISO and non-RTO regions, and 3) improvements in planning between MISO and its neighbors. Market congestion is an important issue for all market participants, and OMS appreciates that MISO examines the Top Congested Flowgates. MISO has expanded these studies in MTEP 12 to include flowgates outside of MISO, and OMS supports this effort. OMS believes that, if there are projects identified that have benefits beyond MISO, then there should be a cost allocation mechanism that enables costs of such a project to be allocated to all the beneficiaries – both inside and outside of the MISO, commensurate with the estimated benefits that the project provides.[5]

Many of the MVP projects that have been approved by the MISO Board have in-service dates that are several years out. Moreover, MISO is scheduled to make a compliance filing in the very near future that reduced the benefit-cost threshold for Market Efficiency Projects (MEPs) to 1.25. Given the length of time before the MVPs are placed in-service and the reduced benefit-cost ratio for MEPs, there is a possibility that beneficial projects on the seams between MISO and its neighbors could be identified. Such projects should receive MISO's full consideration and should not automatically be precluded from MISO's planning process.

Stakeholders can enhance interregional planning by ensuring that relevant transmission providers and RTOs are fully engaged in a joint planning process across their seams. MISO and SPP have

[5] The ICC believes that some weight should be given to, or some account should be taken of, parties' positions about whether or not they really will benefit from MISO projects. There are methods to discern between free riders and non-beneficiaries.

begun initial steps down this path by developing a joint future study in 2012. OMS encourages MISO to pursue similar efforts with its other neighboring transmission providers. OMS also intends to engage neighboring regional state committees and state regulatory commissions, to ensure that transmission providers pursue robust and efficient interregional planning which should result in increased benefits to electricity consumers.[6] One way that state commissions can do this is to establish their own regional planning groups, especially groups that span the boundaries of multiple transmission providers. By doing this, states along the seams are more fully engaged, will better understand each other's goals and priorities, and will provide more meaningful input to the transmission providers. This idea is not however intended to be a substitute for anything mandated by Order 1000.

<u>Elimination of the Federal Right of First Refusal</u>

3. ***What types of projects does your sector believe qualify for the elimination of the Right of First Refusal (ROFR) - Multi Value Projects (MVP's), Market Efficiency Projects (MEP's), Baseline Reliability Projects?***

On this particular topic, OMS is not in full agreement on which projects should have the federal ROFR eliminated. There are two conflicting viewpoints among the states. First is the viewpoint that the elimination of the federal ROFR, if adopted, should be limited in application. For example, given that the scope of MVP and MEP projects are arguably more regional in nature,[7] as well as their need drivers (i.e., public policy, market efficiency) and benefits,[8] removal of the ROFR may be warranted for such projects. Therefore, opening up the process to a qualified non-incumbent transmission owner, who may be able to provide a solution at a lower cost than an incumbent transmission owner, would be beneficial to the customers. Similarly, MEPs have a long-term, regional economic focus[9] (i.e., relieving transmission congestion and improving market efficiency) and therefore, are another category of project that can benefit from more competition to provide for the best solution within a particular region, as well as across multiple regions.

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[6] The ICC is supportive of OMS efforts to engage regulators in bordering areas in discussion regarding inter-regional planning. However, State commissions are not in a position to "ensure that transmission providers pursue robust and efficient interregional planning" because such planning requires cooperation from the state regulators and the transmission providers in the other region.

[7] The ICC does not agree that "MVP and MEP projects are arguably more regional in nature." There is nothing in the tariff criteria requirements for these types of projects that requires them to be regional in nature. The ICC agrees that the ROFR should be eliminated for MVP and MEP projects.

[8] Note that by making this statement OMS is not waiving any of its pending objections to the MVP process, and further note that some OMS states are not in favor of certain aspects of MISO's MVP proposals to date.

[9] The ICC does not agree that MEPs necessarily have a long-term, regional economic focus.

Some states believe Baseline Reliability Projects (BRPs) on the other hand should not be subject to the elimination of the federal ROFR,[10] because these projects are more local in nature, and driven by local reliability needs, usually on a shorter time horizon. The transmission grid is best served by transmission owners meeting the applicable reliability standards (i.e., NERC standards) for their service territory in a sufficient and least cost manner for their customers.

However, some BRPs may also provide regional reliability benefits, as well as interregional benefits (i.e., increased reliability on two neighboring systems, which in turn helps increase transfer capability between the two systems). That poses the question, should certain BRPs be subject to the ROFR elimination, and if so, to what extent? Some OMS states would like to suggest that MISO consider establishing a set of criterion advance of a filing to set a standard when selecting the BRPs that qualify for elimination of ROFR. In other words, some BRPs may be local enough in nature that they should retain the federal ROFR, while some that provide for more regional benefits could be opened to competition. Specific criteria would be necessary for determining when a BRP may provide more benefits beyond a specific local footprint and should be opened to non-incumbent TOs. For example, the size and impact of a project (i.e., a 345kV that can be shown to provide reliability to two neighboring RTOs), a cost threshold for a project (i.e., $10 million), and/or the location of a project (i.e., a transmission line upgrade that sits on, or near a seam whose upgrade would provide for a more robust system, and directly or indirectly, a more reliable link with a neighboring RTO).

The second viewpoint specifies that the elimination of the federal ROFR from the MISO FERC Tariff be applicable for all projects, MVPs, MEPs, and BRPs, where the project's costs are allocated outside the transmission owner zone in which the project is physically located.[11] Given that project costs are to be allocated outside the zone in which the project is to be located, the construction of the project should be open to qualified non-incumbents who may be able to produce the project at a lower cost than an incumbent transmission owner. Competition among qualified transmission developers would help to minimize the costs that are being allocated outside of the zone without compromising project quality. In a situation where the cost of the project is to be allocated completely within the zone where the project is to be located, the selection of a project developer can be left to the parties that will ultimately bear those costs.

It bears stating that in making these suggestions on elimination of the ROFR, OMS believes that ROFRs sounding in state law are unaffected by Order 1000. As FERC stated repeatedly,[12]

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[10] OMS supports MISO's retention of the federal ROFR for Participant Funded, Generator Interconnection, and Transmission Delivery Service projects as well, for similar reasons.

[11] The ICC supports this position.

[12] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶61,051 (July 21, 2011): See, e.g., ¶ 107; ¶ 159, n.155; ¶ 212; ¶ 227; ¶ 290; and ¶ 337.

Order 1000's elimination of the federal ROFR has no preemptive effect on state laws that dictate which entities may build within a state or a specific territory within a state.

4. ***What are the primary factor(s) that should be considered in selecting which transmission developer should construct an approved facility?***
    a. ***What qualifications should be required to be a transmission developer?***
    b. ***By what method should a developer be selected? (i.e. competitive bid, sponsorship, etc.)***
    c. ***Should there be a preference for the proposer of a project?***

a. Current MISO Transmission Owners who have demonstrated the ability to construct, own and operate transmission assets should be automatically included as potential transmission developers in their current service territories.[13] Affiliates of current MISO TOs would seem to be qualified, but it may be difficult to determine the scope and abilities of the affiliate, relative to the MISO TO. Rather than making a special accommodation for existing TO affiliates, it is probably cleaner for MISO to develop the criteria for all new potential TOs.

At a minimum, a prospective transmission developer needs to have a plan for how it would meet all of the NERC requirements to own and operate these critical assets. This would include demonstration of previous experience or a plan as to how and when they would hire personnel to accomplish the regulatory permitting, acquisition of land easements, construction and operation of a transmission project, including outage recovery. An affiliate needs to have a plan detailing the personnel from other parts of the parent corporation (or its affiliates) that would be utilized on its project, and positive affirmation from their upper management or Board of Directors that the plan has been approved.

b. OMS is paying close attention to the MISO ROFR workshops and has yet to develop a formal position on either of the two stakeholder proposals that were presented during the March 23 ROFR meeting. OMS understands that MISO will present an initial proposal in the near future.

To date, the MTEP process has been developed as a cooperative endeavor where individual TOs propose projects at the beginning of the MTEP cycle and then all of the projects are optimized in a give-and-take between the TOs, MISO, and other interested stakeholders, followed by the analysis and decision-making of MISO. This method should result in a more optimal transmission system that realizes the benefits of planning the transmission system on a regional basis rather than using an individual utility perspective.[14]

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[13] The ICC does not agree that incumbents should automatically be included as potential transmission developers. There should be an objective eligibility test applied to all potential developers.

[14] The ICC does not support the bottom-up only style of transmission planning described in this paragraph and does not agree that such process would result in an optimal plan.

Order 1000 layers on to this cooperative process the benefits to be accrued from competition. While it is difficult to argue against the theoretical conclusion that competition leads to lower prices, the calculus used to evaluate the public interest involves additional factors. Regardless of which process MISO ultimately chooses, long-term value for the utility customer should dictate the result. This value encompasses not only capital costs, but issues of reliability, owner/operator accountability, ease of process, and operation and maintenance costs.

If MISO chooses a "competitive bid" methodology, one method of helping to ensure that only serious offers are made for a potential project would be to require a company wishing to bid on a project to post a "bid bond."[15] Not only would that make sure that only serious offers were made, but a "bid bond" could be forfeited if the developer ultimately chooses not to complete the project.

c. The question of whether the original project sponsor should get a preference brings up the issue of how new projects will be proposed. OMS does not want to see MISO overrun with potential proposals that results in MISO resources being consumed with performing studies. If there is a window to propose projects for MISO-identified problems, there will likely be several proposals for each problem. In other words, there could be many "original project sponsors". Giving a preference to the original sponsor can also be problematic when the project is changed in some way, resulting in parties arguing about whether the modified proposal still qualifies as the "original proposal" or a whole new project. If the original project sponsor is given preference, MISO will need to be clear as to when that developer's "rights" expire if the project does not make it into Appendix A in the year that it is proposed or what project changes constitute a project being classified as a "new project". Favoring the original project sponsor could take away from the current collaborative aspect of the planning process, as developers keep their projects and ideas close to the vest in an attempt to keep their original proposer status. OMS would also like to point out that individual proposals are developed based on a unique perspective and while multiple proposals may differ, the outcomes of the proposals may offer similar benefits. This could create a potential impasse when determining the best solution. This is something MISO will have to consider when selecting an approach for project proposals, selection and development.

5. ***Some stakeholders have commented that, for transmission projects whose developer is selected through competitive bidding, a third party evaluator should be used to make the selection. What entity should fill this role? Why?***

OMS will refrain from taking a position on this point at this time.

[15] http://construction.about.com/od/Bidding-Process/a/What-Is-A-Bid-Bond.htm

6. ***What measures can MISO or others take to ensure accurate estimated costs and timely construction once a developer is selected? How should cost overruns and delays be handled should they occur?***

OMS supports the cost containment methods contained in the OMS comments to FERC in its Notice of Inquiry on Transmission Incentives.[16] OMS acknowledges that the FERC has complete control over transmission incentives received by transmission developers. However, MISO could collect a "definitive cost estimate" from a transmission developer having received MISO Board approval to construct a transmission project. This "definitive cost estimate" is further defined on page 14 of the OMS Transmission Incentive Comments:

> Definitive cost estimates would typically include more concrete cost estimates and other project-specific information such as line routes, engineering studies and, where required, state determination of the routes for the transmission project… …For projects requiring a cost-benefit test, such projects must continue to prove to be cost-beneficial. For all projects, there should be a showing that the investment is cost-effective in meeting the purpose for which the project was initially approved. This will require detailed elements for the cost estimate, and a determination that these estimates are not out of line with industry experience.

OMS recommends that there be a requirement on the developer to submit periodic project cost estimate updates. To the extent this "definitive cost estimate," or any updated cost estimate collected by MISO after MISO Board approval of a transmission project, differs significantly, OMS suggests that MISO form a group similar to SPP's Project Cost Working Group to assess whether a significant change in a cost estimate is justified.[17] If a project's new cost estimate is found to be imprudent, then the developer should be given the opportunity to assume responsibility for the overrun. If the developer should choose to not assume responsibility for the overrun, then the project should be subject to cancelation by the MISO Board or transfer to another developer.

For a transmission project whose justification to build is based upon a benefit cost ratio, such as a Market Efficiency Project, if the cost estimate has reached the point where the project is no longer able to be justified because of the increased cost--especially before construction has begun--then either (a) the project's cost allocation should be reviewed for qualification as a different project type that is less dependent on achieving a certain cost benefit ratio; or (b) the MISO Board should be asked to "reevaluate" the project under the current cost allocation scheme

[16] See OMS Comments in Docket No. RM11-26, *Promoting Transmission Investment Through Pricing Reform*, (September 12, 2011)
[17] http://www.spp.org/committee_detail.asp?commID=101

with the cost variance, only if the cost variance is prudent; and / or (c) some alternative remedy should be explored depending on the prudency of the cost estimate increase.[18]

Another possible way to ensure accurate estimated costs would be to impose a hard cost cap on the project, whereby any cost overruns are automatically assumed by the project developer. Borrowing from highway construction contracts, delays and cost control might be mitigated by providing rewards if projects are brought in under the time deadline and under budget. While such an approach removes the need for prudency analysis of cost overruns, it shifts the burden to the project/developer selection process to ensure that project cost estimates are not artificially inflated.

OMS would urge the MISO to be vigilant in protecting against imprudent cost overruns. Indeed, the FERC has created a perverse incentive for transmission developers to inflate final project costs by tying incentive ROEs to final project costs. The OMS commented on this topic in the FERC Transmission Incentives Notice of Inquiry. Specifically:

> Many of the incentives available under Order No. 679, such as ROE adders, have been allowed to apply to the actual costs of the projects rather than estimated cost of the project that is provided by the sponsors of the project. Basing rate incentives, particularly ROE adders, on a project's actual costs does not provide transmission project developers with an incentive to contain costs and more likely gives them an incentive to drive up costs, since they will effectively earn a bonus return for doing so.
>
> Experience has shown that developmental cost estimates used in the regional planning process are not definitive cost estimates and have been off by as much as 50 percent when compared to a project's actual costs. Assuming good faith on the part of project cost estimators, this difference may be primarily related to cost elements that cannot be known until detailed engineering studies have been performed to specifically determine line routes.
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> In order to counteract this critical problem of project cost over-runs, the first step of the OMS's proposed two-step process can be implemented before a definitive cost estimate is available. In the first step, the Commission will evaluate an applicant's request for transmission rate incentives, other than ROE adders. In this step, the Commission should also require each applicant to provide a cost cap on capital that will be needed for the proposed project. Incentives to address identified financial barriers in the first step would

[18] While supportive of the need for cost containment mechanisms, Iowa believes care should be taken in the choice, design, and implementation of such, especially in regard to MVPs. The mechanisms should aim toward encouraging accurate costs estimates and putting the risk of cost overruns significantly, if not mostly, onto the developer. In doing this, MISO should avoid revisiting the MVP portfolio selection that has already been authorized by the MISO board.

only be applied up to the allowed cost cap. The second step would be initiated only after a definitive cost estimate is submitted, and any additional bonuses and penalties granted to the applicant with regard to ROE would be based on performance relative to the definitive cost estimate and scheduled time for completion.[19]

<u>General</u>

7. When should the Order 1000 reforms be implemented? [e.g., upon FERC approval, gradual phase in, beginning of a planning cycle, etc.]

OMS is generally supportive of MISO's current proposed implementation,[20] where once FERC approves the MISO's compliance filings, realizing that both the regional and interregional reforms have different compliance deadlines and therefore potentially different FERC approval dates implementation would occur at the onset of a new planning cycle.[21] While this does present some delay in reaping the benefits of Order 1000, OMS believes that given the complex process (i.e., modeling timeframes, resource availability, and final MISO Board approval), it would be prudent to wait to change the rules prior to the start of a new planning cycle, rather than in the middle of a planning cycle.

Conclusion

This comment was supported by nine OMS members:

Illinois Commerce Commission
Indiana Utilities Regulatory Commission
Iowa Utilities Board
Michigan Public Service Commission
Minnesota Public Utilities Commission
Missouri Public Service Commission
North Dakota Public Service Commission
South Dakota Public Service Commission
Public Service Commission of Wisconsin

The Montana Public Service Commission and Kentucky Public Service Commission both abstained on this comment. The Manitoba Public Utilities Board was not present for the vote.

[19] Comments of the Organization of MISO States, at 30, filed September 12, 2011, in *Promoting Transmission Investment Through Pricing Reform,* Docket No. RM11-26-000.

[20] The ICC supports implementation of Order 1000 compliant tariff language at the earliest possible date. By the time MTEP 13 is approved in December of 2013, MISO should be in full compliance with Order 1000. By waiting to change the rules prior to the start of a new planning cycle, it is possible that MISO would not implement the provisions of Order 1000 until MTEP 15.

[21] MISO has proposed that the first planning cycle for implementation of Order 1000 could be the MTEP 14 planning cycle. Please refer to slide 5 of the January 25th PAC meeting presentation titled "Order 1000 Discussion Local and Regional Planning Requirements".

End Notes Listing Relevant FERC Order 1000 Paragraphs

Paragraph 65
We also clarify that the requirements of this Final Rule are intended to apply to new transmission facilities, which are those transmission facilities that are subject to evaluation, or reevaluation as the case may be, within a public utility transmission provider's local or regional transmission planning process after the effective date of the public utility transmission provider's filing adopting the relevant requirements of this Final Rule. The requirements of this Final Rule will apply to the evaluation or reevaluation of any transmission facility that occurs after the effective date of the public utility transmission provider's filing adopting the transmission planning and cost allocation reforms of the pro forma OATT required by this Final Rule. We appreciate that transmission facilities often are subject to continuing evaluation as development schedules and transmission needs change, and that the issuance of this Final Rule is likely to fall in the middle of ongoing planning cycles. Each region is to determine at what point a previously approved project is no longer subject to reevaluation and, as a result, whether it is subject to the requirements of this Final Rule. Our intent here is that this Final Rule not delay current studies being undertaken pursuant to existing regional transmission planning processes or impede progress on implementing existing transmission plans. We direct public utility transmission providers to explain in their compliance filings how they will determine which facilities evaluated in their local and regional planning processes will be subject to the requirements of this Final Rule.

Paragraph 148
We address these deficiencies in the requirements of Order No. 890 through this Final Rule, beginning with the requirement that public utility transmission providers participate in a regional transmission planning process that produces a regional transmission plan. Through the regional transmission planning process, public utility transmission providers will be required to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process. This could include transmission facilities needed to meet reliability requirements, address economic considerations, and/or meet transmission needs driven by Public Policy Requirements, as discussed further below. When evaluating the merits of such alternative transmission solutions, public utility transmission providers in the transmission planning region also must consider proposed non-transmission alternatives on a comparable basis. If the public utility transmission providers in the transmission planning region, in consultation with stakeholders, determine that an alternative transmission solution is more efficient or cost-effective than transmission facilities in one or more local transmission plans, then the transmission facilities associated with that more efficient or cost-effective transmission solution can be selected in the regional transmission plan for purposes of cost allocation

Paragraph 150
Because of the increased importance of regional transmission planning that is designed to produce a regional transmission plan, stakeholders must be provided with an opportunity to participate in that process in a timely and meaningful manner. Therefore, we apply the Order

No. 890 transmission planning principles to the regional transmission planning process, as reformed by this Final Rule. This will ensure that stakeholders have an opportunity to express their needs, have access to information and an opportunity to provide information, and thus participate in the identification and evaluation of regional solutions. Ensuring access to the models and data used in the regional transmission planning process will allow stakeholders to determine if their needs are being addressed in a more efficient or cost-effective manner. Greater access to information and transparency also will help stakeholders to recognize and understand the benefits that they will receive from a transmission facility in a regional transmission plan. This consideration is particularly important in light of our reforms that require that each public utility transmission provider have a cost allocation method or methods for transmission facilities selected in a regional transmission plan that reflects the benefits that those transmission facilities provide.

Paragraph 152
We conclude that, without the requirement to meet the Order No. 890 transmission planning principles, a regional transmission planning process will not have the information needed to assess the impact of proposed transmission projects on the regional transmission grid. Additionally, absent timely and meaningful participation by all stakeholders, the regional transmission planning process will not determine which transmission project or group of transmission projects could satisfy local and regional needs more efficiently or cost-effectively.

Paragraph 153
A number of commenters specifically address the treatment of non-transmission alternatives in the regional transmission planning process. Order No. 890's comparability transmission planning principle requires that the interests of public utility transmission providers and similarly situated customers be treated comparably in regional transmission planning. In response to Order No. 890, public utility transmission providers have identified in their transmission planning processes where, when, and how transmission and non-transmission alternatives proposed by interested parties will be considered. As noted in Order No. 890, the transmission planning requirements adopted here do not address or dictate which transmission facilities should be either in the regional transmission plan or actually constructed. As also noted in Order No. 890, the ultimate responsibility for transmission planning remains with public utility transmission providers. With that said, the Commission intends that the regional transmission planning processes provide for the timely and meaningful input and participation of stakeholders in the development of regional transmission plans.

Paragraph 208
We allow for local and regional flexibility in designing the procedures for identifying the transmission needs driven by Public Policy Requirements for which potential solutions will be evaluated in the local or regional transmission planning processes. The effects of Public Policy Requirements on transmission needs are highly variable based on geography, existing resources, and transmission constraints. We therefore conclude that it is appropriate to require public utility transmission providers, in consultation with their stakeholders, to design the appropriate procedures for identifying and evaluating the transmission needs that are driven by Public Policy Requirements in their area, subject to our review on compliance. At a minimum, however, we require that all such procedures allow for input from stakeholders, including but not limited to

those responsible for complying with the Public Policy Requirement(s) at issue and developers of potential transmission facilities that are needed to comply with one or more Public Policy Requirements.

Paragraph 209

We decline to require that transmission needs driven by Public Policy Requirements be identified by a particular entity or subset of stakeholders. However, all stakeholders must have an opportunity to provide input and offer proposals regarding the transmission needs they believe should be so identified, as discussed above. In other words, while the procedures adopted by public utility transmission providers in response to this Final Rule must allow all stakeholders to bring forth any transmission needs they believe are driven by Public Policy Requirements, those procedures must also establish a just and reasonable and not unduly discriminatory process through which public utility transmission providers will identify, out of this larger set of needs, those needs for which transmission solutions will be evaluated. Some public utility transmission providers might conclude, in consultation with stakeholders, to develop procedures that rely on a committee of load-serving entities, a committee of state regulators, or a stakeholder group to identify those transmission needs for which potential solutions will be evaluated in the transmission planning processes. *Fn 189.* Another example would be the case where a public utility transmission provider identifies such transmission needs itself on behalf of its customers, following consultation with stakeholders, including participating state regulators. However, to ensure that requests to include transmission needs are reviewed in a fair and non-discriminatory manner, we require public utility transmission providers to post on their websites an explanation of which transmission needs driven by Public Policy Requirements will be evaluated for potential solutions in the local or regional transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated. We conclude that this posting requirement is necessary to provide the Commission and interested parties with information as to how the identification procedures are implemented by public utility transmission providers

Fn 189 As noted below, we strongly encourage states to participate actively in the identification of transmission needs driven by Public Policy Requirements. Public utility transmission providers, for example, could rely on committees of state regulators or, with appropriate approval from Congress, compacts between interested states to identify transmission needs driven by Public Policy Requirements for the public utility transmission providers to evaluate in the transmission planning process.

Paragraph 400

While we acknowledge MidAmerican's concern that the Commission does not specify how interregional transmission facilities will be moved toward construction, we note that in the Proposed Rule, the Commission stated that, consistent with Order No. 890, the proposed regional transmission planning obligations do not address or dictate which investments identified in a transmission plan should be undertaken by public utility transmission providers. We affirm that statement, and further note that Order No. 890 already requires that public utility transmission providers make available information regarding the status of transmission upgrades identified in their regional transmission plans in addition to the underlying transmission plans and related transmission studies. The Commission made clear in Order No. 890-A that transmission providers must make available to other stakeholders information regarding the progress and construction of transmission upgrades and transmission facilities. To the extent neighboring transmission planning regions identify interregional transmission facilities of mutual benefit and have such transmission facilities in their individual regional transmission plans, these informational requirements will apply to the portions of the interregional transmission facilities within each of the individual region's transmission plans. We decline to require, as suggested by MidAmerican and National Grid, that every interregional transmission facility that is evaluated through the interregional transmission coordination procedures automatically be selected in a regional transmission plan for purposes of cost allocation. However, as discussed below, an interregional transmission facility must be selected in both of the relevant regional transmission plans for purposes of cost allocation in order to be eligible for interregional cost allocation pursuant to an interregional cost allocation method required under this Final Rule. Rather, we expect that information exchanged during the interregional coordination effort should inform discussions at the regional and local transmission planning level.

Paragraph 502

Turning to specific comments on this topic, we are not persuaded to adopt Illinois Commerce Commission's proposal for separate review and decision by a committee of state regulators on the reasonableness of proposed transmission expansion projects for which regional cost allocation would apply. As explained above this Final Rule builds on Order No. 890's requirement that a public utility transmission provider have open and transparent transmission planning processes in which we encourage states or state committees to be involved. Additionally, as required by this Final Rule, through transmission planning process, the public utility transmission providers and other parties, including state regulators, will have opportunities to participate in the identification of transmission needs. We decline, however, to mandate veto rights for state committees, but do not preclude public utility transmission providers from proposing such mechanisms on compliance if they choose to do so.[389]

FN 389 For example, Entergy's OATT allows Entergy's committee of state regulators to add a project to Entergy's transmission plan upon unanimous vote of the committee members. *See Entergy Arkansas, Inc.*, 133 FERC ¶61,211 (2010).

MISO Advisory Committee Hot Topic
April 18, 2012

Supplemental Statement of the Illinois Commerce Commission

Regional Planning and Cost Allocation

Although MISO has indicated that it believes it is already mostly in compliance with Order 1000, the ICC states that MISO has numerous changes to make in order to comply with the regional planning and cost allocation portion of Order 1000. For example:

Regional Planning

¶ 65 states that Order 1000 applies to any transmission facility evaluated or re-evaluated after the effective date of the MISO's compliance filing. Specifically, each region is to determine at which point a previously approved project is no longer subject to re-evaluation and, as a result, whether it is subject to the requirements of the final rule. MISO's tariff does not provide for any re-evaluation of MISO Board-approved transmission expansion projects. Order 1000 specifically envisions transmission providers having such a process in their tariff. Accordingly, MISO needs to work with the stakeholders to develop a project re-evaluation process for submission in its Order 1000 compliance filing.

¶ 148 requires public utility transmission providers, when evaluating the merits of alternative transmission solutions, to consider proposed non-transmission alternatives on a comparable basis. MISO has not provided a process by which this requirement will be met.

¶¶ 150 and 153 state that the MTEP process must provide stakeholders with an opportunity to participate in the MTEP process in a timely and meaningful manner. Ensure that stakeholders have: (a) an opportunity to express their needs; (b) access to information and an opportunity to provide information; (c) an opportunity to participate in the identification and evaluation of regional solutions; and (d) access to models and data used in the RTEP process, as well as greater access to information and transparency.

In the past, state commissions have been denied access to data and information that was deemed confidential. MISO must ensure that the confidentially provisions in its tariff concerning access to confidential data do not preclude state commissions that actually can and will keep confidential data confidential from receiving needed data and information that would allow this Order 1000 requirement to be satisfied. Indeed, without access to this information, state commissions attempting to participate in the MTEP process will likely be relegated to little more than the role of spectator. If this happens, it would be difficult for MISO to claim that its stakeholders have "access to models and data" that is used in the RTEP process, "greater access to information and transparency" or "access to information".

In addition, MISO has not explained how its existing planning process provides state commissions with "access to models" that MISO uses in the planning process.

¶ 209 requires public utility transmission providers to post on their websites an explanation of which transmission needs driven by public policy requirements will be evaluated for potential solutions in the local or regional transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated. The FERC concluded that this posting requirement is necessary to provide both the FERC and interested parties with information as to how the identification procedures are implemented by public utility transmission providers. Unless MISO provides such information on their web page, MISO cannot be considered compliant with this provision of Order No. 1000. MISO has not explained how it will decide which transmission needs driven by public policy requirements will be evaluated for potential solutions in the regional transmission planning process.

¶ 400 requires that MISO make available information regarding the status of transmission upgrades identified in their plans in addition to the underlying transmission plans and related transmission studies. In order to gain access to MTEP powerflow models, MISO Series Models or even the MTEP transmission map, MISO stakeholders must first complete the appropriate non-disclosure agreements (NDAs). In particular, MISO's Expansion Planning Information order form clearly states that the powerflow and series models are only available to members and market participants that have executed a universal NDA and confidentiality agreement.[1] Given that certain stakeholders, such as the state commissions are considered part of the non-members sector and many of the state commissions are unable to execute a universal NDA (even though they are quite capable of keeping confidential data confidential and committed to that objective), it is unclear how these underlying transmission plans and studies can be considered "available information". Accordingly, MISO's compliance with this requirement is thwarted by MISO's arbitrary NDA for state regulators.

Cost Allocation

¶ 603 requires each public utility transmission provider to show on compliance that its cost allocation method or methods for regional cost allocation and its cost allocation method or methods for interregional cost allocation are just and reasonable and not unduly discriminatory or preferential by demonstrating that each method satisfies the six cost allocation principles. As discussed below, MISO's cost allocation approach for MVPs fails to comply with almost all of these cost allocation principles. For example:

Regional Cost Allocation Principle 1 (¶ 622): The cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.

With the exception of the 20 percent postage stamp allocation, MISO's cost allocation for baseline reliability projects and market efficiency projects complies with cost allocation principle

[1] See, "Order Models & Maps" link at https://www.midwestiso.org/Planning/Models/Pages/Models.aspx

1. However, MISO has yet to actually show that the cost allocation methodology for each MVP allocates costs to those utilities that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits for those utilities. MISO's MVP approach—which starts with a postage stamp cost allocation—and then attempts to find a set of transmission expansion projects that spreads benefits across the region, is backwards. Order 1000 starts with transmission expansion planning. Then Principle 1 requires the costs of projects that are included in the plan to be allocated to beneficiaries roughly commensurate with their benefits. Accordingly, MISO is not compliant with this portion of Order 1000.

For example, MISO's most recent MTEP contains no meaningful analysis detailing how the costs of the individual MVPs that are allocated across the MISO region are roughly commensurate with the benefits provided to each utility by each MVP. Rather, MISO simply provides a benefit/cost calculation on a portfolio basis at the local resource zone level showing positive benefits.[2] MISO also repeatedly makes variations of the statement that, "MVP benefits will be spread commensurate with the allocation of the costs". However, MISO showing that the MVP portfolio provides positive benefits across the seven local resource zones is not sufficient to comply with cost allocation principle 1. Rather, MISO must make a showing that the benefits provided by the projects in the MVP portfolio, either individually or in aggregate, will be spread across the MISO footprint in a manner that is roughly proportionate to the energy withdrawals from the MISO system. This is due to the fact that the costs of the MVPs are to be recovered on a per-MWh charge. Until MISO provides such analysis, it cannot be compliant with Principle 1.

Regional Cost Allocation Principle 2 (¶ 637): Those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities.

MISO is not compliant with this principle due to the fact that MISO presents the expected estimated benefits for its MVP portfolio on an aggregate basis, rather than on an individual project-specific basis and individual utility basis. Until MISO provides the estimated costs and benefits of the MVPs and how they were calculated, both on an individual project and individual utility basis, load-serving entities will not be able to determine if the projects from which they are being allocated costs, actually provide them with any benefit.

MISO's intention to recover MVP costs on a per-MWh basis from all parties withdrawing energy from the MISO system also makes compliance with Principle 2 difficult. MISO intends to recover the costs of its MVP portfolio through a per-MWh charge assessed to all parties withdrawing energy from the Midwest ISO system (with the exception of parties located in PJM). Given that the intended purpose of MVPs is to address public policy requirements, there are certain users of the MISO system that are effectively being charged for MVPs that they do not need to use. For example, Illinois LSEs are able to purchase renewable energy credits that allow them to meet their public policy standard obligations without actually taking delivery of the wind energy. Michigan's RPS requires all wind energy to be produced in-state. Indiana and Kentucky do not have public policy requirements. In sum, anyone withdrawing energy from the

[2] A local resource zone is an aggregate of transmission owner zones. MISO suggests that there will initially be seven local resource zones across the MISO region.

MISO system will be assessed a charge for the MVPs through the per-MWh charge – including those who do not need the remotely located wind energy made available by the MVPs. Allocating these costs to such parties not only violates cost principle 2, but the principle that "cost causers should pay".

One may argue that these transmission customers derive other benefits from MVPs, such as increased reliability. However, under tariff Criterion 1, MVPs are not proposed for the purpose of addressing any specific reliability concerns. Rather, they are proposed for the purpose of delivering renewable energy to help LSEs meet their public policy obligations. If a reliability violation needs to be addressed, MISO should look to address those needs through the construction of baseline reliability projects, rather than through MVPs.

Consequently, MISO has not demonstrated that its MVP tariff criteria will ensure that Principle 2 of Order 1000 will be met.

Regional Cost Allocation Principle 3 (¶ 646): If a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, it must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. A public utility transmission provider in a transmission planning region may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies and the Commission approves a higher ratio. (P 646)

MISO stakeholder groups have been contemplating modifying the MEP criteria to incorporate a b/c ratio threshold of 1.25. This 1.25 b/c ratio technically complies with the requirement of Principle 3 for MEPs. However, because MVP tariff Criterion 1 does not require a benefits standard, MISO is not in compliance with Principle 3.

Furthermore, Principle 3 specifically requires the benefit analysis and the b/c ratio to be calculated on a "transmission facility" basis. Beside the fact that MVP tariff Criterion 1 does not even require satisfaction of a b/c ratio, the b/c ratio that MISO did provide in MTEP 11 was provided on a portfolio basis and not on a project or "facility" basis.

For all these reasons, MISO is not in compliance with Principle 3.

Regional Cost Allocation Principle 4 (¶ 657): The allocation method for the cost of a transmission facility selected in a regional transmission plan must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.

MISO imposes an MVP charge on export transactions and through transactions that sink outside the MISO region (except for transactions sinking in PJM). It cannot be said that those entities outside the MISO region voluntarily agree to assume those costs. As such, MISO is not compliant with Principle 4.

Regional Cost Allocation Principle 5 (¶ 668): The cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.

As noted above, MISO currently provides the benefits calculations of its MVPs on a portfolio basis and only at the local resource zone level. As such, the determination of benefits and identification of beneficiaries for <u>a transmission facility</u> are not provided. Principle 5 specifically requires the determination of benefits and the identification of beneficiaries on a "transmission facility" basis. MISO's portfolio approach also fails to provide any meaningful documentation that would allow a stakeholder to determine how benefits were calculated and attributed for a specific proposed transmission facility. In simple terms, without project-specific and LSE-specific data and analysis, there is no way for a stakeholder to assess whether the beneficiaries <u>for each facility</u> in the proposed portfolio were properly identified and the corresponding costs were properly allocated.

In order to meet this obligation, MISO should explore the use of PROMOD analysis to determine the benefits for each individual project down to the transmission owner pricing zone level. The ICC acknowledges that in the past, MISO staff has expressed concerns of "arbitrary precision" or "false precision" with the provision of such data to stakeholders. However, the ICC believes that such concerns are unsupported and MISO's providing such data and analysis to stakeholders would help improve the transparency of MISO's MVP benefit calculations and ensure that the costs of each individual facility in the MVP portfolio are distributed to utilities commensurate with their benefits. If there are any real issues concerning "precision", MISO and its stakeholders should be able to address them during the stakeholder process. Providing such granular analysis will allow MISO to both comply with Principle 5 and remove the doubt in the minds of MISO's stakeholders that the MVPs truly provide a level of benefits that are commensurate with the cost allocations.

¶ 669 states that stakeholders must be able to clearly see who is benefiting from and who must pay for transmission expansion projects. The current process employed by MISO does not provide stakeholders with this clarity. Thus, MISO is not in compliance with Principle 5.