

142 FERC ¶ 61,215
 UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
 Philip D. Moeller, John R. Norris,
 Cheryl A. LaFleur, and Tony Clark.

Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners	Docket Nos. ER13-187-000 ER13-187-001
Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners	ER13-186-000
MidAmerican Energy Company and the Midwest Independent Transmission System Operator, Inc.	ER13-89-000
American Transmission Company LLC and the Midwest Independent Transmission System Operator, Inc.	ER13-101-000 ER13-101-001
Cleco Power LLC	ER13-84-000
Entergy Arkansas, Inc.	ER13-95-000

ORDER ON COMPLIANCE FILINGS AND TARIFF REVISIONS

(Issued March 22, 2013)

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Appendix A: List of Intervenors, Commenters, and Entities Submitting Answers

Appendix B: Abbreviated Names of Commenters

1. On October 25, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) submitted in Docket No. ER13-187-000, pursuant to section 206 of the Federal Power Act (FPA),¹ revisions to Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)² to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.³ MISO also submitted revisions to the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation (Transmission Owners Agreement) in Docket No. ER13-187-001.⁴ MISO Transmission Owners joined sections II.D.1 and II.D.3.b⁵ of MISO’s compliance filing.⁶

¹ 16 U.S.C. § 824e (2006).

² MISO, FERC Electric Tariff, Attachment FF (Transmission Expansion Planning Protocol) (8.0.0).

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

⁴ MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, App. B (Planning Framework) (1.0.0).

⁵ Section II.D.1 of MISO’s compliance filing is titled, “Nonincumbent Developer Participation - The Transmission Owners Agreement is Protected by the *Mobile-Sierra* Public Interest Standard and Cannot be Compulsorily Amended Absent a Clear Showing of Serious Harm to Public Interest.” MISO, Transmittal Letter, Docket No. ER13-187-000, at 29 (filed Oct. 25, 2012) (MISO Compliance Transmittal). Section II.D.3.b. of MISO’s compliance filing is titled, “Exclusions From Requirements to Eliminate Right of First Refusal – Multi-Transmission Owner Zones.” *Id.* at 41.

⁶ MISO Transmission Owners for purposes of the filings addressed in this order are: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois

(continued . . .)

2. On October 11, 2012, MidAmerican Energy Company (MidAmerican) submitted in Docket No. ER13-89-000, pursuant to section 206 of the FPA, revisions to Attachment FF-MidAmerican (MidAmerican Local Transmission Planning Process) of the MISO Tariff (Attachment FF-MidAmerican)⁷ to comply with the requirements in Order No. 1000 related to MidAmerican's local transmission planning process.⁸

3. On October 11, 2012, as amended on October 16, 2013, American Transmission Company LLC (American Transmission) submitted in Docket No. ER13-101-000, pursuant to section 206 of the FPA, revisions to Attachment FF-ATCLLC (American Transmission Local Transmission Planning Process) of the MISO Tariff (Attachment FF-ATCLLC)⁹ to comply with the requirements in Order No. 1000 related to American Transmission's local transmission planning process.¹⁰

Company and Ameren Transmission Company of Illinois; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; and Southern Minnesota Municipal Power Agency. MidAmerican Energy Company also joins MISO's compliance filing in Docket Nos. ER13-187-000 and ER13-187-001 only. *See also* MISO, Errata, Docket No. ER13-187-000 (Dec. 20, 2012) (correcting list of MISO Transmission Owners that join parts of the MISO compliance filing).

⁷ MISO, FERC Electric Tariff, Attachment FF-MidAmerican (Local Transmission Planning Process) (1.0.0).

⁸ MISO joined MidAmerican's local compliance filing because MISO is the administrator of the MISO Tariff, but MISO takes no position on the substance of the filing.

⁹ MISO, FERC Electric Tariff, Attachment FF-ATCLLC (Local Transmission Planning Process) (1.0.0).

¹⁰ MISO joined American Transmission's local compliance filing because MISO is the administrator of the MISO Tariff, but MISO takes no position on the substance of the filing.

4. On October 11, 2012, Cleco Power LLC (Cleco) submitted in Docket No. ER13-84-000, pursuant to section 206 of the FPA, revisions to Attachment K of its Open Access Transmission Tariff (Cleco Tariff)¹¹ to comply with the regional transmission planning requirements of Order No. 1000.
5. On October 11, 2012, Entergy Services, Inc. acting as agent for the Entergy Operating Companies,¹² submitted in Docket No. ER13-95-000, pursuant to section 206 of the FPA, revisions to Attachment K of the Entergy Operating Companies' Open Access Transmission Tariff (Entergy Tariff)¹³ to comply with the regional transmission planning requirements of Order No. 1000.
6. On October 25, 2012, MISO and MISO Transmission Owners submitted in Docket No. ER13-186-000, pursuant to section 205 of the FPA,¹⁴ proposed revisions to Attachment FF of the MISO Tariff¹⁵ to modify the cost allocation method for Baseline Reliability Projects (Baseline Reliability Project Filing).
7. In this order, we conditionally accept MISO's compliance filing in Docket Nos. ER13-187-000 and ER13-187-001, subject to a further compliance filing, as discussed below. In addition, we conditionally accept MidAmerican's local compliance filing in Docket No. ER13-89-000, subject to a further compliance filing, as discussed below. We conditionally accept American Transmission's local compliance filing in Docket Nos. ER13-101-000 and ER13-101-001, subject to a further compliance filing, as discussed below. We also conditionally accept Cleco's compliance filing in Docket No. ER13-84-000 and Entergy's compliance filing in Docket No. ER13-95-000, conditioned upon our examination and acceptance of MISO's proposed modifications to its Tariff that reflect the integration of Cleco and Entergy into the MISO system and subject to a further compliance filing, as discussed below. Finally, we conditionally accept MISO's Baseline

¹¹ Cleco Power LLC, OATT, Attachment K (Transmission Planning Process) (1.0.0).

¹² The Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc. (together, Entergy).

¹³ Entergy Arkansas, Inc., Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (1.0.0).

¹⁴ 16 U.S.C. § 824d (2006).

¹⁵ MISO, FERC Electric Tariff, Attachment FF (Transmission Expansion Planning Protocol) (7.0.0).

Reliability Project Filing in Docket No. ER13-186-000, subject to a further compliance filing, as discussed below.

I. Background

8. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890¹⁶ to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its tariff to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

9. Order No. 1000's cost allocation reforms require that each public utility transmission provider participate in a regional transmission planning process that has: (1) a regional cost allocation method or methods for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation, and (2) an interregional cost allocation method or methods for the cost of new transmission facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission coordination procedures required by Order No. 1000. Order No. 1000 also requires that each cost allocation method satisfy six cost allocation principles.

10. The Commission acknowledged in Order No. 1000 that each transmission planning region has unique characteristics, and, therefore, Order No. 1000 accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate regional differences.¹⁷ Order No. 1000 does not prescribe the exact manner in which public utility transmission

¹⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

providers must fulfill the regional transmission planning requirements.¹⁸ Similarly, because the Commission did not want to prescribe a uniform method of cost allocation for every transmission planning region, Order No. 1000 adopts the use of cost allocation principles.¹⁹ The Commission stated that it was acting to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential, and it acknowledged that public utility transmission providers in some regions may already meet or exceed some requirements of Order No. 1000.²⁰

II. Compliance Filings

A. MISO Compliance Filing (Docket No. ER13-187-000)

11. MISO states that its current regional transmission planning process, as outlined in Attachment FF (Transmission Expansion Planning Protocol) of the Tariff and in Appendix B (Planning Framework) of the Transmission Owners Agreement, already largely complies with the regional planning and cost allocation requirements of Order No. 1000. MISO states that the Commission has previously found that MISO's current regional transmission planning process complies with the requirements of Order No. 890.²¹ MISO states that its current regional transmission planning process already results in a regional transmission plan (the Midwest Transmission Expansion Plan (MTEP)), to identify and implement more efficient and/or cost-effective regional transmission solutions. MISO explains that its regional planning process appropriately plans for and allocates the cost of transmission projects that address a variety of needs relating to reliability (through Baseline Reliability Projects and Multi-Value Projects (MVPs)), economics (through Market Efficiency Projects (MEPs) and MVPs), and public policy

¹⁸ *Id.* P 157.

¹⁹ *Id.* P 604.

²⁰ *Id.* P 13.

²¹ MISO Compliance Transmittal at 3 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,164 (2008) (MISO Order No. 890 Compliance Order I), *further orders on compliance*, 127 FERC ¶ 61,169 (2009) (MISO Order No. 890 Compliance Order II) and 130 FERC ¶ 61,232 (2010) (MISO Order No. 890 Compliance Order III)). On April 23, 2010, MISO submitted revisions to Attachment FF in compliance with the Commission's directives in MISO Order No. 890 Compliance Order III. That filing is currently pending before the Commission.

(through MVPs). MISO states that the costs of such transmission projects are allocated in a manner that is consistent with cost causation and commensurate with the associated benefits.

12. MISO notes that it is submitting revisions to its Tariff in this filing to address Order No. 1000's requirements with respect to the requirement to submit or post certain information, including: (1) MISO's explanation of its determinations to evaluate or not to evaluate public policy-driven transmission needs for potential solutions in the local or regional planning process; (2) information merchant developers must provide to enable the evaluation of potential reliability or operational impacts of their proposed transmission facilities on other systems; and (3) the enrollment and listing of non-public utility entities choosing to become part of MISO for purposes of compliance with Order No. 1000.²²

13. MISO also includes revisions to the Tariff and the Transmission Owners Agreement to address the Commission's nonincumbent transmission developer mandates in Order No. 1000 but argues that the Commission should disregard these revisions unless the Commission first determines that it has satisfied the requirements of the *Mobile-Sierra* doctrine with respect to the Transmission Owners Agreement.²³

14. MISO proposes that its compliance filing be made effective with the first annual planning cycle, beginning on June 1, following the issuance of the Commission's order accepting its compliance filing.

B. MidAmerican Local Compliance Filing (Docket No. ER13-89-000) and American Transmission Local Compliance Filing (Docket Nos. ER13-101-000 and ER13-101-001)

15. MidAmerican and American Transmission each separately submitted filings to comply with Order No. 1000's requirement to provide for the consideration of transmission needs driven by public policy requirements in their local transmission planning processes. They explain that their local transmission planning processes function in concert with the MISO regional transmission planning process. With the exception of MidAmerican and American Transmission, MISO performs local planning for its transmission owning members. MidAmerican requests an effective date of

²² MISO Compliance Transmittal at 4.

²³ *Id.* at 4-5. The *Mobile-Sierra* doctrine originated in the Supreme Court's decisions in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

October 11, 2012 for its compliance filing. American Transmission requests an effective date of October 11, 2012 or upon approval of its compliance filing by the Commission.

C. Entergy Compliance Filing (Docket No. ER13-95-000) and Cleco Compliance Filing (Docket No. ER13-84-000)

16. MISO states that Entergy and Cleco, which own both transmission and generation assets currently located outside of MISO's planning area, have announced their intent to join MISO. MISO states that upon the integration of Entergy and Cleco, MISO will take over responsibility for planning their transmission systems pursuant to the MISO Tariff.²⁴

17. Entergy states that it will comply with Order No. 1000 by participating in the MTEP, beginning in June 2013 for the MTEP 2014 planning cycle, which includes participation by Entergy in the MISO local transmission planning process. Entergy intends to be fully integrated into MISO by December 2013. Entergy's proposed revisions to its Attachment K specify that Entergy's current Regional Planning Process as outlined in the Entergy Tariff will continue to apply until the process initiated in calendar year 2012 is completed and that the interregional planning processes will continue to apply until the Southeast Inter-Regional Participation Process initiated in calendar year 2012 is completed. Entergy proposes further that the current Attachment K provisions regarding economic planning studies continue to apply until the studies initiated in calendar year 2012 are completed.

18. Cleco proposes limited changes to its existing Attachment K, stating that it too will comply with Order No. 1000 by participating in the MISO MTEP process beginning in June 2013 for the MTEP 2014 planning cycle. Cleco explains that it will conclude and terminate its current transmission planning process by that time.

19. Cleco and Entergy each request an effective date of October 11, 2012 for the proposed revisions to their respective Attachment Ks.

D. Baseline Reliability Project Filing (Docket No. ER13-186-000)

20. In the Baseline Reliability Project Filing, MISO proposes modifications to the existing Baseline Reliability Project cost allocation provisions in section III.A.2 of Attachment FF of the Tariff to provide for 100 percent of the costs of Baseline Reliability Projects to be allocated to the pricing zone where the Baseline Reliability Project is located. MISO states that, given the evolution of MISO's transmission planning process and creation of additional project types such as MEPs and MVPs, allocation of 100 percent of the costs of Baseline Reliability Projects to the zone where the project is

²⁴ MISO Compliance Transmittal at 17.

located is consistent with the primary use of such facilities and is just and reasonable. MISO also states that the Baseline Reliability Project cost allocation method is not the regional cost allocation method that it will rely on to comply with Order No. 1000 and, therefore, the Order No. 1000 cost allocation principles arguably do not apply. However, MISO states that the proposed revisions to the Baseline Reliability Project cost allocation are consistent with the six Order No. 1000 cost allocation principles. MISO requests that these proposed revisions be made effective on the same date as the requested effective date for MISO's compliance filing (i.e., with the first annual planning cycle, beginning on June 1, following the issuance of the Commission's order accepting its filing).

III. Notice of Filings and Responsive Pleadings

21. Notice of MISO's compliance filing in Docket Nos. ER13-187-000 and ER13-187-001 was published in the *Federal Register*, 77 Fed. Reg. 66,829 (2012), with interventions and protests due on or before December 10, 2012. Appendix A contains the list of intervenors, commenters, and entities filing answers in this proceeding.

22. Notices of MidAmerican's compliance filing in Docket No. ER13-89-000, Cleco's compliance filing in Docket No. ER13-84-000, and Entergy's compliance filing in Docket No. ER13-95-000 were published in the *Federal Register*, 77 Fed. Reg. 64,502 (2012), and notice of American Transmission's compliance filing in Docket Nos. ER13-101-000 and ER13-101-001 was published in the *Federal Register*, 77 Fed. Reg. 64,976 (2012), with interventions and protests in these proceedings due on or before November 9, 2012, subsequently extended until November 26, 2012. Appendix A contains the list of intervenors, commenters, and entities filing answers in these proceedings.

23. Notice of MISO's Baseline Reliability Project Filing in Docket No. ER13-186-000 was published in the *Federal Register*, 77 Fed. Reg. 66,457 (2012), with interventions and protests due on or before November 15, 2012, subsequently extended until December 10, 2012. Appendix A contains the list of intervenors, commenters, and entities filing answers in this proceeding.

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

26. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214(d) (2012), the Commission grants MidAmerican's late-filed motion to intervene in Docket No. ER13-186-000 and ITC's late-filed motion to intervene in Docket Nos. ER13-187-000 and ER13-187-001 given their interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

27. Because the issues raised in MISO's Baseline Reliability Project Filing and MidAmerican's, American Transmission's, Entergy's, and Cleco's compliance filings are integrally related to MISO's compliance filing, we address these filings together in this order.

B. Substantive Matters

28. We find that MISO's, MidAmerican's, and American Transmission's compliance filings, with certain modifications directed below, comply with the regional transmission planning and cost allocation requirements adopted in Order No. 1000. Accordingly, we conditionally accept MISO's, MidAmerican's, and American Transmission's compliance filings to be effective June 1, 2013, October 11, 2012, and October 11, 2012, respectively, as requested, subject to further compliance filings as discussed below. We direct MISO, MidAmerican, and American Transmission to file the compliance filings within 120 days of the date of issuance of this order. We also find MISO's proposed revisions to the Tariff to modify the cost allocation method for Baseline Reliability Projects just and reasonable, and we conditionally accept them to become effective June 1, 2013, as requested, subject to further compliance filing as discussed below.²⁵ Finally, we conditionally accept Cleco's and Entergy's compliance filings, effective October 11, 2012, as requested, conditioned upon our examination and acceptance of MISO's proposed modifications to its Tariff that reflect the integration of Cleco and Entergy into the MISO system²⁶ and subject to a further compliance filing as discussed below. We

²⁵ We note that this order primarily addresses the MISO compliance filings submitted in Docket Nos. ER13-187-000 and ER13-187-001, unless otherwise noted.

²⁶ MISO states it will make the filings to incorporate Cleco and Entergy into the MISO Tariff no later than 60 days prior to the effective date of its Order No. 1000 compliance filing and that that these filings will include changes to: Attachment FF, section IA.2.c (to add a new sub-region to the list of sub-regional planning meetings); Attachment FF-1 (planned projects excluded from regional cost allocation); Attachment FF-3 (Planning Sub-Regions Map); Attachment FF-4 (listing of Transmission Owners integrating local planning process); Module A (Common Tariff Provisions; possible addition of Cleco Power to definition of Second Planning Area); Attachment VV and WW (Local Resource Zone maps); Attachment O (formula rates in transmission pricing zones); Schedules 7, 8, 9, 26 (covering point-to-point and network transmission service and network upgrade charges); and Attachment P (list of grandfathered agreements).

(continued . . .)

also direct Cleco and Entergy to notify the Commission by June 1, 2013 should they fail to join the MTEP 2014 process as proposed.

1. **Regional Transmission Planning Requirements**

29. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that complies with the transmission planning principles of Order No. 890 and that, in consultation with stakeholders, results in the development of a regional transmission plan.²⁷ The regional transmission plan will identify transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related²⁸ needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.²⁹ A primary objective of the reforms in Order No. 1000 is to ensure that transmission planning processes at the regional level consider and evaluate, on a nondiscriminatory basis, possible transmission alternatives and produce a transmission plan that can meet a transmission planning region's needs more efficiently and cost-effectively.³⁰

a. **Transmission Planning Region**

30. Order No. 1000 specifies that a transmission planning region is one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate for purposes of regional transmission planning and development of a single regional transmission plan.³¹ The scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.³² However,

MISO Compliance Transmittal at 21. On February 15, 2013, MISO submitted proposed revisions to Attachment P in Docket No. ER13-945-000. On that same date, Entergy Services, Inc. submitted in Docket No. ER13-948-000, the proposed revisions to Attachment O, and Schedules 7, 8, 9, and 26. The other Tariff filings MISO identified have not yet been submitted.

²⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

²⁸ Public Policy Requirements are defined and described below.

²⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 11, 148.

³⁰ *Id.* PP 4, 6.

³¹ *Id.* P 160.

³² *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements of Order No. 1000.³³

31. In addition, Order No. 1000 requires that public utility transmission providers explain in their compliance filings how they will determine which transmission facilities evaluated in their local and regional transmission planning processes will be subject to the requirements of Order No. 1000.³⁴ Order No. 1000's requirements 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 compliance filing.³⁵ Each region must determine at what point a previously approved transmission project is no longer subject to reevaluation and, as a result, whether it is subject to these requirements.³⁶

32. Order No. 1000-A states that public utility transmission providers in each transmission planning region must have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region.³⁷ Each public utility transmission provider (or regional transmission planning entity acting for all of the public utility transmission providers in its transmission planning region) must include in its tariff a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region.³⁸ A non-public utility transmission provider will not be considered to have made the choice to join a transmission planning region and thus be eligible to be allocated costs under the regional cost allocation method until it has enrolled in the transmission planning region.³⁹

³³ *Id.*

³⁴ *Id.* PP 65, 162.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

³⁸ *Id.*

³⁹ *Id.* PP 276-277.

i. MISO's Filing

33. MISO states that it is a Regional Transmission Organization (RTO) and its Tariff complies with the requirement of Order No. 1000 to participate in a regional transmission planning process that, in consultation with stakeholders, produces a regional transmission plan.⁴⁰

34. To comply with the requirement that it determine which facilities evaluated in its local and regional planning processes will be subject to the requirements of Order No. 1000, MISO requests that the proposed Tariff revisions be made effective on June 1 of the calendar year after the Commission issues an order accepting the proposed Tariff revisions.⁴¹ MISO explains that an annual planning cycle for a specific calendar year designation begins on June 1 of the prior calendar year and typically ends with the MISO Board of Directors' (MISO Board) approval of the final MTEP report, including the projects recommended therein, in December of the designated calendar year (e.g., the planning for MTEP 2014 will commence on June 1, 2013 and be completed in December of 2014).⁴² Thus, if the Commission issues an order before June 1, 2013, the Tariff revisions will be effective beginning with the MTEP 2014 cycle beginning on June 1, 2013. In that case, transmission projects that are evaluated and approved as part of the MTEP 2014 cycle, beginning on June 1, 2013, will be subject to the requirements of Order No. 1000. MISO states that this timetable is necessary to avoid delaying current studies under MISO's existing planning processes or impede progress on the implementation of existing transmission plans (i.e., MTEP 2013 ending May 31, 2013).⁴³

35. To meet the requirement in Order No. 1000 to have a clear enrollment process, MISO proposes to revise the Tariff to state that any transmission provider that wishes to enroll in the MISO transmission planning region for purposes of compliance with Order No. 1000 must become a Transmission Owner by signing the Transmission Owners Agreement and by, within a reasonable time, (1) turning over functional control of its transmission facilities to MISO, and (2) taking service under the MISO Tariff for all of the load that is physically located within the geographic area comprising MISO's transmission system.⁴⁴ MISO states that anyone wishing to become a MISO

⁴⁰ MISO Compliance Transmittal at 6-7.

⁴¹ *Id.* at 61.

⁴² *Id.* at 6.

⁴³ *Id.*

⁴⁴ *Id.* at 15 (citing MISO, FERC Electric Tariff, Attachment FF, § I.A (8.0.0)).

Transmission Owner must file an application for membership, along with an initial membership fee of fifteen thousand dollars. MISO further states that a potential Transmission Owner member is also required to sign several agreements: (1) the Transmission Owners Agreement; (2) the Supplemental Agreement; (3) the Agency Agreement; and (4) the Amended Balancing Authority Agreement.⁴⁵ All public utility and non-public utility transmission providers that enroll in the MISO transmission planning region are listed in Attachment FF-4 and Attachment FF-5 of the Tariff.⁴⁶

ii. Protests/Comments

36. ATC/Duke/Transource and AEP assert that changes to eliminate the federal right of first refusal should go into effect when the Commission issues an order accepting or conditionally accepting MISO's compliance filing, regardless of the timing of MISO's MTEP planning cycle.⁴⁷ Specifically, ATC/Duke/Transource and AEP argue that the Commission should require MISO to apply its proposed competitive bidding process to any transmission projects identified in a planning cycle that concludes (rather than begins) after the date of the Commission's order accepting, or conditionally accepting, MISO's proposed Tariff revisions.⁴⁸ If the Commission finds merit in MISO's argument that the revised transmission planning process should take effect at the beginning of a planning cycle, then they urge the Commission to issue an order on MISO's compliance filing before MISO's MTEP 2014 planning cycle begins on June 1 to prevent delays to the participation of nonincumbent third party developers in the MISO process.⁴⁹ Alternatively, if the Commission issues its order after June 1, 2013, ATC/Duke/Transource argue that the Commission should require MISO to make a filing explaining why it should be allowed to delay implementing its proposal.⁵⁰

⁴⁵ MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owners Agreement (0.0.0).

⁴⁶ MISO Compliance Transmittal at 15 (citing MISO, FERC Electric Tariff, Attachment FF, § I.A (8.0.0)).

⁴⁷ ATC/Duke/Transource, Protest, Docket No. ER13-187-000, at 2 (filed Dec. 10, 2012) (ATC/Duke/Transource Protest).

⁴⁸ ATC/Duke/Transource Protest at 22-24; AEP, Protest, Docket Nos. ER13-186-000, ER13-187-000, and ER13-187-001, at 26-27 (filed Dec. 10, 2012) (AEP Protest).

⁴⁹ ATC/Duke/Transource Protest at 25.

⁵⁰ *Id.* at 25-26.

iii. Answer

37. MISO responds to suggestions that the Tariff changes should take effect upon Commission approval, rather than at the beginning of MISO's next full transmission planning cycle, by explaining that the proposed effective date allows the transmission planning process to continue uninterrupted and allows time for aspects of the transmission planning process to adapt to the changes.⁵¹

iv. Commission Determination

38. We find that the scope of the transmission planning region, the description of the facilities that will be subject to the requirements of Order No. 1000, and the enrollment process specified in MISO's filing comply with the requirements of Order No. 1000.

39. We are issuing this order prior to the start of MTEP 2014 and, therefore, the revised transmission planning process will take effect on June 1, 2013. This largely addresses ATC/Duke/Transource's and AEP's concerns about a delay because the revised transmission planning processes reflecting Order No. 1000 requirements will be in place at the beginning of the next planning cycle. We do not require MISO to implement the proposed revisions before the beginning of its next planning cycle on June 1, 2013 because we agree with MISO that doing so would be disruptive to MISO's current MTEP 2013 planning cycle.

b. Regional Transmission Planning Process General Requirements

40. Order No. 1000 requires that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan and that complies with certain transmission planning principles of Order No. 890 identified in Order No. 1000.⁵² Through the regional transmission planning process, public utility transmission providers must 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.⁵³ Public utility transmission providers have the flexibility to develop, in consultation with stakeholders,

⁵¹ MISO, Answer, Docket No. ER13-187-000, at 14-16 (filed Jan. 18, 2013) (MISO Compliance Filing Answer).

⁵² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 146, 151.

⁵³ *Id.* P 148.

procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.⁵⁴ The procedures must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's needs.⁵⁵ The process used to produce the regional transmission plan must satisfy the following Order No. 890 transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning.⁵⁶

41. Application of these transmission planning principles will ensure that stakeholders have an opportunity to participate in the regional transmission planning process in a timely and meaningful manner. Stakeholders must have an opportunity to express their needs, have access to information, and an opportunity to provide information, and thus have an opportunity to participate in the identification and evaluation of regional solutions.⁵⁷ In addition, when evaluating the merits of alternative transmission solutions, proposed non-transmission alternatives must be considered on a comparable basis.⁵⁸ Public utility transmission providers must identify how they will evaluate and select from competing solutions and resources such that all types of resources are considered on a comparable basis.⁵⁹

i. Transmission Planning Principles

(a) MISO's Filing

42. MISO states that the Commission previously determined that MISO's transmission planning process complies with the requirements of Order No. 890 and describes how its existing process already complies with the coordination,⁶⁰ openness,⁶¹

⁵⁴ *Id.* P 149.

⁵⁵ *Id.* P 147.

⁵⁶ *Id.* P 151. These transmission planning principles are explained more fully in Order No. 890.

⁵⁷ *Id.* P 150. As explained in Order No. 1000, the term "stakeholder" means any interested party. *Id.* P 151, n.143.

⁵⁸ *Id.* P 148.

⁵⁹ *Id.* P 155.

⁶⁰ MISO Compliance Transmittal at 8-9 (citing MISO Order No. 890 Compliance Order I, 123 FERC ¶ 61,164 at PP 28, 30).

transparency,⁶² information exchange,⁶³ comparability,⁶⁴ dispute resolution⁶⁵ and economic planning principles.⁶⁶ MISO states that its transmission planning process remains compliant with Order No. 890.⁶⁷

(b) Protests/Comments

43. The MISO Transmission Owners assert that the existing MTEP process is an open and transparent process used to develop, with stakeholder input, a regional transmission plan that complies with the Order No. 890 transmission planning principles as Order No. 1000 requires.⁶⁸

44. Exelon seeks clarification that nothing in the proposal will affect the development of appropriate transparency for transmission planning resulting from the retirement of System Support Resources (SSR), an issue being addressed through the stakeholder

⁶¹ *Id.* at 9-10 (citing MISO Order No. 890 Compliance Order I, 123 FERC ¶ 61,164 at P 35).

⁶² *Id.* at 10 (citing MISO Order No. 890 Compliance Order I, 123 FERC ¶ 61,164 at PP 42-44).

⁶³ *Id.* (citing MISO Order No. 890 Compliance Order I, 123 FERC ¶ 61,164 at P 52); *see also* MISO Order No. 890 Compliance Order II, 127 FERC ¶ 61,169 at P 17.

⁶⁴ MISO Compliance Transmittal at 10-11 (citing MISO Order No. 890 Compliance Order I, 123 FERC ¶ 61,164 at P 55). *See* MISO Order No. 890 Compliance Order II, 127 FERC ¶ 61,169 at P 22; MISO Order No. 890 Compliance Order III, 130 FERC ¶ 61,232 at PP 17-18; *see also infra* P 48, note 74.

⁶⁵ MISO Compliance Transmittal at 11 (citing MISO Order No. 890 Compliance Order I, 123 FERC ¶ 61,164 at P 59).

⁶⁶ *Id.* at 11-12 (citing MISO Order No. 890 Compliance Order I, 123 FERC ¶ 61,164 at P 74).

⁶⁷ *Id.* at 7.

⁶⁸ MISO Transmission Owners, Comments, Docket Nos. ER13-187-000 and ER13-187-001, at 5 (filed Dec. 10, 2012) (MISO Transmission Owners Comments) (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 146, 151).

process pursuant to the Commission's September 21, 2012 Order.⁶⁹ Specifically, Exelon notes that the Commission previously found that "MISO's proposal requires modification in order to meet the Commission's standards respecting transparency."⁷⁰ Exelon requests that the Commission clarify that nothing in the transmission planning proposal will affect these ongoing proceedings.

45. Interstate Renewable requests that the Commission require MISO to modify its procedures by which it affords comparable treatment to non-transmission alternatives⁷¹ in order to: (1) develop a set of detailed guidelines that clearly and precisely inform stakeholders how to present non-transmission alternative options and how MISO will assess such requests; (2) specify, after stakeholder consultation, how costs and benefits of non-transmission alternatives will be measured and how up-to-date information on costs and benefits will be gathered and applied; and (3) conduct a study of at least one non-transmission alternative involving targeted packages of distributed renewable generation, demand response and energy efficiency as an alternative to a transmission improvement case.⁷²

(c) Answer

46. MISO explains that consideration of non-transmission alternatives is provided for in section I.B.1.b of the Tariff where generation and demand-side resources are considered in both long-term planning and short-term planning.⁷³

⁶⁹ Exelon, Protest, Docket No. ER13-187-000, at 2 (filed Dec. 10, 2012) (Exelon Protest to MISO Compliance Filing) (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (September 21, 2012 Order)).

⁷⁰ *Id.* at 7 (citing September 21, 2012 Order, 140 FERC ¶ 61,237 at P 52).

⁷¹ Examples of non-transmission alternatives provided by Interstate Renewables include distributed renewable generation applications, alone or in combination with energy efficiency and demand response services, combined heat and power, and solar photovoltaic systems as solutions to transmission system cost and reliability problems. *See, e.g.*, Interstate Renewable, Comments, Docket Nos. ER13-187-000 and ER13-187-001, at 1, 2-3 (filed Dec. 10, 2012) (Interstate Renewable Comments).

⁷² *Id.* at 12-17.

⁷³ MISO Compliance Filing Answer at 22-23.

(d) Commission Determination

47. The Commission previously found that MISO's regional transmission planning process satisfies each of the transmission planning principles of Order No. 890. The Commission's focus in this proceeding is therefore on the incremental changes to the MISO's regional transmission planning process developed to comply with the requirements of Order No. 1000. In that context, we find that the MISO regional transmission planning process, as amended to comply with the requirements of Order No. 1000, continues to comply with the Order No. 890 transmission planning principles.

48. We deny Interstate Renewables' request that MISO be required to add additional detail to its Tariff about how stakeholders may propose non-transmission alternatives and how MISO will evaluate such alternatives. The Commission has found that, with one exception not related to the concern raised by Interstate Renewables, MISO's regional transmission planning process complies with the comparability principle.⁷⁴ The Commission found that Attachment FF to the Tariff and MISO's Transmission Planning Business Practice Manual "indicate when and where in the [MISO transmission planning process] sponsors of transmission, generation and demand response have an opportunity to provide their input regarding the development of base-line assumptions (i.e., an identification of the resources [MISO] assumes are going to exist in the future and where load will be located) and the potential solutions, including alternatives, being considered by [MISO] to meet future needs[]" and "clearly indicate how [MISO] will select the preferred solution from competing alternatives such that all types of resources are considered on a comparable basis."⁷⁵ Further, the Commission found that Attachment FF and MISO's Transmission Planning Business Practice Manual make clear that "alternatives stakeholders can propose may include transmission, generation, and demand resources" and that "[MISO] include[s] stakeholders in the process of reviewing cost estimates of identified alternatives."⁷⁶ Thus, the Tariff and the Transmission Planning Business Practice Manual already provides sufficient detail about how stakeholders can propose, and how MISO will evaluate on a comparable basis, any alternative to an identified need. Therefore, Interstate Renewables' requested revisions to provide further detail in the Tariff are unnecessary. With regard to the proposed requirement to evaluate

⁷⁴ MISO's outstanding compliance obligation regarding the comparability principle is related to how MISO will consider contractual commitments to evaluate proposed alternatives. *See* MISO Order No. 890 Compliance Order III, 130 FERC ¶ 61,232 at P 18.

⁷⁵ MISO Order No. 890 Compliance Order II, 127 FERC ¶ 61,169 at P 22 (citations omitted).

⁷⁶ MISO Order No. 890 Compliance Order III, 130 FERC ¶ 61,232 at 17.

a specific number of non-transmission alternatives, we find that this goes beyond what the Commission required in Order Nos. 890 and 1000. Therefore, we do not require MISO to make these changes.

49. With regard to Exelon's concerns, the Commission will make findings on the merits of the filing the Commission required in the September 21, 2012 Order in that proceeding and does not here make any findings in that regard.⁷⁷

ii. OMS Committee

(a) MISO's Filing

50. MISO proposes to amend the Tariff to address the role of the Organization of MISO States, which is a non-profit, self-governing organization of representatives from each state with regulatory jurisdiction over entities participating in MISO. MISO states that the Organization of MISO States serves as a forum for state retail regulatory authorities to coordinate their MISO-related activities, including developing and making recommendations to MISO, the MISO Board, the Commission, other relevant government entities, and state commissions as appropriate.⁷⁸

51. Specifically, MISO asserts that these Organization of MISO States-related Tariff revisions create an Organization of MISO States Committee (OMS Committee) under MISO's Tariff and codify the role of the OMS Committee in MISO's transmission planning, resource adequacy, and transmission cost allocation processes under both Attachment FF and the Transmission Owners Agreement. MISO states that the amendments include provisions that specifically provide for input by the OMS Committee into the MTEP planning principles and objectives, scope elements, modeling inputs or assumptions, and cost-benefit analyses for projects that are not proposed strictly for reliability purposes. MISO further states that the amendments codify the requirement that MISO will provide a prompt and clear response to the OMS Committee in response to issues raised. MISO states that the amendments also provide the OMS Committee with a process to request that MISO reconsider a transmission project submitted for regional cost allocation in the MTEP under certain circumstances (e.g., when a transmission project is considered out-of-cycle and is then recommended to the MISO

⁷⁷ On December 18, 2012, MISO submitted a compliance filing in Docket No. ER12-2302-001 in response to the Commission's directives included in the September 21, 2012 Order. This compliance filing is currently pending before the Commission.

⁷⁸ MISO Compliance Transmittal at 16.

Board, and when a transmission project cost increases by twenty-five percent or more).⁷⁹ Additionally, MISO states that the amendments provide the OMS Committee with the opportunity to request and receive reasonable assistance from MISO in developing its input into the MTEP.⁸⁰

(b) Protests/Comments

52. Public Interest Organizations believe that MISO's stakeholder participation provisions meet the standards of Order No. 1000 for meaningful and timely participation.⁸¹ Public Interest Organizations do not object to the additional procedures for Organization of MISO States to participate and provide input in the transmission planning process, but they assert that MISO should document for the public record and post on its website all communications between Organization of MISO States and MISO staff and Board.⁸² Public Interest Organizations also ask the Commission to reconsider its decision in Order No. 890 not to support a funding mechanism for Public Interest Organizations.⁸³

53. Organization of MISO States generally supports the enhanced role for state commission and state regional committees proposed by MISO, but it states it does have some concerns and proposes some modifications.⁸⁴

54. Organization of MISO States asserts that the Tariff and Transmission Planning Business Practice Manual should be modified and clarified to state that the OMS Committee will be an autonomous and self-governing committee within MISO and any modifications that may impact the ability of the OMS Committee to provide input require approval of the OMS Committee. Organization of MISO States states that the "[Organization of MISO States] Proposal for Enhanced Planning Authority," (OMS Proposal) which was adopted August 16, 2012 and attached as Exhibit No. MISO-3 to

⁷⁹ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § 1.B (8.0.0)).

⁸⁰ *Id.*

⁸¹ Public Interest Organizations, Protest, Docket Nos. ER13-186-000, ER13-187-000, and ER13-187-001, at 10 (filed Dec. 10, 2012) (Public Interest Organizations Protest).

⁸² *Id.* at 11.

⁸³ *Id.* at 12 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 162).

⁸⁴ Organization of MISO States, Comments, Docket Nos. ER13-187-000 and ER13-187-001, at 7 (filed Dec. 10, 2012) (Organization of MISO States Comments).

MISO's compliance filing, outlines a process developed by the Organization of MISO States with respect to MISO's current regional transmission planning process.

Organization of MISO States asserts that the purpose of the OMS Proposal was to have MISO commit to codifying the role that Organization of MISO States and the individual state commissions have been playing in MISO's regional transmission planning process.

Organization of MISO States notes that Subsection 5 in the planning process section, otherwise referred to as the "yellow light" provision, provides the Organization of MISO States with the opportunity to raise a yellow light and trigger the reconsideration by MISO staff of a project that would receive regional cost allocation in the MTEP.

Organization of MISO States states that, under the yellow light provision, MISO staff would have to provide Organization of MISO States with a "substantive and meaningful" response to the Organization of MISO States' concerns before proceeding to obtain approval of the project from the MISO Board. Organization of MISO States encourages the Commission to review the provisions of the proposal and determine if they are consistent and acceptable with the enhanced role envisioned by the Commission.⁸⁵

55. Organization of MISO States also notes that MISO has an outstanding proceeding before the Arkansas Commission wherein MISO submitted a "Proposal for Enhanced [Organization of MISO States] Authority for Determining Cost Allocation Methodologies to Be Filed Pursuant to Section 205 of the Federal Power Act" (205 Rights Proposal). According to Organization of MISO States, the 205 Rights Proposal sets forth a process by which Organization of MISO States would be able to request that MISO file alternative tariff provisions when MISO proposes changes to its regional transmission cost allocation methods involving all MISO transmission project types except Baseline Reliability Projects. Organization of MISO States explains that MISO will implement the 205 Rights Proposal by filing revisions to Appendix K to the Transmission Owners Agreement with the Commission to be effective upon the Entergy integration.⁸⁶ Organization of MISO States asserts, however, that the 205 Rights Proposal submitted by MISO in the Arkansas proceeding contains significant changes from the 205 Rights Proposal adopted by Organization of MISO States on August 16, 2012 and fears that certain language may be used to neutralize any FPA section 205 filing rights otherwise granted by the 205 Rights Proposal to the Organization of MISO States.⁸⁷ Thus, Organization of MISO States asserts that a process to further clarify these roles and enhanced authorities should be concluded either before the effective date of the

⁸⁵ *Id.* at 11-13.

⁸⁶ *Id.* at 13-14.

⁸⁷ *Id.* at 14 (referring to the "OMS Proposal for Enhanced Authority for Determining Cost Allocation Methodologies to be Filed Pursuant to Section 205 of the Federal Power Act," adopted unanimously August 16, 2012 with two abstentions).

MISO compliance rules with the beginning the start of the next applicable planning cycle or at another fixed time as agreed upon.⁸⁸

56. AWEA/WOW argue that some aspects of the proposed increased role for Organization of MISO States are discriminatory to other stakeholders and could result in increased costs to some market participants who might be disadvantaged by the increased role for Organization of MISO States.⁸⁹ AWEA/WOW assert that some of the tariff language added by MISO provides Organization of MISO States with unique opportunities to influence the planning process. AWEA/WOW state that although some aspects regarding the clarification in the proposal regarding the role of Organization of MISO States in MISO's planning process may be beneficial, they argue that MISO's planning process should include the same opportunities for all stakeholders. If the Commission approves MISO's proposed revisions, AWEA/WOW state that MISO's Tariff should be revised in a similar fashion for all stakeholders.⁹⁰

57. According to AWEA/WOW, MISO states that the details of how the OMS Committee will provide input to MISO will be established in the Transmission Planning Business Practices Manual and that such procedures will not change until June 1, 2015, unless revisions are mutually agreed to by Organization of MISO States and MISO.⁹¹ AWEA/WOW assert that it is not possible to determine the appropriateness of this requirement given that the Transmission Planning Business Practice Manual language has yet to be developed. AWEA/WOW argue that the unilateral right to freeze the Transmission Planning Business Practice Manual language is not a right given to any other stakeholder and that any changes to the participation rights of Organization of MISO States must be filed as a Tariff revision since they impact rates as well as terms and conditions. Illinois Commerce Commission argues that this provision appears to circumscribe any FPA section 206 rights the OMS Committee may have to assert claims of unjust or unreasonable tariff language and asserts that MISO's proposed Tariff

⁸⁸ *Id.* at 15.

⁸⁹ AWEA/WOW, Comments, Docket Nos. ER13-186-000, ER13-187-000, and ER13-187-001, at 3 (filed Dec. 11, 2012) (AWEA/WOW Comments).

⁹⁰ *Id.* at 18.

⁹¹ *Id.* at 18-19 (citing MISO, FERC Electric Tariff, Attachment FF, § I.B (8.0.0)).

language for an “OMS Committee” should not be accepted, pending further discussions with the Organization of MISO States.⁹²

58. AWEA/WOW assert that the costs of MISO’s proposal to support Organization of MISO States’ increased participation in the MTEP will likely be covered as an increase to MISO’s Administrative Rate, which is paid by all market participants. AWEA/WOW claim that because Organization of MISO States is comprised of state regulators whose primary responsibility is to represent the customers (i.e., load) in their respective states, any costs associated with supporting Organization of MISO States’ increased participation should only be allocated to load and not assessed to all market participants.⁹³

59. Conversely, Illinois Commerce Commission argues that MISO fails to provide state commissions and regional state committees with a formal role that is distinct and different from the role of other stakeholders.⁹⁴ Illinois Commerce Commission asserts that the OMS Proposal does not enhance the Organization of MISO States’ authority and does not create any decisional role for state commissioners or Organization of MISO States in any of MISO’s planning or cost allocation processes. Though Illinois Commerce Commission acknowledges that the yellow light provision could provide Organization of MISO States with enhanced authority, it argues that its features are too narrow and too limited to have a meaningful effect.⁹⁵

60. Illinois Commerce Commission states that the yellow light provision involves Organization of MISO States’ review of projects proposed by MISO staff to be included in the MTEP. According to the Illinois Commerce Commission, the list of projects should include all projects proposed to be included in the MTEP for purposes of cost allocation.⁹⁶ Illinois Commerce Commission suggests that for each project reviewed, Organization of MISO States should conduct a voting process open to each Organization of MISO States state whose consumers would be allocated costs for the project. Illinois

⁹² Illinois Commerce Commission, Comments, Docket Nos. ER13-187-000 and ER13-187-001, at 21 (filed Dec. 10, 2012) (Illinois Commerce Commission Comments to MISO Compliance Filing).

⁹³ AWEA/WOW Comments at 20.

⁹⁴ Illinois Commerce Commission Comments to MISO Compliance Filing at 14-16.

⁹⁵ *Id.* at 17-18.

⁹⁶ *Id.* at 20.

Commerce Commission asserts that the rules for such a voting process would be established by Organization of MISO States pursuant to its bylaws and consistent with the framework the Commission established in Order No. 1000.⁹⁷ Illinois Commerce Commission believes that such a voting process would enhance MISO's transmission planning process and help ensure that benefits are commensurate with costs and that no costs are allocated to non-beneficiaries.⁹⁸

(c) **Answer**

61. MISO agrees to clarify at the direction of the Commission “the autonomous and self-governing nature of the OMS Committee,” but states that the Commission should reject further changes.⁹⁹ According to MISO, the ultimate role of Organization of MISO States was accepted by the large majority of Organization of MISO States members and is “appropriately balanced.”¹⁰⁰ MISO further asserts that the issue of FPA section 205 filing rights for the OMS Committee should be addressed in Docket No. ER13-708-000, where MISO and its Transmission Owners jointly filed a settlement to amend the Transmission Owners Agreement.¹⁰¹ Lastly, with regard to Public Interest Organizations' request for the Commission to reconsider the funding of non-market participant stakeholders, MISO and American Municipal Power state that the Commission did not require such funding in the planning process and any reconsideration is beyond the scope of the instant proceeding.¹⁰²

⁹⁷ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 502, 689, n.389).

⁹⁸ *Id.*

⁹⁹ American Municipal Power states that the proposal to document and post all stakeholder communications between the OMS Committee and MISO is impractical and unwarranted. *See* American Municipal Power, Answer, Docket Nos. ER13-187-000 and ER13-187-001, at 3 (filed Jan. 22, 2013) (American Municipal Power Answer).

¹⁰⁰ MISO Compliance Filing Answer at 33.

¹⁰¹ *Id.* at 34.

¹⁰² *Id.* at 24-25 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 162); American Municipal Power Answer at 4-5.

(d) **Commission Determination**

62. We find that MISO's Organization of MISO States-related amendments to create an OMS Committee under the MISO Tariff and Transmission Owners Agreement are reasonable. These tariff provisions formalize and define the opportunities for the Organization of MISO States to provide input to MISO for use in its transmission planning, resource adequacy, and transmission cost allocation processes.¹⁰³ We also find it reasonable that MISO and its stakeholders will assess the effectiveness of the OMS Committee after an initial two year period. With regard to the request from Public Interest Organizations that MISO post to its website all communications between Organization of MISO States and MISO, similar to how MISO posts certain communications submitted by other stakeholders, we agree with American Municipal Power's answer that it would be impractical to include all communications, just as MISO does not post every communication with stakeholders. However, we encourage MISO to work with the Organization of MISO States, the OMS Committee and its other stakeholders to evaluate what, if any, communications between the Organization of MISO States and MISO could be posted on MISO's website.

63. With regard to Public Interest Organizations' request for the Commission to reconsider its decision to not support a funding mechanism for public interest organizations, we note that in Order No. 1000, the Commission affirmed the general approach it took in Order No. 890 regarding the recovery of costs associated with participation in the transmission planning process.¹⁰⁴ In that proceeding, the Commission directed public utility transmission providers to "include relevant cost recovery for state regulators, to the extent requested."¹⁰⁵ In Order No. 1000, the Commission declined to expand that directive to include funding for other stakeholder interests.¹⁰⁶ While the Commission did not preclude public utility transmission providers from proposing

¹⁰³ We find protests related to the FPA section 205 filing rights of Organization of MISO States outside the scope of the instant proceeding. We note that, on January 4, 2013, in Docket No. ER13-708-000, MISO and the MISO Transmission Owners submitted a settlement setting forth the conditions under which, among other things, the OMS Committee would have the right to request that MISO examine a change or changes in transmission cost allocation methodologies to projects other than Baseline Reliability Projects.

¹⁰⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 162.

¹⁰⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586, n.339.

¹⁰⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 162.

funding mechanisms for other stakeholders, MISO did not make such a proposal and requiring that it do so would be inconsistent with Order No. 1000.

64. Although the Organization of MISO States generally supports the amendments to the MISO Tariff and Transmission Owners Agreement to include enhanced participation by the Organization of MISO States through the OMS Committee, Organization of MISO States argues that MISO should be required to revise its Tariff and relevant Business Practice Manuals to state that the OMS Committee is autonomous and self-governing and that any modifications that could impact the ability of the OMS Committee to provide input to MISO must be approved by the OMS Committee. In its answer, MISO agrees to clarify in a compliance filing, if directed to do so by the Commission, the autonomous and self-governing nature of the OMS Committee.¹⁰⁷ Given that MISO has agreed to this change, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to revise the Tariff to clarify that the OMS Committee is autonomous and self-governing. We decline to require MISO to revise the Tariff to state that MISO must obtain approval of the OMS Committee before making any changes to a Business Practice Manual related to the OMS Committee, as MISO has not agreed to this and it is not a requirement of Order No. 1000. We note that the Tariff states that any changes to the Transmission Business Practice Manual procedures that describe the OMS Committee input into the MTEP process may not be adopted with less than sixty days' notice to the OMS Committee, giving the OMS Committee members sufficient time to provide input into any proposed changes.¹⁰⁸ In addition, the OMS Committee's input into the MTEP process is described in MISO's Tariff, and the Transmission Business Practice Manual procedures that provide further detail about the OMS Committee input must be consistent with the Tariff.

65. With regard to AWEA/WOW's protest that such details must be filed in the Tariff and not in the Transmission Planning Business Practice Manual, we find that the Tariff must be sufficiently detailed as to provide interested parties with the framework necessary to understand the process, with remaining information relegated to the Transmission Planning Business Practice Manual. Therefore, we will evaluate on compliance whether MISO's amended Tariff revisions providing these clarifying details as requested by the OMS Committee are sufficiently detailed.

66. We dismiss Illinois Commerce Commission's protest that the proposal: (1) is inadequate; (2) should be modified in order for the OMS Committee to provide not only input, but also to make decisions; and (3) fails to provide state commissions and regional state committees with a formal role that is distinct and different from the role of other

¹⁰⁷ MISO Compliance Answer at 33.

¹⁰⁸ MISO, FERC Electric Tariff, Attachment FF, § I.B (8.0.0).

stakeholders. We agree with MISO that revisions to the MISO Tariff and Transmission Owners Agreement to include a formal role for the Organization of MISO States members as part of the OMS Committee were the subject of lengthy negotiations, which Illinois Commerce Commission was a part of, and the role of the OMS Committee was accepted by large majority by Organization of MISO States members.¹⁰⁹ In response to AWEA/WOW's request that other stakeholders be given opportunities similar to Organization of MISO States through the OMS Committee, we note that MISO's Order No. 890-compliant stakeholder process provides adequate opportunities for stakeholder input while also recognizing the enhanced role of states that was encouraged by the Commission in Order No. 1000. In Order No. 1000-A, the Commission recognized the important and unique role of state utility regulators in the transmission planning process.¹¹⁰ Therefore, MISO's proposal is reasonable, and we dismiss AWEA/WOW's request.

67. With regard to AWEA/WOW's protest that the OMS Committee will lead to a higher Administrative Rate and that such costs should only be allocated to load and not all market participants, we note that such administrative costs are generally recovered under Schedule 10 of MISO's Tariff.¹¹¹ However, the OMS Committee is a new committee and the Tariff does not specify how the OMS Committee will be funded. Therefore, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to revise the Tariff to clarify how the OMS Committee will be funded.

c. **Requirement to Plan on a Regional Basis to Identify More Efficient or Cost-Effective Solutions**

68. Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission

¹⁰⁹ See MISO Compliance Answer at 33.

¹¹⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 291 (“[w]e recognize that state utility regulators play an important and unique role in transmission planning processes, given that the states often have authority over transmission, permitting, siting, and construction, and that many state regulatory commissions require utilities to engage in integrated resource planning); Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 688 (“we strongly encourage states to participate actively not only in transmission planning processes in general, but specifically in the identification of transmission needs driven by Public Policy Requirements.”).

¹¹¹ MISO, FERC Electric Tariff, SCHEDULE 10 (ISO Cost Recovery Adder) (4.0.0).

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.¹¹² Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.¹¹³ In addition, whether or not public utility transmission providers within a transmission planning region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is a more efficient or cost-effective solution to their needs.¹¹⁴

69. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer¹¹⁵ must provide to the regional transmission planning process to allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.¹¹⁶

70. Finally, the regional transmission planning process developed by public utility transmission providers, in consultation with stakeholders, must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's needs.¹¹⁷ Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

¹¹² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

¹¹³ *Id.* P 149.

¹¹⁴ *Id.* P 331.

¹¹⁵ Order No. 1000 defines merchant transmission projects as projects “for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates.” *Id.* P 119. The Commission noted in Order No. 1000 that “a merchant transmission developer assumes all financial risk for developing its transmission project and constructing the proposed transmission facilities...” *Id.* P 163.

¹¹⁶ *Id.* P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

¹¹⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

i. MISO's Filing

71. Although MISO's transmittal letter did not directly address the Commission's directive to plan on a regional basis to identify more efficient or cost-effective solutions, MISO's Attachment FF includes provisions that address this requirement. Specifically, with regard to the development of base-line assumptions and models, section I.C.7 of Attachment FF provides that MISO will collaborate with Transmission Owners, other transmission providers, transmission customers, and other stakeholders to develop appropriate planning models that reflect expected system conditions for the planning horizon. The planning models will reflect the projected load growth of existing network customers and other transmission service and interconnection commitments.¹¹⁸ In addition, section I.C.5 of Attachment FF provides that MISO will include North American Electric Reliability Corporation (NERC) reliability standards, economic criteria and public policy requirements in its evaluation of the system applicable planning criteria. MISO will conduct one or more meetings with stakeholders to discuss the assumptions set forth for inclusion in the MTEP and the models and tools that will be used to perform the assessment.¹¹⁹ Models will be posted on a file transfer protocol site maintained by MISO that will be accessible to stakeholders. MISO will provide an opportunity for stakeholders to review and comment on the posted models before commencing planning studies.

72. Section I.C.9 of Attachment FF provides that MISO will, using these assumptions and models, determine the solutions to system needs to be included in the MTEP and recommended for implementation based on input from stakeholders, the plans of any Transmission Owner with its own Commission-approved transmission planning process, and the MTEP aggregate system analysis against applicable planning criteria. Stakeholders have an opportunity to propose solutions to identified needs during the Sub-Regional Planning Meetings and may also propose alternatives at subsequent Planning Advisory Committee and Planning Subcommittee meetings. Proposed projects submitted to MISO are included in Appendix C¹²⁰ until MISO identifies a project as being a

¹¹⁸ Section 3.3.2 of the Transmission Planning Business Practice Manual provides that demand-side management is identified when submitting load data into the model development software.

¹¹⁹ See sections 4.1.1 and 4.1.2 of the Transmission Planning Business Practice Manual.

¹²⁰ Section 2.3 to the Transmission Planning Business Practice Manual describes Appendix C projects as:

projects which are proposed by Transmission Owners,
Stakeholders, or MISO planning staff for which specific

(continued . . .)

potential solution to an identified need (i.e., Appendix B project¹²¹). Projects will remain in Appendix B until the evaluation process for selecting the preferred solution among

needs have not yet been established, but that are thought by sponsor to be a potentially beneficial expansion, and for which the sponsor has provided to MISO a description of the potential need or benefit. All newly proposed projects start as Appendix C projects in the MTEP planning process. These could also include transmission projects which are conceptual in nature and in the early stages of planning. Appendix C projects are not included in MTEP initial power-flow models used to perform baseline reliability studies since the needs or the effectiveness of these projects are yet to be verified. In order to advance to Appendix B, Appendix C projects must be matched as a potential solution to an identified reliability, [public] policy or other need, or to an identified cost savings or other benefit.

¹²¹ Section 2.3 to the Transmission Planning Business Practice Manual describes Appendix B projects as:

projects that are demonstrated to be a potential solution to an identified reliability, [public] policy or other need, or to an identified cost savings or other benefit. In the MTEP development process, an initial needs or potential benefit analysis is performed based on applicable criteria. Once a need or potential benefit is identified, potential solutions from Appendix C are tested for effectiveness in meeting the needs or providing the benefits. Appendix C projects with verified needs and effectiveness are then moved to Appendix B as potential needs to an expansion driver. It is possible that there could be several alternative Appendix B projects to address the same planning issue or need. Projects will remain in Appendix B until the evaluation process for selecting the preferred solution among alternatives is completed.

alternatives¹²² is completed. After the evaluation process concludes, the preferred solution to an identified need becomes an Appendix A project.¹²³

73. Section 2.3(III) of the Transmission Planning Business Practice Manual provides that MISO staff will collaborate with stakeholders to evaluate projects against alternatives to determine the preferred solutions. In relevant part, the collaboration process requires MISO and stakeholders to:

(III) Evaluate Alternatives

-MISO staff performs reliability and economic analyses needed to assess reliability and economic benefits;

¹²² Section 1.D.1.b of Attachment FF provides that alternatives may include transmission, generation and demand-side resources.

¹²³ Section 2.3 to the Transmission Planning Business Practice Manual describes Appendix A projects as:

projects that have been justified to be the preferred solution to an identified reliability, [public] policy or other need, or to achieve an identified cost savings or other benefit and that have been approved by the Transmission Provider Board. The project justification process includes consideration of a variety of factors including urgency of need and comparison from amongst alternatives of operating performance, initial investment costs, robustness of solution, longevity of the solution provided, and performance against other economic metrics. Pending Appendix A projects are recommended for approval by the Transmission Provider Board. Once a project is approved by the Transmission Provider Board as an Appendix A project, the project is implemented in accordance with the [Transmission Owners Agreement] and the Tariff. Projects in Appendix A may be generated from the baseline planning process, or from the generator interconnection or Transmission Service request study processes. Projects in Appendix A may be eligible for regional cost sharing per provisions in Attachment FF of the Tariff, and are categorized according to their cost sharing eligibility. See Section 2.4 of this [Business Practice Manual] (MTEP Project Categories) for descriptions of the different categories of Appendix A projects. See Section 8.0 (Cost Allocation Process) for details on eligibility criteria and cost allocation methodologies.

-MISO staff reviews cost estimates of identified alternatives with Transmission Owners and other stakeholders;
-MISO staff in collaboration with stakeholders evaluates projects against alternatives to determine the preferred solutions. The project justification process includes consideration of a variety of factors including urgency of need and comparison from amongst alternatives of operating performance, initial investment costs, robustness of the solution, longevity of the solution provided, and performance against other economic and non-economic metrics as developed with stakeholders.^[124]

74. Lastly, section I.C.13 of Attachment FF provides that MISO will resolve and document issues raised in the stakeholder process, including, but not limited to, planning criteria. Section I.C.14 of Attachment FF provides that disputes concerning MTEP issues may be resolved consistent with the dispute resolution process contained in Attachment HH to the Tariff.

75. In addition, MISO states that it has revised its Tariff to identify the information and data that merchant transmission developers are required to provide to MISO to enable it to assess the potential reliability and operational impacts that the merchant transmission developer's proposed transmission facilities will have on other systems in the region.¹²⁵ These data requirements include descriptions and key technical parameters for proposed facilities, points of interconnection, and proposed facility models to allow for adequate technical analyses of operational and reliability impacts. MISO notes that there is currently a stakeholder initiative underway to develop formalized processes and procedures regarding analysis of merchant transmission facility proposals and requirements to interconnect to the MISO Transmission System. According to MISO, this initiative may result in a FPA section 205 filing with the Commission to include additional detail and enhancements regarding the terms and conditions of merchant transmission project interconnections.¹²⁶

ii. Protests/Comments

76. Clean Line argues that MISO should create a clearly defined process by which a nonincumbent transmission developer can propose transmission solutions to meet identified transmission needs that will be considered for inclusion in the MTEP for purposes of cost allocation, similar to the means available to existing Transmission

¹²⁴ Transmission Planning Business Practice Manual at section 2.3(III).

¹²⁵ MISO Compliance Transmittal at 15.

¹²⁶ MISO, FERC Electric Tariff, Attachment FF, § IV (8.0.0).

Owners to propose projects for consideration by MISO through their local transmission plans in the “bottom-up” portion of MISO’s bottom-up, top-down approach to transmission planning.¹²⁷

77. Clean Line supports the proposed Tariff revisions allowing merchant transmission developers to submit information and data. Clean Line claims, however, that it is not clear whether merchant transmission projects can be incorporated into the MTEP regional plan if they are not subject to cost allocation. Thus, Clean Line asserts that MISO should clarify that merchant transmission developers’ ability to participate in MISO’s regional planning process includes incorporation of merchant projects in the MTEP Regional Plan even if they are not subject to regional cost allocation. Clean Line further asserts that MISO should assess whether such merchant projects might also satisfy reliability, economic, or Public Policy Requirement transmission needs. If such needs are reduced or eliminated by a merchant project or projects, Clean Line claims that MISO would no longer need to select an MEP or MVP to address these identified criteria.¹²⁸

iii. Answer

78. In response to comments from Clean Line that the MISO planning process is not clear regarding how nonincumbent transmission developers can propose projects, MISO in its answer explains the planning process is both a bottom-up and top-down process, with MISO assessing projects from Transmission Owners to meet local needs as well as recommending alternative projects that would be more effective solutions. MISO further explains the planning process relies on a large repository of conceptual project ideas, supplied by Transmission Owners, nonincumbent transmission developers, other stakeholders and MISO staff. MISO also notes it has an initiative under way to enhance regional policies and procedures, including those for submission of project ideas. Specifically, MISO states that it is currently working with stakeholders to develop specific procedures for the recommendation of project ideas by stakeholders and that MISO staff will clarify these procedures in the Transmission Planning Business Practice Manual.¹²⁹

79. In response to Clean Line’s comments that MISO should evaluate whether merchant transmission projects address regional transmission needs and include merchant transmission projects in the MTEP, MISO explains the proposal meets the requirements

¹²⁷ Clean Line, Protest, Docket Nos. ER13-187-000 and ER13-187-001, at 7 (filed Dec. 10, 2012) (Clean Line Protest).

¹²⁸ *Id.* at 5.

¹²⁹ MISO Compliance Filing Answer at 25-27.

to assess reliability and operational impacts of merchant transmission projects, and that Clean Line's proposal is beyond the scope of this compliance filing.¹³⁰

iv. Commission Determination

80. We find that the regional transmission planning process specified in MISO's Tariff complies with the requirements of Order No. 1000. Specifically, with respect to the requirement to plan on a regional basis to identify more efficient or cost-effective transmission solutions, we find that sections I.C.9 and I.D.1.b of Attachment FF provide that MISO will use the assumptions and models that it has developed with stakeholder input to determine the transmission solutions to transmission system needs based on input from stakeholders, the plans of any transmission owner with its own Commission-approved local transmission planning process, and the MTEP aggregate transmission system analysis against applicable planning criteria. Therefore, consistent with Order No. 1000, MISO evaluates through its regional transmission planning process, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning process. Moreover, we find that MISO's production of the MTEP satisfies Order No. 1000's requirement that the regional transmission planning process developed by public utility transmission providers, in consultation with stakeholders, must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's transmission needs.¹³¹

81. We also find that MISO's proposed revisions to Attachment FF comply with the requirement to propose what information and data a merchant transmission developer must provide to allow MISO to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region. We reject Clean Line's request that we direct MISO to allow transmission developers to submit merchant transmission projects for full evaluation in the MISO regional transmission planning process. This request goes beyond the requirements of Order No. 1000.¹³² While Order No. 1000 acknowledges that in some regions,

¹³⁰ *Id.* at 27.

¹³¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

¹³² We note that Clean Line essentially acknowledges that MISO's proposal meets the merchant transmission information requirement in Order No. 1000, stating that it "applauds [MISO's] proposed Tariff revisions allowing merchant transmission developers to submit 'information and data . . . to enable [MISO] to assess the potential reliability and operational impacts that the merchant developer's proposed facilities will
(continued . . .)"

transmission facilities not selected for purposes of regional or interregional cost allocation, such as a local transmission facility or merchant transmission facility, may be in a regional transmission plan for informational purposes, the Commission stated that it did not intend to disturb regional practices with regard to such transmission facilities.¹³³ Thus, we find that Clean Line's proposal to require MISO to include merchant transmission projects in the MTEP is not required by Order No. 1000 and is therefore, beyond the scope of this proceeding. Although not a requirement of Order No. 1000, we encourage MISO to continue the stakeholder initiative MISO states is underway to develop formalized processes and procedures regarding analysis of merchant transmission facility proposals and requirements to interconnect to the MISO transmission system.¹³⁴

82. We also note that a transmission developer may submit its transmission project into the regional transmission planning process for potential selection in the regional transmission plan for purposes of cost allocation. In that case, the regional transmission planning process would evaluate the proposed transmission project as it would any other proposed project and, if the transmission project is selected in the regional transmission plan for purposes of cost allocation, it would be eligible to use the regional cost allocation method. If the proposed transmission facility is not selected in the regional transmission plan for purposes of cost allocation, then the transmission developer may choose to move forward as a merchant transmission facility through the interconnection process.

d. Consideration of Transmission Needs Driven by Public Policy Requirements

83. Order No. 1000 requires public utility transmission providers to amend their tariffs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.¹³⁵ The Commission clarified in Order No. 1000-A that Order No. 1000 requires that transmission needs driven by Public Policy Requirements be considered in a transmission planning process just as transmission needs driven by reliability or economic concerns are also considered.¹³⁶ Public Policy Requirements are requirements established by local,

have on the other systems in the region.” Clean Line Protest at 5 (citing MISO Compliance Transmittal at 15).

¹³³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 63, 64.

¹³⁴ MISO Compliance Transmittal at 16.

¹³⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

¹³⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at PP 204, 206, 208-211, 317-319.

state or federal laws or regulations (i.e., enacted statutes passed by the legislature and signed by the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).¹³⁷ As explained further below, Order No. 1000 specifies that the consideration of transmission needs driven by Public Policy Requirements means: (1) the identification of transmission needs driven by Public Policy Requirements, and (2) the evaluation of potential solutions to meet those identified needs.¹³⁸

84. To comply with the requirement to identify transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with their stakeholders, must establish procedures in their tariffs to identify at the local and regional level those transmission needs driven by Public Policy Requirements for which potential transmission solutions will be evaluated.¹³⁹ The process for identifying transmission needs driven by Public Policy Requirements must allow stakeholders, including, but not limited to, those responsible for complying with the Public Policy Requirements at issue and the developers of potential transmission facilities that are needed to comply with one or more Public Policy Requirements, an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements.¹⁴⁰ Public utility transmission providers must explain in their compliance filings how the procedures adopted give all stakeholders a meaningful opportunity to submit what the stakeholders believe are transmission needs driven by Public Policy Requirements.¹⁴¹

85. In addition, public utility transmission providers, in consultation with stakeholders, must 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.¹⁴² Public utility

¹³⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2. Order No. 1000-A clarified that Public Policy Requirements included local laws and regulations passed by a local governmental entity, such as a municipal or county government. Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹³⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

¹³⁹ *Id.* PP 206, 207.

¹⁴⁰ *Id.* PP 207, 208.

¹⁴¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

¹⁴² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

transmission providers must explain in their compliance filings how their open and transparent transmission planning process determines whether to move forward regarding transmission needs driven by Public Policy Requirements.¹⁴³ In addition, each public utility transmission provider must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that have been identified for evaluation for potential solutions in the local and regional transmission planning processes, and (2) how other transmission needs driven by Public Policy Requirements introduced by stakeholders were considered during the identification stage and why they were not selected for further evaluation.¹⁴⁴

86. To comply with the requirement to evaluate potential solutions to meet the identified transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with stakeholders, must also establish procedures in their tariffs to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements.¹⁴⁵ These procedures must include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by Public Policy Requirements.¹⁴⁶ Stakeholders must be provided an opportunity to provide input during the evaluation of potential solutions to identified needs.¹⁴⁷ In addition, the Commission and stakeholders must be able to review the record that is created by the process to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential.¹⁴⁸ The Commission will review the proposed evaluation procedures to ensure they comply with the objective of meeting the identified transmission needs more efficiently or cost-effectively.¹⁴⁹

¹⁴³ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

¹⁴⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

¹⁴⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* P 220; *see also id.* n.191 (“This requirement is consistent with the existing requirements of Order Nos. 890 and 890-A which permit sponsors of transmission and non-transmission solutions to propose alternatives to identified needs.”).

¹⁴⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

¹⁴⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

87. Public utility transmission providers must amend their tariffs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.¹⁵⁰ There are no restrictions on the type or number of Public Policy Requirements to be considered as long as any such requirements arise from local, state, or federal laws or regulations that drive transmission needs and as long as the requirements of the procedures required in Order No. 1000 are met.¹⁵¹ In addition, Order No. 1000 does not preclude any public utility transmission provider from considering in its transmission planning process transmission needs driven by additional public policy objectives not specifically required by local, state or federal laws or regulations. However, Order No. 1000 creates no obligation for any public utility transmission provider or its transmission planning processes to consider transmission needs driven by a public policy objective that is not specifically required by local, state or federal laws or regulations.¹⁵² In addition, public utility transmission providers are not required to consider Public Policy Requirements themselves as part of the transmission planning process.¹⁵³

i. Regional Transmission Planning Process

(a) Definition of Public Policy Requirements

(1) MISO's Filing

88. MISO states that the key mechanism for considering public policy requirements is the existing requirement for MISO to address in its transmission planning criteria for the MTEP “Transmission Issues,” which are defined to include “the need to comply with all requirements imposed on the Transmission System performance by entities with jurisdiction or authority over all or part of the Transmission System including, but not necessarily limited to ... compliance with applicable state and federal laws,” and “compliance with applicable regulatory mandates and obligations, including regulatory obligations related to serving load, interconnecting generation and providing transmission service.”¹⁵⁴ MISO also states that to determine the robustness and/or long-term projected

¹⁵⁰ *Id.* P 203.

¹⁵¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 214; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹⁵² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216.

¹⁵³ Order No. 1000-A, 139 FERC ¶ 61,132 at P 204.

¹⁵⁴ MISO Compliance Transmittal at 13.

economic value of transmission projects recommended in the MTEP, it explores multiple future scenarios through various studies included in the MTEP analysis, scenarios that may consider potential public policy-driven needs involving proposed public policies that have not yet been enacted as laws, regulations, or mandates.¹⁵⁵

(2) Protests/Comments

89. Public Interest Organizations, AWEA/WOW, and Interstate Renewable argue that MISO's Tariff does not include an Order No. 1000-compliant definition of public policy requirements.¹⁵⁶ Interstate Renewable asserts that MISO provides an incomplete definition of public policy requirements,¹⁵⁷ and Public Interest Organizations and AWEA/WOW assert that MISO's definition of "Transmission Issues" does not reflect the full range of public policy requirements as the term was defined in Order No. 1000, which include federal, state, municipal and county laws and regulations that could drive system needs.¹⁵⁸

90. In addition, Public Interest Organizations and AWEA/WOW claim that the definition of "Transmission Issue"¹⁵⁹ limits the public policy requirements that may be

¹⁵⁵ *Id.* at 14.

¹⁵⁶ Interstate Renewable Comments at 12; AWEA/WOW Comments at 8-12; Public Interest Organizations Protest at 15-16.

¹⁵⁷ Interstate Renewable Comments at 12.

¹⁵⁸ Public Interest Organizations Protest at 16; AWEA/WOW Comments at 9 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 319; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2).

¹⁵⁹ The definition reads in relevant part:

A reason to improve, expand or modify the Transmission System. These reasons may be compliance-based, economic-based, or reflect other local needs. *Compliance-based reasons* reflect the need to comply with all requirements... including, but not necessarily limited to... iv) *compliance with applicable state and federal laws* and v) *compliance with applicable regulatory mandates and obligations.*

Public Interest Organizations Protest at 15-16, n.25 (citing MISO, FERC Electric Tariff, § 1.667b (Transmission Issue) (0.0.0)) (emphasis added).

considered to be “compliance-based” requirements.¹⁶⁰ Public Interest Organizations state that, while they assume “compliance” refers to the obligations of whichever entity is subject to compliance with the applicable law, regulation or regulatory mandate, the meaning of this critical definition should be made clear and complete.¹⁶¹ AWEA/WOW argue that public policy requirements include more than just mandates, but also goals that drive transmission needs that the system should be planned to achieve. AWEA/WOW further note that many public policy requirements that drive transmission needs are issued by entities that do not necessarily have jurisdiction or authority over all or part of the transmission system.¹⁶² Finally, Public Interest Organizations also argue that the term “Transmission Issue” is geographically limiting because it refers to requirements imposed by entities solely within MISO’s footprint, while the public policies of jurisdictions outside of MISO’s footprint also can affect MISO’s system needs.¹⁶³

91. Interstate Renewable submits that the range of public policies that might prove relevant to Order No. 1000’s requirements to consider transmission needs driven by public policy requirements clearly include policies established by a number of states in the MISO region to drive solar, small wind, combined heat and power, and other forms of distributed renewable generation. Interstate Renewable argues that effective implementation of Order No. 1000 involves a serious consideration of distributed renewable generation and demand response as central drivers of the transmission planning process.¹⁶⁴

92. AWEA/WOW commend MISO for its proposal to consider under various future scenarios potential needs driven by proposed public policies that have not yet been enacted as laws, regulations, or mandates. However, AWEA/WOW argue that MISO should explicitly include in its definition of public policy requirements potential future public policy directives and requirements that affect infrastructure needs. AWEA/WOW state that these directives and requirements should be included in the transmission planning process; otherwise, the transmission planned today may not be sufficient to accommodate those directives and requirements.¹⁶⁵

¹⁶⁰ *Id.* at 16; AWEA/WOW Comments at 9.

¹⁶¹ Public Interest Organizations Protest at 16.

¹⁶² AWEA/WOW Comments at 9.

¹⁶³ Public Interest Organizations Protest at 16.

¹⁶⁴ Interstate Renewable Comments at 11.

¹⁶⁵ AWEA/WOW Comments at 10-11.

93. To address their concerns, Public Interest Organizations and AWEA/WOW suggest that MISO define “Public Policy Requirements” as “requirements established by enacted statutes or regulations, for example renewable energy standards, energy efficiency standards and environmental laws and regulations,” based on the Order No. 1000 term, and then use the “Public Policy Requirements” term in the definition of “Transmission Issue.”¹⁶⁶

(3) Answer

94. MISO explains that it did not propose a new definition of public policy requirements because the current Tariff definition of “Transmission Issues” already addresses the need to comply with federal and state laws as well as regulatory mandates and obligations applicable to the transmission system.¹⁶⁷ MISO reiterates that the determination of transmission needs driven by public policy requirements is an integral part of the regional transmission planning process and that the criticisms from commenters do not take into account the integrated and comprehensive nature of the MISO regional transmission planning process.¹⁶⁸ MISO states that its transmission planning process evaluates public policy factors together with economic and reliability considerations; anything other than a comprehensive planning process will generally not provide the best planning transmission solution.¹⁶⁹ MISO explains that the key objective of the transmission planning process is to develop an integrated transmission solution that satisfies all identified needs.

(4) Commission Determination

95. We find that MISO’s proposed definition of public policy requirements partially complies with the provisions of Order No. 1000. Accordingly, MISO must make a further compliance filing to revise its Tariff, as discussed below.

¹⁶⁶ *Id.* at 11; Public Interest Organizations Protest at 16-17. AWEA/WOW states that this modified definition would, in turn, need to be captured in various MTEP provisions in MISO’s Tariff, such as in section 1.419(ii) of the Tariff; Attachment FF, section I.A; and Attachment FF, section I.C. AWEA/WOW Comments at 11-12.

¹⁶⁷ MISO Compliance Filing Answer at 69; American Municipal Power Answer at 6-7.

¹⁶⁸ MISO Compliance Filing Answer at 69-70.

¹⁶⁹ *Id.* at 70.

96. The Commission appreciates that MISO employs an integrated and comprehensive method for identifying more efficient or cost-effective transmission solutions. However, we are not persuaded that MISO's consideration of "Transmission Issues," as defined, will encompass the full range of public policy requirements which may drive transmission needs as specified by the Commission in Order No. 1000. We find that MISO's definition of "Transmission Issues" includes "the need to comply with all requirements imposed on the Transmission System performance," including Public Policy Requirements as defined by the Commission in Order No. 1000 as state or federal laws or regulations, specifically, enacted statutes (i.e., passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level.¹⁷⁰ However, we find that the definition of "Transmission Issues" does not allow for the consideration of duly enacted laws or regulations passed by a local governmental entity.¹⁷¹ Therefore, we require that MISO submit a further compliance filing to clarify in its Tariff that it will also consider duly enacted laws or regulations passed by a local governmental entity.

97. While the procedures required in Order No. 1000 are intended to be flexible enough to allow stakeholders to suggest the consideration of transmission needs driven by any Public Policy Requirement, the Commission declined in Order No. 1000 to mandate consideration of transmission needs driven by any particular Public Policy Requirement.¹⁷² Therefore, in response to Interstate Renewable, we decline to require that MISO specifically include the consideration of distributed renewable generation and demand response as central drivers in the transmission planning process. Nonetheless, we conclude that MISO's transmission planning process is sufficiently flexible to allow stakeholders to request that MISO study such issues if they desire to do so.

98. Moreover, we do not grant the clarification sought by AWEA/WOW that MISO explicitly include in its definition of public policy requirements, potential future public

¹⁷⁰ As noted above, the MISO Tariff defines "Transmission Issues" to include "the need to comply with all requirements imposed on the Transmission System performance by entities with jurisdiction or authority over all or part of the Transmission System including, but not necessarily limited to ... compliance with applicable state and federal laws," and "compliance with applicable regulatory mandates and obligations, including regulatory obligations related to serving load, interconnecting generation and providing transmission service. MISO, FERC Electric Tariff, § 1.667b (Transmission Issue) (0.0.0).

¹⁷¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹⁷² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 215.

policy directives and requirements and include language in its Tariff to address the consideration of potential public policies which include not yet enacted laws, regulations, or mandates. As noted above, the requirements of Order No. 1000 with respect to public policy requirements are limited to “enacted statutes (i.e., passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level,” as well as “duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government.”¹⁷³ Although a public utility transmission provider is not precluded from considering in its transmission planning process transmission needs driven by additional public policy objectives, it is not required to do so.

(b) **Consideration of Transmission Needs Driven by Public Policy Requirements**

(1) **MISO’s Filing**

99. MISO states that its Tariff currently includes a procedure for identifying and considering transmission needs driven by public policy requirements in both local and regional transmission planning processes and for evaluating potential transmission solutions to meet those needs. As described above, MISO states that the key mechanism for considering public policy requirements is the existing requirement for MISO to address “Transmission Issues” in its transmission planning criteria for the MTEP. Accordingly, MISO states that its transmission planning process addresses transmission needs arising from federal and state laws, regulatory mandates, and regulatory obligations by identifying and evaluating Transmission Issues, which results in the recommendation of specific projects in the MTEP. MISO states that this approach allows the determination of specific Transmission Issues driven by public policy requirements to be integrated into the overall regional transmission planning process.¹⁷⁴ MISO also proposes to revise the definition of the MTEP process in Module A of the Tariff to specifically refer that MTEP will “facilitate compliance with documented federal and state energy laws, regulatory mandates and regulatory obligations,” as well as to more fully use the defined term Transmission Issues.¹⁷⁵ MISO clarifies that, consistent with

¹⁷³ *Id.* P 2; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹⁷⁴ MISO Compliance Transmittal at 12 -14.

¹⁷⁵ *Id.*; MISO, FERC Electric Tariff, § 1.419 (Midwest ISO Transmission Expansion Plan) (1.0.0).

Order No. 1000, it considers the needs driven by the public policy requirements, not the policies themselves.¹⁷⁶

100. MISO explains that its existing Tariff provides for a separate category of transmission projects that are planned to meet transmission needs driven by public policy requirements – MVPs. Specifically, MISO explains, an MVP may be developed to enable the Transmission System “to reliably and economically deliver energy in support of documented energy policy mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation” (MVP Criterion 1). MISO clarifies, however, that the MVP provisions do not supplant integrated resource planning by its member transmission owners, pursuant to which potential solutions to needs driven by public policy requirements also may take into account the resource decisions of the transmission planning process.¹⁷⁷

101. MISO states that stakeholders have ample opportunity to offer input regarding the transmission needs that are driven by public policy requirements in the open, transparent stakeholder process used by MISO to identify and evaluate potential transmission solutions.¹⁷⁸ According to MISO’s current Tariff, MISO facilitates discussions with Transmission Owners, the OMS Committee, and other stakeholders about Transmission Issues and solutions through its Planning Subcommittee and Sub-regional Planning Meetings.¹⁷⁹

102. MISO also states that it has revised Attachment FF of its Tariff so that MISO will post on its website an explanation of: (1) which transmission needs driven by public policy requirements will be evaluated for potential solutions in the local or regional transmission planning process, and (2) why other suggested transmission needs will not be evaluated.¹⁸⁰

103. In evaluating transmission needs driven by public policy requirements, MISO employs its regional transmission planning process, which satisfies the principles of Order No. 890 and includes MISO’s proposed changes to comply with the requirements

¹⁷⁶ MISO Compliance Transmittal at 14.

¹⁷⁷ *Id.* at 13-14.

¹⁷⁸ *Id.* at 12.

¹⁷⁹ MISO, FERC Electric Tariff, Attachment FF, § I.C.2 (7.0.0).

¹⁸⁰ MISO Compliance Transmittal at 14.

of Order No. 1000.¹⁸¹ As described above, MISO, in collaboration with stakeholders, evaluates projects against alternatives to determine the preferred solutions. The collaboration process requires MISO to perform reliability and economic analyses, and, in collaboration with stakeholders, review cost estimates of identified alternatives. MISO collaborates with stakeholders to consider a variety of factors including urgency of need, operating performance, initial investment costs, robustness of solution, longevity of solution and performance against other economic and non-economic metrics as developed with stakeholders.¹⁸²

(2) Protests/Comments

104. MISO Transmission Owners fully support MISO's proposed Tariff changes to address Order No. 1000's requirement to consider transmission needs driven by public policy requirements and state that through its MVP proposal in 2010, MISO has already put in place Commission-approved Tariff mechanisms to satisfy this requirement.¹⁸³ AWEA/WOW state that MISO has generally met this requirement by providing a path for transmission projects that are primarily driven by public policy requirements to receive a defined cost allocation method, but argue that clarification, as discussed below, is necessary.¹⁸⁴

105. Interstate Renewable, Public Interest Organizations and AWEA/WOW are concerned about whether MISO complies with Order No. 1000's requirements to identify and select for evaluation efficient and cost-effective solutions to meet needs driven by public policy requirements. Public Interest Organizations and Interstate Renewable assert that MISO's Tariff does not provide a clear process for identifying Public Policy Requirement-driven system needs.¹⁸⁵ They further argue that the proposal lacks procedures to select through a stakeholder process, at either the local or regional level, the needs driven by public policy requirements for which potential solutions will be

¹⁸¹ See *supra* P 47.

¹⁸² See *supra* P 73 (citing Transmission Planning Business Practice Manual at section 2.3(III)); see also MISO, FERC Electric Tariff, Attachment FF, § I.C.9 (7.0.0).

¹⁸³ MISO Transmission Owners Comments at 5-6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at PP 207-209 (2010) (MVP Order), *order on reh'g*, 137 FERC ¶ 61,074 (2011)).

¹⁸⁴ AWEA/WOW Comments at 2.

¹⁸⁵ Public Interest Organizations Protest at 17; Interstate Renewable Comments at 11-12.

evaluated.¹⁸⁶ Similarly, AWEA/WOW state that the MISO Tariff does not explain the actual process for identifying and selecting Public Policy Requirement-driven system needs in a level of detail that would allow the Commission or stakeholders to determine if it is compliant with Order No. 1000.¹⁸⁷ These parties request that the Commission direct MISO to detail the procedures that it will use to identify both local and regional transmission needs driven by public policy requirements and the process it will follow to select the needs for which potential solutions will be evaluated.¹⁸⁸

106. AWEA/WOW argue that there is also insufficient detail with respect to how and at what point all interested persons or entities may participate in local and regional stakeholder planning groups and meetings and provide input on model inputs, solutions, and other aspects of the transmission planning process related to public policy requirements.¹⁸⁹ Public Interest Organizations and Interstate Renewable state that stakeholder input into the identification and evaluation of Public Policy Requirement-driven needs is critical to ensuring planning decisions that result in the selection of cost-effective and efficient solutions.¹⁹⁰ Public Interest Organizations also state that MISO should provide for open and transparent procedures that delineate when and how stakeholders may identify these needs and provide input on the needs for which MISO should evaluate solutions.¹⁹¹

107. AWEA/WOW also state that MISO's Tariff should be amended further to provide that MISO will provide data supporting all of its determinations concerning the transmission needs driven by public policy requirements for which solutions will be evaluated. Otherwise, AWEA/WOW contend, MISO could simply say, for example, that a particular transmission proposal was not deemed needed at this time or not cost-effective enough – vague explanations that would not inform market participants.¹⁹²

¹⁸⁶ Public Interest Organizations Protest at 14; Interstate Renewable Comments at 11-12.

¹⁸⁷ AWEA/WOW Comments at 15.

¹⁸⁸ Public Interest Organizations Protest at 15; Interstate Renewable Comments at 2, 11-12; AWEA/WOW Comments at 16.

¹⁸⁹ AWEA/WOW Comments at 15.

¹⁹⁰ Public Interest Organizations Protest at 13-14; Interstate Renewable Comments at 11-12.

¹⁹¹ Public Interest Organizations Protest at 13-14.

¹⁹² AWEA/WOW Comments at 13-14.

(3) Answer

108. MISO provides additional detail in response to commenters who express concern about MISO's planning process not sufficiently detailing how interested parties may participate in planning groups and meetings, such as with regard to public policy requirements and non-transmission alternatives. MISO explains that the planning process allows for all stakeholders to participate through monthly Planning Advisory Committee meetings, bi-monthly Planning Subcommittee meetings, quarterly sub-regional planning meetings, and numerous other ad hoc meetings and groups, for which meeting schedules, and associated meeting materials are posted on MISO's website.¹⁹³ MISO explains the current Tariff requires addressing compliance with applicable federal, state and local laws as well as regulatory mandates and obligations imposed by regulatory authorities with jurisdiction over the transmission system.¹⁹⁴

(4) Commission Determination

109. We find that MISO's filing partially complies with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements. As discussed further below, MISO must submit a further compliance filing to address in greater detail the requirement in Order No. 1000 to establish procedures for identifying transmission needs driven by public policy requirements in its regional transmission planning process that allow stakeholders an opportunity to provide input and offer proposals regarding the transmission needs they believe are driven by public policy requirements and describe a just and reasonable and not unduly discriminatory process through which MISO will identify those needs driven by public policy requirements for which transmission solutions will be evaluated.

110. We recognize that MISO's regional transmission planning process, as described in Attachment FF of MISO's Tariff, offers opportunities for stakeholders to provide input to the transmission planning process, through various committees and groups, to identify transmission needs and to propose transmission solutions to identified transmission needs. However, we agree with commenters and find that the Tariff does not establish procedures to describe how and at what point(s) in the process stakeholders can provide input and offer proposals specifically regarding the transmission needs they believe are driven by public policy requirements. To the extent that MISO plans to use its existing procedures that already allow for stakeholder input, they have to be clear with respect to transmission needs driven by public policy requirements. Therefore, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to

¹⁹³ MISO Compliance Filing Answer at 20.

¹⁹⁴ *Id.* at 22.

revise its Tariff to include clear, transparent procedures for identifying transmission needs driven by public policy requirements in its regional transmission planning process that allow stakeholders an opportunity to provide input and offer proposals regarding the transmission needs they believe are driven by public policy requirements.

111. In addition, Order No. 1000 requires that public utility transmission providers, in consultation with their stakeholders, establish a just and reasonable and not unduly discriminatory process through which the public utility transmission provider will identify those transmission needs driven by public policy requirements for which transmission solutions will be evaluated.¹⁹⁵ We agree with Public Interest Organizations, Interstate Renewable, and AWEA/WOW that MISO has not complied with this obligation. We understand MISO's proposal to incorporate its identification of transmission needs driven by public policy requirements into its overall regional transmission planning process. However, MISO is required to explain in its Tariff the process it will use to identify, out of the larger set of transmission needs driven by public policy requirements that stakeholders may propose, those needs for which transmission solutions will be evaluated. Thus, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to include such a process in its Tariff and, consistent with the requirements of Order No. 1000, to explain in its compliance filing the just and reasonable and not unduly discriminatory process.¹⁹⁶

112. Although MISO must revise its Tariff as described above, we find that MISO has complied with Order No. 1000's requirement that each public utility transmission provider must post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the local and regional transmission planning processes, and (2) why other suggested transmission needs driven by Public Policy Requirements will not be evaluated.¹⁹⁷ In response to AWEA/WOW, we conclude that the Tariff already provides for adequate opportunity for stakeholders to obtain data used by MISO in the transmission planning process consistent with the transparency requirements of Order No. 890.¹⁹⁸ Order No. 1000 enhanced these requirements by directing public utility transmission providers to post an explanation of which transmission needs driven by Public Policy Requirements are identified for evaluation along with an explanation of why

¹⁹⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

¹⁹⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

¹⁹⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

¹⁹⁸ *See, e.g.*, MISO, FERC Electric Tariff, Attachment FF § I.C.7 (8.0.0).

other suggested transmission needs will not be evaluated, and MISO has complied with this requirement.

113. We find that MISO's proposal also complies with the requirement to have procedures in its Tariff to evaluate at the regional level potential transmission solutions to identified transmission needs driven by Public Policy Requirements that both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by Public Policy Requirements¹⁹⁹ and allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs.²⁰⁰ As discussed above, MISO must revise its Tariff to specifically address how it will identify which transmission needs driven by Public Policy Requirements that it will incorporate into its regional transmission planning process. However, once the transmission needs driven by Public Policy Requirements are identified, MISO's proposal is to evaluate those transmission needs along with all other transmission needs it has identified as part of its existing transmission planning process. MISO's existing process already allows any stakeholder to propose transmission projects to any identified transmission need and provides stakeholders with the opportunity to provide input during the evaluation process. Therefore, no further changes are needed to comply with this requirement.

**ii. Local Transmission Planning Process – MISO;
Docket Nos. ER13-187-000 and ER13-187-001**

114. With the exception of MidAmerican and American Transmission, the Transmission Owners that belong to MISO do not utilize separate local transmission planning processes. Under section I.C.9 of Attachment FF, MISO evaluates both regional and local planning criteria.²⁰¹ Thus, for these public utility transmission providers, Order No. 1000's requirements with regard to Public Policy Requirements apply only to the regional transmission planning process, consistent with Order No. 1000.²⁰²

¹⁹⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

²⁰⁰ *Id.* P 220.

²⁰¹ MISO, FERC Electric Tariff, Attachment FF, § I.C.9 (8.0.0).

²⁰² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203, n.185 (“To the extent public utility transmission providers within a region do not engage in local transmission planning, such as in some ISO/RTO regions, the requirements of this Final Rule with regard to Public Policy Requirements apply only to the regional transmission planning process.”).

iii. **Local Transmission Planning Process-MidAmerican; Docket No. ER13-89-000**

(a) **MidAmerican's Filing**

115. As described above, MidAmerican submitted revisions to Attachment FF-MidAmerican to comply with Order No. 1000's requirement to provide for the consideration of transmission needs driven by Public Policy Requirements in MidAmerican's local transmission planning process. MidAmerican requests an effective date of October 11, 2012. MidAmerican explains that its local transmission planning process functions in concert with the MISO regional transmission planning process. MidAmerican proposes to add the following language to Attachment FF-MidAmerican:

MidAmerican will evaluate transmission needs driven by public policy requirements in accordance with the requirements for the local transmission planning processes of Attachment FF to the Tariff.

(b) **Protests/Comments**

116. E.ON Climate & Renewables North America notes that MidAmerican's proposed revisions to Attachment FF-MidAmerican necessarily rely on, or are related to, terms and processes filed in Dockets Nos. ER13-186-000 and ER13-187-000 to revise the larger MISO Tariff to comply with Order No. 1000. Accordingly, E.ON Climate & Renewables North America submits that the final resolution of the revisions proposed to Attachment FF-MidAmerican should be rendered in connection with the final resolution of the revisions filed in MISO Docket Nos. ER13-186-000 and ER13-187-000.²⁰³

(c) **Commission Determination**

117. We find that the tariff changes proposed by MidAmerican do not comply with the requirement to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local transmission planning process. Accordingly, we direct MidAmerican to file, within 120 days of the date of issuance of this order, a further compliance filing that includes tariff changes to: (1) establish procedures for identifying transmission needs driven by Public Policy Requirements in its local transmission planning process that allow stakeholders an opportunity to provide input and offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements; (2) describe a just and reasonable and not unduly

²⁰³ E.ON Climate & Renewables North America, Comments, Docket No. ER13-89-000, at 1 (filed Nov. 26, 2012).

discriminatory process through which it will identify those needs driven by Public Policy Requirements for which transmission solutions will be evaluated; (3) establish procedures to evaluate at the local level potential solutions to identified transmission needs driven by Public Policy Requirements that comply with the above-mentioned requirements of Order No. 1000; and (4) provide for the posting on its website of an explanation of the transmission needs driven by Public Policy Requirements that have been identified for evaluation for potential solutions in the local transmission planning process and why other suggested transmission needs will not be evaluated.

118. We disagree with E.ON Climate & Renewables North America that MidAmerican's compliance filing to amend its local transmission planning process must be considered in the context of the larger MISO regional compliance filing, though we are addressing both filings in the same order. MidAmerican has chosen to maintain its own local transmission planning process under the MISO Tariff rather than allowing MISO to incorporate MidAmerican's local planning into the MISO regional transmission planning process. MidAmerican must therefore comply, separately from MISO, with the requirement to describe procedures in MidAmerican's *local* transmission planning process that provide for the consideration of transmission needs driven by Public Policy Requirements. For example, the MidAmerican local transmission planning process provides long-term reliability and economic planning of transmission facilities for MidAmerican's portion of the transmission system for firm commitments and Network Customers.²⁰⁴ In addition, MidAmerican retains ultimate responsibility for the transmission studies and transmission plans developed under the MidAmerican local transmission planning process.²⁰⁵ We therefore find that an additional compliance filing, as detailed above, is required for MidAmerican to meet the requirements of Order No. 1000 regarding the consideration of transmission needs driven by Public Policy Requirements in the local transmission planning process.

iv. Local Transmission Planning Process-American Transmission; Docket Nos. ER13-101-000 and ER13-101-001

(a) American Transmission's Filing

119. As described above, American Transmission submits revisions to Attachment FF-ATCLLC to comply with Order No. 1000's requirement to provide for the consideration of transmission needs driven by Public Policy Requirements in American Transmission's

²⁰⁴ MISO, FERC Electric Tariff, Attachment FF – MidAmerican, § III (1.0.0).

²⁰⁵ MISO, FERC Electric Tariff, Attachment FF – MidAmerican, § V.8 (1.0.0).

local transmission planning process. American Transmission requests that the tariff revisions become effective on October 11, 2012 or upon approval by the Commission.

120. American Transmission explains that its existing local transmission planning process contains many of the elements set forth in Order No. 1000, and it was able to incorporate specific Order No. 1000 requirements into its existing local transmission planning process, as described below.

121. First, American Transmission states that, consistent with the definition adopted by the Commission in Order No. 1000, it proposes to define “Public Policy Requirements” as “enacted statutes (i.e., passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level.”²⁰⁶ Second, American Transmission states that it has included specific reference to Public Policy Requirements as an element to be taken into account in its local transmission planning process.²⁰⁷

122. Third, pursuant to the requirement to implement procedures that would allow interested stakeholders to participate in the process of identifying Public Policy Requirements, American Transmission proposes to modify its existing Network Adequacy Assessment participation process²⁰⁸ to solicit information from all stakeholders regarding Public Policy Requirements.²⁰⁹ More specifically, American Transmission’s proposed revisions would require American Transmission to: (1) solicit information relating to Public Policy Requirements from all stakeholders by using a form letter that requests information concerning the recipient’s current and projected use of transmission facilities or the needs of their interconnection and distribution facilities, and (2) post on its web page a solicitation for information from stakeholders, including state regulators regarding Public Policy Requirements.²¹⁰ American Transmission states that these

²⁰⁶ American Transmission, Transmittal Letter, Docket Nos. ER13-101-000 and ER13-101-001, at 5 (filed Oct. 11, 2012) (American Transmission Transmittal).

²⁰⁷ *Id.* at 5-6.

²⁰⁸ In order to perform an annual assessment of its transmission facilities to determine whether there is a need to modify, extend, or construct new facilities, American Transmission currently solicits information from its interconnection customers, transmission customers, and owners of interconnected distribution facilities. MISO, FERC Electric Tariff, Attachment FF – ATCLLC, § VI.D.2 (1.0.0).

²⁰⁹ American Transmission Transmittal at 7.

²¹⁰ American Transmission collects the information set forth in the form letters and in response to the web page posting and takes such information into account in any
(continued . . .)

revisions will permit all stakeholders to identify Public Policy Requirements to be included in American Transmission's local transmission planning process, to be aware of the Public Policy Requirements that American Transmission would include in its local transmission planning processes, and to identify transmission facilities driven by such Public Policy Requirements to be included in American Transmission's annual Network Adequacy Assessment. Further, American Transmission states that it has incorporated the Public Policy Requirements in its Economic Planning process to further assure that Public Policy driven transmission facilities will be considered in American Transmission's planning processes.²¹¹

123. Fourth, to meet Order No. 1000's posting requirement of Public Policy Requirements, American Transmission states that it has included Public Policy Requirements as part of the posting requirements in its local transmission planning processes for Network Adequacy and Economic Planning, which allow stakeholders to provide information to facilitate those processes. Specifically, American Transmission proposes that: (1) American Transmission will post on its web page a solicitation for information from state regulators regarding Public Policy Requirements, in addition to other stakeholders, as part of its Network Adequacy process, and (2) American Transmission will permit state regulators and other stakeholders, in addition to customers, to comment on assumptions, study models, and assessment tools used in the Economic Planning process that American Transmission posts on its web page.²¹² In addition, American Transmission proposes to post on its website an explanation of which transmission needs driven by public policy requirements will be considered in study assumptions, as well as any suggested public policy requirements that will not be considered.²¹³

(b) Protests/Comments

124. E.ON Climate & Renewables North America notes that American Transmission's proposed revisions to Attachment FF-ATCLLC necessarily rely on, or are related to, terms and processes filed in Dockets Nos. ER13-186-000 and ER13-187-000 to revise the larger MISO Tariff to comply with Order No. 1000. Accordingly, E.ON Climate &

models and tools that American Transmission uses to make its assessment of its transmission facilities requirements. MISO, FERC Electric Tariff, Attachment FF – ATCLLC, § VI.D.2 (1.0.0).

²¹¹ American Transmission Transmittal at 7-8.

²¹² *Id.* at 8-9.

²¹³ MISO, FERC Electric Tariff, Attachment FF – ATCLLC, § VI.D.4. (1.0.0).

Renewables North America submits that the final resolution of the revisions proposed to the Attachment FF-ATCLLC should be rendered in connection with the final resolution of the revisions filed in MISO Docket Nos. ER13-186-000 and ER13-187-000.²¹⁴

(c) **Answer**

125. American Transmission submits that its proposed changes affect only American Transmission's local transmission planning process and are not related to, or dependent upon, anything in MISO's Order No. 1000 filings in Docket Nos. ER13-186-000 and ER13-187-000.²¹⁵ American Transmission states that because its revisions to its Commission-approved local transmission planning process fulfill the Order No. 1000 compliance requirements that are separate from MISO's requirements being addressed in Docket Nos. ER13-186-000 and ER13-187-000, the Commission's acceptance of American Transmission's Order No. 1000 compliance filing should not be delayed until a final resolution of MISO's filings.²¹⁶

(d) **Commission Determination**

126. We find that American Transmission partially complies with the provisions of Order No. 1000 addressing transmission needs driven by Public Policy Requirements. We direct American Transmission to file, within 120 days of the date of issuance of this order, a further compliance filing, that includes tariff changes to more fully address the requirements in Order No. 1000 to: (1) include a definition of Public Policy Requirements that is consistent with the definition adopted in Order No. 1000; (2) describe a just and reasonable and not unduly discriminatory process through which the public utility transmission provider will identify those needs driven by Public Policy Requirements for which transmission solutions will be evaluated; (3) establish procedures to evaluate at the local level potential solutions to identified transmission needs driven by Public Policy Requirements that comply with the above-mentioned requirements of Order No. 1000; and (4) provide for the posting on its website of an explanation of the transmission needs driven by Public Policy Requirements that have been identified for evaluation for potential solutions in the local transmission planning processes and why other suggested transmission needs will not be evaluated, as discussed below.

²¹⁴ E.ON Climate & Renewables North America, Comments, Docket No. ER13-101-000, at 1 (filed Nov. 26, 2012).

²¹⁵ American Transmission, Answer, Docket Nos. ER13-101-000 and ER13-101-001, at 2 (filed Nov. 30, 2012).

²¹⁶ *Id.* at 2.

127. As a threshold matter, we find that American Transmission's proposed definition of Public Policy Requirements partially complies with the provisions of Order No. 1000. In Order No. 1000, the Commission defined Public Policy Requirements as state or federal laws or regulations, specifically, "enacted statutes (i.e., passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level," as well as "duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government."²¹⁷ American Transmission's proposed definition does not include duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government, consistent with the requirements of Order No. 1000.²¹⁸ Accordingly, we direct American Transmission to file, within 120 days of the date of issuance of this order, a further compliance filing revising its Tariff to include duly enacted laws or regulations passed by a local governmental entity in the definition of Public Policy Requirements.

128. As described above, American Transmission proposes to modify its existing Network Adequacy Assessment participation process to solicit information from all stakeholders regarding Public Policy Requirements. We find that American Transmission's proposal complies with Order No. 1000's requirement that public utility transmission providers amend their tariffs to describe the procedures by which transmission needs driven by Public Policy Requirements will be identified in the local transmission planning processes, which must allow stakeholders an opportunity to provide input and offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements.²¹⁹

129. However, Order No. 1000 also requires that public utility transmission providers, in consultation with their stakeholders, establish a just and reasonable and not unduly discriminatory process through which the public utility transmission provider will identify those needs driven by Public Policy Requirements for which transmission solutions will be evaluated.²²⁰ American Transmission has not complied with this obligation. Thus, we direct American Transmission to submit a compliance filing to include such a process in its Tariff and, consistent with the requirements of Order No. 1000, to explain in its compliance filing how its open and transparent transmission

²¹⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

²¹⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

²¹⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 205, 207-208.

²²⁰ *Id.* P 209.

planning process determines whether to move forward regarding transmission needs driven by Public Policy Requirements.²²¹

130. Moreover, Order No. 1000 requires that each public utility transmission provider, in consultation with stakeholders, establish procedures in its tariff to evaluate at the local level potential solutions to identified transmission needs driven by Public Policy Requirements that both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by Public Policy Requirements²²² and allow stakeholders an opportunity to provide input during the evaluation of potential solutions to identified needs.²²³ American Transmission has not explained how its local transmission planning process fulfills this requirement, and we find that it therefore does not comply. We direct American Transmission to file a further compliance filing adopting in its tariff procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by Public Policy Requirements that comply with the above-mentioned requirements of Order No. 1000.

131. Finally, American Transmission proposes to utilize its website to allow stakeholders to identify transmission needs driven by public policy requirements. In addition, American Transmission proposes to post on its website an explanation of which solutions to identified needs will be considered in study assumptions, as well as any suggested public policy requirements that will not be considered in study assumptions. This proposal partially complies with Order No. 1000. Order No. 1000 requires an explanation of why other suggested transmission needs driven by Public Policy Requirements will not be evaluated, not an explanation of why the Public Policy Requirements themselves will not be evaluated. Accordingly, we direct American Transmission to revise Attachment FF-ATCLLC to provide for the posting on its website of an explanation of why other suggested transmission needs driven by Public Policy Requirements will not be evaluated, as required by Order No. 1000.²²⁴

132. We disagree with E.ON Climate & Renewables North America that the American Transmission local compliance filing to amend its local public policy process must be considered in the context of the larger MISO regional compliance filing, though we are addressing both filings in the same order. As required by Order No. 1000, public utility transmission providers must amend their tariffs to describe procedures that provide for

²²¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

²²² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

²²³ *Id.* P 220.

²²⁴ *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning process. As a public utility transmission provider with a local transmission planning process, American Transmission is required to comply with this Order No. 1000 requirement in addition to its compliance with the regional transmission planning and cost allocation requirements as a public utility transmission provider enrolled in the MISO transmission planning region.

2. Nonincumbent Transmission Developer Reforms

133. Order No. 1000 institutes a number of reforms that seek to ensure that nonincumbent transmission developers have an opportunity to participate in the transmission development process. These reforms involve the elimination of federal rights of first refusal from Commission-jurisdictional tariffs and agreements, and requirements regarding qualification criteria for transmission developers and processes for evaluating proposals for new transmission facilities.

a. Federal Rights of First Refusal

134. Order No. 1000 requires that each public utility transmission provider eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.²²⁵ Order No. 1000 defines a transmission facility selected in a regional transmission plan for purposes of cost allocation as a transmission facility that has been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for selection in a regional transmission plan for purposes of cost allocation because it is a more efficient or cost-effective solution to regional transmission needs.²²⁶ If a public utility transmission provider's tariff or other Commission-jurisdictional agreements do not contain a federal right of first refusal provision, a public utility transmission provider should state this in its compliance filing.²²⁷

²²⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. The phrase "a federal right of first refusal" refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

²²⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 5, 63.

²²⁷ *Id.* P 314, n.294.

135. The requirement in Order No. 1000 to eliminate a federal right of first refusal does not apply to local transmission facilities,²²⁸ which are defined as transmission facilities located solely within a public utility transmission provider's retail distribution service territory or footprint that are not selected in the regional transmission plan for purposes of cost allocation.²²⁹ The requirement also does not apply to the right of an incumbent transmission provider to build, own, and recover costs for upgrades to its own transmission facilities, regardless of whether an upgrade has been selected in the regional transmission plan for purposes of cost allocation.²³⁰ In addition, the Commission noted that the requirement does not remove, alter or limit an incumbent transmission provider's use and control of its existing rights-of-way under state law.²³¹

136. The Commission clarified in Order No. 1000-A that Order No. 1000 does not require elimination of a federal right of first refusal for a new transmission facility if the regional cost allocation method results in an allocation of 100 percent of the facility's costs to the public utility transmission provider in whose retail distribution service territory or footprint the facility is to be located.²³² The Commission also clarified in Order No. 1000-A that the term "selected in a regional transmission plan for purposes of

²²⁸ *Id.* PP 226, 258, 318.

²²⁹ *Id.* P 63. The Commission clarified in Order No. 1000-A that a local transmission facility is one that is located within the geographical boundaries of a public utility transmission provider's retail distribution service territory, if it has one; otherwise the area is defined by the public utility transmission provider's footprint. In the case of an RTO or ISO whose footprint covers the entire region, local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owning members. Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

²³⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

²³¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

²³² Order No. 1000-A, 139 FERC ¶ 61,132 at P 423.

cost allocation” excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located.²³³ However, the Commission acknowledged in Order No. 1000-A that there may be a range of examples of multi-transmission provider zones, and it would address whether a cost allocation to a multi-transmission provider zone is regional on a case-by-case basis based on the facts presented on compliance.²³⁴

137. The Commission received comments during the rulemaking process regarding the applicability of the *Mobile-Sierra* doctrine to rights of Transmission Owners to build found in agreements subject to Commission jurisdiction. The Commission stated in Order No. 1000 that the record was not sufficient in the generic rulemaking to address such issues, and those issues are better addressed as part of the proceeding on the compliance filing submitted pursuant Order No. 1000, where interested parties may provide additional information.²³⁵ The Commission stated in Order No. 1000-A, and reiterated in Order No. 1000-B, that any compliance filing must include the revisions to any Commission-jurisdictional tariffs and agreements necessary to comply with Order No. 1000 as well as the *Mobile-Sierra* arguments. The Commission will first decide, based on a more complete record, including the viewpoints of other interested parties, whether the agreement has *Mobile-Sierra* protection, and if so, whether the Commission has met the applicable standard of review such that it can require the modification of the particular provisions involved. If the Commission determines that the agreement does have *Mobile-Sierra* protection and that it cannot meet the applicable standard of review, then the Commission will not consider whether the revisions submitted to the Commission-jurisdictional tariffs and agreements comply with Order No. 1000. However, if the Commission determines that the agreement is not protected by a *Mobile-Sierra* provision or that the Commission has met the applicable standard of review, then the Commission will decide whether the revisions to the Commission-jurisdictional tariffs and agreements comply with Order No. 1000 and, if such tariffs and agreements are accepted, they would become effective consistent with the approved effective date.²³⁶

²³³ *Id.* P 423.

²³⁴ *Id.* P 424; Order No. 1000-B, 141 FERC ¶ 61,044 at P 40.

²³⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 292.

²³⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at P 389.

i. *Mobile-Sierra*

(a) MISO's Filing

138. MISO argues that the Commission may not require elimination of existing transmission construction rights and obligations from MISO's Transmission Owners Agreement²³⁷ without a clear showing of serious harm to the public interest consistent with the *Mobile-Sierra* heightened standard of review.²³⁸ MISO contends that because the Transmission Owners Agreement is protected by the *Mobile-Sierra* doctrine and the Commission has not shown that its existing provisions seriously harm the public interest, the Commission cannot require MISO to adopt the nonincumbent transmission developer reforms required by Order No. 1000, including elimination of federal rights of first refusal. MISO states that it has provided the changes to the Transmission Owners Agreement (along with the related revisions to the Tariff) necessary to implement the nonincumbent transmission developer requirements of Order No. 1000, but it argues that the Commission should not accept them unless it finds that the Transmission Owners Agreement is not a *Mobile-Sierra* contract, or that it is a *Mobile-Sierra* contract, and the public interest standard of review has been met.²³⁹

139. MISO argues that the *Mobile-Sierra* doctrine protects the Transmission Owners Agreement, and under this doctrine the Commission's authority to modify or abrogate a valid contract negotiated among sophisticated utility parties such as the Transmission Owners Agreement is limited.²⁴⁰ Specifically, MISO states that the Commission must presume that "the rate set out in a freely negotiated wholesale energy contract meets the 'just and reasonable' requirement," which may be overcome only if the Commission

²³⁷ MISO states that these rights and obligations, including language that provides a federal right of first refusal, are set forth in Appendix B, section VI of the Transmission Owners Agreement. MISO Compliance Transmittal at 31, n.143 (citing *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057, at P 101 (2012)).

²³⁸ *Id.* at 29.

²³⁹ *Id.* at 39.

²⁴⁰ *Id.* at 31. Further, MISO notes that the Transmission Owners Agreement, in general, and the Appendix B, section VI provisions, in particular, were the result of significant compromise among the founding Transmission Owner signatories to the Transmission Owners Agreement, without which MISO may not have been formed. *Id.* n.145.

“concludes that the contract seriously harms the public interest.”²⁴¹ MISO states that the Court contemplated abrogation of these voluntary contracts only in circumstances of “*unequivocal public necessity*.”²⁴²

140. MISO argues that the *Mobile-Sierra* doctrine protects the Transmission Owners Agreement for two reasons. First, MISO states that the Commission has specifically found that the Transmission Owners Agreement “impose[s] a *Mobile-Sierra* standard of review” that the Commission can amend “only if it ‘adversely affect[s] the public interest.’”²⁴³ Second, MISO contends that, even absent this Commission finding, the Transmission Owners Agreement is silent on the standard of review, and therefore the *Mobile-Sierra* public interest standard of review is presumed to apply as a “default rule.”²⁴⁴ MISO also states that courts and the Commission have repeatedly found that absent an express waiver or limitation in an agreement, the *Mobile-Sierra* protections apply even if the agreement is silent as to the standard of review.²⁴⁵ MISO states that the Transmission Owners Agreement contains no language to support a finding that the *Mobile-Sierra* doctrine should not apply to the agreement in general or Appendix B specifically, and therefore the *Mobile-Sierra* presumption remains the “default rule.”²⁴⁶

141. MISO thus argues that because *Mobile-Sierra* applies, the Commission can compel changes to the Transmission Owners Agreement only if it seriously harms the “public interest” and “extraordinary circumstances” exist such that the modification is an

²⁴¹ *Id.* at 31 (citing *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, at 530 (2008)) (*Morgan Stanley*) (additional citation omitted).

²⁴² *Id.* (citing *Morgan Stanley*, 554 U.S. at 534) (emphasis added by MISO) (additional citation omitted).

²⁴³ *Id.* at 32 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,090, at P 47, n.41 (2008) (MISO February 1, 2008 Order) (additional citation omitted)).

²⁴⁴ *Id.* at 32-33 (citing *Morgan Stanley*, 554 U.S. at 534).

²⁴⁵ *Id.* at 33 (citing *Texaco Inc. v. FERC*, 148 F.3d 1091, 1096 (D.C.Cir. 1998); *Appalachian Power Co. v. FERC*, 529 F.2d 342, 348 (D.C. Cir. 1976); *Standard of Review for Modifications to Jurisdictional Agreements*, 125 FERC ¶ 61,310, at PP 4-5 (2008); *Wis. Pub. Serv. Corp.*, 120 FERC ¶ 61,177, at P 22, n.19 (2007)).

²⁴⁶ *Id.*

“unequivocal public necessity.”²⁴⁷ MISO maintains that the Commission made no showing in the Order No. 1000 rulemaking proceeding.

142. MISO maintains that the rulemaking record in the Order No. 1000 proceeding is devoid of any evidence of harm to the public interest. MISO argues that the Commission’s findings are therefore premised on a theoretical threat of harm, and not on any specific demonstration, which is insufficient to make the necessary showing that Appendix B, section VI of the Transmission Owners Agreement “seriously harms the public interest.”²⁴⁸ MISO asserts that the courts have rejected attempts to require modification of agreements subject to the *Mobile-Sierra* doctrine on the basis of mere assertions of harm.²⁴⁹

143. MISO argues that, in fact, its track record of transmission expansion under the existing Transmission Owners Agreement is resulting in robust transmission expansion and increased participation by nonincumbent utilities in MISO, which benefit rather than harm the public interest. MISO also states that its existing Transmission Owners Agreement does not interfere with efficient transmission planning or result in more costly, less optimal transmission solutions in MISO.²⁵⁰

144. Additionally, MISO argues that the MISO Tariff and Transmission Owners Agreement facilitate, rather than prohibit, participation by nonincumbent transmission developers in the transmission planning process,²⁵¹ noting that under the Transmission

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 34 (citing *Morgan Stanley*, 554 U.S. at 530).

²⁴⁹ *Id.* at 35 (citing *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 14 (D.C. Cir. 2002)).

²⁵⁰ MISO states that, in the course of the MTEP process, MISO is obligated to attempt to coordinate or consolidate, where possible, individually defined transmission projects into more comprehensive cost-effective developments. *Id.* at 35.

²⁵¹ As an example of such participation, MISO states that the CapX2020 Transmission Capacity Expansion Initiative (CapX2020 Initiative) was a joint effort by 11 incumbent and nonincumbent public and non-public utilities, to construct nearly 700 miles of new, extra-high voltage transmission facilities. MISO states that the CapX2020 Initiative has encouraged participation in transmission investment and ownership by nonincumbent transmission dependent utilities, as acknowledged by the Commission in a recent order granting transmission rate incentives for an entity that, while not currently a MISO Transmission Owner, will be a participating owner in the CapX2020 Initiative. *Id.* at 38, n.178 (citing *WPPI Energy*, 141 FERC ¶ 61,004, at P 2 (2012)).

Owners Agreement, the MTEP process is open to all stakeholders and provides the opportunity for input into the development of an efficient and cost-effective transmission plan.²⁵² Moreover, MISO states that the Transmission Owners Agreement allows Transmission Owners to designate other parties to construct facilities that the Transmission Owners would otherwise have the right to construct under this provision. MISO cites to a number of Commission proceedings that it states demonstrate that nonincumbent transmission developers are being provided the opportunity to participate in transmission expansion in MISO under the current Transmission Owners Agreement.²⁵³

(b) Protests/Comments

145. Several commenters disagree with MISO's assertion that the Commission lacks the authority to modify MISO's Transmission Owners Agreement to remove the federal right of first refusal, absent a clear showing of serious harm to the public interest consistent with the heightened standard of review under the *Mobile-Sierra* doctrine.

146. ATC/Duke/Transource argue that the *Mobile-Sierra* doctrine only applies to: (1) contracts that specifically include the doctrine in the language of the agreement, and (2) bilateral agreements that contain a fixed rate or a rate formula for the purchase of gas or electricity at wholesale²⁵⁴ and Appendix B of the Transmission Owners Agreement does not fit in either of those categories.

147. Organization of MISO States argues that despite recognizing that *Mobile-Sierra* relates to contractual rates, MISO applies it to the entire Transmission Owners Agreement,²⁵⁵ but fails to identify how the construction rights set forth in the Transmission Owners Agreement would have an impact on rates or why they need to be subject to the higher *Mobile-Sierra* standard.²⁵⁶ Organization of MISO States also argues that, while it is clear that the doctrine applies to a "freely negotiated wholesale energy contract," the Transmission Owners Agreement does not appear to be such an agreement

²⁵² *Id.* at 36.

²⁵³ *Id.* at 38, n.179 (citing Pioneer Transmission, LLC, Offer of Settlement, Docket No. EL12-24-000 (Aug. 20, 2012)).

²⁵⁴ ATC/Duke/Transource Protest at 8 (citing *Morgan Stanley*, 554 U.S. at 534).

²⁵⁵ Organization of MISO States Comments at 4.

²⁵⁶ *Id.* at 5.

because new members must sign the agreement as-is, with little room for negotiation.²⁵⁷ Illinois Commerce Commission states that MISO may not assume that all provisions of a negotiated rate contract are protected by the *Mobile-Sierra* doctrine, noting that it was an open issue in *NRG Power Mktg., LLC v. Maine Public Utility Commission*.²⁵⁸ Illinois Commerce Commission and Organization of MISO States maintain that the right of first refusal may be more akin to rules of “general applicability” and that while still remaining rules, practices, or contract provisions related to or affecting rates, such provisions may not be “contractually negotiated rates” entitled to *Mobile-Sierra* protection.²⁵⁹

148. Illinois Commerce Commission states that by applying *Mobile-Sierra* to the entire Transmission Owners Agreement, MISO is expanding the current application of the doctrine.²⁶⁰ Organization of MISO States concurs, arguing that such expansion is a conclusion that courts have not made.²⁶¹ Similarly, ATC/Duke/Transource state that the neither the Supreme Court nor the Commission has expanded the protection of the *Mobile-Sierra* doctrine to all contracts or to agreements that do not establish a wholesale rate.²⁶² ATC/Duke/Transource argue that the *Mobile-Sierra* doctrine is not relevant to

²⁵⁷ *Id.* (citing *Morgan Stanley*, 554 U.S. at 532-533).

²⁵⁸ Illinois Commerce Commission Comments to MISO Compliance Filing at 27-28 (citing *NRG Power Mktg., LLC v. Maine Public Utility Commission*, 130 S. Ct. 693, at 701 (2010)). Illinois Commerce Commission notes that the Commission determined that the rates at issue there (auction revenue rates) were not contract rates but found that the Commission had discretion to apply the *Mobile-Sierra* standard. *Id.* at 28 (citing *Devon Power, LLC*, 134 FERC ¶ 61,208 (2011), *order on reh’g*, 137 FERC ¶ 61,073 (2011)).

²⁵⁹ *Id.*; Organization of MISO States Comments at 5.

²⁶⁰ Illinois Commerce Commission Comments to MISO Compliance Filing at 27-28; *see also* ATC/Duke/Transource Protest at 10-11 (stating that “neither the Commission nor the Courts automatically extend a blanket *Mobile-Sierra* protection over all contracts under its jurisdiction.”).

²⁶¹ Organization of MISO States Comments at 5-6.

²⁶² ATC/Duke/Transource also state that MISO’s reliance on *Appalachian Power Co. v. Fed. Power Comm’n.*, 529 F.2d 342 (D.C. Cir. 1976), to support its assertion that the *Mobile-Sierra* doctrine is the default standard that the Commission must meet when it orders changes to all contracts, is misplaced. ATC/Duke/Transource state that the court did not say, as MISO suggests, that the Commission must meet *Mobile-Sierra*’s public interest standard before it can order reform for any contract, no matter the subject matter or the signatories. ATC/Duke/Transource Protest at 9.

contracts that do not establish rates for the purchase or sale of gas or electricity.²⁶³ Organization of MISO States argues that MISO's proposed expansion of *Mobile-Sierra* may have severe consequences by encouraging transmission owners to put all policy issues into their transmission owner agreements, virtually removing the Commission's ability to set policies that benefit the public interest, and it could have significant impacts on the value of an RTO and its independence from market participants.²⁶⁴

149. ATC/Duke/Transource argue that the *Mobile-Sierra* doctrine does not apply to Appendix B of the Transmission Owners Agreement because it is not a bilateral agreement between a buyer and a seller that sets a contract rate or a formula for the sale and purchase of electricity or gas at wholesale.²⁶⁵ ATC/Duke/Transource argue that Appendix B does not set prices or rates, nor does it establish the relationship between the seller and buyer of gas or electricity.²⁶⁶ Accordingly, ATC/Duke/Transource state that none of the elements of a rate that would warrant a *Mobile-Sierra* public interest inquiry are present. They argue, for example, that there is no need to protect the sanctity of a contracted rate negotiated at arms' length between a buyer and a seller, as there are no buyers and sellers, and there is no need to protect the consuming public from such a rate. Organization of MISO States agrees that the rationale underlying the *Mobile-Sierra* doctrine is inapplicable in the current context.²⁶⁷

150. ATC/Duke/Transource also argue that there is no language in Appendix B of the Transmission Owners Agreement, or elsewhere in the Transmission Owners Agreement, demonstrating that its signatories intended that the *Mobile-Sierra* doctrine would govern amendments to this appendix. ATC/Duke/Transource state that the signatories chose to protect Appendix K of the Transmission Owners Agreement²⁶⁸ explicitly by the *Mobile-*

²⁶³ *Id.* at 9-10.

²⁶⁴ Organization of MISO States Comments at 6.

²⁶⁵ ATC/Duke/Transource Protest at 11. AEP concurs, stating that the relevant provision of the MISO Transmission Owners Agreement is not a "contract rate" to which the *Mobile-Sierra* public interest standard automatically applies. AEP Protest at 17.

²⁶⁶ ATC/Duke/Transource Protest at 11.

²⁶⁷ Organization of MISO States Comments at 6.

²⁶⁸ MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, App. K (Filing Rights Pursuant to Section 205 of the FPA) (1.0.0).

Sierra doctrine; thus, it is clear that the signatories knew how to invoke in explicit terms *Mobile-Sierra* protections when they negotiated and sought approval for Appendix K.²⁶⁹

151. Illinois Commerce Commission notes MISO's reliance on the MISO February 1, 2008 Order to support its argument that the Commission has determined that the public interest standard applies to the Transmission Owners Agreement.²⁷⁰ Illinois Commerce Commission states that while the MISO February 1, 2008 Order identifies the Commission's agreement that *Mobile-Sierra* applied to the Transmission Owners Agreement, it is clearly cited in the context of the *rate* at issue in that case, namely the rate structure for identified services during the six-year transition period. Similarly, ATC/Duke/Transource point out that the MISO February 1, 2008 Order refers to Appendix C of the Transmission Owners Agreement,²⁷¹ which addresses "certain transmission pricing and revenue distribution matters."²⁷² AEP agrees, stating that the provision at issue is distinguishable in that it directly concerned transmission revenue requirements, a clear "rate" issue.²⁷³

152. LS Power asserts that MISO fails to put into context either the right of first refusal provision or Order No. 1000.²⁷⁴ LS Power states that there is not both a *Mobile-Sierra* protected right of first refusal and a *Mobile-Sierra* protected right to regional cost allocation under specific terms.²⁷⁵ LS Power states that incumbent transmission owners have no contractual entitlement to a specific regional cost allocation methodology on

²⁶⁹ ATC/Duke/Transource Protest at 12.

²⁷⁰ Illinois Commerce Commission Comments to MISO Compliance Filing at 28 (citing MISO Compliance Filing at 32).

²⁷¹ MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, App. C (Pricing, Revenue Distribution, Return of Start-Up, GFAs) (1.0.0).

²⁷² ATC/Duke/Transource Protest at 11 (noting that the MISO February 1, 2008 Order involved revisions to specify how MISO treated revenues that it would have received for Network Integration Transmission Service provided to MISO Transmission Owners for service to their bundled retail load, but for the exemption that the service receives from Tariff charges).

²⁷³ AEP Protest at 17.

²⁷⁴ LS Power, Supplemental Protest Regarding *Mobile-Sierra* Assertions, Docket No. ER13-187-000, at 6 (filed Dec. 10, 2012) (LS Power *Mobile-Sierra* Protest).

²⁷⁵ *Id.*

terms that they mandate. Further, they are not forced to use a regional cost allocation but have the choice of how to proceed.²⁷⁶ LS Power states that because there is not a *Mobile-Sierra* protected right to access regional cost allocation or to any specific regional cost allocation methodology, the Commission is not constrained in restricting the terms under which the Commission will allow that public utility transmission provider and others to participate in regional cost allocation.²⁷⁷ Thus, LS Power argues that the Commission need not meet the heightened standard of review with regard to the mandates of Order No. 1000.²⁷⁸

153. LS Power also argues that the contracts at issue here are not between buyers and sellers but between groups of existing transmission owners to establish the conditions under which they will operate collectively and cede certain traditional rights to an independent regional planning entity. LS Power argues that, at least with respect to the right of first refusal provisions, the agreements at issue do not meet the premise that the contract rates are the product of fair, arms-length negotiations.²⁷⁹ LS Power states that the parties to the agreement could not be expected to negotiate a just and reasonable rate between them, as the focus of their negotiation was not a rate to be paid by one of them but whether the two of them would exclude a third.²⁸⁰

154. Further, LS Power states that *Mobile-Sierra* only prohibits the Commission from abrogating “valid” contracts and the Commission must determine whether the right of first refusal provisions, as currently argued to exclude all but the contract signatories from participation, would be a valid contractual purpose.²⁸¹ Finally, LS Power states that the Court in *Morgan Stanley* made clear that if there is a causal connection between unlawful activity and the contract provision at issue, the Commission can abrogate the rate.²⁸² LS Power states that an agreement among a group of transmission owners to

²⁷⁶ *Id.* at 9-10.

²⁷⁷ *Id.* at 10

²⁷⁸ *Id.* at 3-4, 17-18.

²⁷⁹ *Id.* at 19-20 (citing *Morgan Stanley*, 554 U.S. at 545).

²⁸⁰ *Id.* at 20.

²⁸¹ *Id.* at 20-21.

²⁸² *Id.* at 21 (citing *Morgan Stanley*, 554 U.S. at 554-555).

exclude new competitors would certainly call into question the lawfulness of the arrangement.²⁸³

155. Illinois Commerce Commission argues that MISO should have provided more support for the applicability of the *Mobile-Sierra* doctrine to the specific right of first refusal provisions in the Transmission Owners Agreement, as was required by Order No. 1000-A.²⁸⁴ Further, MISO should have addressed whether the claimed protection of the right of first refusal satisfies the purpose of the *Mobile-Sierra* doctrine.²⁸⁵

156. AEP states that the imposition of a “more stringent application of the just and reasonable standard” to an anticompetitive provision that the Commission has already generically found to be unjust and unreasonable would be “intolerable” under the context of the circumstances.²⁸⁶

157. Some entities that argue that the *Mobile-Sierra* doctrine applies to the Transmission Owners Agreement argue that the Commission has not demonstrated that it has met the heightened “public interest” standard of review to require revisions to it. ITC Companies and MISO Transmission Owners argue that the Commission has not demonstrated that the MISO Transmission Owners Agreement federal right of first refusal provisions are contrary to the public interest and must be replaced. ITC Companies state that MISO’s compliance filing makes a compelling case that the existing Transmission Owners Agreement benefits the public interest because it has lead to significant transmission expansion, while the Order No. 1000 administrative record does not support a finding that the federal right of first refusal provisions have harmed the public interest.²⁸⁷ ITC Companies state that the Transmission Owners Agreement has also not prevented the participation of non-incumbent transmission developers in the

²⁸³ *Id.*

²⁸⁴ Illinois Commerce Commission Comments to MISO Compliance Filing at 29 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 389).

²⁸⁵ *Id.* (citing *Mobile*, 350 U.S. at 344).

²⁸⁶ AEP Protest at 17-18.

²⁸⁷ ITC Companies, Comments, Docket No. ER13-187-000, at 6-7 (filed Dec. 10, 2012) (ITC Companies Comments to MISO Compliance Filing) (citing MISO Compliance Transmittal at 34).

MISO transmission expansion process.²⁸⁸ MISO Transmission Owners claim that the Commission has not satisfied its obligations under *Mobile-Sierra*.²⁸⁹

158. In contrast, LS Power and ATC/Duke/Transource argue that the Commission has demonstrated that, consistent with the *Mobile-Sierra* doctrine, the public interest requires removal of the federal right of first refusal from MISO's Transmission Owners Agreement. ATC/Duke/Transource argue that the evidence MISO offers in its compliance filing to support the retention of the federal right of first refusal is insufficient to rebut the Commission's finding that the public interest requires its elimination.²⁹⁰ ATC/Duke/Transource contend that the evidence presented by MISO to demonstrate the public benefits of the federal right of first refusal is overstated and misleading in that the projects that MISO offers as evidence of third party transmission construction are in fact projects proposed by incumbent Transmission Owners to be constructed in their own service territories.²⁹¹ ATC/Duke/Transource argue that contrary to MISO's claims, non-incumbent transmission developers are being impeded, and in turn, customers are being harmed, by the federal right of first refusal provisions in the current Transmission Owners Agreement.²⁹²

159. LS Power argues that the Commission made sufficient findings in Order Nos. 1000 and 1000-A to establish that the national public interest requires removal of federal rights of first refusal.²⁹³ LS Power states that removal of the federal rights of first refusal was narrowly tailored and allowed incumbent transmission owners to choose to address rate-payer needs as they historically did, i.e., locally.²⁹⁴ LS Power argues that, despite assertions to the contrary, the Commission referenced specific data and studies related to the transmission development and cost allocation issues that Order No. 1000 addresses.²⁹⁵ LS Power states that, the Commission also noted specific complaints about

²⁸⁸ *Id.* at 7.

²⁸⁹ MISO Transmission Owners Comments at 7.

²⁹⁰ ATC/Duke/Transource Protest at 2.

²⁹¹ *Id.* at 16 (citing MISO Compliance Transmittal at 36-39).

²⁹² *Id.* at 19.

²⁹³ LS Power *Mobile-Sierra* Protest at 4, 26 (citing Order No. 1000, FERC Stats. Regs. ¶ 31,323 at P 226).

²⁹⁴ *Id.* at 4.

²⁹⁵ *Id.* at 27 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 44-45) (additional citations omitted).

MISO's transmission planning process in its analysis as well as considered the more general impact of rights of first refusal on the public interest, including findings as to the unduly discriminatory nature of such provisions.²⁹⁶

160. LS Power argues that the Commission's findings in Order Nos. 1000 and 1000-A are sufficient to satisfy the public interest standard because the Commission is "adapt[ing] [its] rules and policies to the demands of changing circumstances."²⁹⁷ LS Power argues that while the Commission may have been willing to accept rights of first refusal in the past, such provisions have become contrary to the public interest with the advent of independent transmission companies willing and able to construct new transmission facilities of the same quality and reliability as incumbent utilities, but at a lower cost.²⁹⁸ LS Power argues that in the years since the transition to RTOs, circumstances have significantly changed, warranting a change in the Commission's policy with respect to regional transmission planning and regional cost allocation.²⁹⁹ ATC/Duke/Transource concur, arguing that the industry and the markets are undergoing fundamental changes and the Commission has correctly determined that the public interest requires corresponding fundamental changes to the regulatory environment.³⁰⁰

161. Additionally, ATC/Duke/Transource and LS Power state that the Commission has satisfied the *Mobile-Sierra* public interest standard by ordering targeted changes that alleviate serious harm³⁰¹ by fostering the competitive market for the benefit of all its

²⁹⁶ *Id.* at 28-30 (arguing that this finding was based on the fact that a federal right of first refusal may discourage new entrants from proposing new transmission projects in the regional transmission planning process).

²⁹⁷ *Id.* at 30 (citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1967), finding that the *Mobile-Sierra* doctrine does not alter the fact that the Commission must be permitted to adapt its rules to changing circumstances).

²⁹⁸ *Id.* at 31.

²⁹⁹ *Id.* at 30.

³⁰⁰ ATC/Duke/Transource Protest at 13 (citing *TAPS v. FERC*, 225 F.3d at 711 (finding that "generic *Mobile-Sierra* findings are appropriate only in rare circumstances. Order No. 888 is just such a circumstance. It fundamentally changes the regulatory environment in which utilities operate, introducing meaningful competition into an industry that since its inception has been highly regulated and affecting all utilities in a similar way.") (additional citation omitted)).

³⁰¹ LS Power and ATC/Duke/Transource argue that there is serious harm caused by rights of first refusal to the public interest because they deprive customers of the

(*continued . . .*)

participants.³⁰² LS Power argues that contract reformation is permitted to address undue discrimination³⁰³ and where the existing contract will harm third parties, including competitors and competition.³⁰⁴ LS Power argues that rights of first refusal are facially anticompetitive because they provide incumbent utilities with the right to foreclose competing companies from building similarly reliable and economic transmission projects at a potential lower cost and they also prevent non-incumbent transmission developers from participating fully in the regional transmission planning process, which can lead to more expensive and less efficient transmission projects being selected in the regional transmission plan.³⁰⁵ ATC/Duke/Transource concur and argue that the loss in competition can lead to rates that are unjust and unreasonable for ratepayers.³⁰⁶ LS Power notes that, in determining a just and reasonable rate, the Commission must consider allegations that proposed rates are discriminatory and are anticompetitive in effect.³⁰⁷

162. LS Power requests that the Commission make a generic *Mobile-Sierra* public interest finding. LS Power states that the Commission's authority to modify rates fixed by contract when modifications are "necessary in the public interest" is greatest when the Commission acts on an industry-wide basis to abrogate contract provisions.³⁰⁸ LS Power states that, although the Commission has to make individual assessments whether relevant *Mobile-Sierra* protection exists in the context of Order No. 1000, the Commission should address, on a collective basis, the impact of any qualifying contracts

benefits of competition and there is no countervailing public policy reason to allow such an anticompetitive provision. *See* LS Power *Mobile-Sierra* Protest at 31; ATC/Duke/Transource Protest at 14.

³⁰² ATC/Duke/Transource Protest at 2, 16. *See* LS Power *Mobile-Sierra* Protest at 30-31.

³⁰³ LS Power *Mobile-Sierra* Protest at 23 (citing *TAPS v. FERC*, 225 F.3d at 712) (additional citations omitted).

³⁰⁴ *Id.* at 22-23 (citations omitted).

³⁰⁵ *Id.* at 23.

³⁰⁶ ATC/Duke/Transource Protest at 14.

³⁰⁷ LS Power *Mobile-Sierra* Protest at 22 (citing *FPC v. Conway Corp.*, 426 U.S. 271 (1976)).

³⁰⁸ *Id.* at 24 (citing *TAPS v. FERC*, 225 F.3d at 711).

on national policy.³⁰⁹ LS Power states that the court in *TAPS v. FERC* addressed the Commission's ability to look at contracts collectively and found "nothing in the *Mobile-Sierra* doctrine to prohibit FERC from responding with a public interest finding applicable to all contracts in the class."³¹⁰ LS Power states that Order No. 1000 appears to be just the circumstance where a generic *Mobile-Sierra* finding is appropriate because the contractual provisions before the Commission are identical in their effect and MISO makes identical arguments.³¹¹

163. Illinois Commerce Commission argues that MISO's voluntary decision to sign on to the MISO Transmission Owners' *Mobile-Sierra* position³¹² as part of its compliance filing creates a perception of non-independence that should have been avoided.³¹³ Illinois Commerce Commission states that while incumbent utilities have an interest in the revisions needed to address the non-incumbent transmission developer reforms, these revisions do not appear to implicate MISO's interests. Further, Illinois Commerce Commission states that, as a not-for-profit corporation that is required to be independent from profit-maximization objectives of market participants and transmission owners in particular, MISO should be cognizant of its independent status and be especially careful not to appear to take sides in the competition between current incumbent transmission companies and potential future incumbent Transmission Owners. Accordingly, Illinois Commerce Commission recommends that the Commission not provide the deference usually given to independent RTOs to MISO in this case.³¹⁴

³⁰⁹ *Id.*

³¹⁰ *Id.* at 24-25 (citing *TAPS v. FERC*, 225 F.3d at 710).

³¹¹ *Id.* at 25.

³¹² Illinois Commerce Commission notes that not all of the MISO Transmission Owners signed on to the October 25 Filing, which claims *Mobile-Sierra* protection with respect to the right of first refusal provisions of the Transmission Owners Agreement. Illinois Commerce Commission Comments to MISO Compliance Filing at 24.

³¹³ *Id.* at 30-31 (noting that, with respect to PJM Interconnection, L.L.C.'s (PJM) filing to comply with Order No. 1000 in Docket No. ER13-195-000, the PJM transmission owners submitted a *Mobile-Sierra* claim and PJM did not sign on to their filing) (additional citation omitted).

³¹⁴ *Id.* (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at PP 99, 152 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

164. Further, Illinois Commerce Commission and Organization of MISO States express concern that MISO's *Mobile-Sierra* arguments were not discussed with MISO stakeholders.³¹⁵ They dispute MISO's claim that the revisions needed to comply with Order No. 1000 compliance were the subject of "an intensive stakeholder process," arguing that the *Mobile-Sierra* argument was never seriously raised in the various stakeholder forums relating to the Order No. 1000 compliance filing.³¹⁶ Illinois Commerce Commission also argues that the Order No. 1000 process cannot be said to have been "open and transparent" to all stakeholders because the Transmission Owners had more information about the contents of MISO's developing compliance filing than the other stakeholders.³¹⁷ Illinois Commerce Commission and Organization of MISO States argue that knowing that MISO was planning to reach such a conclusion would likely have changed the way stakeholders approached issues relating to Order No. 1000 compliance.³¹⁸ Illinois Commerce Commission recommends that the Commission reject MISO's *Mobile-Sierra* request, or at least, remand it back to the stakeholder process for a full vetting as envisioned by Order No. 1000.³¹⁹

165. Finally, Consumers Energy Company states that it is concerned about MISO's statement that the Commission should disregard its proposed Tariff and Transmission Owners Agreement revisions to address Order No. 1000's nonincumbent transmission developer reforms unless the Commission first determines that it has satisfied the requirement of the *Mobile-Sierra* doctrine.³²⁰ Consumers Energy Company argues that MISO's attempt to have the Commission disregard the revisions addressing the

³¹⁵ *Id.* at 24-27; Organization of MISO States Comments at 6-7.

³¹⁶ These commenters acknowledge that the *Mobile-Sierra* issue was raised by parties in Order No. 1000, 1000-A, and 1000-B filings but argue that it was never raised in the MISO stakeholder process leading up to MISO's October 25 compliance filing. Illinois Commerce Commission Comments to MISO Compliance Filing at 25; Organization of MISO States Comments at 6-7 (citing MISO Compliance Transmittal at 5).

³¹⁷ Illinois Commerce Commission Comments to MISO Compliance Filing at 24-25.

³¹⁸ *Id.* at 26; Organization of MISO States Comments at 7.

³¹⁹ Illinois Commerce Commission Comments to MISO Compliance Filing at 27.

³²⁰ Consumers Energy Company, Comments, Docket No. ER13-187-000, at 2 (filed Dec. 10, 2012) (citing MISO Compliance Transmittal at 4) (additional citations omitted).

nonincumbent transmission developer reforms proposed in this filing based on *Mobile-Sierra* grounds is an impermissible collateral attack on Order No. 1000.³²¹

(c) Answer

166. MISO states that arguments that the *Mobile-Sierra* public interest standard does not apply to non-rate terms and conditions or to agreements such as the Transmission Owners Agreement disregard precedent and should therefore be rejected. As an initial matter, MISO argues that the Commission already has determined that the Transmission Owners Agreement is subject to *Mobile-Sierra* protection, and the Commission's order does not limit this determination to the pricing provisions of that agreement.³²² As such, MISO claims that protesters' arguments constitute a collateral attack on a prior Commission determination. MISO also maintains that there is no merit to the argument that Appendix B, section VI of the Transmission Owners Agreement is not subject to the *Mobile-Sierra* standard because it does not contain rate provisions.³²³

167. MISO asserts that the Transmission Owners Agreement was part of the bargained-for exchange that resulted in the Transmission Owners voluntarily agreeing to participate in MISO, and it is similar to agreements among "sophisticated entities" entitled to *Mobile-Sierra* protection. MISO disagrees that the Transmission Owners Agreement is not entitled to *Mobile-Sierra* protection because it is not an arms' length agreement between a seller and buyer or because the Transmission Owners in MISO have a commonality of interests. It argues that there is no requirement or judicial precedent limiting the doctrine to bilateral agreements only. MISO states that the Commission has granted *Mobile-Sierra* protection to agreements among transmission-owning members of RTOs relating to transmission planning and expansion, as well as agreements between an RTO and its transmission owners, such as balancing authority agreements.³²⁴

³²¹ *Id.* at 2-3.

³²² MISO Compliance Answer at 4 (citing MISO February 1, 2008 Order, 122 FERC ¶ 61,090 at P 47, n.41).

³²³ *Id.* at 5 (citing *ISO New Eng. Inc.*, 109 FERC ¶ 61,147, at PP 77-78 (2004) (*ISO New Eng.*); *Pub. Utils. with Existing Contracts in the Cal. Indep. Sys. Operator Corp. Region*, 125 FERC ¶ 61,228, at PP 6, 15 (2008); *Vt. Transco LLC*, 118 FERC ¶ 61,244, at P 50 (2007), *order on clarification and reh'g sub nom. Lamoille County Sys. v. Vt. Transco LLC*, 120 FERC ¶ 61,010 (2007); *Sw. Power Pool, Inc.*, 117 FERC ¶ 61,207, at PP 27-28 (2006), *order on reh'g*, 119 FERC ¶ 61,021, at P 11 (2007)).

³²⁴ *Id.* at 6 (citing MISO February 1, 2008 Order, 122 FERC ¶ 61,090 at P 47, n.41; *ISO New Eng. Inc.*, 109 FERC ¶ 61,147 at PP 77-78).

168. MISO disagrees with protesters' reliance on *NRG Power v. Maine PUC* to support their arguments that the *Mobile-Sierra* standard does not apply. MISO argues that the Commission has already determined that the Transmission Owners Agreement has *Mobile-Sierra* protection, whereas on remand in *NRG Power v. Maine PUC*, the Commission was considering whether to accept a proposed *Mobile-Sierra* provision that would bind future entities under the agreement. MISO states that the Commission may not now revoke *Mobile-Sierra* protection, and it argues that the logic underlying both *NRG Power v. Maine PUC* and the subsequent remand order dictates that the Transmission Owners Agreement remains subject to the public interest standard.³²⁵

169. MISO also disagrees that the *Mobile-Sierra* public interest standard does not apply to the Transmission Owners Agreement because the agreement does not specify that this standard applies. It states that absent specific language to the contrary, the public interest standard is the appropriate standard of review.³²⁶

170. MISO argues that no party has introduced any evidence of harm sufficient to meet the public interest standard, including any evidence to demonstrate that the existing transmission construction rights and obligations led to undue discrimination, harm to MISO customers, or increased cost of transmission expansion.³²⁷

171. MISO claims that LS Power confuses the issues when it argues that there is no *Mobile-Sierra* protected right to cost allocation and that Transmission Owners wishing to retain their rights of first refusal should simply forego the right to regional cost allocation. MISO states that it does not contend that the Transmission Owners Agreement provides a "right" to regional cost allocation, but rather that the *Mobile-Sierra* doctrine protects the freely-negotiated contractual rights and obligations set forth in Appendix B, section VI of the Transmission Owners Agreement from modification by the Commission absent serious harm to the public interest.³²⁸

172. MISO states in response to arguments concerning a lack of stakeholder involvement in the development of the *Mobile-Sierra* arguments in its compliance filing, as well as a question of MISO's independence from its Transmission Owners, that it concluded that the *Mobile-Sierra* doctrine applies to any review of the Transmission Owners Agreement, and thus it included its arguments in the compliance filing as directed by Order No. 1000. MISO explains that the compliance filing was made with MISO's Transmission Owners simply because Order No. 1000 invited public utility

³²⁵ *Id.* at 6-8.

³²⁶ *Id.* at 7-8.

³²⁷ *Id.* at 8-10.

³²⁸ *Id.* at 10.

transmission providers that are members of RTOs to join their RTO's Order No. 1000 compliance filing in lieu of submitting their own filing.³²⁹ MISO states that it did not consider it necessary to discuss its previously articulated public position on *Mobile-Sierra* in its stakeholder process, nor was it required to do so under Order No. 1000.

173. In response to arguments that MISO's opposition to the nonincumbent developer reforms properly belongs in the Order No. 1000 proceeding and amounts to a collateral attack on Order No. 1000, MISO answers that these contentions overlook the Commission's finding in Order No. 1000 and Order No. 1000-A both that the rulemaking record was insufficient for the Commission to determine whether any specific agreement was protected by *Mobile-Sierra* and that transmission providers should address this issue in their Order No. 1000 compliance filings.³³⁰

(d) Commission Determination

174. In Order No. 1000, the Commission declined to address as part of the rulemaking process arguments that transmission owners agreements, such as the MISO Transmission Owners Agreement, were protected under *Mobile-Sierra*. The Commission concluded that the record was not sufficient to evaluate such arguments and that they could be better addressed at the compliance stage.³³¹ The Commission stated in Order No. 1000-A that "a public utility transmission provider that considers its contract to be protected by a *Mobile-Sierra* provision may present its arguments as part of its compliance filing."³³²

175. Drawing on this Commission statement, MISO argues that *Mobile-Sierra* requires the Commission to presume that a rate set out in a freely-negotiated wholesale energy contract meets the just and reasonable requirement of the FPA and that the Commission can overcome the presumption only if it concludes that the contract seriously harms the public interest. We disagree with MISO's claims that the right of first refusal provision in the MISO Transmission Owners Agreement is subject to a *Mobile-Sierra* presumption and that the Commission has previously reached that conclusion.

³²⁹ To further demonstrate its independence, MISO notes that its compliance filing includes changes that benefit parties other than the MISO Transmission Owners, including provisions providing an enhanced role for state commissions in the transmission planning process. *Id.* at 11-12.

³³⁰ *Id.* at 12-13.

³³¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 292.

³³² Order No. 1000-A, 139 FERC ¶ 61,132 at P 389.

176. As a threshold matter, the fact that a federal right of first refusal is contained in a contract does not establish that the contract is entitled to a *Mobile-Sierra* presumption. The *Mobile-Sierra* presumption applies to a contract only if the contract has certain characteristics that justify the presumption. MISO has not made such a showing, and we find that the provision in question lacks the characteristics necessary to justify a *Mobile-Sierra* presumption.

177. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the instrument at issue embodies either (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. The former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption; the latter constitute tariff rates, terms, or conditions to which the *Mobile-Sierra* presumption does not apply, although the Commission may exercise its discretion to apply the heightened *Mobile-Sierra* standard.³³³

178. In some instances, the jurisdictional provisions of a contract may be classified in their entirety as including either contract rates, terms, and conditions that are subject to a *Mobile-Sierra* presumption or tariff rates, terms, and conditions to which the *Mobile-Sierra* presumption does not apply. On one hand, all such provisions in bilateral power sales contracts freely negotiated at arm's length between sophisticated parties generally would establish contract rates and would come within the presumption.³³⁴ On the other hand, where the terms of an agreement would, if approved, be incorporated into the service agreements of all present and future customers, those terms are properly classified as tariff rates and the *Mobile-Sierra* presumption would not apply.³³⁵

³³³ See *New England Power Generators Ass'n, Inc. v. FERC*, No. 11-1422 at 10-12 (D.C. Cir. Feb. 15, 2013).

³³⁴ See generally *Morgan Stanley*, 554 U.S. 527.

³³⁵ *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014, at P 17 (2011) (holding that the *Mobile-Sierra* presumption does not apply to a settlement agreement “[b]ecause the terms of the Settlement, if approved, will be incorporated into the service agreements of all present and future shippers. . . .”); see also *High Island Offshore Sys., LLC*, 135 FERC ¶ 61,105, at P 19 (2011); *Petal Gas Storage, L.L.C.*, 135 FERC ¶ 61,152, at P 12 (2011); *Southern LNG Co., LLC*, 135 FERC ¶ 61,153, at P 19 (2011) (each finding that *Mobile-Sierra* presumption does not apply to offer of settlement which incorporates into each shipper's service agreement rates, terms, and conditions that are generally applicable “to all present and future customers”).

179. By contrast, the MISO Transmission Owners Agreement cannot be classified in its entirety as containing contract rates or tariff rates. As discussed further below, we find that for two separate but reinforcing reasons, the right of first refusal provision in the Transmission Owners Agreement lacks the characteristics that justify the *Mobile-Sierra* presumption.³³⁶ Other provisions of the Transmission Owners Agreement not at issue in this proceeding may have those characteristics. Given the breadth and complexity of the Transmission Owners Agreement, we find that it is neither practical nor necessary to evaluate whether the preponderance of the Transmission Owners Agreement's provisions include tariff rates or contract rates. Rather, we find that determining the standard of review that should apply to specific provisions of the Transmission Owners Agreement is an appropriate way to recognize the distinctions among its provisions.

180. We agree with Illinois Commerce Commission that in this instance the Transmission Owners Agreement formulates a rule that is a prescription of general applicability rather than a negotiated rate provision that is necessarily entitled to a *Mobile-Sierra* presumption.³³⁷ We note that in its most recent statement on the *Mobile-Sierra* doctrine, the U.S. Supreme Court acknowledged the potential distinction between "prescriptions of generally applicability" and "contractually negotiated rates."³³⁸ Where the language of an agreement establishes rules that delimit, qualify, or restrict the ability of any other potential competitor to engage in the subject activity, that language creates generally applicable requirements.

181. This conclusion is bolstered by the fact that, as Organization of MISO States notes, new MISO members must accept these provisions as-is, with limited room for negotiation. As a result, new MISO members are placed in a position that differs fundamentally from that of parties who are able to negotiate freely, like buyers and

³³⁶ We discuss below, and disagree with, MISO's argument that the Commission has previously found that the *Mobile-Sierra* presumption is applicable to this provision. Where arguments are presented in Order No. 1000 compliance filing proceedings with respect to previous Commission statements as to the standard of review applicable to provisions in another RTO's or ISO's transmission owners agreement, the Commission will address those arguments on a case-by-case basis.

³³⁷ See Illinois Commerce Commission Comments, Docket No. ER13-195-000, at 3.

³³⁸ *NRG Power Marketing, LLC, v Me. Pub. Util. Comm.*, 130 S.Ct. 693, 701 (2010). The Court made this statement even as it held that the *Mobile-Sierra* presumption "is not limited to challenges to contract rates brought by contracting parties. It applies, as well, to challenges initiated by third parties." *Id.*

sellers entering into a typical power sales contract that would be entitled to a *Mobile-Sierra* presumption.

182. We also find that the *Mobile-Sierra* presumption does not apply to the right of first refusal in the MISO Transmission Owners Agreement because that provision arose in circumstances that do not provide the assurance of justness and reasonableness on which the *Mobile-Sierra* presumption rests.”³³⁹

183. Specifically, this provision arose in a negotiation aimed at protecting a common interest among competing transmission owners. Unlike circumstances in which the Commission can presume that the resulting rate is the product of negotiations between parties with competing interests, the negotiation that led to the provisions at issue here were among parties with the same interest, namely, protecting themselves from competition in transmission development. Thus, while the MISO Transmission Owners may have engaged in extensive negotiations, because of the common interests here, the negotiations do not bear the hallmarks necessary for the *Mobile-Sierra* presumption.³⁴⁰

184. The Commission has recognized a similar point in other contexts that are relevant here. For instance, the Commission has observed that “the self-interest of two merger partners converge sufficiently, even before they complete the merger, to compromise the market discipline inherent in arm’s-length bargaining that serves as the primary protection against reciprocal dealing.”³⁴¹ The Commission’s policy on market-based rates incorporates similar principles.³⁴²

³³⁹ *Id.* at 554 (stating that “the premise on which the *Mobile-Sierra* presumption rests” is “that the contracts are the product of fair, arm’s length negotiations.”). Arm’s-length bargaining serves an important role in confirming that the transaction price reflects fair market value.

³⁴⁰ We also note that in reaching these conclusions we do not imply that the parties have acted in bad faith. Rather, for purposes of *Mobile-Sierra* analysis, the courts have found that it is relevant whether, in seeking to advance their interests, the parties are situated in relation to each other in a way that allows one to make a specific assumption about the results of their negotiations. We reach our conclusions here based in part on that analysis.

³⁴¹ *Delmarva Power & Light Co.*, 76 FERC ¶ 61,331, at 62,582 (1996) (quoting *Cinergy, Inc.*, 74 FERC ¶ 61,281, at 61,900 (1996)).

³⁴² *See, e.g.*, 18 C.F.R. § 35.36(a)(9)(iii) (2012) (making possible absence of arm’s-length bargaining a potential ground for finding that it is necessary or appropriate in the public interest to treat entities as affiliates for purposes of the Commission’s

(*continued . . .*)

185. MISO's response to Arkansas Electric's argument that *Mobile-Sierra* should not apply to Transmission Owners that become parties to the Transmission Owners Agreement after the effective date of Order No. 1000 reinforces this conclusion. MISO argues that the right of first refusal provision in the Transmission Owners Agreement applies to Entergy even though Entergy is not yet a party to that agreement and did not negotiate those provisions. This argument implicitly acknowledges that the provision is of general applicability and, therefore, does not merit the *Mobile-Sierra* presumption. The fact that Entergy may not find the provision objectionable does not alter the character of the provision as one of general applicability.

186. MISO also argues in its answer that the Commission has granted *Mobile-Sierra* protection to agreements that it describes as similar to the one at issue here. Such cases reflect the Commission's analysis of the facts presented in specific cases and are not necessarily determinative here.³⁴³ The question presented here is whether the Commission must presume that the right of first refusal set forth in the MISO Transmission Owners Agreement is just and reasonable. The fact that the Commission has in some situations exercised its above-noted discretion to establish enhanced requirements for a showing that something is not just and reasonable does not answer this question.

187. We also disagree with MISO's argument that the *Mobile-Sierra* public interest standard protects the sanctity of contract, not simply the parties to the contract because "it can bind non-parties."³⁴⁴ MISO makes this claim based on the Supreme Court's holding in *NRG Power v. Maine PUC*. However, in that case the Court simply held that third parties challenging "a contract rate resulting from fair, arms' length negotiations"³⁴⁵ would have to satisfy the public interest standard. The point at issue here is not whether

market-based rate regulations); *see also Central Maine Power Co.*, 85 FERC ¶ 61,272 (1998) (accepting implementing agreements as just and reasonable where the rates, terms and conditions in the agreements were determined through a competitive bidding process and subsequent arm's-length negotiations where neither party could exercise market power).

³⁴³ As noted above, where arguments are presented in Order No. 1000 compliance filing proceedings with respect to previous Commission statements as to the standard of review applicable to provisions in another RTO's or ISO's transmission owners agreement, the Commission will address those arguments on a case-by-case basis.

³⁴⁴ MISO Compliance Answer at 13.

³⁴⁵ *NRG Power Mktg., LLC v. Maine Public Utility Commission*, 130 S. Ct. 693, at 701 (2010).

the public interest standard binds third parties but rather whether the agreement itself establishes rates, terms, and conditions that bind third parties by restricting their ability to engage in certain business activities. It is the essence of a right of first refusal that it creates limitations that apply to and bind all entities that may wish to engage in certain conduct and that as a result are generally applicable to all entities. This direct encroachment on the potential activities of other entities differs fundamentally from the external economic effects of contracts that are the focus of the *Mobile-Sierra* cases.³⁴⁶

188. Finally, MISO argues that the Commission has found that the Transmission Owners Agreement imposes a *Mobile-Sierra* standard of review. However, while the Commission does have authority to find, where appropriate, that an agreement or provisions of an agreement should be subject to a *Mobile-Sierra* heightened standard of review, it did not do this in the case of the right of first refusal in the Transmission Owners Agreement. MISO's claim that the Commission has found that the Transmission Owners Agreement is subject to a *Mobile-Sierra* standard of review is based on a statement made in a footnote in a 2008 Commission order that conditionally accepted revisions to MISO's Tariff dealing with the transmission service that the MISO Transmission Owners must take to meet their obligations to serve bundled retail load.³⁴⁷ One party to the proceeding argued that the proposed Tariff revisions violated the Transmission Owners Agreement because they would alter revenue distribution and because the MISO Transmission Owners had failed to satisfy the requirement that any adjustment to revenue distribution be approved by a unanimous vote of the MISO Transmission Owners. The party in question argued that there was no justification for disregarding this requirement and that the changes to the Transmission Owners Agreement were subject to the *Mobile-Sierra* public interest standard.³⁴⁸

189. The Commission concluded that it was ambiguous whether the unanimity requirement applied in this situation and that the proposed Tariff revisions were

³⁴⁶ *Mobile*, 350 U.S. at 345 (stating that the Commission may authorize a higher rate if it “determines the contract rate to be so low as to conflict with the public interest”); *Sierra*, 350 U.S. at 355 (identifying the central issue in such cases as “whether the rate is so low as to adversely affect the public interest – as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory”); *Morgan Stanley*, 554 U.S. at 545-546 (stating that “only when the mutually agreed-upon contract rate seriously harms the consuming public may the Commission declare it not to be just and reasonable.”).

³⁴⁷ See MISO February 1, 2008 Order, 122 FERC ¶ 61,090 at P 47, n.41.

³⁴⁸ *Id.* PP 23-24.

consistent with the Transmission Owners Agreement.³⁴⁹ The Commission further stated in a footnote that it agreed that the Transmission Owners Agreement imposed a *Mobile-Sierra* standard of review, although there was no need to address changes to that agreement.³⁵⁰ But when this statement is read in context, it has neither the meaning nor the precedential value that MISO attributes to it.

190. As Illinois Commerce Commission and ATC/Duke/Transource note, our statements on *Mobile-Sierra* in that instance are best understood as directed to a specific rate matter that is dealt with in the Transmission Owners Agreement, not to everything contained in that agreement. When it stated that *Mobile-Sierra* applied, the Commission's attention was directed to the claim that proposed Tariff revisions violated the requirement under Article 2, section IX.C (Amendments by Owners) of the Transmission Owners Agreement that Transmission Owners must unanimously approve all modifications to the revenue distribution provisions of Appendix C of the Transmission Owners Agreement. As we explain above, the applicability of *Mobile-Sierra* depends on the characteristics of the provision in question. The fact that *Mobile-Sierra* applies to one provision of a contract does not mean that it also applies to other provisions regardless of whether they possess the characteristics that make *Mobile-Sierra* applicable. Specifically, a conclusion that the public interest standard applies to modifications to the revenue distribution provisions in Appendix C states nothing about the standard that applies to modifications to Appendix B, which is the portion of the Transmission Owners Agreement affected by the requirements of Order No. 1000 concerning federal rights of first refusal. We thus see no basis for concluding the Commission was in that case making blanket findings applicable to every provision of the Transmission Owners Agreement. As a result, we also agree with Illinois Commerce Commission that MISO may not assume that all provisions of a contract have *Mobile-Sierra* protection, and we agree with Organization of MISO States that MISO applies *Mobile-Sierra* to the entire Transmission Owners Agreement without explaining why the specific provision at issue should be subject to it.

191. In addition, regardless of how broadly one chooses to read the statement on *Mobile-Sierra* in question, that statement provides little reasoning to support its conclusion and was not necessary to decide the question presented. Without further discussion by the Commission, the simple statement cited by MISO provides no reasoning that could be used to persuade one that MISO's interpretation is correct. Our analysis above explains why *Mobile-Sierra* does not apply to the right of first refusal provision in the MISO Transmission Owners Agreement, and nothing in the footnote in question casts doubt on that conclusion. We therefore find that the statement that MISO

³⁴⁹ *Id.* PP 47-48.

³⁵⁰ *Id.* P 47, n.41.

refers to does not demonstrate that the right of first refusal provision of the MISO Transmission Owners Agreement is protected by *Mobile-Sierra*.

192. Since *Mobile-Sierra* does not protect the right of first refusal provision of the MISO Transmission Owners Agreement, we do not need to address MISO's argument that the Commission has not demonstrated that the right of first refusal adversely affects the public interest.

193. Finally, we find to be without merit Consumers Energy Company's argument that MISO's statement that the Commission should disregard its proposed revisions to address Order No. 1000's nonincumbent transmission developer reforms unless the Commission first determines that it has satisfied the requirement of the *Mobile-Sierra* doctrine amounts to a collateral attack on Order No. 1000. The Commission clarified in Order No. 1000-A that a public utility transmission provider that considers its contract to be protected by a *Mobile-Sierra* provision may present its arguments as part of its Order No. 1000 compliance filing, but the compliance filing must also include the revisions necessary to comply with Order No. 1000.³⁵¹ MISO's compliance filing is consistent with this clarification.

ii. Removal of Federal Rights of First Refusal

(a) MISO's Filing

194. Since *Mobile-Sierra* does not protect the right of first refusal provision of the MISO Transmission Owners Agreement, we turn now to MISO's proposal to eliminate that provision. MISO states that the Commission has found that the language in section VI of Appendix B of the Transmission Owners Agreement acts to establish a right of first refusal.³⁵² Therefore, MISO proposes to amend the Transmission Owners Agreement and the Tariff to clarify that for transmission projects selected in the regional transmission plan for purposes of cost allocation, an entity to construct each such project will be chosen using an inclusive evaluation approach.³⁵³

195. MISO proposes to maintain the provision in the Transmission Owners Agreement that includes a federal right of first refusal but revise it so that it does not apply to "Open Transmission Projects," which MISO explains are facilities selected in the regional

³⁵¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 389.

³⁵² MISO Compliance Transmittal at 40 (citing *Xcel Energy Services Inc. v. American Transmission Co., LLC*, 140 FERC ¶ 61,058 at P 64).

³⁵³ *Id.* at 39-40.

transmission plan for purposes of cost allocation.³⁵⁴ Specifically, MISO is proposing to revise the provision to state:

Except for facilities that are Open Transmission Projects as defined in the Tariff and subject to the transmission developer selection process set forth in Attachment FF, Section VIII of the Tariff: (i) Ownership and the responsibility to construct facilities which are connected to a single Owner's system belong to that Owner, and that Owner is responsible for maintaining such facilities; (ii) Ownership and the responsibilities to construct facilities which are connected between two (2) or more Owners' facilities belong equally to each Owner, unless such Owners otherwise agree, and the responsibility for maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners; and (iii) Finally, ownership and the responsibility to construct facilities which are connected between an Owner(s)' system and a system or systems that are not part of the Midwest ISO belong to such Owner(s) unless the Owner(s) and the non-Midwest ISO party or parties otherwise agree.^[355]

196. MISO also proposes to revise language in Attachment FF of the Tariff as follows:

With the exception of Open Transmission Projects, fFor each project included in the recommended MTEP Appendix A and prior to approval by the Transmission Provider Board, the plan shall designate one or more Transmission Owners to construct, own, operate, maintain, repair, restore, and finance the recommended project, based on the planning analysis performed by the Transmission Provider and based on other input from participants, including, but not limited to, any indications of a willingness to bear cost responsibility for the

³⁵⁴ Proposed section 1.477a to MISO's Tariff defines Open Transmission Project, in relevant part, as follows: "A Market Efficiency Project or Multi-Value Project contained in MTEP Appendix A that has been approved by the Transmission Provider Board and may contain one or more New Transmission Facilities[.]" MISO, FERC Electric Tariff, § 1.477a (Open Transmission Project) (0.0.0).

³⁵⁵ MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, App. B, § VI (Planning Framework) (1.0.0).

project; and applicable provisions of the ISO Agreement, ~~one or more Transmission Owners or other entities to construct, own and/or finance the recommended project.~~^[356]

(b) **Protests/Comments**

197. ITC Companies state that they support MISO's proposed approach to eliminate the federal right of first refusal from the Transmission Owners Agreement and the Tariff.³⁵⁷

198. Consumers Energy Company, ATC/Duke/Transource and LS Power generally argue that MISO's request to retain a federal right of first refusal for incumbent transmission providers contravenes Order No. 1000.³⁵⁸ In addition, ATC/Duke/Transource state that the Commission should order MISO to make changes to the Transmission Owners Agreement's federal right of first refusal provision to indicate that ownership will be "shared proportionately" rather than "shared equally" for projects that are not regionally cost-shared.³⁵⁹ ATC/Duke/Transource argue that revising the Transmission Owners Agreement to provide for proportionate ownership shares will prevent the unintended regional cost sharing that could occur if all projects are split equally.³⁶⁰

199. LS Power states that it has concerns that the compliance filing does not fully comply with the Commission's mandate to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal.³⁶¹ LS Power argues that the Commission should require MISO to affirmatively state both that (i) it has removed all language granting a right of first refusal; and (ii) that all actions

³⁵⁶ MISO, FERC Electric Tariff, Attachment FF, § V (8.0.0).

³⁵⁷ ITC Companies Comments to MISO Compliance Filing at 8.

³⁵⁸ Consumers Energy Company, Protest, Docket No. ER13-186-000, at 3-4 (filed Dec. 10, 2012) (Consumers Energy Company Protest to Baseline Reliability Project Filing) (citing MISO Compliance Transmittal at 29-41); ATC/Duke/Transource Protest at 19; LS Power, Protest, Docket No. ER13-187-000, at 17-18 (filed Dec. 10, 2012) (LS Power Protest to MISO Compliance Filing).

³⁵⁹ ATC/Duke/Transource Protest at 3. ATC/Duke/Transource state that AEP is not joining the argument summarized by this sentence.

³⁶⁰ *Id.* at 34.

³⁶¹ LS Power Protest to MISO Compliance Filing at 16, n.42 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313).

undertaken by MISO in fulfillment of Order No. 1000 will be done on a nondiscriminatory basis, favoring no entity and with no obligation or intent to maximize existing Transmission Owner transmission revenue in selection of the Selected Transmission Developer.³⁶²

(c) **Commission Determination**

200. We find that MISO has complied with the requirement to eliminate from its Commission-jurisdictional tariffs and agreements provisions that establish a federal right of first refusal. Although MISO did not delete the right of first refusal provisions in their entirety, it added language to the Transmission Owners Agreement and the Tariff to state that the right of first refusal provisions do not apply to “Open Transmission Projects,” which are facilities selected in the regional transmission plan for purposes of cost allocation. Thus, we find that MISO has satisfied Order No. 1000’s requirement that each public utility transmission provider eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.³⁶³

201. We reject ATC/Duke/Transource’s suggestion to change “share equally” to “share proportionately” since we find this to be outside the scope of this compliance filing proceeding. We also reject LS Power’s request to require MISO to make affirmative statements that essentially repeat the requirements of Order No. 1000. We have found that MISO’s proposal complies with the requirements of Order No. 1000 and the statements LS Power requests of MISO are unnecessary and, in any event, were not required by Order No. 1000.

iii. **References to State or Local Rights of First Refusal**

(a) **MISO’s Filing**

202. MISO states that the Commission found that the reforms in Order No. 1000 do not impact in any way state laws and obligations applicable to transmission developers.³⁶⁴

³⁶² *Id.* at 17-18.

³⁶³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. The phrase “a federal right of first refusal” refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

³⁶⁴ MISO Compliance Transmittal at 50 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 227 and n.231).

MISO therefore proposes to add the following new provision at section VIII.A of Attachment FF of the Tariff:

State or Local Rights of First Refusal. The Transmission Provider shall comply with any Applicable Laws and Regulations granting a right of first refusal to a Transmission Owner. The Transmission Owner will be assigned any transmission project within the scope, and in accordance with the terms, of any Applicable Laws and Regulations granting such a right of first refusal. These Applicable Laws and Regulations include, but are not limited to, those granting a right of first refusal to the incumbent Transmission Owner(s) or governing the use of existing developed and undeveloped right of way held by an incumbent utility.^[365]

203. MISO states that it would be inefficient and wasteful to engage in a separate developer selection process in states that define which entities are eligible to develop a transmission project because if an ineligible developer was selected in the MISO developer selection process, the developer would ultimately be rejected in the state process.³⁶⁶

(b) Comments/Protests

204. LS Power objects to the inclusion in section VIII.A of the proposed Tariff to the reference to “Applicable Laws and Regulations . . . governing the use of existing developed or undeveloped right of way held by an incumbent utility.”³⁶⁷ LS Power argues that MISO is not in the position of interpreting legal rights between parties regarding land use.³⁶⁸ Thus, LS Power urges the Commission to strike all but the first sentence of this section.³⁶⁹

³⁶⁵ MISO, FERC Electric Tariff, Attachment FF, § VIII.A (8.0.0).

³⁶⁶ MISO Compliance Transmittal at 50.

³⁶⁷ LS Power Protest to MISO Compliance Filing at 18-19.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

(c) **Commission Determination**

205. We find that, as discussed further below, MISO's proposed new provision at section VIII.A of Attachment FF—State or Local Rights of First Refusal must be removed from its Tariff. MISO is correct that Order No. 1000 does not require removal from Commission-jurisdictional tariffs or agreements references to state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.³⁷⁰ However, MISO's proposal goes beyond mere reference to state or local laws or regulations; it references state and local laws and then uses that reference to create a federal right of first refusal. Order No. 1000 does not permit a public utility transmission provider to add a federal right of first refusal for a new facility based on state law. Therefore, we reject MISO's proposal and direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing deleting proposed section VIII.A of Attachment FF to the Tariff.

206. While state laws and regulations may not be used to automatically exclude bids to develop more efficient or cost-effective transmission solutions to regional transmission needs, it is not necessarily impermissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process. Indeed, the Commission has identified points at which such consideration might be appropriate. For example, in Order No. 1000-A, the Commission stated that public utility transmission providers in a transmission planning region must adopt a transparent and not unduly discriminatory evaluation process and must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer.³⁷¹ This statement does not preclude public utility transmission providers in regional transmission planning processes from taking into consideration the particular strengths of either an

³⁷⁰ See Order No. 1000, FERC Stats. & Regs ¶ 31,323 at P 253, n.231:

Nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities. This Final Rule does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements.

See also Order No. 1000-A, 139 FERC ¶ 61,132 at P 381.

³⁷¹ Order No. 1000-A, FERC Stats. & Regs ¶ 31,132 at P 454

incumbent transmission provider or a nonincumbent transmission developer during its evaluation.³⁷² As the Commission acknowledged, an incumbent public utility transmission provider is free to highlight such strengths to support transmission project(s) in the regional transmission plan, or in bids to undertake transmission projects in regions that choose to use solicitation processes.³⁷³ An incumbent transmission provider may have unique knowledge of its own transmission systems, familiarity with the communities they serve, economies of scale, experience in building and maintaining transmission facilities, and access to funds needed to maintain reliability, and the Commission did not believe removing the federal right of first refusal diminishes the importance of these factors.³⁷⁴

207. The Commission has also identified other points at which such consideration might be appropriate. In Order No. 1000-A, the Commission stated that public utility transmission providers are required to describe the circumstances and procedures under which public utility transmission providers will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions, including those proposed by the incumbent transmission provider, to ensure the incumbent transmission provider can meet its reliability needs or service obligations.³⁷⁵ Order No. 1000-A further addresses concerns relating to the progress of a transmission developer for a transmission project selected in the regional transmission plan for purposes of cost allocation toward achieving state approvals to construct that project. With respect to this issue, Order No. 1000-A provides:

As part of the ongoing monitoring of the progress of the transmission project once it is selected [in the regional transmission plan for purposes of cost allocation], the public utility transmission providers in a transmission planning region must establish a date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address. If such critical

³⁷² *Id.*

³⁷³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 260.

³⁷⁴ *Id.*

³⁷⁵ Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 477. *See also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329 (“[A]n incumbent transmission provider must have the ability to propose solutions that it would implement within its retail distribution service territory or footprint that will enable it to meet its reliability needs or service obligations.”).

steps have not been achieved by that date, then the public utility transmission providers in a transmission planning region may remove the transmission project from the selected category and proceed with reevaluating the regional transmission plan to seek an alternative solution.^[376]

iv. **Projects with Upgrades and New Transmission Facilities (20 mile threshold)**

(a) **MISO's Filing**

208. MISO argues that while the Commission has recognized that the term upgrade does not apply to an entirely new transmission facility, some new transmission circuit proposals may be implemented as a combination of new transmission line sections and upgrades to existing transmission line sections.³⁷⁷ MISO states that for such situations where a new transmission circuit is composed of both upgraded existing transmission line sections and new transmission line sections, the proposed Tariff revisions consider new transmission line sections on new right-of-way as new transmission facilities when the length of such new transmission line sections exceeds 20 contiguous miles.³⁷⁸ Otherwise, the construction of new transmission line sections would be considered part of the upgrade to the existing transmission facilities. MISO explains that upgrades made to the existing transmission line sections would always be considered upgrades.³⁷⁹

³⁷⁶ Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 442.

³⁷⁷ MISO Compliance Transmittal at 48.

³⁷⁸ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.C.1.1.1 (8.0.0)). The proposed Tariff language—Combination of Upgrades and New Facilities—states:

If a proposed transmission project includes a combination of new transmission line sections and upgrades to existing transmission line sections, and the new transmission line sections are less than twenty (20) contiguous miles in total length, construction of the new transmission line sections will be considered a transmission upgrade for the purpose of retaining a right of first refusal. In either event, upgrades made to the existing transmission line sections will be considered transmission upgrades for the purpose of retaining a right of first refusal.

³⁷⁹ *Id.*.

(continued . . .)

209. MISO argues that this provision addresses an issue identified in the stakeholder process where a new transmission circuit is composed mostly of upgrades to existing transmission line facilities, but some new sections may be required due to right-of-way expansion issues or to tie the transmission circuits into the appropriate substation terminals. According to MISO, in these cases, it may not be efficient to separate out the new portion(s) of the facility to a potentially different developer if the new transmission line section(s) represents a small percentage of the project or there are many short new transmission sections dispersed along a proposed transmission circuit that consists mainly of upgrades to an existing transmission line facility. MISO contends that most regionally cost shared transmission projects are large, with the average mileage of MVP projects approved to date to be about 115 miles per project. Thus, MISO argues that a 20 mile continuous threshold is a just and reasonable threshold that balances the opportunity to compete for project development with the need to ensure project development efficiency.³⁸⁰

(b) Protests/Comments

210. LS Power argues that the average project length of 115 miles that MISO bases its 20 mile threshold on is misleading because MISO excludes the average mileage of Baseline Reliability Projects. LS Power further argues that the 20 mile threshold is meaningless, and is a new barrier to entry for new entrants. LS Power argues that these types of mileage thresholds were suggested by commenters prior to the Commission's issuance of Order No. 1000 and the Commission rejected them.³⁸¹

211. ATC/Duke/Transource argue that MISO's choice of 20 miles for a threshold is arbitrary. ATC/Duke/Transource further argue that MISO does not set a similar line mile threshold for the existing upgrade portion of a combination project that would require the new facilities to be conveyed automatically to the incumbent Transmission Owner.³⁸²

212. Organization of MISO States states that it is concerned that the 20-contiguous-mile threshold could lead to the possibility for gaming that could ultimately exempt large transmission projects from the competitive process. Specifically, Organization of MISO States states that because the proposal requires that there be more than 20 "contiguous" miles before a new transmission line is open to competitive bidding, a project could be

³⁸⁰ *Id.*

³⁸¹ LS Power Protest to MISO Compliance Filing at 11 (citing MISO Compliance Transmittal at 48).

³⁸² ATC/Duke/Transource Protest at 28.

divided up so that it is considered an upgrade even though only a small portion of the line is an existing line, provided that the new portions were less than 20 contiguous miles. Organization of MISO States requests that the Commission direct MISO to remove or clarify the continuity element or consider an alternative threshold that would count as an upgrade. If a 20-mile threshold is reasonable, Organization of MISO States suggests that the threshold be revised to 20 miles of new transmission line, regardless of whether those miles are contiguous or not.³⁸³

213. Alternatively, Organization of MISO States offers the following threshold that would count as an upgrade: (1) any upgrade that consists of five miles or less of facilities in new rights-of-way, and (2) the new rights-of-way involved in the upgrade are less than 25 percent of the total mileage of the line, but the new portions would never exceed a total of 20 miles. Organization of MISO States contends that this approach would maintain upgrade status for relatively small projects (any with less than 5 miles of new right-of-way) and would address the concern that 25 percent of a project could be large (i.e., 25 percent of 200 miles if 50 miles) since the 20-mile cap would apply.³⁸⁴

(c) **Answer**

214. With regard to questions about the appropriateness of the 20 mile threshold, MISO states that it has, along with its stakeholders, selected a value that strikes the right balance between the need to maintain efficiency in developing transmission projects and operating and maintaining new transmission facilities and the potential opportunity to reduce costs via the inclusive evaluation process.³⁸⁵

(d) **Commission Determination**

215. We find MISO's proposed 20 contiguous mile threshold does not comply with the requirements of Order No. 1000 because MISO did not provide sufficient support to justify maintaining a federal right of first refusal for any transmission project that includes less than 20 contiguous miles of new transmission facilities. Accordingly, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to justify its proposal or to instead revise its Tariff to delete the 20 contiguous mile threshold for identifying when a project that contains both upgrades to existing transmission facilities and new transmission facilities would qualify as a new transmission project.

³⁸³ Organization of MISO States Comments at 33-34

³⁸⁴ *Id.*

³⁸⁵ MISO Compliance Filing Answer at 54-55.

216. We recognize that it may be appropriate for MISO to establish a threshold under which a new transmission line circuit containing both new and upgraded transmission line sections should be considered an upgrade and thus not be subject to Order No. 1000's requirement to remove a federal right of first refusal. However, we agree with protestors that MISO has not provided sufficient support to demonstrate that the proposed threshold of 20 contiguous miles is appropriate. For instance, we agree with Organization of MISO States that MISO's proposal could allow a large new transmission project that is almost entirely made up of new transmission segments to be categorized as an upgrade so long as no new segment of the project is more than 20 contiguous miles. In addition, we are concerned that certain projects under the 20 contiguous mile threshold could potentially qualify as an MVP or MEP. With respect to LS Power's protest that the Commission in Order No. 1000 rejected mileage thresholds proposed by commenters, we note that Order No. 1000 did not specifically address whether, and if so under what conditions, a mileage threshold would be acceptable. We defer judgment on the reasonableness of MISO's proposed mileage threshold until our review of MISO's further compliance filing.

v. **Upgrade Definition – Existing Transmission Lines**

(a) **MISO's Filing**

217. MISO states that the proposed Tariff language clarifies that upgrades to existing transmission line facilities include any replacement, relocation, modification, or expansion of such transmission line facilities so long as transmission line facilities are classified as transmission plant and owned by one or more Transmission Owners.³⁸⁶

218. Specifically, MISO proposes to add the following new provision at section VIII.C.1.1 of Attachment FF of the Tariff:

Upgrades to Existing Transmission Lines. Upgrades to existing transmission line facilities include any expansion, replacement or modification, for any purpose, made to existing transmission line facilities that are classified as transmission plant and owned by one or more Transmission Owners, for reasons including, but not limited to: . . . (d) relocating the existing transmission line, or any portion thereof, for any purpose; . . . (f) ii. replacing single-circuit structures with multi circuit structures;. . . .^[387]

³⁸⁶ MISO Compliance Transmittal at 48 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.B.1.1 (8.0.0)).

³⁸⁷ See MISO, FERC Electric Tariff, Attachment FF, § VIII.C.1.1 (8.0.0).

(b) Comments/Protests

219. AEP claims that by over expansively defining the category of “upgrades to existing facilities,” MISO has effectively created a sponsorship model available only for incumbents.³⁸⁸ AEP argues that MISO’s proposed definition of upgrades to existing facilities (and any definition that includes any new transmission line) will limit competition.³⁸⁹

220. LS Power also argues that MISO proposes an expansive definition of “upgrades to transmission lines” that is inconsistent with Order No. 1000.³⁹⁰ LS Power objects to the use of the word “expansion” in MISO’s proposed definition of upgrades. LS Power states that expansion is not used by the Commission in Order No. 1000-A and could be construed too broadly and should be struck and replaced with “addition to,” consistent with Order No. 1000-A.³⁹¹ LS Power objects to the use of the phrase “that are classified as transmission plant” throughout section VIII.C.1.1 of the proposed Tariff and argues that the Commission should strike all uses of that phrase.³⁹² LS Power argues that this position is directly contrary to Order Nos. 1000 and 1000-A and by placing the focus of the review on the accounting classification of an asset, it provides a loophole for assets to be broadly defined from a bookkeeping perspective, with little oversight on whether an existing transmission facility is being upgraded.³⁹³

221. In addition, LS Power objects to the upgrades definition referencing as an example “relocating the existing transmission line, or any portion thereof, for any purpose.”³⁹⁴ LS Power argues that there are situations where relocating the existing transmission line could indeed be a new transmission facility, and Order No. 1000-A is clear that upgrade

³⁸⁸ AEP Protest at 14-15.

³⁸⁹ *Id.*

³⁹⁰ LS Power Protest to MISO Compliance Filing at 11 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.C.1.1.1 (8.0.0)).

³⁹¹ *Id.* at 12, n.27 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

³⁹² *Id.* at 12-13.

³⁹³ *Id.* (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 427).

³⁹⁴ *Id.* at 13.

does not refer to an entirely new transmission facility.³⁹⁵ LS Power argues that the Commission should strike section VIII.C.1.1(d) in its entirety.³⁹⁶

222. LS Power also objects to the upgrades definition referencing as an example “replacing single-circuit structures with multi-circuit structures,”³⁹⁷ LS Power states that performing this so-called replacement would require an entirely new transmission facility and thus, the Commission should strike section VIII.C.1.1(f)(ii) in its entirety.³⁹⁸

(c) **Answer**

223. With regard to the claim that all new transmission line sections associated with a new transmission circuit should be considered new construction subject to the elimination of a right of first refusal, MISO finds this approach problematic. As an example, MISO states that under a scenario in which the bulk of a project is an upgrade (e.g., upgrading an existing 345 kV transmission line by installing a second circuit) and the new transmission construction is a small part of the project (e.g., building a new 2-mile 345 kV single-circuit transmission line to tie the new transmission circuit to the substation), it would not be efficient and cost effective to execute the evaluation process for the new transmission construction and potentially assign the project to two developers. MISO continues that the potential savings that may result from allowing an incumbent and a nonincumbent to complete one small line construction would likely be more than offset by the cost of evaluating two proposals, additional regulatory complexity, additional operational complexity and troubleshooting the facility after it is placed in service.³⁹⁹

224. With regard to LS Power’s comment that relocation of existing transmission facilities should not be considered upgrades, MISO states it is important to note that most relocation requests for transmission circuits are for limited sections and are driven by large scale infrastructure expansions and not scenarios driven by reliability issues, economic issues, or renewable portfolio standards. As a result, the requesting party will

³⁹⁵ *Id.* (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

³⁹⁶ *Id.* (referencing MISO, FERC Electric Tariff, Attachment FF, § VIII.C.1.1(f)(ii) (8.0.0)).

³⁹⁷ *Id.* at 14.

³⁹⁸ *Id.*

³⁹⁹ MISO Compliance Filing Answer at 53-54.

typically reimburse the Transmission Owner for costs incurred to relocate. These projects would not be considered for cost sharing in MISO's MTEP.⁴⁰⁰

(d) Commission Determination

225. We find that MISO's proposed definition of Upgrades to Existing Transmission Lines partially complies with the requirements of Order No. 1000 with respect to the elimination of federal rights of first refusal from Commission-jurisdictional tariffs and agreements. Accordingly, MISO must make a further compliance filing revising its Tariff, as discussed below.

226. We generally find, with the exception of discrete issues identified below, that MISO's proposal to define as upgrades the expansion, replacement or modification to existing transmission line facilities complies with Order No. 1000 and the upgrades exemption provided therein. With regard to AEP's argument that MISO's proposed definition of upgrades to existing facilities will limit competition, we find that the upgrades exemption afforded to incumbent transmission providers in Order No. 1000 was the result of balancing the need to expand competition while also not adversely affecting the right of an incumbent transmission provider to build upgrades to its own transmission facilities. Therefore, we reject AEP's argument. We also find unnecessary and reject LS Power's request to replace "expansion" with "addition to" in MISO's upgrades definition. We do not agree that "expansion" could be construed too broadly in light of the specific examples set forth in the definition. We also reject LS Power's request to require MISO to remove all uses of the phrase "classified as transmission plant" throughout MISO's proposed Tariff language. We find this language allows MISO to clarify that in order for a transmission facility to be eligible for consideration as an upgrade, and maintain a federal right of first refusal, the facility must first be classified as transmission plant. This is merely one requirement to qualify as an upgrade, not the only requirement. Accordingly, we disagree with LS Power's suggestion to strike all uses of that phrase.

227. MISO's proposed upgrades definition includes as examples any project that relocates any portion of an existing transmission line facility, and any project that replaces single circuit towers with multi circuit towers. MISO would always assign these projects to the incumbent Transmission Owner. With regard to relocation, MISO's answer explains that most relocation requests are for limited sections of transmission lines and are typically for highway, airport or other infrastructure expansions, and as such, these projects are not for reliability or economic issues or improving the transmission facility. We appreciate the need, as described by MISO, for allowing relocation of existing transmission facilities to qualify as an upgrade. However, we find that these specific examples may not be inclusive of all relocation scenarios and could

⁴⁰⁰ *Id.* at 56.

potentially limit relocations to the specific examples provided by MISO. Therefore, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to add language to the Tariff to instead include the specific criteria and/or principles MISO will use to evaluate whether a project that relocates any portion of an existing transmission line facility qualifies as an upgrade, rather than leaving open-ended any reason for relocating a transmission line or limiting relocation to the examples provided by MISO.

228. With regard to the proposal to allow replacing single circuit structures with multi circuit structures, we agree with LS Power that circumstances may exist where replacing single circuit structures with multi circuit structures on an existing transmission line may inappropriately qualify this new transmission facility as an upgrade. In particular, the Commission is concerned that replacement of a few single circuit structures with multi-circuit structures in order to allow for routing of a new, larger transmission line may inappropriately qualify the entire new transmission facility as an upgrade. As such, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to modify the Tariff language to provide more specific criteria for determining when replacing single circuit structures with multi-circuit structures is defined as an upgrade.

vi. Upgrade Definition – Transmission Substations

(a) MISO’s Filing

229. MISO proposes language in its Tariff stating that the acquisition of additional land adjacent to or near an existing substation and including on that land new facilities to interconnect to the existing substation should qualify as an upgrade that maintains a federal right of first refusal.⁴⁰¹ MISO states that the proposed Tariff language clarifies that upgrades to existing substation facilities include any expansions, replacements, or modifications made, in part or in whole, to any existing substation or portion thereof that is owned by one or more Transmission Owners, and where some or all of the plant within the existing substation is classified as transmission plant.⁴⁰² MISO states that purchasing additional land “near the existing substation” presently occurs when the expansion of a substation cannot be made by purchasing land adjacent to the existing substation due to

⁴⁰¹ MISO Compliance Transmittal at 49 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.C.1.2 (8.0.0) (“An upgrade to an existing substation includes acquiring additional land adjacent to or near the existing substation in conjunction with installation of additional plant within the boundaries of this additional land, including facilities to interconnect such plant to the existing substation plant.”)).

⁴⁰² *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.C.1.2 (8.0.0)).

the unavailability of such land (e.g., existing substation site is bounded on all sides by public roads). MISO explains that historically, Transmission Owners have often purchased land near an existing substation, such as an empty site across the road, and expanded the existing substation via a second substation footprint interconnected to the existing substation footprint by very short overhead transmission circuits essentially operating as substation buses (i.e., the two substations operate as one). Furthermore, MISO explains that Transmission Owners may find it easier to simply relocate the existing transmission substation to a larger nearby parcel of land and reroute the existing transmission circuits to the new substation to facilitate long-term expansion requirements.⁴⁰³

230. In addition, MISO proposes language to its Tariff that would treat as an upgrade that maintains a federal right of first refusal an entirely new substation that interconnects multiple existing transmission line facilities all owned by a single Transmission Owner or group of Transmission Owners.⁴⁰⁴ MISO states that a transmission substation may be installed along an existing two-terminal transmission circuit or at the common junction point of transmission circuits that contain three or more terminals to facilitate better system protection, higher load capabilities, increased operating flexibility, reduced facility outage times, higher levels of customer service reliability and/or mitigation of existing contingencies. MISO contends that, the installation of the substation is an improvement of the performance of an existing transmission line facility, and as such, represents an upgrade to that transmission line facility that should maintain a federal right of first refusal.⁴⁰⁵

(b) Comments/Protests

231. LS Power contends that MISO's proposal is an attempt to expand the "upgrade" right of first refusal permitted by Order No. 1000.⁴⁰⁶ LS Power argues that as written, this section creates many novel rights of first refusal for new transmission facilities,

⁴⁰³ *Id.*

⁴⁰⁴ *Id.* at 49-50. *See also* MISO, FERC Electric Tariff, Attachment FF, § VIII.C.1.2 (8.0.0); MISO, FERC Electric Tariff, § 1.454a (New Substation Facility) (0.0.0) ("An upgrade to an existing substation includes, in part 'acquiring additional land adjacent to or near the existing substation in conjunction with installation of additional plant within the boundaries of this additional land, including facilities to interconnect such plant to the existing substation plant.'").

⁴⁰⁵ MISO Compliance Transmittal at 50.

⁴⁰⁶ LS Power Protest to MISO Compliance Filing at 14.

contrary to Order No. 1000.⁴⁰⁷ LS Power urges the Commission to strike the entirety of this section and replace it with different language.⁴⁰⁸

(c) **Answer**

232. With regard to protests made against considering new substation facilities as upgrades, MISO notes that such facilities are specialized substations that simply upgrade the capacity or performance of an existing transmission circuit and thus are functionally equivalent to the upgrade of a transmission circuit and that these specialized substation facilities have an entirely different function and purpose than a conventional substation.⁴⁰⁹

(d) **Commission Determination**

233. We find that MISO's proposed Tariff language allowing the acquisition of additional land adjacent to or near an existing substation and including on that land new transmission facilities to interconnect to the existing substation to qualify as an upgrade that maintains a federal right of first refusal partially complies with the requirements of Order No. 1000. Accordingly, MISO must make a further compliance filing revising its Tariff, as discussed below.

234. We agree with MISO that allowing a substation expansion to qualify as an upgrade, under certain conditions, would allow for situations where there is a need to expand, but no available land immediately adjacent to the existing substation's footprint. However, we find that MISO's proposed language does not include clear limitations on or a definition of what land "near" an existing substation would qualify an expansion as an upgrade. Therefore, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to provide examples in the Tariff to illustrate what constitutes land near an existing substation for purposes of qualifying as an upgrade and maintaining a federal right of first refusal, consistent with the examples MISO provided in its transmittal letter.

235. However, we disagree with MISO's proposal that the construction of a new substation that interconnects multiple existing transmission line facilities all owned by a single Transmission Owner or group of Transmission Owners should be considered an upgrade does not comply with Order No. 1000. MISO has not provided sufficient

⁴⁰⁷ *Id.* at 15.

⁴⁰⁸ *Id.*

⁴⁰⁹ MISO Compliance Filing Answer at 57.

support to demonstrate why a new substation that interconnects multiple lines should be considered an upgrade instead of a new transmission project. Accordingly, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing that removes the proposed language in the Tariff to treat as an upgrade the construction of a new substation that interconnects multiple existing transmission line facilities all owned by a single Transmission Owner or group of Transmission Owners or, in the alternative, provide further justification.

vii. Upgrade Definition – Right-of-Way

(a) MISO’s Proposal

236. MISO states that it is proposing changes to its Tariff to the extent an incumbent Transmission Owner owns a right-of-way held for future use that is classified as transmission plant, in which case installation of new transmission facilities on that right-of-way would be considered a transmission upgrade that maintains a federal right of first refusal.⁴¹⁰ MISO states that, for situations where an unimproved right-of-way is held by an incumbent Transmission Owner but not considered transmission plant, the proposed Tariff revisions do not address such unimproved right-of-way and do not grant or deny any such rights to incumbent Transmission Owners or nonincumbent transmission developers.⁴¹¹ MISO states that, to be recognized, the right-of-way must be owned or contain improvements owned by the Transmission Owner and be classified as transmission plant, in which case any impact to these improvements would be considered an upgrade in accordance with the proposed Tariff language and with Order No. 1000 and Order No. 1000-A.⁴¹² MISO states that where the unimproved right-of-way would be utilized by a proposed transmission project, state laws will govern whether the incumbent transmission developer maintains the right to such upgrades.⁴¹³ MISO also proposes to qualify as an upgrade a project “replacing an entire existing transmission

⁴¹⁰ MISO Compliance Transmittal at 50. MISO does not cite specific language in its Tariff that makes any new facility on an existing right-of-way an upgrade, but it appears the relevant language states, in part that an upgrade includes “improving land and land rights booked under the Commission’s Uniform System of Accounts, Account Nos. 105 [(Electric Plant Held for Future Use)], 350 [(Transmission Plant-Land and Land Rights)], and/or 380 [(Regional Transmission and Market Operation Plant-Land and Land Rights)].” *See* MISO, FERC Electric Tariff, Attachment FF, § VIII.C.1.1(i) (8.0.0).

⁴¹¹ MISO Compliance Transmittal at 50.

⁴¹² *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 357).

⁴¹³ *Id.*

facility with a new transmission line facility on the same right-of-way or on a different right-of-way if the replacement is driven by a relocation request or requirement.”⁴¹⁴ MISO also proposes to revise its Tariff such that if state regulatory authorities do not approve a project as a new transmission facility, but instead as upgrades to existing transmission facilities, then MISO will designate the appropriate Transmission Owner to construct, own, operate, maintain, repair, restore, and finance such facilities.⁴¹⁵

(b) Comments/Protests

237. ITC Companies state that they support MISO’s proposal to allow new projects that use existing rights-of-way to be considered an upgrade if the right-of-way is presently classified as transmission plant.⁴¹⁶

238. PSC of Wisconsin seeks clarification of the following statement in MISO’s compliance filing: “To the extent an incumbent Transmission Owner owns a right-of-way held for future use that is classified as transmission plant, installation of new transmission facilities on that right-of-way will be considered a transmission upgrade.”⁴¹⁷ PSC of Wisconsin states that this would appear to exempt from the competitive process (and maintain a right of first refusal) for “upgrades” to rights-of-way that currently do not actually have a physical transmission line on them today.⁴¹⁸ PSC of Wisconsin requests additional clarification on this proposal.⁴¹⁹

239. LS Power objects to section VIII.C.1.1(e) of the proposed Tariff, which provides that upgrades to existing transmission lines include “replacing an entire existing transmission facility with a new transmission facility on the same right-of-way or on a different right-of-way if the replacement is driven by a relocation request or requirement.”⁴²⁰ LS Power argues that this section should be struck in its entirety

⁴¹⁴ See MISO, FERC Electric Tariff, Attachment FF, § VIII.C.1.1(e) (8.0.0).

⁴¹⁵ See MISO, FERC Electric Tariff, Attachment FF, § V (8.0.0).

⁴¹⁶ ITC Companies Comments to MISO Compliance Filing at 9.

⁴¹⁷ PSC of Wisconsin, Comments, Docket Nos. ER13-186-000, ER13-187-000, and ER13-187-001, at 3-4 (filed Dec. 10, 2012) (citing MISO Compliance Transmittal at 50).

⁴¹⁸ *Id.* at 3-4.

⁴¹⁹ *Id.* at 4.

⁴²⁰ LS Power Protest to MISO Compliance Filing at 13-14.

because it seeks to classify a “new” transmission facility as an upgrade regardless of the circumstances, and the Commission rejected the idea that a new transmission facility in existing rights-of-way should be an upgrade in Order No. 1000-A.⁴²¹

240. LS Power argues that section VIII.C.1.1(j) of the proposed Tariff, which includes the language “any other modifications to existing transmission facilities” is vague, and the concept is captured elsewhere in the Tariff.⁴²² LS Power also objects to section VIII.C.1.1(i) of the proposed Tariff, which includes in the definition of upgrade “improving land and land rights booked under the Commission’s Uniform System of Accounts, Accounts No. 105, 350, and/or 380.”

241. ATC/Duke/Transource argue that by proposing to address right-of-way issues in the regional transmission planning process, MISO exceeds its authority and improperly enters the jurisdiction of the state. Thus, ATC/Duke/Transource argue that section VIII.C.1.1(i) and the related provision in section VI of Appendix B of the Transmission Owners Agreement should be deleted because this grant should not be included in the Tariff.⁴²³

242. ATC/Duke/Transource further argue that the Commission should summarily reject as discriminatory MISO's proposal to designate construction, ownership and other responsibilities based on a state regulatory authority’s decision to approve a project as an upgrade instead of as a new transmission facility. ATC/Duke/Transource state that this would allow MISO *retroactively* award to an incumbent Transmission Owner an Open Transmission Project that was initially awarded to a nonincumbent developer after the project was proposed by the nonincumbent developer in a state regulatory routing and siting process and approved, but that might have been assigned by the state to be routed

⁴²¹ *Id.* at 13-14, n.31 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 427) (stating that “the nonincumbent transmission developer reforms were not intended to alter an incumbent transmission provider’s use and control of its existing rights-of-way under state law.”).

⁴²² *Id.* at 14.

⁴²³ ATC/Duke/Transource Protest at 32. Proposed section VI of Appendix B of the Transmission Owners Agreement states “[e]ach owner has the exclusive right to upgrade, modify, alter, or replace its own facilities, and its interests in real estate as defined in the Uniform System of Accounts Account Nos. 105, 350, or 380, regardless of whether facility costs are regionally allocated.” MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, App. B, § VI (Planning Framework) (1.0.0).

on an incumbent Transmission Owner's right-of-way.⁴²⁴ ATC/Duke/Transource state that the use or non-use of existing transmission rights-of-way should be addressed in the state regulatory process.⁴²⁵

(c) **Answer**

243. With regard to protests made by LS Power and PSC of Wisconsin that ownership of an unimproved right-of-way held for future use should not entitle an incumbent Transmission Owner to a right of first refusal to improve the right-of-way through the construction of facilities, MISO states it is imperative to recognize that there are specific instances where a right-of-way is a property right for which the incumbent Transmission Owner has paid money up front to possess and retain rights going forward, often with obligations to maintain such rights. MISO continues that Tariff provisions to incorporate an elimination of the right of first refusal should not violate a contractual right. MISO states that to the extent the cost-effective transmission solution utilizes such property rights, the Transmission Owner should possess a right of first refusal on such property rights since another entity cannot take away an incumbent Transmission Owner's rights under easements that the Transmission Owner has executed. Furthermore, under the Uniform System of Accounts, a right-of-way represents transmission property classifications and this falls within the intent of upgrades to existing facilities. Each Transmission Owner has the exclusive right to upgrade, modify, alter, or replace its own facilities and to use its interests in real estate regardless of whether facility costs are regionally allocated.⁴²⁶

(d) **Commission Determination**

244. We find that MISO's proposal to allow a Transmission Owner to maintain a federal right of first refusal for any new transmission facility built on that Transmission Owner's right-of-way if such right-of-way contains improvements owned by the Transmission Owner and is classified as transmission plant is not permitted by Order No. 1000, and, as such, we direct MISO to remove the proposed language in the compliance filing we direct here. The Commission acknowledged in Order No. 1000 that its reforms "are not intended to alter an incumbent transmission provider's use and control of its existing rights-of-way[.]" that Order No. 1000 does not "grant or deny transmission developers the ability to use rights-of-way held by other entities, even if transmission facilities associated with such upgrades or uses of existing rights-of-way are

⁴²⁴ ATC/Duke/Transource Protest at 32.

⁴²⁵ *Id.*

⁴²⁶ MISO Compliance Filing Answer at 57-59.

selected in the regional transmission plan for purposes of cost allocation[,]” and that the “retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way.”⁴²⁷ However, the Commission did not find that as part of its compliance filing, a public utility transmission provider may add a federal right of first refusal for a new transmission facility built on an existing right-of-way. Accordingly, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing revising the proposed Tariff language to remove the proposed language related to rights-of-way in section VIII.C.1.1(e) of the Tariff.

245. Similarly, Order No. 1000 does not require removal from Commission-jurisdictional tariffs or agreements references to state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.⁴²⁸ However, MISO’s proposal goes beyond mere reference to state or local laws or regulations; it references state and local laws and then uses that reference to create a federal right of first refusal. Order No. 1000 does not permit a public utility transmission provider to add a federal right of first refusal for a new facility based on state law.

246. While state laws and regulations may not be used to automatically exclude bids to develop more efficient or cost-effective transmission solutions to regional transmission needs, it is not necessarily impermissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process. Indeed, the Commission has identified points at which such consideration might be appropriate. For example, in Order No. 1000-A, the Commission stated that public utility transmission providers in a transmission planning region must adopt a transparent and not unduly discriminatory evaluation process and must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a

⁴²⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31, 323 at P 319.

⁴²⁸ *See id.* P 253, n.231:

Nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities. This Final Rule does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements.

See also Order No. 1000-A, FERC Stats. & Regs ¶ 31,132 at P 381.

transmission facility proposed by an incumbent transmission developer.⁴²⁹ This statement does not preclude public utility transmission providers in regional transmission planning processes from taking into consideration the particular strengths of either an incumbent transmission provider or a nonincumbent transmission developer during its evaluation.⁴³⁰ As the Commission acknowledged, an incumbent public utility transmission provider is free to highlight such strengths to support transmission project(s) in the regional transmission plan, or in bids to undertake transmission projects in regions that choose to use solicitation processes.⁴³¹ An incumbent transmission provider may have unique knowledge of its own transmission systems, familiarity with the communities they serve, economies of scale, experience in building and maintaining transmission facilities, and access to funds needed to maintain reliability, and the Commission did not believe removing the federal right of first refusal diminishes the importance of these factors.⁴³²

247. The Commission has also identified other points at which such consideration might be appropriate. In Order No. 1000-A, the Commission stated that public utility transmission providers are required to describe the circumstances and procedures under which public utility transmission providers will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions, including those proposed by the incumbent transmission provider, to ensure the incumbent transmission provider can meet its reliability needs or service obligations.⁴³³ Order No. 1000-A further addresses concerns relating to the progress of a transmission developer for a transmission project selected in the regional transmission plan for purposes of cost allocation toward achieving state approvals to construct that project. With respect to this issue, Order No. 1000-A provides:

As part of the ongoing monitoring of the progress of the transmission

⁴²⁹ Order No. 1000-A, FERC Stats. & Regs ¶ 31,132 at P 454

⁴³⁰ *Id.*

⁴³¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 260.

⁴³² *Id.*

⁴³³ Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 477. *See also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329 (“[A]n incumbent transmission provider must have the ability to propose solutions that it would implement within its retail distribution service territory or footprint that will enable it to meet its reliability needs or service obligations.”).

project once it is selected [in the regional transmission plan for purposes of cost allocation], the public utility transmission providers in a transmission planning region must establish a date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address. If such critical steps have not been achieved by that date, then the public utility transmission providers in a transmission planning region may remove the transmission project from the selected category and proceed with reevaluating the regional transmission plan to seek an alternative solution.^[434]

viii. Joint Zones

(a) MISO's Filing

248. MISO proposes that the allocation of costs of a new transmission facility to one of MISO's existing 11 joint pricing zones, which include facilities of more than one Transmission Owner, qualifies as local cost allocation and, thus, the new transmission facility would not be subject to the requirement to eliminate a federal right of first refusal.⁴³⁵ MISO explains that when the cost of a transmission facility is allocated by MISO solely to one of these joint pricing zones, the cost allocation is local, just as it would be for the cost of an identical transmission facility that is allocated to one of the 13 MISO pricing zones consisting of only one transmission owner's transmission facilities.⁴³⁶ Additionally, MISO states that for its 11 joint pricing zones, a single Transmission Owner owns at least 75 percent of the gross transmission plant in that pricing zone.⁴³⁷ As a result, MISO contends, the Transmission Owners with fewer assets within a joint pricing zone largely rely on the transmission system of the Transmission Owner with the bulk of the transmission assets within the zone.⁴³⁸

249. MISO argues that its pricing zones (including the 11 joint pricing zones) predate the issuance of Order No. 1000 and that the existing pricing zones were not created to

⁴³⁴ Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 442.

⁴³⁵ *Id.* at 42.

⁴³⁶ *Id.*

⁴³⁷ *Id.* at 45 (citing MISO Compliance Transmittal at Ex. No. MISO-5).

⁴³⁸ *Id.*

provide the individual Transmission Owners a federal right of first refusal. MISO explains that the MISO pricing zones are based on historic cooperation among transmission-owning utilities that recognized the existence of historic balancing authority areas (i.e., now Local Balancing Authorities under MISO's consolidated balancing authority)⁴³⁹ and historic stand-alone transmission Tariff pricing zones.⁴⁴⁰ According to MISO, joint pricing zones within MISO arose in order to create efficiencies and avoid construction of redundant transmission facilities by multiple utilities in a local area.⁴⁴¹ MISO states that when MISO was formed, the pricing zones were specified in the Tariff; for a new Transmission Owner to be assigned a separate zone, the Transmission Owner had to have been "a transmission provider [that] is or would have been a specified zone for pricing under an existing or proposed regional transmission tariff."⁴⁴² However, because many Transmission Owners joining MISO at a later date did not meet this definition, the new transmission owning-members became part of an existing pricing zone through the development of joint pricing zones.⁴⁴³

250. MISO argues that given the relatively small geographic scope of its pricing zones (including the joint pricing zones), as compared to the overall MISO footprint, allocation of the costs of a transmission facility to a single pricing zone is local as that term is used in Order No. 1000, regardless of the number of Transmission Owners with facilities in that zone.⁴⁴⁴ MISO contends that the Commission's concerns regarding the possibility that Transmission Owners in RTOs could establish unnaturally large multi-owner zones to retain a federal right of first refusal, does not exist in MISO under the current joint pricing zone configuration.⁴⁴⁵

⁴³⁹ *Id.* at 43-44 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, *order on reh'g*, 123 FERC ¶ 61,297 (2008)).

⁴⁴⁰ *Id.* at 42-43.

⁴⁴¹ *Id.* at 43.

⁴⁴² *Id.* (citing MISO FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, App. C, § II.A.1 (Pricing, Revenue Distribution, Return of Start-Up, GFAs) (0.0.0)).

⁴⁴³ *Id.*

⁴⁴⁴ *Id.* at 44.

⁴⁴⁵ *Id.* at 42.

(b) Protest/Comments

251. ITC Companies, Alliant Energy, and Midwest TDUs support MISO's proposed treatment of cost allocation to a single joint pricing zone as local cost allocation.⁴⁴⁶ Conversely, LS Power argues that MISO does not provide specific information or individual justifications for its request relating to the 11 joint pricing zones and thus, MISO's blanket request for joint pricing zones to be considered local should be denied.⁴⁴⁷

252. LS Power argues that, contrary to MISO's claims, differentiating between single owner zones and joint pricing zones does not result in undue discrimination.⁴⁴⁸ According to LS Power, every Transmission Owner, regardless of what pricing zone it is in, retains the right under Order No. 1000 to construct projects in its retail distribution service territory if the costs are allocated to its ratepayers.⁴⁴⁹ In this regard, LS Power argues, MISO Transmission Owners are treated equally whether they are in single Transmission Owner zones or joint zones.⁴⁵⁰ LS Power contends that if MISO's Tariff does not permit a Transmission Owner to build a project in its retail distribution territory and charge only its ratepayers, the Tariff should be changed to permit that right.⁴⁵¹ Thus, according to LS Power, the answer is not to reclassify joint pricing zones as "local" zones, as this would be equally discriminatory, allowing Transmission Owners within multi-Transmission Owner zones to build projects that cross more than one retail distribution service territory, while owners in single zones could not do so, even though the project size may be identical.⁴⁵²

253. Organization of MISO States states that it takes no position on MISO's proposed treatment of cost allocation to a single joint pricing zone as *local* cost allocation.⁴⁵³

⁴⁴⁶ ITC Companies Comments to MISO Compliance Filing at 7-8; Alliant Energy, Comments, Docket Nos. ER13-187-000 and ER13-187-001, at 8 (filed Dec. 10, 2012) (Alliant Energy Comments); Midwest TDUs, Comments, Docket Nos. ER13-186-000 and ER13-187-000, at 6-7 (filed Dec. 10, 2012).

⁴⁴⁷ LS Power Protest to MISO Compliance Filing at 8-9.

⁴⁴⁸ *Id.* at 9-10 (citing MISO Compliance Filing at 46).

⁴⁴⁹ *Id.* at 10.

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ Organization of MISO States Comments at 32.

However, it asks the Commission to clarify whether the proposed cost allocation applies only to the 11 of 24 current MISO pricing zones with more than one Transmission Owner, or whether the “waiver” applies to any of the 13 MISO pricing zones currently with one Transmission Owner if, in the future, another Transmission Owner constructs and owns a project within that zone.⁴⁵⁴

(c) **Answer**

254. MISO states that its filing provided evidence of the relative level of transmission ownership investment of each of the 11 joint pricing zones. In addition, MISO reiterates several of the arguments made in its filing that the joint pricing zones reflect the historical local nature of zone development as well as the integrated nature of the transmission systems that make up the joint pricing zones, and that the geographic scope of the existing pricing zones is small relative to the MISO footprint.⁴⁵⁵ MISO states that its proposal to treat joint pricing zones as local and therefore retain a federal right of first refusal predates the issuance of Order No. 1000 and is consistent with the finding in Order No. 1000-A that this treatment is appropriate in zones where costs are allocated entirely to an area consisting of one transmission provider that has one or more smaller transmission providers within its borders.⁴⁵⁶ MISO argues that requiring different treatment for a subset of Transmission Owners just because they are part of a joint pricing zone would result in disparate, unduly discriminatory treatment of similarly situated Transmission Owners. Moreover, MISO contends that dividing the existing joint pricing zones into multiple zones comprised of each Transmission Owner’s facilities within the joint pricing zone is impractical and infeasible. Any attempt to do so would result in the arbitrary allocation of costs that does not reflect how the joint pricing zones operate. In response to Organization of MISO States, MISO reiterates that the development of subsequent joint pricing zones would be subject to Commission review.⁴⁵⁷

(d) **Commission Determination**

255. We find that MISO’s proposal to treat a new transmission facility whose costs are allocated entirely to a single joint pricing zone within MISO as if its costs were allocated to a pricing zone with a single transmission provider complies with the requirements of

⁴⁵⁴ *Id.*

⁴⁵⁵ MISO Compliance Filing Answer at 73-74.

⁴⁵⁶ *Id.* at 74 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 424).

⁴⁵⁷ *Id.* at 74-76.

Order No. 1000. Therefore, with respect to those identified single joint pricing zones within MISO, a new transmission facility whose costs are allocated entirely to such a single joint pricing zone within MISO are not subject to the requirement to eliminate any federal right of first refusal.

256. We find that MISO's 11 existing joint pricing zones are consistent with the exception the Commission stated it would consider in Order No. 1000-A. Specifically, recognizing that special consideration is needed when a small transmission provider is located within the footprint of another transmission provider, the Commission stated that it would address on a case-by-case basis whether a cost allocation to a multi-transmission provider zone is regional based on the specific facts presented on compliance. For example, the Commission explained that a zone consisting of one transmission provider that has within its borders one or more smaller utilities that largely depend on its transmission system but nevertheless own a little transmission of their own, so that they too are transmission providers, is not necessarily a "zone consisting of more than one transmission provider" as the term is used in the order. The Commission stated that if the costs of a new transmission facility were allocated entirely to such a zone, this might qualify as local cost allocation rather than regional cost allocation.⁴⁵⁸

257. We disagree with LS Power's argument that MISO has not provided specific information or individual justifications to support treating a transmission facility whose costs are allocated entirely to a single joint pricing zone within MISO as a local transmission facility. MISO provided relevant background information about the creation of joint pricing zones within MISO in its compliance filing.⁴⁵⁹ We find this information demonstrates that the MISO joint pricing zones are the creation of historic cooperation among neighboring utilities and were not created for the purpose or effect of undermining the requirements of Order No. 1000 with respect to elimination of federal rights of first refusal. In addition, MISO provided information that shows that a single transmission owner owns at least 75 percent of the gross transmission plant in each of its 11 joint pricing zones.⁴⁶⁰ We find that this demonstrates that each of MISO's existing joint pricing zones consists of one transmission provider with the vast majority of transmission assets and one or more smaller transmission owners that largely depend on the transmission owner with the majority of transmission assets in each joint pricing zone. MISO also shows that the geographic scope of each of the existing pricing zones, including the joint pricing zones, are small in comparison to total MISO regional

⁴⁵⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 424.

⁴⁵⁹ MISO Compliance Transmittal at 43, Ex. No. MISO-1 at 24-25.

⁴⁶⁰ *Id.* at Ex. No. MISO-5.

footprint.⁴⁶¹ Thus we find that MISO is not attempting to circumvent the requirement to eliminate the federal right of first refusal by dividing into large multi-utility joint pricing zones. For these reasons, we agree with MISO that when the cost of a transmission facility is allocated by MISO solely to one of these existing joint pricing zones, the cost allocation is local, just as it would be for the cost of an identical facility that is allocated to one of the 13 MISO pricing zones consisting of only one transmission owner's facilities. We also disagree with LS Power that MISO should modify its Tariff to essentially eliminate joint pricing zones by allowing a transmission owner within a joint pricing zone to be allocated costs separately from the other transmission owners within that joint pricing zone. For the reasons discussed above and based on the evidence before us, we conclude that classifying a transmission facility whose costs are allocated entirely to one of MISO's existing joint pricing zones as a local transmission facility is not unduly discriminatory or preferential but instead reflects the historic local nature of MISO's existing joint pricing zones. We, therefore, dismiss LS Power's argument.

258. In response to the Organization of MISO States, we find that, consistent with MISO's request, our finding that a new transmission facility whose costs are allocated entirely to a single joint pricing zone within MISO is a local transmission facility applies only to a new transmission facility whose costs are allocated entirely to one of the 11 existing MISO joint pricing zones. Specifically, MISO states that it believes that allocation of costs to a single joint pricing zone qualifies as a local cost allocation, "at least with respect to the joint pricing zones existing as of the date of this filing."⁴⁶² Accordingly, in accepting MISO's proposal, we are not making any determination about whether a new transmission facility whose costs are allocated entirely to any future joint pricing zone within MISO, including one formed as a result of a change to one of the 13 existing MISO pricing zones currently with only one Transmission Owner, qualifies as a local transmission facility for purposes of retaining a federal right of first refusal.

b. Qualification Criteria

259. Order No. 1000 requires each public utility transmission provider to revise its tariff to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer.⁴⁶³ Appropriate qualification criteria must be

⁴⁶¹ *Id.* at 44, Ex. No. MISO-1 at 25, Ex No. MISO-4.

⁴⁶² *Id.* at 42.

⁴⁶³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developer.⁴⁶⁴ These criteria must not be unduly discriminatory or preferential and must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.⁴⁶⁵

260. The qualification criteria should also allow for the possibility that an existing public utility transmission provider already satisfies the criteria. There must be procedures in place for timely notifying transmission developers of whether they satisfy the region's qualification criteria and opportunities to remedy any deficiencies.⁴⁶⁶ In addition, the qualification criteria should not be applied to an entity proposing a transmission project for consideration in the regional transmission planning process if that entity does not intend to develop the proposed transmission project.⁴⁶⁷

261. The Commission clarified in Order No. 1000-A that it would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it has, or can obtain, state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.⁴⁶⁸

i. MISO's Filing

262. MISO states that it will evaluate the qualifications of transmission developers during the evaluation and selection of transmission developers that submit bids to construct and own a project that has been selected for inclusion in the MTEP.⁴⁶⁹ MISO

⁴⁶⁴ *Id.* P 324.

⁴⁶⁵ *Id.* P 323.

⁴⁶⁶ *Id.* P 324.

⁴⁶⁷ *Id.* P 324, n.304; Order No. 1000-A, 139 FERC ¶ 61,132 at n.520.

⁴⁶⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

⁴⁶⁹ MISO proposes that, within 30 calendar days of the date the MISO Board approves an Open Transmission Project (i.e., a transmission project that does not maintain a right of first refusal) for inclusion in the MTEP, MISO will develop and post on its website a request for proposal (Transmission Proposal Request) for each Open Transmission Project that has been selected. Transmission developers may then submit bids to construct and own each Open Transmission Project. MISO Compliance Transmittal at 40, 51; MISO, FERC Electric Tariff, §§ 1.477a, 1.671b (0.0.0).

proposes that it will review any bid it received in response to a Transmission Proposal Request to determine whether the transmission developer that submitted the bid meets the qualification criteria and can be chosen to construct and own the Open Transmission Project for which the transmission developer submitted a bid.⁴⁷⁰ MISO does not propose a separate qualification process to determine whether a transmission developer is qualified to submit a bid and will instead evaluate the qualifications of transmission developers during the evaluation and selection of transmission developers that submit bids.⁴⁷¹

263. MISO states that its proposed approach is reasonable in light of Order No. 1000 and Order No 1000-A's (i) apparently principal concern to avoid the risk of unduly impeding nonincumbent access; (ii) restrictions on qualification criteria associated with state requirements; (iii) intent to allow flexibility in the definition of prequalification criteria; and (iv) MISO's use of an inclusive evaluation approach (rather than project sponsorship), where qualifications can be more substantively considered with reference to projects that have already been selected.⁴⁷²

264. In addition, MISO states that its proposed approach will facilitate compliance with the requirement of Order No. 1000 that "[t]he qualification criteria must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities."⁴⁷³ MISO states that such opportunity will be enhanced by deferring the time for demonstrating qualifications more substantively to the subsequent evaluation of full proposals to build approved projects.⁴⁷⁴

265. MISO's proposal includes a single explicit qualification criteria that a transmission developer must meet before it can submit a bid – a transmission developer must either be a Transmission Owner as defined in the Tariff or a Non-owner Member as defined in the Transmission Owners Agreement at the time the Transmission Proposal Request is posted and must maintain such status throughout the entire process of evaluation and

⁴⁷⁰ MISO, FERC Electric Tariff, § 1.528a (Qualified Transmission Developer) (0.0.0).

⁴⁷¹ MISO Compliance Transmittal at 51.

⁴⁷² *Id.*

⁴⁷³ *Id.* (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323).

⁴⁷⁴ *Id.*

selection of bids and project implementation.⁴⁷⁵ A Non-owner Member is defined in the Transmission Owners Agreement as “a member which is not an owner.”⁴⁷⁶ To become a Non-owner Member, a transmission developer must fill out the application on the MISO website, pay a \$15,000 membership fee and annual dues.⁴⁷⁷

ii. Protests/Comments

266. LS Power argues that MISO’s proposal to merge the qualification process related to financial and technical capabilities of project developers into the context of the project proposal evaluation process skews the data and affects the quality of the competitive bid framework MISO has proposed, resulting in serious flaws.⁴⁷⁸ LS Power argues that the Commission should instead mandate that MISO clearly establish a qualification process for judging an entity’s financial and technical capabilities prior to its participation in the competitive process.⁴⁷⁹

267. Illinois Commerce Commission notes that section VIII.E of the Tariff requires that, in order to be eligible to be considered a Qualified Transmission Developer, a transmission developer must either be a Transmission Owner as defined in the Tariff or a Non-owner Member as defined in the Transmission Owners Agreement at the time the Transmission Proposal Request is posted, and must maintain such status throughout the entire process of evaluation and selection of bids and project implementation, provided that a Non-owner Member must become a Transmission Owner.⁴⁸⁰ Illinois Commerce Commission argues that MISO’s compliance filing does not explain why imposing this

⁴⁷⁵ MISO, FERC Electric Tariff, Attachment FF, § VIII.E (8.0.0).

⁴⁷⁶ See MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, Article 1, § I.N (Non-owner Member) (0.0.0).

⁴⁷⁷ See MISO, Application for Non-Transmission Owning Members, at <https://www.midwestiso.org/StakeholderCenter/Members/Pages/BecomingaMember.aspx>.

⁴⁷⁸ LS Power Protest to MISO Compliance Filing at 27.

⁴⁷⁹ *Id.* at 27-28.

⁴⁸⁰ Illinois Commerce Commission Comments to MISO Compliance Filing at 53, n.139 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.E (8.0.0)).

requirement is necessary and requests that the Commission direct MISO to provide an explanation for this provision.⁴⁸¹

iii. Answer

268. MISO disagrees with LS Power that the Tariff should provide for qualification criteria distinct from its process for evaluating transmission developers that submit bids to construct and own an Open Transmission Project. MISO states that Order No. 1000-A precludes prequalification criteria that involve the demonstration of the ability to comply with state requirements and approvals.⁴⁸² MISO found it was unwieldy to attempt to identify significant qualification criteria that would not impact factors associated with state requirements so it continued the inclusive approach of its current process for considering project suggestions or ideas by any stakeholders.⁴⁸³

269. In response to Illinois Commerce Commission, MISO argues that it is reasonable to require developers to be non-transmission owning members or transmission owning members of MISO in order to submit proposals to construct, own, operate, maintain, and restore new transmission facilities because MISO membership is a requirement to trigger the conflict-of-interest standards that will further ensure MISO's independent evaluation and selection of transmission developers. MISO cites regulations prohibiting any RTO's employees or non-stakeholder directors from having any financial interest in any of its market participants as well as the MISO Standards of Conduct that prohibits any MISO employee from directly owning securities issued by an owner, member, or user of the transmission system.⁴⁸⁴ MISO states that the Commission issued an order in April 2011 affirming that, even in cases where there is seemingly little possibility for an actual conflict to arise, RTOs must conduct themselves in a manner that avoids any conflict of interest.⁴⁸⁵ Since, in Order No. 1000, the Commission reiterated its findings in Order No. 2000⁴⁸⁶ regarding conflicts of interest and stated that the focus of the definition of

⁴⁸¹ *Id.* at 53.

⁴⁸² MISO Compliance Filing Answer at 37 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 441).

⁴⁸³ *Id.*

⁴⁸⁴ *Id.* at 45-46 (citing FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, App. A, § II.E (Standards of Conduct) (0.0.0)).

⁴⁸⁵ *Id.* at 46 (citing *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,036 (2011)).

⁴⁸⁶ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092

(continued . . .)

market participant should be on those entities whose economic and commercial interest can be affected by an RTO's behavior, MISO found it prudent to include limitations on the potential for conflict of interest in its compliance filing. MISO states that this conflict of interest is mitigated by requiring all transmission developers submitting a bid to be MISO members and it will ensure that all the proposals are evaluated consistently, without the opportunity for conflicts of interest among the MISO staff entrusted with this evaluation.⁴⁸⁷

iv. Commission Determination

270. We find that MISO's proposal to determine whether a transmission developer is qualified to submit a bid to construct and own an Open Transmission Project partially complies with the qualification criteria requirements of Order No. 1000. MISO must make a further compliance filing revising its Tariff, as discussed below.

271. MISO will evaluate the qualifications of a transmission developer after the developer submits a bid to construct and own a project that has been selected for inclusion in the MTEP. However, except for the requirement to be a Transmission Owner or Non-owner Member, MISO does not explain, and the Tariff does not provide, what qualification criteria a transmission developer must meet to submit a bid in response to a Transmission Proposal Request. Instead, the Tariff combines qualification criteria and the information MISO will use to evaluate bids without distinguishing between the two. For example, the Tariff states that, to be a Qualified Transmission Developer, a transmission developer must submit a bid that meets all the necessary requirements, including those related to being a Qualified Transmission Developer. However, the Tariff does not list or otherwise make clear what specific requirements a transmission developer must meet to become a Qualified Transmission Developer, other than to submit a bid that meets *all* the Tariff requirements.⁴⁸⁸ In addition, MISO will notify a

(2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁴⁸⁷ MISO Compliance Filing Answer at 45-47.

⁴⁸⁸ For example, section VIII.E of the Tariff states:

To be eligible to be considered a Qualified Transmission Developer, a [transmission developer] that submits a [bid] must include therein all the agreements specified in Section VIII.D of this Attachment FF. Furthermore, a [transmission developer] will not be considered a Qualified Transmission Developer if all required data specified in the Transmission Proposal Request, including, but not limited to, the required

(continued . . .)

transmission developer whether it meets the (unspecified) criteria to qualify to submit a bid only *after* the transmission developer submits a bid. Thus, a potential transmission developer does not know what criteria it must meet to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities and will only know whether it qualifies to submit a bid after it has gone through the process to actually submit a bid. And, without knowing what the qualification criteria are, we cannot determine whether the criteria are unduly discriminatory or preferential. Therefore, we require MISO, within 120 days of the date of issuance of this order, to submit a compliance filing revising its Tariff to explicitly state what qualification requirements must be satisfied for a transmission developer to make a transmission project proposal in MISO's MTEP.

272. We find that the one explicit bidder qualification criterion that MISO does propose – that a transmission developer must be a Transmission Owner or Non-owner Member to qualify to submit a bid – complies with Order No. 1000. This qualification criterion is fair and not unreasonably stringent when applied to either an incumbent transmission provider or nonincumbent transmission developer and is not unduly discriminatory or preferential. Therefore, we conclude that Illinois Commerce Commission's request for additional clarification is unnecessary.

c. Information Requirements

273. Order No. 1000 requires that each public utility transmission provider revise its tariff to identify the information that a prospective transmission developer must submit in support of a transmission project the developer proposes in the regional transmission planning process.⁴⁸⁹ The public utility transmission provider must identify this information in sufficient detail to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects that are proposed in this process.⁴⁹⁰ The information requirements must not be so cumbersome that they effectively prohibit transmission developers from proposing transmission projects, yet not be so relaxed that they allow for relatively unsupported proposals.⁴⁹¹ They may require, for example, relevant engineering studies and cost

data outlined in Section VIII.D of this Attachment FF, is not included in the [bid] as required by Sections VIII.D and VIII.F of this Attachment FF. MISO, FERC Electric Tariff, Attachment FF, § VIII.E (8.0.0).

⁴⁸⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

⁴⁹⁰ *Id.* P 326.

⁴⁹¹ *Id.*

analyses and may request other reports or information from the transmission developer that are needed to facilitate evaluation of the transmission project in the regional transmission planning process.⁴⁹²

274. Each public utility transmission provider must also revise its tariff to identify the date by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle.⁴⁹³ Each transmission planning region may determine for itself what deadline is appropriate and may use rolling or flexible dates to reflect the iterative nature of their regional transmission planning process.⁴⁹⁴

i. MISO's Filing

275. MISO states that it has revised Attachment FF to identify the information that must be submitted by an applicant in response to a Transmission Proposal Request and the date by which such information must be submitted. A Transmission Proposal Request will list the required information to be included in a bid, including, but not limited to: (1) documentation that the applicant satisfies the general requirements for Qualified Transmission Developers; (2) cost estimate data; (3) reasonably descriptive facility design proposals;⁴⁹⁵ (4) documentation of project implementation capabilities; (5) documentation of operations, maintenance, repair, and replacement capabilities; (6) modeling data files; and (7) descriptions of relevant partnerships or agreements.⁴⁹⁶ MISO proposes that cost estimate data include, at a minimum: (1) estimated project cost for each proposed facility; and (2) estimated annual revenue requirements for the first 40 years that the facilities included in the bid will be in service.⁴⁹⁷

276. MISO states that, while not required, the transmission developer submitting a bid would also be encouraged to include information regarding past experience in

⁴⁹² *Id.*

⁴⁹³ *Id.* P 325.

⁴⁹⁴ *Id.* P 327.

⁴⁹⁵ Under MISO's proposal, "reasonably descriptive facility design proposals" represent descriptions of the core attributes and features of a design, not the detailed engineering and design calculations and documents. MISO, FERC Electric Tariff, Attachment FF, § VIII.D.6 (8.0.0).

⁴⁹⁶ MISO Compliance Transmittal at 51-52; MISO, FERC Electric Tariff, Attachment FF, § VIII.D (8.0.0).

⁴⁹⁷ MISO, FERC Electric Tariff, Attachment FF, § VIII.D.5 (8.0.0).

implementing transmission line and transmission substation projects and operating, maintaining, restoring, and repairing transmission line and transmission substation projects.⁴⁹⁸ In addition, MISO states that, since the proposed evaluation process includes a metric for participation in the MISO regional planning process by the transmission developer submitting a bid, the applicant may also include documentation of: (1) any relevant planning studies performed and shared in the MISO regional planning process to address the transmission issue(s) being addressed by the Open Transmission Project, and/or (2) any proposed project ideas or project portfolio ideas submitted by the transmission developer in the past in the MISO regional planning process to address the transmission issue(s) being addressed by the Open Transmission Project.⁴⁹⁹

277. MISO proposes that the Transmission Proposal Request will specify for each new transmission facility both an expected in-service date and an implementation schedule indicating the required steps to construct the project, including all required regulatory approvals.⁵⁰⁰ Further, in its transmittal letter, MISO proposes that, as part of the contents of a bid, applicants submit a development schedule that includes, at minimum, state regulatory approvals.⁵⁰¹ MISO also proposes to require transmission developers to establish a date by which state approval(s) to construct must be achieved, as well as to provide MISO with authority to reassign an Open Transmission Project through its proposed reevaluation process should a transmission developer fail to timely obtain state regulatory approvals.⁵⁰²

278. MISO states that the Transmission Proposal Request will specify the date by when bids are due to MISO, but no later than 180 days after the Transmission Proposal Request has been posted by MISO on its website.⁵⁰³ MISO states that any inquiries by transmission developers submitting bids, prior to the submission of the bid, should be

⁴⁹⁸ MISO Compliance Transmittal at 52 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.7 (8.0.0)).

⁴⁹⁹ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.9 (8.0.0)).

⁵⁰⁰ MISO, FERC Electric Tariff, Attachment FF, § VIII.D.2.b.i.2 (8.0.0).

⁵⁰¹ MISO Compliance Transmittal at 56.

⁵⁰² *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § IX.C.1 (8.0.0)); *see also* MISO, FERC Electric Tariff, Attachment FF, § IX.B.2 (8.0.0).

⁵⁰³ MISO Compliance Transmittal at 52.

directed to the contacts in the Transmission Proposal Request, and not to the interconnecting incumbent Transmission Owner.⁵⁰⁴

279. MISO proposes that the bid proposal would be considered a firm offer of the applicant to construct, own, maintain, and restore the new transmission facility, if the bid proposal is accepted.⁵⁰⁵ Further, the transmission developer submitting a bid would be required to execute a Binding Proposal Agreement, which would stipulate that the winning proponent shall execute the Transmission Owners Agreement and would bind the applicant to the terms of its bid, the Transmission Proposal Request, and the applicable requirements of the Tariff, including those requiring the developer to make a good faith effort to construct the relevant project.⁵⁰⁶

280. MISO proposes a single cure period of 10 business days should MISO determine after the due date that there are any deficiencies with regard to data submitted in any bid, which would commence upon notification of the deficiency to the transmission developer that submitted the bid.⁵⁰⁷ Under its proposal, MISO would also be able to request additional data from the transmission developer that submitted the bid following the cure period if it is believed additional data is needed to make a selection decision, and the transmission developer that submitted the bid will be given a minimum of 10 business days to provide the additional information.⁵⁰⁸

281. MISO proposes that all information submitted in a bid will be considered Confidential Information, as currently defined in the Tariff, and will be subject to the applicable Tariff provisions.⁵⁰⁹

282. MISO states that, in order to insulate load from the costs of evaluating bids, it is proposing to require a transmission developer to submit with each bid a deposit of one

⁵⁰⁴ MISO, FERC Electric Tariff, Attachment FF, § VIII.D.11 (8.0.0).

⁵⁰⁵ MISO, FERC Electric Tariff, Attachment FF, § 1.455c (8.0.0).

⁵⁰⁶ MISO Compliance Transmittal at 54; MISO, FERC Electric Tariff, Attachment FF, § 1.49 (Binding Proposal Agreement) (8.0.0).

⁵⁰⁷ MISO, FERC Electric Tariff, Attachment FF, § VIII.F (8.0.0).

⁵⁰⁸ MISO Compliance Transmittal at 52-53; MISO, FERC Electric Tariff, Attachment FF, § VIII.D.12 (8.0.0).

⁵⁰⁹ MISO Compliance Transmittal at 53; MISO, FERC Electric Tariff, Attachment FF, § VIII.D.13 (8.0.0).

percent of the projected project cost, not to exceed \$500,000.⁵¹⁰ MISO explains that this deposit will be used to offset the costs of evaluating developer bids, with any balance remaining after the evaluation has concluded being refunded to the transmission developer.⁵¹¹ MISO proposes that no interest will be paid on deposits held.⁵¹²

ii. Protests/Comments

283. Exelon asks the Commission to reject the level of detail MISO proposes to require transmission developers to submit in each bid for an Open Transmission Project. According to Exelon, MISO proposes that a bid to construct and own an Open Transmission Project will not include “detailed engineering and design calculations and documents.”⁵¹³ However, Exelon argues that an applicant must include the types of details which are normally only finalized after the completion of detailed engineering and siting studies. For instance, Exelon states that MISO proposes that a bid to construct and own an Open Transmission Project include, among other things: (1) the estimated length of line, in miles and basis for the estimate; (2) proposed conductor type, size, and, if applicable, bundling configuration; (3) proposed default or typical structure design attribute(s) to be used for tangent, running angle, in-line dead-end, and angle dead-end structures when feasible and/or for the majority of the New Transmission Line Facility; and (4) modeling data for all proposed facilities, including, at a minimum, data files necessary to model power flow and short-circuit models and to model new contingencies.⁵¹⁴

284. Exelon argues that specification of all of these criteria in a proposal implicitly requires applicants to complete detailed engineering, design, and siting studies, at a great expense, prior to the submission of a proposal. Further, Exelon states that while it is not clear exactly what level of specificity is required for the above-referenced items, if a

⁵¹⁰ MISO Compliance Transmittal at 54; MISO, FERC Electric Tariff, Attachment FF, § VIII.D.2.a (8.0.0).

⁵¹¹ MISO Compliance Transmittal at 54.

⁵¹² MISO, FERC Electric Tariff, Attachment FF, § VIII.D.2.a (8.0.0).

⁵¹³ Exelon Protest to MISO Compliance Filing at 3 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.6 (8.0.0) (“[r]easonably descriptive facility design proposals represent descriptions of the core attributes and features of a design, not the detailed engineering and design calculations and documents.”)).

⁵¹⁴ *Id.* at 3-4 (citing MISO, FERC Electric Tariff, Attachment FF, §§ VIII.D.6(a)(1)-(a)(3), VIII.D.10 (8.0.0)).

transmission developer's bid is selected by MISO, the developer is then obligated to "construct, own, operate, maintain, repair, and restore New Transmission Facility(ies) . . . in accordance with the Binding Proposal Agreement."⁵¹⁵ Exelon believes that the binding requirement is unrealistic, may impede transmission development, and may also produce inefficient results. Exelon argues that MISO's proposed Tariff provisions do not permit a developer to modify its project to account for the results of its engineering studies, and as such, the proposed requirements do not guarantee safe and reliable operation of the transmission system. To the contrary, Exelon submits that, to the extent the proposed requirements induce developers to develop detailed binding commitments prior to performing detailed engineering and siting studies,⁵¹⁶ they raise the prospect that developers will commit to projects that do not actually meet the engineering and reliability needs of the system.⁵¹⁷ Exelon states that because the proposed requirements are likely to discourage competitive proposals and will not guarantee safe and reliable transmission operation, the Commission should reject the level of detail required and the binding nature of the bids to construct and own Open Transmission Projects.⁵¹⁸

285. Further, ITC Companies assert that since bids to construct and own Open Transmission Projects will be evaluated on the basis of cost and "reasonably descriptive" facility design,⁵¹⁹ the level of detail requested in MISO's process may not be available so soon after MISO approval of a new transmission project. ITC Companies state that the Commission should require MISO to reduce the level of detail required in bids to only encompass what can be reasonably known and provided prior to detailed engineering studies, as this would allow the process to be completed in a more timely fashion and reduce the potential for speculative information to be submitted and considered in the evaluation of project proposals.⁵²⁰ For example, ITC Companies argue that, for large regional transmission projects selected in a regional transmission plan for purposes of

⁵¹⁵ *Id.* at 5 (citing MISO, FERC Electric Tariff, Attachment FF, § 1.455c (8.0.0)).

⁵¹⁶ Exelon argues that developers could engage in extensive engineering and siting work before submitting a proposal, at which point it would be realistic for the developer to bind itself to detailed elements of a construction plan, but performing studies to produce that level of detail would be extraordinarily expensive, thus discouraging competitive proposals. *Id.* at 6.

⁵¹⁷ *Id.*

⁵¹⁸ *Id.*

⁵¹⁹ MISO, FERC Electric Tariff, Attachment FF, § VIII.G.2 (8.0.0).

⁵²⁰ ITC Companies Comments to MISO Compliance Filing at 12.

cost allocation, information on final project route will not be available within six months after approval of a project for inclusion in the MTEP. ITC Companies state that route selection varies from state to state but generally requires significant outreach to, and participation by, the public, landowners, federal, state and local governmental authorities, and other interested stakeholders, which can take one or two years to complete. Until the conclusion of this outreach and collaboration, information on project route and thus “reasonably descriptive” facility design information will not be available, since design can only begin after a route is selected.⁵²¹ Similarly, ITC Companies argue that accurate cost data will not be available until “reasonably descriptive” facility design information is available. Thus, neither “reasonably descriptive” facility design information nor accurate cost data will be available within 180 days the issuance of a Transmission Proposal Request. ITC Companies argue that these metrics are unrealistic and will simply invite proposals that are based on speculation and guesswork instead of on verifiable facts.⁵²²

286. Illinois Commerce Commission states that it is not clear why MISO would prohibit the submission of “detailed engineering and design calculations and documents,” if the bidder is able to provide it, and it requests that MISO provide an explanation for this language.⁵²³ Illinois Commerce Commission also states that, in addition to specifying the expected in-service date for a transmission project, MISO’s Transmission Proposal Request will specify the “implementation schedule indicating the required steps to develop and construct the Open Transmission Project, including, but not limited to, all required regulatory approvals.”⁵²⁴ Illinois Commerce Commission states that it is reasonable to specify some dates for reaching milestones, as it will assist MISO in tracking project development, but it is not clear why MISO should take responsibility for ascertaining and specifying “all required regulatory approvals” that the winning bidder will need to obtain. Illinois Commerce Commission states that tracking regulatory approvals seems to be more properly the responsibility of the winning bidder.⁵²⁵

287. AEP, LS Power and Illinois Commerce Commission disagree with MISO’s proposed deposit requirement. AEP asserts that the proposed deposit would constitute a

⁵²¹ *Id.* at 11-12.

⁵²² *Id.* at 12.

⁵²³ Illinois Commerce Commission Comments to MISO Compliance Filing at 52 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.6 (8.0.0)).

⁵²⁴ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.2.b.i.2 (8.0.0)).

⁵²⁵ *Id.*

“pay-to-play” arrangement that would shift the burden of administering a competitive process from the consumers who benefit from competition among developers to those who are simply seeking to compete. LS Power and Illinois Commerce Commission argue that the proposed minimum deposit per project equal to one percent of the projected project cost (not to exceed \$500,000) that a bidder is required to submit is excessive and could be a barrier to entry. While it recognizes that there are actual review costs associated with a thorough review of competitive bids, LS Power asserts that MISO fails to justify the large deposit required, and it submits that the amount should be rejected unless MISO can prove that such a deposit corresponds to actual evaluation costs. Illinois Commerce Commission argues that the deposit level should not be set higher than what is required to cover the costs of bidder evaluation; however, it cannot determine the reasonableness of MISO’s proposed deposit level without some sense of the level and cost of resources that MISO will need.⁵²⁶ Illinois Commerce Commission requests that the Commission direct MISO to explain how its deposit proposal will only cover the costs of bidder evaluation and to propose a revision if it does not.⁵²⁷

288. LS Power and Illinois Commerce Commission note that MISO also proposes to pay no interest on the deposit funds that it will hold and will only return any unused funds *pro rata* to the applicants within thirty days of the designation of the selected transmission developer.⁵²⁸ LS Power argues that MISO provided insufficient justification for the deposit to be held interest free and believes that deposit funds should accrue interest at the Commission’s approved rate for deposits.⁵²⁹ Further, Illinois Commerce Commission states that it is unclear if disqualified bidders get their deposit back immediately upon disqualification or whether they will have to wait until thirty days after the designation of the transmission developer selected to construct and own the Open Transmission Project.⁵³⁰

⁵²⁶ *Id.* at 45-46, n.124.

⁵²⁷ *Id.* at 46-47.

⁵²⁸ LS Power Protest to MISO Compliance Filing at 33-34; Illinois Commerce Commission Comments to MISO Compliance Filing at 46-47, n.125 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.2.a (8.0.0)).

⁵²⁹ LS Power Protest to MISO Compliance Filing at 34.

⁵³⁰ Illinois Commerce Commission Comments to MISO Compliance Filing at 46, n.125.

289. LS Power further contends that MISO should clarify that any proposal deposits apply not only to new entrants, but also to incumbent Transmission Owners to ensure comparable treatment.⁵³¹

290. Referring to MISO's proposal requiring that all information submitted with project bids and bid evaluation remain confidential and not posted publicly,⁵³² Illinois Commerce Commission states that MISO has not explained why it believes that all the information submitted as part of the information requirements needs to be considered confidential.⁵³³ Illinois Commerce Commission contends that unless MISO can provide a strong reason to keep all information associated with project bids and bid evaluation confidential, the Commission should direct MISO to develop a matrix showing which elements will be confidential and which will be public, along with an explanation of when and how these elements will be made public.⁵³⁴

291. Illinois Commerce Commission contends that it is unduly discriminatory to require states that select the transmission developer to sign a non-disclosure agreement because there are numerous states that are unable to sign the MISO non-disclosure agreement as it is currently written. Illinois Commerce Commission argues that it would be inappropriate for MISO to put into place procedures that would knowingly prohibit particular states from exercising their option to select a developer because of such states' transparency laws or other conflicting laws.⁵³⁵

292. Additionally, Illinois Commerce Commission notes that MISO proposes to prohibit a transmission developer submitting a bid from communicating with an incumbent Transmission Owner and, instead, would direct the applicant to contact MISO. Illinois Commerce Commission states that, while it is clear why it might not be in the best interest of the applicant to communicate its intentions to the incumbent Transmission

⁵³¹ LS Power Protest to MISO Compliance Filing at 33-34.

⁵³² MISO, FERC Electric Tariff, Attachment FF, §§ VIII.B, VIII.D.13 (8.0.0).

⁵³³ Illinois Commerce Commission states that this provision is in stark contrast with the approach employed by PJM where a significant amount of information concerning the project proposals received by PJM will be publicly posted. Illinois Commerce Commission Comments to MISO Compliance Filing at 42.

⁵³⁴ *Id.* at 43.

⁵³⁵ *Id.*

Owner, it is not clear why MISO's Tariff would need to prohibit such communications, and it requests that MISO provide an explanation for this provision.⁵³⁶

iii. Answer

293. MISO disagrees with several parties protesting the level of specificity required by MISO's proposed Tariff revisions. Responding to Exelon's protest that too much detail is required for a bid, MISO states that its proposed approach is just and reasonable for MISO to make an appropriate determination of the transmission developer selected to construct and own the Open Transmission Project. MISO states that it is common for transmission developers to receive this information when taking bids from sub-contracted engineering firms and that these contractors do not need to do detailed engineering analyses to establish estimates. Furthermore, the information that MISO states it is requesting is meant to give the transmission developer submitting a bid additional flexibility in its proposal so long as the planning driven parameters are satisfied. MISO explains that this is why MISO is only requiring attributes that will govern the eventual detailed design of the applicant's proposed transmission facilities or the approach a developer will take in developing the detailed design. As long as MISO is able to weigh the differences of different "strategies" present in different proposals, MISO states that an applicant's bid proposal does not need to specify facility construction standards other than the parameters modeled in the power flow studies. MISO only requires information to aid in understanding why the costs of competing proposals may be different and how they will correlate to the quality and features to which the proposed facilities will be designed.⁵³⁷

294. In response to LS Power and AEP, MISO states that its deposit requirement is neither new, nor controversial because it is not excessive and will not impact the competitive bidding process. MISO states, as an example, that in the Generator Interconnection Process, deposits up to \$520,000 are used to cover study costs.⁵³⁸ In response to AEP's and Illinois Commerce Commission's assertions that the deposit requirement could hurt competition, MISO responds that the deposit requirement will, in fact, help competition by: (1) insulating MISO, as well as the transmission customers, from bearing the costs of proposal evaluation, which would be inappropriate; (2) serving as an effective test of a transmission developer's commitment and desire to build a

⁵³⁶ *Id.* at 52-53 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.11 (8.0.0)).

⁵³⁷ MISO Compliance Filing Answer at 38-40.

⁵³⁸ *Id.* at 49 (citing MISO, FERC Electric Tariff, Attachment X, § 8.2 (Generator Interconnection Procedures) (7.0.0)).

project; and, (3) limiting the number of bid proposals any one entity will submit and encouraging submission of the best alternatives. Additionally, MISO reiterates that a developer will bear only the costs actually associated with evaluating the proposal.⁵³⁹

295. MISO disagrees with Illinois Commerce Commission that the proposals need not be treated as confidential and that it is discriminatory against states that are unable to enter into non-disclosure agreements to require these agreements in order for states to select the transmission developer. MISO states that the contents of each project proposal will contain a transmission developer's best business case as to why it should build a particular project and if these details were divulged to the public, other developers would be given unfair insight into their competitor's business practices and strategies, operating strengths, and construction and material contracts.⁵⁴⁰ Therefore, MISO argues that it should not be required to develop a matrix identifying the confidential and non-confidential elements of the proposal.

iv. Commission Determination

296. We find that the MISO's proposed information requirements for the submission of bid proposals to construct and own Open Transmission Projects partially comply with the requirements of Order No. 1000. Accordingly, MISO must make a further compliance filing revising its Tariff, as discussed below.

297. We find that MISO's proposed information requirements are "not so cumbersome that they effectively prohibit transmission developers from proposing transmission projects yet not...so relaxed that they allow for relatively unsupported proposals."⁵⁴¹ We disagree with Exelon the information requirements implicitly require "specificity" that cannot be achieved *before* detailed engineering and siting studies have been finalized. MISO requires that entities submit, as part of their bid proposal, documents that illustrate their implementation, operations, maintenance, and repair capabilities, cost estimates, and "reasonably descriptive design proposals" of a project.⁵⁴² Attachment FF provides that "reasonably descriptive facility design proposals" "represent descriptions of the core attributes and features of a design, not the detailed engineering and design calculations and documents."⁵⁴³ Therefore, while fulfilling the engineering and design component of

⁵³⁹ *Id.* at 50.

⁵⁴⁰ *Id.* at 43-44.

⁵⁴¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 326.

⁵⁴² MISO, FERC Electric Tariff, Attachment FF, § VIII.D.3 (8.0.0).

⁵⁴³ MISO, FERC Electric Tariff, Attachment FF, § VIII.D.6 (8.0.0).

the information requirements for a bid proposal does require a certain amount of investment by the applicant, we find MISO's proposal to require information to be reasonable

298. We also find that Exelon's assertion that MISO's requirement that a developer be required to construct, own, and operate a project if that developer's bid is selected "in accordance with the Binding Proposal Agreement" does not impede the competitive bidding process or the guarantee of safe and reliable transmission operations. In fact, MISO's current process for transmission expansion requires that a developer construct the project it proposed.⁵⁴⁴ Exelon does not provide evidence that MISO's existing, Commission-approved process is unworkable. Therefore, we conclude that it is reasonable for MISO to require that, after submitting a bid, a project developer must be willing to enter a Binding Proposal Agreement.

299. We disagree with Illinois Commerce Commission that MISO is prohibiting the submission of more detailed engineering and design calculations. MISO's proposed Tariff revisions merely clarify the definition of a "reasonably descriptive facility design" and that a submission is not required to have "detailed engineering and design calculations and documents." This Tariff language does not preclude the submission of a more detailed study.⁵⁴⁵ Therefore, we decline to direct MISO to clarify why it prohibits the submission of a more detailed engineering and design study.

300. We find that MISO's proposed deposit requirement partially complies with the requirements of Order No. 1000. As proposed, a transmission developer that submits a bid must pay the lesser of one percent of the projected project costs or \$500,000 as a deposit to cover the expense to evaluate the bids. Both incumbent transmission providers and nonincumbent transmission developers must submit the same deposit with each bid. MISO will track its costs while evaluating a bid and refund the remainder of the deposit upon the completion of the evaluation process within 30 days of a developer being designated a Selected Transmission Developer. However, MISO has not provided sufficient evidence that the amount of the deposit is justified. MISO notes that under its Generator Interconnection Process deposits up to \$520,000 are used to cover study costs but provides no evidence that the costs required to evaluate a generator interconnection are comparable to those necessary to conduct the developer selection process. Therefore, while we disagree with commenters that the existence of a deposit will necessarily create

⁵⁴⁴ MISO, FERC Electric Tariff, § 1.455(c) (0.0.0) (New Transmission Proposal) (stating that "[a] proposal in response to a Transmission Proposal Request...is considered to be a firm offer of the [Applicant] to... construct, own, operate, maintain, repair, and restore [facilities]... in accordance with the Binding Proposal Agreement.").

⁵⁴⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 326.

barriers to entry and accept MISO's proposal to have a deposit requirement, we find that MISO must provide additional evidence as to how it decided on the lesser of one percent or \$500,000 as the amount required for a deposit.

301. However, we agree with Illinois Commerce Commission that MISO should provide more clarity with regard to how it will calculate costs associated with evaluating bid proposals to determine whether a refund of the deposit will be needed. In addition, we agree with Illinois Commerce Commission that MISO should clarify whether or not disqualified bidders will get their deposit back immediately upon disqualification or will have to wait 30 days after the designation of a Selected Transmission Developer because such uncertainty may affect the willingness of a developer to submit a bid. Moreover, consistent with the Commission's policy to require payment of interest on deposits or study costs that are refunded to a generator interconnection customer, we require MISO to revise its Tariff so that interest will be paid on any refunded portion of the deposit that a transmission developer submitted with its bid.⁵⁴⁶ We therefore direct MISO to file, within 120 days of the date of issuance of this order, a compliance filing with Tariff revisions that: (1) clarify how MISO will calculate the cost it will incur to evaluate bids for the purpose of refunding a bidder's deposit; (2) clarify whether or not disqualified applicants must wait 30 days after the designation of the Selected Transmission Developer; and (3) provide interest on any bid deposits that are refunded to a transmission developer.

302. We reject Illinois Commerce Commission's request that unless MISO can show why all information requirements for submitting a bid must be confidential, MISO should create a matrix establishing which information will be confidential and which will not.⁵⁴⁷ As MISO states in its answer, it proposed to keep its project selection process confidential among all bidders to ensure competing developers are not given unfair insight into their competitors' business practices and strategies, operating strengths, and construction and material contracts. However, we note that MISO proposes revisions to its Tariff stating that "within thirty (30) calendar days of the designation of the Selected

⁵⁴⁶ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 123 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008); see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at PP 166-168 (2012) (rejecting MISO's proposal to eliminate the payment of interest on refunded portions of generator interconnection study deposits).

⁵⁴⁷ Illinois Commerce Commission Comments to MISO Compliance Filing at 43.

Transmission Developer, [MISO] will provide a report in which it explains the basis for designating the Selected Transmission Developer for each Open Transmission Project.”⁵⁴⁸ Thus MISO will provide sufficient information about the selection process to developers who were not selected while adhering to MISO’s proposed confidentiality.

303. With respect to MISO’s proposal to only allow inquiries from transmission developers submitting bids to go to contacts in the Transmission Proposal Request and not to the interconnecting incumbent Transmission Owner, before the bid has been submitted, Illinois Commerce Commission believes that incumbent Transmission Owners should be permitted to communicate with applicants, even though it may not be in their best interest.⁵⁴⁹ We find that MISO’s proposed Tariff language is reasonable on this point, and Illinois Commerce Commission has not provided any evidence to the contrary. Accordingly, we will not direct a revision to this proposed requirement.

304. On the issue of who must develop an implementation schedule for a proposed transmission facility, we find MISO’s proposed Tariff language is unclear. MISO’s proposed Tariff language states that each Transmission Proposal Request will specify an “[i]mplementation schedule indicating the required steps to develop and construct the Open Transmission Project, including, but not limited to, all required regulatory approvals.”⁵⁵⁰ MISO implies in its transmittal letter that the transmission developer must submit the implementation schedule by stating that it revised the Tariff to require transmission developers to establish a date by which state approval(s) to construct must be achieved.⁵⁵¹ However, Illinois Commerce Commission reads the Tariff language to mean that that MISO will provide the implementation schedule and argues that it is the transmission developer who should include in its bid project-specific milestone dates in a development schedule for obtaining state regulatory approval. Order No. 1000 requires the transmission developer of a transmission facility to submit a development schedule that indicates the required steps, such as the granting of state approvals, necessary to develop and construct the transmission facility such that it meets the needs of the region.⁵⁵² Order No. 1000 also requires that, as part of the ongoing monitoring of the progress of a transmission project once it has been selected in the regional transmission

⁵⁴⁸ MISO, FERC Electric Tariff, Attachment FF, § VIII.G.8 (8.0.0).

⁵⁴⁹ Illinois Commerce Commission Comments to MISO Compliance Filing at 52-53.

⁵⁵⁰ MISO, FERC Electric Tariff, Attachment FF, § VIII.D.2.b.i.2 (8.0.0).

⁵⁵¹ MISO Compliance Transmittal at 56.

⁵⁵² Order No. 1000-A, 139 FERC ¶ 61,132 at P 442.

plan for purposes of cost allocation, the public utility transmission providers in a transmission planning region must establish a date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the transmission need that the transmission project is selected to address.⁵⁵³ Because the Tariff is unclear on these two points, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to revise the Tariff to make clear that: (1) a transmission developer must include in a bid made in response to a Transmission Proposal Request a development schedule that generally indicates the required steps, such as the granting of state approvals, necessary to develop and construct the transmission facility such that it meets the needs of the region, and (2) MISO will establish a date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address.

d. Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

305. Order No. 1000 requires each public utility transmission provider to amend its tariff to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.⁵⁵⁴ Public utility transmission providers should both explain and justify the nondiscriminatory evaluation process proposed in their compliance filings.⁵⁵⁵

306. The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.⁵⁵⁶ The public utility transmission providers in a transmission planning region must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer.⁵⁵⁷ When cost estimates are part of the

⁵⁵³ *Id.*

⁵⁵⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

⁵⁵⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 268.

⁵⁵⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

⁵⁵⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or nonincumbent transmission developer.⁵⁵⁸ The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.⁵⁵⁹

i. MISO Developer Selection Process

(a) MISO's Filing

307. If a state chooses to not, or does not have the authority to, select the transmission developer, or if a state does not select the transmission developer within 360 days from the posting of the Transmission Proposal Request, MISO will evaluate transmission developer bids and choose from those bids who will be the Selected Transmission Developer⁵⁶⁰ based on evaluation criteria specified in the Tariff.⁵⁶¹ MISO will identify and post the Selected Transmission Developer within 180 days of the date when the bids were due.⁵⁶²

308. MISO explains that it will use the following four general criteria to evaluate transmission developer bids: (1) cost and reasonably descriptive facility design; (2) project implementation capabilities; (3) operations, maintenance, repair, and replacement capabilities; and (4) transmission provider planning process participation.⁵⁶³ MISO proposes that, when it evaluates each bid a transmission developer submits in response to a Transmission Proposal Request, it will assign a specific weight to each of

⁵⁵⁸ *Id.* P 455.

⁵⁵⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

⁵⁶⁰ MISO, FERC Electric Tariff, § 1.599a (Selected Transmission Developer) (0.0.0).

⁵⁶¹ The state developer selection process is described in the section that follows.

⁵⁶² MISO Compliance Transmittal at 55 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.G.1 (8.0.0)).

⁵⁶³ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.G.2 (8.0.0)); *see also* MISO, FERC Electric Tariff, Attachment FF, §§ VIII.G.3-VIII.G.6 (8.0.0) for specific factors that MISO proposes to evaluate in considering these four general criteria.

these four criteria, and the specific weight it assigns will depend on whether the Open Transmission Project is a new transmission line facility or new substation facility.⁵⁶⁴

309. When considering cost and reasonably descriptive facility design quality (criterion 1), MISO proposes to evaluate, at a minimum: (1) estimated project cost for each proposed facility; (2) estimated annual revenue requirements for all new transmission facilities included in the transmission developer's bid; (3) cost estimate rigor, which shall include financial assumptions and supporting information to clearly demonstrate a thorough analysis in support of the cost estimate; (4) reasonably descriptive facility design quality; and (5) reasonably descriptive facility design rigor, which shall include facility studies performed and other specific supporting data that clearly documents and supports consideration and attention given to the proposed reasonably descriptive facility designs.⁵⁶⁵ In the bid evaluation process, the cost and reasonably descriptive facility design quality criterion will be weighted 30 percent in the evaluation process for both new transmission lines and substations.⁵⁶⁶

310. When considering project implementation capabilities (criterion 2), MISO proposes to evaluate, at a minimum, existing or planned capabilities and processes regarding: (1) project management; (2) route and site evaluation; (3) land acquisition; (4) engineering and surveying; (5) material procurement; (6) facility construction; (7) final facility commissioning; and (8) previous applicable experience and demonstrated ability.⁵⁶⁷ In the bid evaluation process, the project implementation capabilities criterion will be weighted 35 percent for new transmission lines and 30 percent for new substations.⁵⁶⁸

311. When considering operations, maintenance, repair, and replacement capabilities (criterion 3), MISO proposes to evaluate, at a minimum, existing or planned capabilities and processes regarding the following, as applicable, based on the types of facilities included in the Transmission Proposal Request: (1) forced outage response; (2) switching; (3) emergency repair and testing; (4) spare parts; (5) preventative and/or

⁵⁶⁴ MISO Compliance Transmittal at 55-56.

⁵⁶⁵ MISO, FERC Electric Tariff, Attachment FF, § VIII.G.3 (8.0.0).

⁵⁶⁶ MISO Compliance Transmittal at 55-56; MISO, FERC Electric Tariff, Attachment FF, § VIII.G.7 (8.0.0).

⁵⁶⁷ MISO, FERC Electric Tariff, Attachment FF, § VIII.G.4 (8.0.0).

⁵⁶⁸ MISO Compliance Transmittal at 55-56; MISO, FERC Electric Tariff, Attachment FF, § VIII.G.7 (8.0.0).

predictive maintenance and testing; (6) real-time operations monitoring and control; and (7) major facility replacement capabilities, including ongoing financial capabilities to restore facilities after catastrophic outages.⁵⁶⁹ In the bid evaluation process, the operations, maintenance, repair, and replacement capabilities criterion will be weighted 30 percent for new transmission lines and 35 percent for new substations.⁵⁷⁰

312. When considering transmission provider planning process participation (criterion 4), MISO will consider relevant planning studies conducted by the transmission developer that submitted the bid and the associated results supplied to the MISO planning process, as well as transmission project ideas submitted in the past by the transmission developer as potential solutions to address the same Transmission Issues addressed by the Open Transmission Project.⁵⁷¹ In the bid evaluation process, the transmission provider planning process participation criterion will be weighted 5 percent for both new transmission lines and substations.⁵⁷²

313. Thus, under MISO's proposal, the cost and reasonably descriptive facility design and transmission provider planning process participation metrics will be weighted the same for both new transmission line facilities and new substation facilities, and the project implementation capabilities and operations, maintenance, repair, and replacement capabilities metrics will be weighted differently.⁵⁷³ MISO states that project implementation capabilities are weighted higher for new transmission line facilities than for new substation facilities because project implementation tasks, such as performing routing evaluation, regulatory permitting, and right-of-way acquisition, tend to be more complex and have greater impacts for new transmission facilities than for new substation facilities. In addition, MISO states that the capital costs of transmission facilities, on average, tend to be higher than the capital costs of substation facilities unless the transmission line length is very short.⁵⁷⁴

⁵⁶⁹ MISO, FERC Electric Tariff, Attachment FF, § VIII.G.5 (8.0.0).

⁵⁷⁰ MISO Compliance Transmittal at 55-56; MISO, FERC Electric Tariff, Attachment FF, § VIII.G.7 (8.0.0).

⁵⁷¹ MISO, FERC Electric Tariff, Attachment FF, § VIII.G.6 (8.0.0).

⁵⁷² MISO Compliance Transmittal at 55-56; MISO, FERC Electric Tariff, Attachment FF, § VIII.G.7 (8.0.0).

⁵⁷³ MISO Compliance Transmittal at 55-56.

⁵⁷⁴ *Id.* at 56.

314. MISO states that operations, maintenance, repair, and replacement capabilities are weighted higher for substation facilities than for transmission line facilities because operations, maintenance, repair, and replacement tasks tend to be more complex for substations and problems in substations often have greater impacts on the bulk power system than problems on transmission line facilities. As an example, MISO points to a failure of a relay scheme or circuit breaker in a substation or occurrence of a short-circuit fault within a substation, which could potentially lead to multiple outages and greater stress on system stability than a fault on a transmission line circuit. In addition, MISO argues that equipment and systems in substations tend to be more complex than a transmission line, thus requiring higher levels of operations, maintenance, repair, and replacement skill and effort.⁵⁷⁵

315. MISO states that, as part of the selection criteria, costs will be scrutinized in the same manner whether a project is proposed by an incumbent or nonincumbent. MISO states that, by requiring the same cost estimate information from both incumbents and nonincumbents (i.e., estimated total capital cost of the project by facility; estimated annual revenue requirements for the first 40 years of the project's in-service life; and supporting detail on the annual allocation factors used to estimate the annual revenue requirements), MISO will be able to evaluate project proposals consistently regardless of whether they are submitted by incumbents or nonincumbents.⁵⁷⁶

316. According to MISO's proposed Tariff language, MISO's planning staff and/or independent consultants will evaluate various aspects of each bid submitted by a transmission developer, and the specific methods that will be used to evaluate various aspects of a bid will be described in the Transmission Planning Business Practice Manual. The Tariff also states that MISO planning staff, and any independent consultants, will be overseen by an executive oversight committee consisting of three or more MISO executive staff, including at least one officer, and the final designation of the Selected Transmission Developer will rest with this committee. The committee shall possess certain specific expertise necessary for evaluation of bids submitted by transmission developers, such as, but not limited to, transmission construction, engineering, project management, financing, state regulatory, and operations. Within 30 calendar days of the designation of the Selected Transmission Developer, MISO will provide a report in which it explains the basis for designating the Selected Transmission

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.* at 57.

Developer for each Open Transmission Project. Any disputes regarding the developer selection will be referred to the Dispute Resolution Process under Attachment HH of the Tariff.⁵⁷⁷

(b) Protests/Comments

317. MISO Transmission Owners state that they support MISO's proposed comprehensive evaluation approach, developed through a robust stakeholder process, as just and reasonable and consistent with the requirements of Order No. 1000.⁵⁷⁸

318. Alliant Energy agrees that each of the four proposed criteria are important, but it considers cost to be a principal factor in the decision process. Accordingly, Alliant Energy argues that the cost and descriptive facility design criteria should have a weighting of 50 percent versus 30 percent as proposed and the project implementation capabilities criteria and operations, maintenance, repair, and replacement capabilities weighting should each be reduced by 10 percent. Alliant Energy states that with costs identified as a key factor for the need of the federal rights of first refusal elimination, MISO should reflect this significance in the processes used.⁵⁷⁹

319. Illinois Commerce Commission and LS Power raise similar concerns, arguing that the only way to ensure the selection of the more efficient or cost-effective solution is to require that the evaluation process be heavily weighted toward the overall relative cost and relative effectiveness of the respective projects and proposals. Illinois Commerce Commission notes that selection of transmission facilities in a regional transmission plan for purposes of cost allocation is directly related to costs that will be allocated to jurisdictional ratepayers; thus it argues that, as the most important criteria, project cost elements should be given a weight of 50 percent.⁵⁸⁰ LS Power notes that the proposed evaluation process demonstrates significant thought regarding how the quality of proposals will be evaluated, particularly related to cost estimates; thus, the amount of detail required in the evaluation process will likely yield good quality cost estimates in its competitive bid process. Further, LS Power supports how MISO linked the concepts of cost estimates and reasonably descriptive facility design proposals in its evaluation

⁵⁷⁷ MISO, FERC Electric Tariff, Attachment FF, § IX.G.8 (8.0.0); MISO, FERC Electric Tariff, Attachment HH (Dispute Resolution Procedures) (1.0.0).

⁵⁷⁸ MISO Transmission Owners Comments at 7-8.

⁵⁷⁹ Alliant Energy Comments at 6-7.

⁵⁸⁰ Illinois Commerce Commission Comments to MISO Compliance Filing at 50-51, n.136.

matrix. LS Power believes that MISO's proposed evaluation criteria will require a transmission developer to put careful thought and efforts into the preparation of any MISO bid, and any cost estimates submitted will have reasonable support behind them. For this reason, LS Power argues that the cost and reasonably descriptive facility design criterion should be heavily-weighted (at least 75 percent) in the ultimate selection process for bids to construct and own an Open Transmission Project.⁵⁸¹ LS Power argues that the overall cost of a transmission project is what matters to ratepayers once the participants in the proposal process are deemed truly qualified.⁵⁸²

320. LS Power argues that the land acquisition factor of the project implementation capabilities criterion is ambiguous. LS Power does not object to reviewing a transmission developer's capabilities for obtaining the land necessary for its project, within the restrictions set forth in Order No. 1000, but LS Power submits that these capabilities are more appropriate as qualification criteria. LS Power argues that once an entity is qualified, this category should have significantly less weight than is proposed by MISO. LS Power expresses concern that MISO will use this provision to improperly value ownership of existing rights-of-way with regard to land acquisition, which is heightened by MISO's proposal to require that any a bid submitted in response to a Transmission Proposal Request describe rights-of-way and land acquisition strategies as part of the requirement to document the project implementation capabilities.⁵⁸³ LS Power states that valuation by a RTO or Independent System Operator of existing rights-of-way for a project is improper. LS Power argues that to the extent that a project sponsor believes that its existing rights-of-way add value to its project proposal, that value should be reflected in project sponsor's cost proposal.⁵⁸⁴ LS Power also suggests that the Commission require MISO to remove all weighting for operations, maintenance, repair, and replacement capabilities, which it argues should instead be a qualification criteria.⁵⁸⁵

321. Organization of MISO States argues that MISO takes a reasonable and necessary step in its cost review process by requesting updated cost estimates from developers in

⁵⁸¹ LS Power Protest to MISO Compliance Filing at 26-27.

⁵⁸² *Id.* at 27.

⁵⁸³ *Id.* at 30, n.66 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.3(4) (8.0.0)).

⁵⁸⁴ *Id.* at 30-31.

⁵⁸⁵ *Id.* at 28-29.

the proposed developer selection process.⁵⁸⁶ However, it argues that these measures are not sufficient to assure that consumers pay just and reasonable rates. To assure prudent cost containment, Organization of MISO States also recommends requiring the cost estimates be broken down into multiple categories, as taken from the SPP Cost Estimation Report Tool.⁵⁸⁷ Organization of MISO States argues that these categories will make bids more directly comparable and will provide specific, uniform, and necessary additional information for the party selecting a developer to make a more informed decision. Further, according to Organization of MISO States, requiring this specific information will make conducting an analysis of any future changes to the estimated cost of the project more straightforward and consistent.⁵⁸⁸ Finally, Organization of MISO States argues that, in order to ensure accurate cost estimates, entities submitting bids should be required to provide bids for two separate line routes to give MISO and stakeholders confidence that the bidder has fully considered an alternative in case its preferred route for a transmission project is not feasible.⁵⁸⁹

322. According to ITC Companies, MISO proposes that cost estimate information requested in bids must include estimated annual revenue requirements for the first 40 years of the project's in-service life, to be calculated in accordance with Attachment MM of the Tariff⁵⁹⁰ for MVPs and Attachment GG of the Tariff⁵⁹¹ for MEPs.⁵⁹² ITC Companies state that the problem is that estimated annual revenue requirements calculated in accordance with Attachments MM and GG would be based in part on

⁵⁸⁶ Organization of MISO States Comments at 16-17 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.5 (8.0.0)).

⁵⁸⁷ *Id.* at 17 (stating that the Southwest Power Pool, Inc. (SPP) cost estimation tool is *available at* <http://www.spp.org/publications/SCERT%20Version%201.2.xls>).

⁵⁸⁸ For example, if a transmission project's cost of obtaining right-of-way has changed, interested stakeholders would be able to review the original cost estimate to determine the reason for the cost change (e.g., what width of right-of-way was in the original cost estimate). *Id.* at 17-18.

⁵⁸⁹ *Id.* at 18.

⁵⁹⁰ MISO, FERC Electric Tariff, Attachment MM (Multi-Value Project Charge) (4.0.0).

⁵⁹¹ MISO, FERC Electric Tariff, Attachment GG (Network Upgrade Charge) (8.0.0).

⁵⁹² ITC Companies Comments to MISO Compliance Filing at 12-13.

system-wide data from a formula rate in Attachment O of the MISO Tariff,⁵⁹³ but this type of system-wide data is difficult to predict several years into the future for incumbent Transmission Owners. Further, a nonincumbent transmission developer would not have an existing Attachment O formula rate. Thus, ITC Companies argue that MISO will have no benchmark with which to confirm the reasonableness of revenue requirement estimates submitted by nonincumbent transmission developers. ITC Companies state that the required cost information needs to be revised to only include the level of detail that is known at this stage of a project's development. Since cost estimates will contain considerable uncertainty until detailed engineering is complete, ITC Companies believe that comparing competing cost estimates should not be a primary factor in determining the best proposal.⁵⁹⁴

323. Illinois Commerce Commission argues that because MISO proposes to accept non-fixed cost bids, it is crucial for MISO to assess whether the cost estimate submitted in a bid is reasonable or whether it is a low estimate designed merely to win the bid.⁵⁹⁵ Illinois Commerce Commission states that while MISO states that it will look at "financial assumptions and supporting information" associated with a cost estimate, it provides no further detail on how it will test rigor of the cost estimate.⁵⁹⁶ Illinois Commerce Commission requests that the Commission direct MISO to describe in detail the cost information that MISO will require from each bidder (presumably differentiating between fixed cost bids and non-fixed cost bids) and explain how MISO will assess the reasonableness of the cost estimates for non-fixed cost bids and how MISO will compare fixed cost bids against non-fixed cost bids.⁵⁹⁷

324. ATC/Duke/Transource assert that the transmission provider planning process participation criterion be revised to state that the five percent awarded by MISO in the developer selection process should go to the developer that initially submits a proposal to address a transmission issue that is being considered in the current planning cycle that

⁵⁹³ MISO, FERC Electric Tariff, Attachment O (Rate Formulae).

⁵⁹⁴ ITC Companies Comments to MISO Compliance Filing at 13.

⁵⁹⁵ Illinois Commerce Commission states that under fixed cost bids, the bidder commits to passing through into rates no more than the amount of the bid it submits, while under a non-fixed cost bid, the bidder will be permitted to flow through in rates the actual project cost. Illinois Commerce Commission Comments to MISO Compliance Filing at 47-48.

⁵⁹⁶ *Id.* at 48-49.

⁵⁹⁷ *Id.* at 50.

was identified as the preferred solution to the transmission need and included in the regional plan.⁵⁹⁸

325. With respect to the evaluation criteria based on participation in the MISO stakeholder process,⁵⁹⁹ which reads in part, “the Transmission Provider will consider relevant planning studies conducted by the Qualified Transmission Developer and the associated results supplied to the Transmission Provider planning process, as well as transmission project ideas submitted in the past by the Qualified Transmission Developer as potential solutions to address the same Transmission Issues addressed by the Open Transmission Project,” LS Power is concerned that this proposal may be implemented in a manner that is prejudicial to nonincumbents. LS Power states that it has refrained from submitting transmission projects to MISO in the past once it became clearly evident that any such project would be subject to a right of first refusal. Further, Order No. 1000 was clear that there is no ongoing right to projects submitted in the past that were not included in the regional plan.⁶⁰⁰ Thus, LS Power argues that if the Commission accepts that transmission project ideas submitted in the past can be eligible toward the MISO stakeholder process evaluation criteria, then the Commission should also be explicit that the transmission project ideas must be submitted in that regional planning cycle under a specific proposal window. LS Power further suggests that the Commission ensure this provision is implemented fairly and not permit a grant of credit for any ideas displayed on Exhibit No. MISO-6.⁶⁰¹

⁵⁹⁸ ATC/Duke/Transource Protest at 48.

⁵⁹⁹ LS Power Protest to MISO Compliance Filing at 29, n.61 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.G.6 (8.0.0)) (emphasis added).

⁶⁰⁰ *Id.* at 29, n.63 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 340) (“With regard to ongoing sponsorship rights, the Commission concludes on balance that granting transmission developers an ongoing right to build sponsored transmission projects could adversely impact the transmission planning process, potentially leading to transmission developers submitting a multitude of possible transmission projects simply to acquire future development rights. The Commission appreciates that not granting such a right causes some risk for transmission developers in disclosing their transmission projects for consideration in the regional transmission planning process. That risk is outweighed, however, by the potentially negative impacts such a rule could have on regional transmission planning.”).

⁶⁰¹ According to LS Power, Exhibit No. MISO-6 provides a map of past “Potential Transmission Lines Identified,” and it is partly on this basis that MISO elected to go with a competitive bidding model versus a sponsorship model. *Id.* at 29-30, n.62.

326. ITC Companies argue that the timetable for soliciting and selecting the developer of an Open Transmission Project is too long, noting that bid proposals will be due six months after the issuance of a Transmission Proposal Request and MISO has another six months to select a transmission developer. ITC Companies argue that MISO's proposed revisions, therefore, add an additional year to an already lengthy and cumbersome process for the construction of transmission projects approved in the MTEP, which could create an unacceptable delay in the realization of benefits from new construction projects.⁶⁰²

327. Alliant Energy believes that within the developer and evaluation process, stakeholders should have the opportunity to submit comments to be considered as part of the decision process, which should be made clear in the compliance filing.⁶⁰³

328. Alliant Energy notes that MISO proposes to provide a report in which it will explain the basis for designating the Selected Transmission Developer for each Open Transmission Project.⁶⁰⁴ Alliant Energy states that additional information needs to be provided as to what information will be provided in the report.⁶⁰⁵

329. Illinois Commerce Commission notes that under MISO's proposal, the final sign-off regarding the designation of Selected Transmission Developers resides with an "executive oversight committee consisting of three or more executive staff" of MISO.⁶⁰⁶ Illinois Commerce Commission recommends that the Commission reject this proposal and require all developer selection decisions to be reviewed and approved by the MISO Board, as is existing practice.⁶⁰⁷

(c) Answer

330. In response to concerns raised by Organization of MISO States and Illinois Commerce Commission that MISO is not requiring cost estimates to include sufficient

⁶⁰² ITC Companies Comments to MISO Compliance Filing at 10-11.

⁶⁰³ Alliant Energy Comments at 6-7.

⁶⁰⁴ *Id.* at 7-8, n.7 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.G.8 (8.0.0)).

⁶⁰⁵ *Id.* at 7-8.

⁶⁰⁶ Illinois Commerce Commission Comments to MISO Compliance Filing at 54, n.140 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.G.8 (8.0.0)).

⁶⁰⁷ *Id.* at 55.

information, MISO claims that, while the proposed Tariff language does not prescribe the specific items that need to be submitted to support the estimated project cost and annual revenue requirement, it does state that cost estimates will be evaluated by reviewing the financial assumptions and supporting information provided in the bid proposal to demonstrate the rigor and reasonableness of the cost estimates. Thus, MISO argues that a proposal that does not provide supporting assumptions and detail would not meet the level of rigor required to have confidence in the reasonableness of the cost estimates submitted in the bid proposal. In response to ITC Companies' comments that annual revenue requirements should not be required as part of the cost estimates, MISO argues that it is important when evaluating the cost estimates provided in bid proposals to examine more than just project construction cost. MISO explains that different transmission developers will have different cost structures which will determine the actual costs passed on to customers, and are not captured by looking only at project costs.⁶⁰⁸

331. In response to arguments that costs should be given greater weight, including LS Power's argument that costs should be the primary factor in judging proposals, MISO contends that some of these comments imply that costs should be considered separately from design and quality and rigor. MISO argues that considering costs separately from these other aspects is neither feasible nor desirable, because cost effectiveness and efficiency cannot be divorced from design quality. According to MISO, considering cost and design separately will increase the likelihood that the best overall proposal may not be selected as the winning proposal.⁶⁰⁹

332. In response to ITC Companies' concern about the time allowed for submitting and evaluating transmission proposals, MISO argues that that time is a necessary trade-off to provide developers ample chance to develop responsive and detailed proposals for multiple projects, and to give MISO adequate opportunity to thoroughly evaluate what could potentially be many proposals in an effort to ensure outcomes that are fair, just, and reasonable. According to MISO, the proposed timeline strikes the right balance between the need to implement projects within the required time frame and the need to perform due diligence in developing and evaluating the bid proposals.⁶¹⁰

333. In response to Illinois Commerce Commission's arguments concerning developer selection by the MISO Board, MISO explains that the MISO Board is tasked with establishing broad corporate policy, but is not involved with day-to-day management and

⁶⁰⁸ MISO Compliance Filing Answer at 40-42.

⁶⁰⁹ *Id.* at 44-45.

⁶¹⁰ *Id.* at 42-43.

operations. Thus, MISO argues, the developer selection process will be overseen by the MISO Board, as are all MISO transmission planning activities, but the MISO Board will not and should not directly approve developer selection. According to MISO, the MISO Board may not have the technical qualifications to adequately assess transmission proposals. MISO also points out that MISO Board review and approval would be an additional step that adds even more time to the already lengthy process of selecting transmission proposals.⁶¹¹

(d) Commission Determination

334. We find that MISO's proposal regarding the evaluation of bids submitted by transmission developers in response to a Transmission Proposal Request partially complies with the requirements of Order No. 1000. Accordingly, MISO must make a further compliance filing revising its Tariff, as discussed below.

335. As we find above in section IV.B.2.b.iv., MISO does not distinguish between the criteria it will use to determine whether a transmission developer is qualified to submit a bid and the criteria MISO will use to evaluate the bids submitted. Thus, it is not clear how MISO will determine if a transmission developer is qualified to submit a bid and how MISO will evaluate proposed bids submitted by qualified developers. In addition, as discussed below, we find that MISO has not explained nor justified that its proposed evaluation process that would weight project costs at or less than 30 percent will properly measure the relative efficiency and cost-effectiveness of a proposed bid.

336. We will determine whether MISO's filing complies with the requirement to describe a transparent and not unduly discriminatory process for evaluating, in this case, bids submitted in response to a Transmission Proposal Request when MISO makes its further compliance filing. However, there are certain aspects of MISO's proposal that are sufficiently clear to address here.

337. We find that, as a general matter, it is appropriate for MISO to consider several factors in evaluating transmission developer bids submitted in response to a Transmission Proposal Request. MISO's current proposal states that it intends to consider four "General Criteria" to evaluate bids: (1) cost and reasonably descriptive facility design; (2) project implementation capabilities; (3) operations, maintenance, repair, and replacement capabilities; and (4) transmission provider planning process participation.⁶¹² Using several criteria to evaluate a bid under a competitive solicitation model is consistent with the Commission's finding in Order No. 1000 that incumbent public utility

⁶¹¹ *Id.* at 47-49.

⁶¹² MISO, FERC Electric Tariff, Attachment FF, § VIII.G.2 (8.0.0).

transmission providers and nonincumbent transmission developers can highlight their strengths when proposing a transmission project or submitting a bid.⁶¹³

338. However we agree with LS Power that the qualitative criteria set forth above to evaluate a transmission developer bid including project implementation capabilities criterion and the operations, maintenance, repair and replacement capabilities may be better used as a separate assessment of determining whether a transmission developer is qualified to submit a bid to develop a transmission project for selection in the regional transmission plan for purposes of cost allocation; rather than a means to evaluate the bid submitted. Order No. 1000 requires each public utility transmission provider to revise its OATT to establish appropriate qualification criteria. Such qualification criteria must provide each potential transmission developer the opportunity to demonstrate it has the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities.

339. With regard to the weight MISO proposes to assign to each evaluation criteria, MISO proposes to weigh the three non-cost-based criteria (project implementation; operations, maintenance, repair, and replacement; and planning process participation) as 70 percent of its transmission developer bid evaluation and weigh the one criterion that includes (but is not limited to) cost-based factors (cost and reasonably descriptive facility design) as only 30 percent. We find that MISO does not justify or explain why it assigned a significantly higher percentage to non-cost-based criteria and a much lower percentage to the cost-based criterion, nor does MISO explain how that assignment results in a not unduly discriminatory evaluation process. MISO may consider several factors as part of its evaluation process, but, as required by Order No. 1000, MISO must explain and justify that process as not unduly discriminatory. While the Commission recognized in Order No. 1000 that the process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation will likely vary from region to region⁶¹⁴ such evaluation must consider “the relative efficiency and cost-effectiveness of [any proposed transmission] solution.”⁶¹⁵ We are concerned that an evaluation process that considers costs as part of a single criterion, and weights that criterion at only 30 percent may not properly measure the relative efficiency and cost-effectiveness of a proposed bid.

340. Accordingly, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing that revises its Tariff to: (1) specify and distinguish

⁶¹³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 260.

⁶¹⁴ *Id.* P 323.

⁶¹⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at n. 307.

between the qualification requirements a transmission developer must meet to submit a bid in response to a Transmission Proposal Request and the evaluation requirements regarding the bids submitted by qualified transmission developers; and (2) revise its evaluation process to reflect greater weighting of costs in evaluating transmission developer bids in order to better reflect the relative efficiency and cost-effectiveness of any proposed transmission solution, or explain and justify why its proposed weighting of costs in the evaluation process complies with the requirements of Order No. 1000.

341. In its transmittal letter, MISO states that it proposes to revise the cost information requirements in its Tariff⁶¹⁶ to include: (1) that annual revenue requirements for the first 40 years of a project's in-service life will be calculated in accordance with Attachments GG and MM of the Tariff, and (2) supporting detail on the annual allocation factors used to estimate the annual revenue requirements, including operations and maintenance, general and common depreciation expense, taxes other than income taxes, income taxes, and return. MISO states that this information is necessary to provide greater transparency concerning how the costs associated with a transmission facility selected in the regional transmission plan for purposes of cost allocation are calculated for purposes of evaluating bid proposals, as well as to ensure that these costs are calculated consistently in all bid proposals and are evaluated on a not unduly discriminatory or preferential basis. However, some of the language MISO stated it proposed in its transmittal letter, referring to calculations made in accordance with Attachments GG and MM, is not included in MISO's proposed revisions to its Tariff. Therefore, we direct MISO to submit in a compliance filing, within 120 days of date of the issuance of this order, a clarification of whether it intends to include the additional proposal outlined in its transmittal letter in its Tariff, and if so, to revise its Tariff accordingly.

342. Regarding MISO's proposed one-year timeline for the bid evaluation process that ITC Companies argue is too long, MISO argues that the time is a necessary tradeoff between providing transmission developers the opportunity to develop responsive and detailed bids, and giving MISO the opportunity to thoroughly evaluate these bids. We agree with MISO's reasoning and find that the proposed six-month period to develop bids and six month period for MISO to evaluate them is a reasonable balance between the need to implement projects and the need to perform due diligence in developing and evaluating the bids.

343. Alliant Energy requests clarification from MISO as to what information MISO will provide in the report to explain the basis for designating the Selected Transmission Developer for each Open Transmission Project. In response to this request, MISO explains in its answer that, per the proposed Tariff language, MISO will provide necessary explanation about how selection decisions are made, without revealing

⁶¹⁶ See MISO, FERC Electric Tariff, Attachment FF, § VIII.D.5 (8.0.0).

confidential information.⁶¹⁷ MISO has further explained that the exact format and general content of these reports will be developed with stakeholder input and codified in a future portion of the Transmission Planning Business Practice Manual. We find that MISO has provided a sufficient explanation here of its proposed report on Selected Transmission Developers. We encourage Alliant Energy raise any concerns it may have regarding the report during the stakeholder process to ensure that Alliant Energy's views are properly considered during the drafting of the Transmission Planning Business Practice Manual.

344. We do not grant Illinois Commerce Commission's request that the Commission require all developer selection decisions to be reviewed and approved by the MISO Board. As explained by MISO, the developer selection process will be overseen by the MISO Board, like all other MISO transmission planning activities, but the MISO Board will not directly approve developer selection.⁶¹⁸ We find MISO's proposal, in which the evaluation of bid proposals will be conducted by MISO planning staff and/or independent consultants who are supervised by an oversight committee consisting of MISO executive staff with specific expertise necessary for the evaluation of bid proposals, will ensure that transmission developer bids are chosen in a transparent and not unduly discriminatory manner. In addition, an entity can raise any concern regarding the developer selection under the Tariff dispute resolution process.⁶¹⁹

ii. State Developer Selection Process

(a) MISO's Filing

345. Notwithstanding the competitive solicitation process MISO outlines in its filing, MISO proposes that states with authority to do so will have the first option to select the Qualified Transmission Developer for any Open Transmission Projects, or portion thereof, that are physically located within such state's boundaries.⁶²⁰ Under this proposal, states would be required to inform MISO of their intent to exercise this option

⁶¹⁷ MISO, FERC Electric Tariff, Attachment FF, § VIII.G.8 (8.0.0) ("Within thirty (30) calendar days of the designation of the Selected Transmission Developer, [MISO] will provide a report in which it explains the basis for designating the Selected Transmission Developer for each Open Transmission Project.").

⁶¹⁸ MISO Compliance Filing Answer at 48.

⁶¹⁹ MISO, FERC Electric Tariff, Attachment FF, § VIII.G.8 (8.0.0).

⁶²⁰ MISO Compliance Transmittal at 55; MISO, FERC Electric Tariff, Attachment FF, § VIII.B (8.0.0).

prior to approval of a particular recommended Open Transmission Project by the MISO Board, and then these states must complete their evaluation and selection within the same timeframe that MISO is allowed (i.e., one year from the posting of the Transmission Proposal Request).⁶²¹ MISO argues that if a state has a “law that establishes a right of first refusal,” it would be inefficient and wasteful to engage in a separate developer selection process in that state as the selection of a non-eligible developer in the MISO process would ultimately be rejected in the state process.⁶²²

(b) Protests/Comments

346. Several entities protest MISO’s proposal to allow states with authority the first option to select the developer for an Open Transmission Project physically located in its boundaries. ATC/Duke/Transource express concern with MISO’s proposal to assign the obligation to build to the incumbent Transmission Owner for transmission projects in states with rights of first refusal. Noting that transmission projects are commonly interstate in nature and do not necessarily terminate within or exactly at state borders, ATC/Duke/Transource state that MISO does not address situations where an Open Transmission Project is located partially in a state with a right of first refusal and partially in a state without a right of first refusal, including how the project’s development would be coordinated in regards to design standards, completion deadlines, and other important aspects. Without establishing clear rules, ATC/Duke/Transource argue that nonincumbent developers may be deterred from bidding and delays in completing the project may result.⁶²³

347. AEP states that MISO’s proposal will necessarily lead to inefficiencies, delays, uncertainty and increased costs because it essentially creates a separate qualification process at the state level.⁶²⁴ AEP states that the potential problems are exacerbated for multi-state projects, as MISO’s proposal could result in the selection of different developers for each state of a multi-state project, perhaps chosen based on differing state criteria. Thus, AEP states that if the Commission accepts this proposal, it should require

⁶²¹ MISO Compliance Transmittal at 55.

⁶²² *Id.* at 50; MISO, FERC Electric Tariff, Attachment FF, § VIII.A (8.0.0).

⁶²³ ATC/Duke/Transource Protest at 37-40.

⁶²⁴ AEP Protest at 21; *see also* LS Power Protest to MISO Compliance Filing at 21-22.

MISO to enter into agreements requiring the states to use the same criteria and approach the Commission approves for developer selection by MISO.⁶²⁵

348. Clean Line, LS Power, and ATC/Duke/Transource express concern that MISO's proposal will undermine the identification and evaluation of more efficient or cost-effective alternatives and could potentially result in unjust and unreasonable rates or undue discrimination by public utility transmission providers.⁶²⁶ At a minimum, ATC/Duke/Transource believe that the dispute resolution process should be available as part of the state selection process.⁶²⁷ LS Power states that MISO's proposal would make the state commission's process subject to Commission jurisdiction to determine whether it complies with Order No. 1000, which may not be acceptable to state commissions.⁶²⁸ ITC Companies assert that the process should assume that MISO will choose the developer unless preempted by local laws or regulations.⁶²⁹ Similarly, AEP states that MISO could evaluate bids, and the states could make final selections from among the qualifying bidders based on a full record developed by MISO.⁶³⁰

349. ATC/Duke/Transource seek clarification with respect to section VIII.G.1(3) of Attachment FF, which proposes that if a state initially opts to select a developer, but does not complete the selection process within the 360 day time period, MISO will step in to complete the selection process. ATC/Duke/Transource argue that MISO provides no guidance on how MISO's assumption of the selection process would occur, nor what will happen to the state process that is underway.⁶³¹ LS Power contends that specific language in proposed section VIII.B of Attachment FF, including the reference that "a state with the authority to do so may elect to determine the Selected Transmission Developer," is vague and should be revised to specify the authority needed for a state to

⁶²⁵ AEP Protest at 21-22.

⁶²⁶ *See* Clean Line Protest at 8; LS Power Protest to MISO Compliance Filing at 21; ATC/Duke/Transource Protest at 41.

⁶²⁷ ATC/Duke/Transource Protest at 41 (citing MISO, FERC Electric Tariff, Attachment FF, VIII.G.8 (8.0.0)).

⁶²⁸ LS Power Protest to MISO Compliance Filing at 20-21.

⁶²⁹ ITC Companies Comments to MISO Compliance Filing at 9-10.

⁶³⁰ AEP Protest at 21-22.

⁶³¹ ATC/Duke/Transource Protest at 41.

conduct the selection.⁶³² Illinois Commerce Commission states that MISO has not explained whether a state that exercises its option to evaluate bids and select the winning bidder in MISO's competitive developer selection process will be eligible to access these deposit funds to offset its expenses, and, if so, how that process will work.⁶³³

(c) **Answer**

350. MISO states that its proposed Tariff revisions achieve a reasonable balance between deference to state requirements and observance of the Commission's mandates regarding the transmission planning process. MISO asserts that Order No. 1000 permits states to participate in the developer selection process.⁶³⁴

(d) **Commission Determination**

351. We find that MISO's proposal does not comply with Order No. 1000. Accordingly, we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to eliminate provisions in its Tariff that allows a state to select the transmission developer of a transmission facility selected in the regional transmission plan for purposes of cost allocation.

352. Order No. 1000 requires public utility transmission providers in a region to make the decision to choose which developer may allocate the cost of such projects through the regional cost allocation method. For example, Order No. 1000 provides, "[w]hether or not public utility transmission providers within a region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is an efficient or cost-effective solution to their needs."⁶³⁵ In addition, Order No. 1000-A states, "Order No. 1000 . . . requires public utility transmission providers in a region to adopt transparent and not unduly discriminatory criteria for selecting a new transmission project in a regional transmission plan for purposes of cost allocation."⁶³⁶

353. Order No. 1000 also requires that a nonincumbent transmission developer of a transmission facility selected in the regional transmission plan for purposes of cost

⁶³² LS Power Protest to MISO Compliance Filing at 22.

⁶³⁴ MISO Compliance Filing Answer at 29-32.

⁶³⁴ MISO Compliance Filing Answer at 29-32.

⁶³⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331.

⁶³⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at P 455.

allocation must have the same opportunity as an incumbent transmission developer to allocate the cost of such transmission facilities through the regional cost allocation method.⁶³⁷ Moreover, Order No. 1000 discusses two ways the public utility transmission providers in a transmission planning region could address developers: (1) by allowing the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project, or (2) by using a nondiscriminatory competitive bidding process as the mechanism to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation. Order No. 1000 does not foreclose other possibilities as well. Finally, if the public utility transmission providers in a transmission planning region adopt a sponsorship model, Order No. 1000 requires that the regional transmission planning process have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.⁶³⁸

354. Therefore, we find that MISO must include a developer selection process such as the evaluation process discussed above whereby the public utility transmission providers in the region ultimately decide which developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. We agree that, to the extent that state regulatory authorities want to participate, they are able to participate. However, the Commission has the responsibility to ensure that the rates, terms and conditions of service provided by public utility transmission providers are just and reasonable and not unduly discriminatory or preferential and that public utility transmission providers comply with our rules and regulations enacted to meet this responsibility. Thus, the Commission is responsible for ensuring that public utility transmission providers in a region adopt transparent and not unduly discriminatory criteria for selecting a new transmission project in a regional transmission plan for purposes of cost allocation. The role of state regulatory authorities must be to provide guidance and recommendations and must be defined in the Tariff. For instance, a state entity or regional state committee can consult, collaborate, inform, and even recommend a developer that is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation, but the public utility transmission providers in a transmission planning region must make the selection decision with respect to the developer, not the state entity or regional state committee.

⁶³⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 335.

⁶³⁸ *Id.* P 336.

e. **Reevaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation**

355. Each public utility transmission provider must amend its tariff to describe the circumstances and procedures under which public utility transmission providers in the regional transmission planning process will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative transmission solutions, including those that the incumbent transmission provider proposes, to ensure the incumbent transmission provider can meet its reliability needs or service obligations.⁶³⁹ If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.⁶⁴⁰

i. **MISO's Filing**

356. MISO states that it has revised its Tariff to describe circumstances and procedures to reevaluate the regional transmission plan by conducting a Variance Analysis⁶⁴¹ to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation, including delays in achieving state regulatory approvals, would require the evaluation of alternative solutions, including those proposed by the incumbent Transmission Owners to ensure they can meet their reliability needs or service obligations.⁶⁴² In order to account for changes that may occur during the implementation of new transmission facilities, MISO proposes to expand the reevaluation process required by Order No. 1000 to also consider the impacts of changes in cost or developer qualifications for projects evaluated through the selection process.⁶⁴³

⁶³⁹ *Id.* PP 263, 329; Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

⁶⁴⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

⁶⁴¹ MISO, FERC Electric Tariff, § 1.692a (Variance Analysis) (0.0.0).

⁶⁴² MISO Compliance Transmittal at 57 (citing MISO, FERC Electric Tariff, Attachment FF, § IX (8.0.0)).

⁶⁴³ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, §§ IX.A.1, IX.A.3 (8.0.0)).

MISO states that the reevaluation process will begin at the assignment of a project to a Selected Transmission Developer, and it will conclude when the project construction begins. MISO states that this reevaluation timeframe will provide clarity to transmission developers on the risk they will face if cost or schedule drivers change while they are implementing the project. MISO notes that the end point of the timeframe does not preclude the ongoing analysis of delays after construction has begun to ensure system reliability, nor does it suspend the developer's obligation to build after this point.⁶⁴⁴

357. MISO states that it will determine the need for an initial Variance Analysis through the collection of project and developer status updates.⁶⁴⁵ MISO plans to collect and, to the extent the updates contain public information, post these updates for stakeholders on a quarterly basis, unless otherwise identified by the MISO Board.⁶⁴⁶ Upon the receipt of a status update that denotes significant changes in the schedule or cost of a transmission project or which shows changes to a transmission developer's qualifications, MISO proposes to perform an initial Variance Analysis to determine the high level potential impact of the identified changes. This analysis would determine if the changes may cause harm to the system, and MISO states that it will flag changes of this nature for full reevaluation. During full reevaluation, MISO proposes to perform full analyses to determine the impact of the changes to a project or transmission developer. At the conclusion of reevaluation, MISO states that it will determine if any changes to the project or developer are necessary, or it may recommend no changes to either item.⁶⁴⁷

358. MISO specifies that, under its proposed Tariff revisions, the following criteria would trigger a Variance Analysis and potential reevaluation: (1) cost increases; (2) schedule delays; and (3) deviation from Selected Transmission Developer characteristics or qualifications.⁶⁴⁸ First, MISO explains that any project cost increase

⁶⁴⁴ *Id.*. Attachment FF of the Tariff requires transmission owners and selected transmission developers to report the status of all projects selected for inclusion in the regional transmission plan, even after construction has begun. Such reports must, at a minimum, include any changes to the schedule or estimated costs, an explanation of the causes of those changes, and changes in project status. *See* MISO, FERC Electric Tariff, Attachment FF, § I.C.11 (8.0.0).

⁶⁴⁵ Selected Transmission Developers must submit periodic status reports upon reaching pre-designated milestones in the project implementation process or at MISO's request. MISO, FERC Electric Tariff, Attachment FF, § I.C.i.11 (8.0.0).

⁶⁴⁶ MISO Compliance Transmittal at 57-58.

⁶⁴⁷ *Id.* at 58 (citing MISO, FERC Electric Tariff, Attachment FF, § IX.C (8.0.0)).

⁶⁴⁸ *Id.*

that reduces the benefit to cost ratio of an economically-driven Open Transmission Project to less than the required benefit-to-cost threshold will trigger a Variance Analysis and potential reevaluation to determine if the project retains sufficient benefits, as compared to its updated costs, to continue.⁶⁴⁹ Second, MISO states that a reported or otherwise identified delay of six months or more from the in-service date established in MTEP, Appendix A will trigger a Variance Analysis and potential reevaluation to determine whether delays would require the evaluation of alternative solutions, a reliability mitigation plan, and/or an updated implementation plan.⁶⁵⁰ Finally, MISO states that any material changes in the characteristics or qualifications of a Selected Transmission Developer will trigger a Variance Analysis and potential reevaluation to determine if the changes impact the ability of the developer to implement, own, operate, maintain, or restore the transmission facilities.⁶⁵¹

359. At the conclusion of any necessary reevaluation, MISO states that it would determine whether a reliability mitigation plan, project cancellation, or developer reassignment would be necessary to ensure reliable operation of the transmission system and maintain just and reasonable rates.⁶⁵² First, MISO explains that if its analysis determines that system reliability may be adversely affected by the delay of an assigned Open Transmission Project, then MISO would coordinate with the impacted Transmission Owner(s) to develop a mitigation plan to address the violation. MISO states that such mitigation measures may include, but are not limited to, the development of an updated project implementation plan, an operating procedure to maintain near term reliability, an alternative project to mitigate the reliability violation, and/or developer reassignment. MISO states that it would support and coordinate with the affected Transmission Owner(s) when such mitigation plans are needed.⁶⁵³

⁶⁴⁹ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, §§ IX.A.1, B.1 (8.0.0)).

⁶⁵⁰ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, §§ IX.A.2, B.2 (8.0.0)).

⁶⁵¹ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, §§ IX.A.3, B.3 (8.0.0)).

⁶⁵² Other proposed reevaluation outcomes would be to make no change to the Open Transmission Project or to implement any other remedy that is appropriate under the circumstances, including a combination of the other alternatives. *Id.* at 59; MISO, FERC Electric Tariff, Attachment FF, § IX.C (8.0.0).

⁶⁵³ *See* MISO Compliance Transmittal at 59; MISO, FERC Electric Tariff, Attachment FF, § IX.C.3 (8.0.0).

360. Second, MISO proposes to evaluate cost increases in projects driven by economic benefits to ensure that the project will still provide sufficient value to justify its continued construction and result in just and reasonable rates. Under the proposed Tariff revisions, in a situation where cost increases cause the overall benefit to cost ratio to decrease to the point where a project will no longer bring value greater than its costs, MISO may cancel the project. Prior to the cancellation of any project, MISO states that it would determine whether cancellation would cause reliability concerns and would document any additional benefits, such as public policy needs, that may justify the continuation of the project.⁶⁵⁴ MISO argues that this reevaluation, in conjunction with the developer reassignment provisions described below, will ensure that the costs submitted with the developer proposals are developed through a robust process that results in reasonable estimates because a subsequent change in cost may lead to the project cancellation and/or the developer reassignment.⁶⁵⁵

361. Finally, if a Selected Transmission Developer is unable to implement the project as directed by MISO or it becomes clear that once implemented, the developer may be unable to operate, maintain, or restore the transmission line for which they were selected, MISO proposes to reassign the selected transmission developer to ensure that the transmission project is implemented in a timely manner.⁶⁵⁶ MISO states that, in instances where the Selected Transmission Developer is unable to fulfill the responsibilities, MISO would first offer the transmission project to the incumbent Transmission Owner, allowing for an expedited in-service date because the incumbent Transmission Owner would be able to draw upon its local experience to implement the project in the most efficient manner possible. In the event that the incumbent Transmission Owner is unable or uninterested in completing the transmission project, MISO proposes to assign the transmission project to a new transmission developer pursuant to the proposed MISO developer selection process.⁶⁵⁷ MISO notes that it would also determine whether the delay caused by developer reassignment would create reliability concerns. If so, MISO proposes to develop a mitigation plan, in coordination with the affected Transmission Owner(s), to clarify the mitigation actions and responsibilities, including, without limitation, the development of an updated project implementation plan, an operating

⁶⁵⁴ MISO Compliance Transmittal at 59 (citing MISO, FERC Electric Tariff, Attachment FF, § IX.C.2 (8.0.0)).

⁶⁵⁵ *Id.* at 59-60.

⁶⁵⁶ *Id.* at 60 (citing MISO, FERC Electric Tariff, Attachment FF, § IX.C.1 (8.0.0)).

⁶⁵⁷ *Id.*

procedure to maintain near-term reliability, an alternative project to mitigate the reliability violation, and/or developer reassignment.⁶⁵⁸

ii. Protests/Comments

362. Several commenters express concern with MISO's proposed threshold for reevaluation of project costs. ATC/Duke/Transource argue that the proposed evaluation process will not ensure that the actual cost estimates provided in a transmission developer's bid are accurate.⁶⁵⁹ ATC/Duke/Transource and Alliant Energy state that MISO proposes to evaluate the ongoing cost estimate of a project once development begins and the variance from the initial estimate by determining whether the current project benefit-cost ratio remains above the benefit-cost threshold for cost-sharing eligibility, not by monitoring the actual cost estimate.⁶⁶⁰ ATC/Duke/Transource and Illinois Commerce Commission argue that MISO's proposal allows for significant changes in the cost estimate of a project from the estimate provided in the bid if the benefit-cost ratio is still above the minimum required threshold for a particular cost allocation methodology.⁶⁶¹ Moreover, Illinois Commerce Commission expresses concern that MISO allows itself to identify additional new benefits.⁶⁶² Alliant Energy argues that these measures offer little encouragement for a developer to diligently focus on cost overruns as long as the project continues to support the minimum benefit-to-cost criteria.⁶⁶³ Further, ATC/Duke/Transource argue that this approach could create the

⁶⁵⁸ *Id.*

⁶⁵⁹ ATC/Duke/Transource Protest at 42 (citing Direct Testimony of Jennifer Curran, Exhibit to MISO Compliance Transmittal, at 33 (MISO Compliance Curran Test.)).

⁶⁶⁰ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § I.X (8.0.0); MISO Compliance Transmittal at 58); Alliant Energy Comments at 7.

⁶⁶¹ Illinois Commerce Commission Comments to MISO Compliance Filing at 55-56, n.142 (citing MISO, FERC Electric Tariff, Attachment FF, § IX.A.1 (8.0.0)).

⁶⁶² *Id.* at 55-56, n.143 (citing MISO Compliance Transmittal at 58) ("These benefits may include, but are not limited to, the originally defined economic benefits, reliability benefits, and public policy benefits."). Illinois Commerce Commission argues that adding further ambiguity is that MISO does not have any specified methods for quantifying reliability benefits or public policy benefits; consequently, there will be no way to prove that MISO has improperly quantified such benefits. *Id.*

⁶⁶³ Alliant Energy Comments at 7, n.6 (citing MISO, FERC Electric Tariff, Attachment FF, § IX.A.1 (8.0.0)).

opportunity for transmission developers to submit intentionally low cost estimates in bids to win the project, potentially leading to unjust and unreasonable rates even if the benefit-cost ratio remains above the threshold.⁶⁶⁴ In addition, Illinois Commerce Commission states that MISO's proposal with respect to threshold cost increases is contradictory because MISO states in the Project Reevaluation section⁶⁶⁵ that it will compare the project's "current cost estimate" with the project's "currently estimated benefit," but it also states in the Project Cancellation section⁶⁶⁶ that it will compare the "currently estimated cost" against the "previously defined benefits."⁶⁶⁷

363. ATC/Duke/Transource argue that MISO should evaluate the variance between the current actual cost estimate of a project and the original cost estimate, in addition to the benefit-cost threshold, when reviewing a project's status after it is awarded to a developer. Further, to discourage developers from submitting low cost estimates in bids, ATC/Duke/Transource suggest that MISO establish an appropriate cost evaluation mechanism for Open Transmission Projects in a stakeholder process, such as revisiting a project that has exceeded a certain percentage increase above the cost estimate when the project was approved in MTEP.⁶⁶⁸ Similarly, Organization of MISO States submits that MISO should develop more cost estimate-based reevaluation triggers, recommending that all MISO Projects that are cost shared or are estimated to cost greater than \$25 million should have a reevaluation trigger related to new cost estimates of 20 percent or more from their cost estimate at the time of MISO approval. Organization of MISO States further suggests that once a project has undergone reevaluation, that project should be eligible for reevaluation again if its cost estimates increase 20 percent more from the cost estimate at the time of reevaluation.⁶⁶⁹ Organization of MISO States argues that MISO scrutiny of costs must include sufficient reevaluation, on-going cost review, and other cost containment measures, which must be included as part of MISO's compliance filing.⁶⁷⁰ Illinois Commerce Commission asserts that MISO's proposed reevaluation of selected developer designations is inadequate and the Commission should direct MISO to

⁶⁶⁴ ATC/Duke/Transource Protest at 43.

⁶⁶⁵ MISO, FERC Electric Tariff, Attachment FF, § IX.B (8.0.0).

⁶⁶⁶ MISO, FERC Electric Tariff, Attachment FF, § IX.C.2 (8.0.0).

⁶⁶⁷ Illinois Commerce Commission Comments to MISO Compliance Filing at 55.

⁶⁶⁸ ATC/Duke/Transource Protest at 43.

⁶⁶⁹ Organization of MISO States Comments at 22.

⁶⁷⁰ *Id.* at 15.

reinitiate the stakeholder process to correct deficiencies.⁶⁷¹ Alliant Energy requests the addition of improved cost control measures, such as a cost cap on a proposed developer's project bid that limits the amount to be recovered for a project and would require that any expenditures incurred over the set cap be explained, verified and accepted through a transparent stakeholder approval process to help preserve the integrity of cost estimates and protect customers from imprudent expenditures while discouraging low cost estimates.⁶⁷²

364. Organization of MISO States acknowledges that MISO's cost estimate-based reevaluation approach for MEPs and MVPs is a modest step in terms of cost containment.⁶⁷³ However, Illinois Commerce Commission and Organization of MISO States contend that MISO's proposal does not specify how other cost increases, besides those listed as "Grounds for Variance Analysis,"⁶⁷⁴ would trigger a reevaluation for an Open Transmission Project (i.e., MEPs and MVPs) and also argue that there is no cost estimation trigger for reevaluation of any other project type, such as Baseline Reliability Projects.⁶⁷⁵ Thus, Illinois Commerce Commission contends that allowable cost increases for those project types appear to be unlimited. Organization of MISO States contends that projects included in future MVP portfolios should also be subject to potential reevaluation. Acknowledging that it may be unlikely that an MVP that was part of a portfolio may be cancelled as part of a reevaluation, Organization of MISO States submits that it is possible in rare situations when there are significant changes to the cost

⁶⁷¹ Illinois Commerce Commission Comments to MISO Compliance Filing at 56.

⁶⁷² Alliant Energy Comments at 7.

⁶⁷³ According to Organization of MISO States, this proposed approach requires that if a MEP has reached a cost estimate where the benefit-to-cost ratio is less than 1.25, the project will be reevaluated, and if an economically justified MVP has a benefit-to-cost ratio of less than one after project cost increases, the project will be reevaluated. Organization of MISO States Comments at 22 (citing MISO Compliance Transmittal at 59; MISO, FERC Electric Tariff, Attachment FF, § IX (8.0.0)).

⁶⁷⁴ MISO, FERC Electric Tariff, Attachment FF, § IX.A (8.0.0)).

⁶⁷⁵ Illinois Commerce Commission Comments to MISO Compliance Filing at 55-56, n.142 (citing MISO, FERC Electric Tariff, Attachment FF, § IX.A.1 (8.0.0)); Organization of MISO States Comments at 22.

estimate and, in that circumstance, it may be prudent to investigate whether alternate transmission projects exist to fit the needs of that MVP portfolio.⁶⁷⁶

365. Organization of MISO States recommends that MISO further investigate the causes for transmission project cost estimation increases for reevaluations based on cost estimation increases and prepare a report for stakeholders on why the project cost estimate increased⁶⁷⁷ and should prepare a similar report for stakeholders after any reevaluation for schedule delays or “deviation from selected transmission developer qualifications” in order to improve the transparency of the MISO planning process.⁶⁷⁸

366. Organization of MISO States and Illinois Commerce Commission contend that the need for a previously approved project should be reevaluated. Organization of MISO States submits that at the time of significant cost increases MISO, with input from stakeholders, should evaluate whether a project is still needed. Currently, if circumstances change, MISO does not re-examine the continued need for the transmission facility, allowing associated costs to be added to rate base regardless of the lack of an actual need.⁶⁷⁹ Illinois Commerce Commission states that once the MISO Board approves inclusion of a project in MTEP Appendix A, the basis upon which that project was approved is never reevaluated, even if system conditions applicable to the project change dramatically. Similarly, if circumstances change, such as the siting of a new generator or increase in demand response programs in a location whose need was to be addressed by a new transmission facility in the MTEP, Illinois Commerce Commission argues that MISO does not reexamine the continued need for the transmission facility and lets such projects be added to rate base regardless of the lack of

⁶⁷⁶ For example, an MVP project chosen with a cost estimate based on a design going through an environmentally sensitive area could be rerouted to avoid such an area, thus causing significant cost increases. This “reroute” could involve the selection of an entirely different project, probably near the reevaluated MVP. Organization of MISO States Comments at 22-23.

⁶⁷⁷ *Id.* at 23-24.

⁶⁷⁸ *Id.*

⁶⁷⁹ For example, when the recent economic recession hit and load forecasts dropped dramatically, no re-examination was conducted to check if transmission projects previously approved with established in-service dates would still be needed by the forecasted in-service dates, or even needed at all. *Id.* at 24.

an actual need.⁶⁸⁰ Illinois Commerce Commission states that more attention must be paid to the ratepayers who ultimately bear the costs of MISO's decisions.⁶⁸¹

367. Noting that the proposed definition of Open Transmission Project⁶⁸² allows it to contain both new and current transmission facilities and that the reevaluation process does not differentiate between the new and current transmission facilities in determining what cost increases trigger a reevaluation,⁶⁸³ Organization of MISO States is concerned about the possibility of a hypothetical Open Transmission Project that would be a combination of both a new transmission line or other new transmission facilities and upgrades by an incumbent Transmission Owner on its existing facilities.⁶⁸⁴ Organization of MISO States contends that if this hypothetical project was a MEP, MISO would need to be able to determine the cause of cost increases to determine whether the incumbent working on its own facilities was the cause of cost increases or whether construction of the new facilities caused the cost increase to trigger a reevaluation. Organization of MISO States suggests that the Commission direct MISO to track costs of any Open Transmission Project in a way to determine whether upgrades to existing facilities or new transmission facilities are enough to trigger a reevaluation; and determine that only cost increases of new facilities are eligible to trigger such a reevaluation.⁶⁸⁵

368. Organization of MISO States argues that MISO is not currently archiving its project status reports, containing the cost estimates of projects after the MISO Board has approved the project for cost allocation purposes. Organization of MISO States believes that MISO should be required to post all quarterly status reports on its website on a going forward, not just the current quarterly status report, allowing stakeholders to better

⁶⁸⁰ Illinois Commerce Commission Comments to MISO Compliance Filing at 56-57.

⁶⁸¹ *Id.* at 57.

⁶⁸² MISO, FERC Electric Tariff, § 1.477a (Open Transmission Project) (0.0.0).

⁶⁸³ Organization of MISO States Comments at 26.

⁶⁸⁴ *Id.* (explaining that upgrades to existing facilities are one of the exceptions to the requirement in Order No. 1000 to remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements).

⁶⁸⁵ *Id.* at 27.

understand how cost estimates for projects change over time and increasing the transparency of the MISO planning process.⁶⁸⁶

369. Organization of MISO States expresses concern with MISO's proposed change to its cost tracking system⁶⁸⁷ to require a developer to update project costs only “upon solicitation from MISO and upon reaching pre-designated milestones in the project.”⁶⁸⁸ To assure adequate and timely review of project costs, Organization of MISO States argues that after MISO approves a transmission project, the developer should update its cost estimate for all cost shared projects and any project greater than \$25 million on a quarterly basis, not just at “milestones” which may only occur twice after project approval.⁶⁸⁹ Further, Organization of MISO States and ATC/Duke/Transource assert that more detail is needed regarding exactly when milestones would occur or what the project “pre-designated milestones” would be.⁶⁹⁰ Organization of MISO States contends that if the Commission accepts MISO’s proposal on “pre-designated milestones,” the Commission should direct MISO to identify the pre-designated milestones.⁶⁹¹ Similarly, ATC/Duke/Transource recommends that MISO ensure that there are consistent references to “milestones” and “timetables” throughout the Tariff.⁶⁹²

370. In addition to directing MISO to require quarterly cost estimates by Transmission Owners, Organization of MISO States argues that MISO should: (1) permit stakeholders to submit questions concerning cost changes greater than 20 percent of all cost-shared projects and all other projects greater than \$25 million to the Transmission Owner responsible for the project, and (2) require Transmission Owners to provide, within 20 days, written answers to those questions.⁶⁹³

⁶⁸⁶ *Id.* at 18.

⁶⁸⁷ MISO, FERC Electric Tariff, Attachment FF, § I.A.11 (8.0.0).

⁶⁸⁸ Organization of MISO States Comments at 18-19 (citing MISO Compliance Transmittal at 57).

⁶⁸⁹ *Id.* at 19, 21.

⁶⁹⁰ ATC/Duke/Transource Protest at 47.

⁶⁹¹ Organization of MISO States Comments at 19.

⁶⁹² ATC/Duke/Transource Protest at 47.

⁶⁹³ Organization of MISO States Comments at 21.

371. Organization of MISO States recommends that MISO establish a stakeholder group that would make reevaluation recommendations on which of the five reevaluation options MISO should pursue and review project cost estimates of reevaluated projects. Organization of MISO States argues that MISO's current compliance filing lacks stakeholder involvement and sufficient transparency to ensure that proper decisions are made and regular reevaluation occurs.⁶⁹⁴

372. LS Power states that it reads the provision of section VIII.G(8) of the MISO Tariff as permitting the Selected Transmission Developer to defer moving forward with a project until a dispute is resolved. Although LS Power agrees that there should be a forum for resolving disputes related to MISO's application of the planning and selection criteria, LS Power is concerned that the provision could allow, and even encourage, litigation for strategic advantage. LS Power therefore requests that the Commission require MISO to affirmatively state that any delay resulting from disputes shall not subject the Selected Transmission Developer to reassignment of the project either during the period of the dispute or any time thereafter.⁶⁹⁵

373. Organization of MISO States expresses concern that the MISO Transmission Owners currently can transfer the right to build any project approved by the MISO Board to an affiliate without any stakeholder or MISO staff review,⁶⁹⁶ and argues that MISO's compliance filing would continue to allow a Transmission Owner to transfer the right to construct a transmission project to an affiliate, even if the right to build the project was earned through the proposed transmission developer selection process, with the only limitation being that the affiliate is able to construct and own the transmission project. Organization of MISO States argues that companies that are selected in MISO's proposed transmission developer selection process should not be allowed to transfer the right and obligation to construct a project to an affiliate without a demonstration that ratepayers will be held harmless by the transfer; and the transfer is in the public interest. Absent these demonstrations, Organization of MISO States asserts that, where the Transmission Owner was chosen through the MISO's process, transferring the right to build to an affiliate should require the affiliate to enter and be chosen through a new transmission developer selection process.⁶⁹⁷ Otherwise, Organization of MISO States argues that

⁶⁹⁴ *Id.* at 25.

⁶⁹⁵ LS Power Protest to MISO Compliance Filing at 33-34.

⁶⁹⁶ Organization of MISO States clarify that their comments do not address the right to transfer ownership of an already constructed transmission project nor are they intended to have impact on any state law requirements relating to transactions between affiliates. Organization of MISO States Comments at 28.

⁶⁹⁷ *Id.* at 28-29.

allowing an affiliate transfer would nullify the proposed transmission developer selection process and subvert the purpose of this competitive bidding process.⁶⁹⁸ Organization of MISO States questions how a different entity, such as an affiliate would remain qualified if MISO or the state choosing the transmission developer has never determined the affiliate to be qualified.⁶⁹⁹

374. According to Organization of MISO States, MISO proposed in the stakeholder process leading up to its compliance filing not to allow affiliated companies to submit separate bids for the same transmission project and to only allow each entity or holding company to submit one bid for the transmission project. Organization of MISO States supports a single exception to this policy where the holding company submits one “fixed cost bid” (only able to recover the costs of that bid) and one “non-fixed cost bid” (to be able to recover other prudent costs above that bid). Organization of MISO States requests that the Commission direct MISO to include this commitment in a future compliance filing, as well as its suggested exception.⁷⁰⁰ Organization of MISO States also seeks clarification from the Commission as to how Commission-approved ROEs interact with the new competitive bidding process contemplated by MISO, posing the following questions: (1) should developers file at the Commission first to obtain an ROE before they submit a project into the MISO process; (2) may a developer voluntarily commit to a lower ROE in its bid; and (3) should developers file at the Commission as a transmission developer and obtain a “market rate” ROE, which would only be determined in an RTO bidding process? Organization of MISO States expresses concern that an ROE submitted in the MISO bidding process may be subsequently changed by the Commission, stating that if a developer voluntarily submits a lower ROE as part of its bid, the developer should be held to that submitted ROE, even if a higher ROE has been granted by the Commission. It seeks confirmation from the Commission that it would uphold the lower ROE submitted in a developer’s bid and not grant a higher ROE as part of its transmission rate incentive policy.⁷⁰¹

iii. Answer

375. In its answer, MISO addresses several commenter concerns regarding its proposed reevaluation process. In response to commenter concerns regarding the frequency with which selected developers should be required to provide project updates, MISO clarifies

⁶⁹⁸ *Id.* at 30.

⁶⁹⁹ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § IX.B.3 (8.0.0)).

⁷⁰⁰ *Id.* at 30-31.

⁷⁰¹ *Id.* at 27.

that its Tariff currently requires quarterly reports from all projects recommended for implementation in the MTEP. MISO further clarifies that its proposed Tariff changes are not intended to limit Transmission Owners from submitting quarterly reports, but to capture the points in the implementation process where changes in cost and schedule are likely to be realized.⁷⁰²

376. Responding to commenters who question whether the cost-based reevaluation criteria proposed by MISO are sufficient, MISO reiterates that the goal of its proposed cost-based reevaluation is to determine if economic based projects still have sufficient merit to warrant construction.⁷⁰³ MISO states that the reevaluation process is not intended to be a substitute for any other discussion of cost based increases outside of the context of reevaluation or project cancellation, especially in conjunction with an enhanced project status report method. MISO does caution, however, that much of the cost data that may be collected from developers is competitively sensitive, so it may be inappropriate to use a stakeholder committee to obtain and assess this data as recommended by Organization of MISO States.⁷⁰⁴

377. MISO restates that the purpose of its developer-based reevaluation criteria is intended to determine if a developer is still able to implement, operate, maintain, repair, and restore the transmission facilities. Responding to comments that reevaluation should not be triggered if delays result from pending dispute resolution proceedings, MISO also restates that any significant project delay must be evaluated to determine if it will threaten reliability, regardless of the genesis of the delay.⁷⁰⁵

378. MISO disagrees with commenters who contend that MISO should consider a more comprehensive reevaluation process that assesses whether previously approved projects have become unnecessary because of changes in system conditions. MISO argues that nothing in Order No. 1000 requires the reevaluation process to consider whether a project, even without delay, is no longer needed.⁷⁰⁶ MISO asserts that it is unlikely projects in its planning process would need to be evaluated for reasons other than a material delay in their implementation, explaining that the MTEP is designed to identify transmission projects representing a “least regrets” solution to anticipated needs. This

⁷⁰² MISO Compliance Filing Answer at 61.

⁷⁰³ *Id.* at 63 (citing MISO Compliance Curran Test. at 40).

⁷⁰⁴ *Id.*

⁷⁰⁵ *Id.* at 64-65.

⁷⁰⁶ *Id.* at 65.

method identifies those projects which provide the most benefits under the most future conditions, while also considering stakeholder-proposed projects and alternatives.⁷⁰⁷ In addition, MISO argues that its Tariff and Transmission Owners Agreement provide an obligation for designated Transmission Owners or selected transmission developers to construct the facilities they are designated to construct, thus providing a parallel assurance that such facilities are reasonable.⁷⁰⁸ MISO contends that with the rapid variation in load forecasts based on economic conditions, requiring reevaluation of all approved projects due to possible variations in assumptions is unreasonable and imposes unreasonable risk on the Transmission Owner or selected transmission developer. Finally, MISO states that, in its experience, transmission lines driven by load growth are ultimately needed so any changes due to reevaluation would be negligible compared to the risks and uncertainty reevaluation would create.⁷⁰⁹

379. Regarding Organization of MISO States' comments on developer proposal limitations, MISO argues that any attempt to limit the submission of proposals to one proposal per entity would require either defining entities so narrowly as to limit the participation of any stakeholder in multiple proposals, or broadly enough to enable companies to form multiple limited liability corporations to submit multiple proposals. MISO argues for this reason, limitations on proposal submission were not included in the MISO proposal.⁷¹⁰

iv. Commission Determination

380. Order No. 1000 requires each public utility transmission provider to amend its tariff to describe the circumstances and procedures under which public utility transmission providers in the regional transmission planning process will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative transmission solutions.⁷¹¹ If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement within its retail

⁷⁰⁷ *Id.* at 66.

⁷⁰⁸ *Id.*

⁷⁰⁹ *Id.* at 67.

⁷¹⁰ *Id.* at 51.

⁷¹¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 263, 329; Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation. We find that MISO's proposal regarding the reevaluation of proposed transmission projects partially complies with the requirements of Order No. 1000. Accordingly, MISO must make a further compliance filing revising its Tariff, as discussed below.

381. MISO will require Selected Transmission Developers to submit periodic status reports and conduct a Variance Analysis if there is a reported or otherwise identified delay of six months or more, which will determine if the delay necessitates a full reevaluation.⁷¹² If the Variance Analysis indicates the delay requires a full reevaluation, MISO will perform an analysis to determine if the delay poses risks of adverse impact on MISO's transmission system reliability and what mitigation measures and plan should be implemented.⁷¹³ We find that this is a reasonable approach to dealing with the reevaluation of proposed transmission projects, subject to the further compliance filing directives below.

382. We dismiss Organization of MISO States' concerns related to project reporting, because we find that MISO's proposed reporting requirements, in addition to the project reporting requirements currently required by MISO's Tariff,⁷¹⁴ are sufficient for the purposes of monitoring the potential need to reevaluate transmission projects. However, we agree with Organization of MISO States and ATC/Duke/Transource that the proposed Tariff language contains insufficient explanation of "pre-designated milestones." We therefore direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing to provide more detail about what these milestones might consist of, how they will be established, and whether they are consistent with other references to milestones and timetables in the Tariff. We also agree that MISO should post all quarterly reports and not just the most recent report.

383. We note that Order No. 1000 does not require public utility transmission providers to reevaluate transmission projects based on cost requirements but allows a public utility

⁷¹² MISO, FERC Electric Tariff, Attachment FF, § IX.A.2 (8.0.0).

⁷¹³ MISO, FERC Electric Tariff, Attachment FF, § IX.B.2 (8.0.0).

⁷¹⁴ MISO currently requires quarterly reports from all projects recommended for implementation in the MTEP, which are consolidated and posted on the MISO website, *available at*:
<https://www.midwestiso.org/Planning/TransmissionExpansionPlanning/Pages/MTEPStudies.aspx>.

transmission provider to include cost containment provisions in its compliance filing.⁷¹⁵ Here, MISO proposes to reevaluate projects based on cost increases. For example, under the MISO's proposal, any project increase that reduces the benefit to cost ratio of an economically-driven Open Transmission Project to less than the required benefit-cost threshold will trigger a Variance Analysis and potential reevaluation. We accept MISO's proposal to include consideration of cost in its reevaluation criteria, and reject requests by protestors to require MISO to include more stringent cost-based reevaluation criteria given that the Commission in Order No. 1000 explicitly declined to require a cost containment component in compliance filings.⁷¹⁶

384. Illinois Commerce Commission requests that MISO be required to go beyond the Order No. 1000 requirement to reevaluate the regional transmission plan in response to delays and to also reexamine the continued need for a transmission project even after it has been selected in the regional transmission plan for purposes of cost allocation and included in Appendix A of the MTEP. We agree with MISO that Order No. 1000 does not require a reevaluation process for reasons other than for a delay. Therefore, we reject Illinois Commerce Commission's argument as outside the scope of this proceeding.

385. We dismiss LS Power's request that the Commission require MISO to exempt from transmission developer reassignment any transmission project that is delayed as a result of disputes. Such an exemption would not comply with Order No. 1000, which requires that any significant transmission project delay must be evaluated to determine if it may potentially adversely affect an incumbent transmission provider's ability to fulfill its reliability needs or service obligations.⁷¹⁷

386. We dismiss ATC/Duke/Transource's proposal that MISO should evaluate the variance between the current actual cost estimate of a transmission project and the original cost estimate, when reviewing a transmission project's status after it is awarded. The purpose of MISO's variance analysis is to determine if delays in the development of a transmission facility selected in the regional plan for purposes of cost allocation require reevaluation of alternative transmission solutions. We do not see ATC/Duke/Transource's request as necessary to this requirement.

387. Organization of MISO States argues that companies should not be allowed to transfer the right and obligation to construct a project to an affiliate without a

⁷¹⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 625.

⁷¹⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 704.

⁷¹⁷ *Id.* P 329.

demonstration that: (1) ratepayers will be held harmless by the transfer, and (2) the transfer is in the public interest. Organization of MISO States would also like to restrict affiliates from submitting separate bids for the same transmission projects, with the exception of submitting one “fixed-cost bid” and one “non-fixed cost bid.” We decline to require MISO to make these changes, and instead accept MISO’s explanation that any attempt to limit the submission of proposals to one proposal per entity would require either defining entities so narrowly as to limit participation of any stakeholder in multiple proposals, or broadly enough to enable companies to form multiple limited liability corporation to submit multiple proposals.

388. Organization of MISO States would like for the ROE to be capped at the level included in a bid submission, even if a bid is reassigned to an affiliate, and seeks clarification on whether transmission developers should file at the Commission first to obtain an ROE before they submit a project into the MISO process, whether a transmission developer may voluntarily commit to a lower ROE in its bid, and whether transmission developers should file at the Commission as a transmission developer and obtain a “market rate” ROE, which would only be determined in an RTO bidding process. We do not require MISO to revise the proposal to cap ROEs. We find that MISO’s proposal to allow for reevaluation of any change in the Selected Transmission Developer’s characteristics and qualifications acts as a sufficient safeguard in the event a bid is transferred to another developer. We find that MISO’s treatment of ROEs in the planning process remains the same as in its previously approved planning process, and we therefore find these concerns outside the scope of this proceeding.

f. **Cost Allocation for Transmission Projects Selected in the Regional Transmission Plan for Purposes of Cost Allocation**

389. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that provides that a nonincumbent transmission developer has an opportunity comparable to that of an incumbent transmission developer to allocate the cost of a transmission facility through a regional cost allocation method or methods.⁷¹⁸ A nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.⁷¹⁹ If a transmission project is selected in a regional transmission plan for purposes of cost allocation, Order No. 1000 requires that the transmission developer of that transmission facility (whether incumbent or

⁷¹⁸ *Id.* P 332.

⁷¹⁹ *Id.*

nonincumbent) must be able to rely on the relevant cost allocation method or methods within the region should it move forward with its transmission project.⁷²⁰

390. Order No. 1000 specifies that the regional transmission planning process could use a nondiscriminatory competitive bidding process as the mechanism to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation.⁷²¹ A region may use or retain an existing mechanism that relies on a competitive solicitation to identify preferred solutions to regional transmission needs, and such an existing process may require little or no modification to comply with the framework adopted in Order No. 1000.⁷²² The regional transmission planning process could allow the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project.⁷²³ If it uses a sponsorship model, the regional transmission planning process would also need to have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.⁷²⁴

i. Competitive Bidding Process

(a) MISO's Filing

391. MISO proposes a competitive bidding process to select transmission developers to construct, own, operate, maintain, and restore Open Transmission Projects. MISO proposes that within 30 days from approval of the MTEP by the MISO Board, MISO will develop and post a Transmission Proposal Request for each transmission project in the MTEP that is an Open Transmission Project (i.e., that is not subject to a right of first refusal). Prospective transmission developers, whether incumbent or nonincumbent, must submit their bid proposals by the date specified in the Transmission Proposal Request, but no later than 180 days after MISO posts the request. Within 180 days of this due date for bids, MISO will evaluate the bids and choose the Selected Transmission

⁷²⁰ *Id.* P 339.

⁷²¹ *Id.* P 336.

⁷²² *Id.* P 321.

⁷²³ *Id.* P 336.

⁷²⁴ *Id.*

Developer for that transmission project.⁷²⁵ The Selected Transmission Developer, whether incumbent or nonincumbent, will use the regional cost allocation for the Open Transmission Project based on the criteria discussed in earlier sections of this order.⁷²⁶

(b) Protests/Comments

392. According to Illinois Commerce Commission, MISO proposes to assign an Open Transmission Project to the incumbent Transmission Owner if no proposals are received from qualified transmission developers.⁷²⁷ Illinois Commerce Commission questions why it would always be most appropriate for MISO to assign the right to develop the project to the incumbent Transmission Owner, noting, for example, that if the required in-service date for the project is far enough in the future to permit MISO to carry the project over to the next annual cycle and to permit a new project developer solicitation process, it may be more efficient and cost effective to proceed in that way, rather than assigning the project to the incumbent. Accordingly, the Illinois Commerce Commission requests that the Commission direct MISO to explain the reasons for its proposal to assign a project to the incumbent when no qualified bids are received.⁷²⁸

393. Illinois Commerce Commission argues that MISO does not make clear whether the evaluator (either MISO or the state that exercised the state choice option) may choose to reject all of the bids, although it appears that MISO intends to always select one of the bids for implementation.⁷²⁹ Illinois Commerce Commission states that it is conceivable that the best course of action in certain circumstances would be to reject all of the bids, including when: (1) no reasonable bid is submitted, or (2) there is sufficient time before the needed project in-service date and there is a reasonable likelihood of receiving better bids in the subsequent cycle. Accordingly, Illinois Commerce Commission requests that

⁷²⁵ MISO Compliance Transmittal at 51-52.

⁷²⁶ MISO, FERC Electric Tariff, Attachment FF, § VIII.G.9 (8.0.0).

⁷²⁷ Illinois Commerce Commission Comments to MISO Compliance Filing at 44, n.120 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.G.9 (8.0.0)).

⁷²⁸ *Id.* at 45.

⁷²⁹ For example, the proposed tariff language states that MISO will “[s]elect one of the New Transmission Proposals for implementation based on application of the evaluation criteria.” *Id.* at 43, n.118 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.G.1(2) (8.0.0)).

the Commission direct MISO to clarify its position on whether all bids may be rejected and under what circumstances that action may be taken.⁷³⁰

394. ATC/Duke/Transource state that, instead of MISO's competitive bidding approach, they prefer a sponsorship model for Order No. 1000 compliance because it is more efficient and is similar to the approach currently used in MISO for proposing and developing projects. ATC/Duke/Transource point out that there are many benefits of the sponsorship approach that were identified during the MISO stakeholder process, including that it would incent developers to invest in planning and that competition among developers would lead to the type of quality, cost-effective, and efficient solutions to transmission needs sought by the Commission. ATC/Duke/Transource argue that the proposed competitive bidding approach would incent developers to focus their resources on developing bids with the best chance of being selected, instead of on planning and developing projects proposals with the best chance of meeting regional transmission needs. ATC/Duke/Transource argue that MISO provides only a cursory explanation of the perceived shortfalls of the existing sponsorship model, which they argue could also occur under a competitive bidding approach. They believe that MISO proposes to trade one set of potential complexities for another, without providing an explanation why the current sponsorship model is no longer effective or just and reasonable.⁷³¹

395. Illinois Commerce Commission is concerned about MISO's proposal to designate an incumbent transmission owner as the developer of a transmission project based on a state law. Illinois Commerce Commission states that when MISO exempts such a project from the competitive process for developer selection based on a state law, and the costs of the project are allocated to other states, there does not appear to be a mechanism to assure achievement of the Commission's objective for efficient and cost effective projects.⁷³² Illinois Commerce Commission recommends that projects that retain a state law right of first refusal not be subject to cost allocation outside the state in which the project is physically located; this would ensure that other states do not bear extra costs due to the host state's preference for an incumbent transmission developer, rather than a developer selected through a competitive process.⁷³³

⁷³⁰ *Id.* at 44.

⁷³¹ ATC/Duke/Transource Protest at 36-40; *see also* AEP Protest at 21-22.

⁷³² Illinois Commerce Commission Comments to MISO Compliance Filing at 32.

⁷³³ *Id.*

(c) **Answer**

396. MISO's answer responds to comments that the sponsorship model is a more appropriate method than MISO's proposal by explaining that the decision to adopt the inclusive evaluation model was made after extensive stakeholder discussion that reviewed both sponsorship and inclusive evaluation approaches, and that MISO is not obligated to show the chosen solution is perfect or superior to potential alternatives.⁷³⁴

(d) **Commission Determination**

397. We find that MISO's proposal to use a competitive bidding process for selection of Selected Transmission Developers and to allocate the cost of a transmission facility through a regional cost allocation method or methods complies with the requirements of Order No. 1000. It allows incumbent transmission developers and non-incumbent transmission developers to participate comparably.⁷³⁵

398. ATC/Duke/Transource state their preference for a sponsorship model, arguing that MISO has not shown that its proposed competitive bidding approach is more favorable for Order No. 1000 compliance than MISO's current approach. As discussed above, we find that the proposed competitive bidding model is just and reasonable.

399. Illinois Commerce Commission requests that the Commission direct MISO to clarify its position on whether all bids may be rejected and under what circumstances that action may be taken. We find that MISO's proposed Tariff language is not clear on this point. Accordingly we direct MISO to file, within 120 days of the date of issuance of this order, a further compliance filing with Tariff language to clarify whether and under what circumstances all bids may be rejected.

400. Illinois Commerce Commission also requests that the Commission direct MISO to explain the reasons for MISO's proposal to assign a transmission project to the incumbent when no qualified bids are received. We will not grant this request. We note that in Order No. 1000, the Commission stated that in requiring public utility transmission providers to remove a federal right of first refusal from their Commission jurisdictional tariffs and agreements, it sought to "provide nonincumbent transmission developers with the opportunity to propose and construct transmission projects, consistent with state and local laws and regulations."⁷³⁶ As detailed herein, we find that

⁷³⁴ MISO Compliance Filing Answer at 18.

⁷³⁵ *See supra* P 48.

⁷³⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 259.

MISO's proposal, with the compliance requirements we are requiring, complies with this directive. Further, Order No. 1000 acknowledged that there:

may be situations in which an incumbent transmission provider has an obligation to build a project that is selected in the regional transmission plan for purposes of cost allocation but has not been sponsored by another transmission developer.⁷³⁷

401. Accordingly, we find that MISO's proposal to assign a project to the incumbent transmission owner absent any qualified bids complies with Order No. 1000 because, at that point, both incumbent transmission providers and nonincumbent transmission developers have had an opportunity to bid to become the Selected Transmission Developer, but chose not to do so, or were rejected as not qualified.⁷³⁸

402. With regard to Illinois Commerce Commission's concern that a mechanism does not exist to assure more efficient or cost-effective transmission projects when a project is exempted from the competitive process for developer selection by MISO based on a state law, we find that Order No. 1000 recognized that removing federal rights of first refusal in Commission-jurisdictional tariffs or agreements would not eliminate all obstacles to transmission development that may exist under state or local laws or regulations.⁷³⁹ We recognize that transmission development may vary based on state or local laws or regulations; however, as we explained elsewhere,⁷⁴⁰ MISO may not rely on a state law or regulations to exempt projects from the competitive bidder selection process. Therefore, we reject as unnecessary Illinois Commerce Commission's recommendation.

ii. Construction Work in Progress (CWIP)

(a) Protests/Comments

403. LS Power requests that MISO clarify that a Selected Transmission Developer will be eligible to recover the cost of the transmission facility through the MISO regional cost allocation method. LS Power proposes that MISO add a sentence to the definition of

⁷³⁷ *Id.* P 267.

⁷³⁸ We note that MISO must clarify whether and under what circumstances all bids may be rejected. *See supra* P 399.

⁷³⁹ *Id.* P 257.

⁷⁴⁰ *See supra* PP 205, 354.

Selected Transmission Developer, which is currently defined as a Qualified Transmission Developer that has been selected to construct, implement, own, operate, maintain, repair, and restore one or more new transmission facilities. LS Power suggests adding the following sentence:

Such Qualified Transmission Developer, whether a Non-owner Member or Transmission Owner, shall have comparable opportunity to a Transmission Owner to use the regional cost allocation method, and to be eligible to allocate the cost of the New Transmission Facility through the MISO regional cost allocation method.⁷⁴¹

404. AEP notes that in order for an entity to be considered a Qualified Transmission Developer under MISO's transmission planning process, MISO proposes that such entities must agree "to execute the [Transmission Owners Agreement] if designated as the Selected Transmission Developer in the evaluation process to develop, own and operate New Substation Facilities and/or New Transmission Line Facilities after the facilities have been constructed but prior to energization of such New Transmission Facilities, unless the applicant submitting a bid proposal is already a Transmission Owner."⁷⁴² However, AEP argues that neither the Tariff nor the Transmission Owners Agreement provides any language that specifically provides a mechanism for a nonincumbent transmission developer to collect revenues under Commission-approved rate treatments, such as Construction Work in Progress (CWIP), during construction for an Open Transmission Project awarded to the developer.⁷⁴³ Therefore, AEP contends that the Commission should direct MISO to revise its Transmission Owners Agreement in a manner that allows entities that do not yet have facilities in service to recover pre-operational costs, such as CWIP, under Commission-approved rate schedules.⁷⁴⁴

405. Illinois Commerce Commission similarly notes that section VIII.D.4(1) of the Tariff limits an applicant submitting a bid proposal that is not already a Transmission Owner to signing the Transmission Owners Agreement only "after the facilities have

⁷⁴¹ LS Power Protest to MISO Compliance Filing at 32.

⁷⁴² AEP Protest at 23-24 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.4(1) (8.0.0)).

⁷⁴³ *Id.* at 24.

⁷⁴⁴ *Id.*

been constructed but prior to energization of such New Transmission Facilities.”⁷⁴⁵ Illinois Commerce Commission argues that this provision appears to prevent the applicant from recovering CWIP on its project, should it win the bid and requests that the Commission direct MISO to explain its rationale for the provision and direct MISO to explain how it meets the “not unduly discriminatory” requirement in FPA section 205.⁷⁴⁶

406. Similarly, ATC/Duke/Transource argue that MISO should clarify that nonincumbent transmission developers are not excluded from using Commission-approved rate treatments during construction for an Open Transmission Project awarded to the developer and having MISO collect those amounts under the appropriate rate schedules of the Tariff.⁷⁴⁷ ATC/Duke/Transource argue that preventing nonincumbents from using Commission-approved rate treatments during the development of a project is contrary to the Commission's recent policy statement on transmission rate incentives.⁷⁴⁸ ATC/Duke/Transource also argue that nonincumbent transmission developers have the right to sign the Transmission Owners Agreement when its project is awarded.⁷⁴⁹ ATC/Duke/Transource also propose that MISO should require that any Local Balancing Authority responsibilities that may be imposed on a developer be identified at the time the Transmission Owners Agreement is signed.⁷⁵⁰

(b) Answer

407. In response to commenters who express concern about the ability of new entrants to use MISO's cost allocation methods or to recover costs during construction, MISO states that it is reasonable for the Tariff and Transmission Owners Agreement to require an entity to sign the Transmission Owners Agreement as a condition of becoming a Transmission Owner that transfers transmission facilities to the functional control of MISO.⁷⁵¹ MISO clarifies that entities that do not have Transmission Owner status are

⁷⁴⁵ Illinois Commerce Commission Comments to MISO Compliance Filing at 53 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.D.4(1) (8.0.0)).

⁷⁴⁶ *Id.* at 54.

⁷⁴⁷ ATC/Duke/Transource Protest at 44-45.

⁷⁴⁸ *Id.* (citing *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012)).

⁷⁴⁹ *Id.* at 45.

⁷⁵⁰ *Id.* at 46.

⁷⁵¹ MISO Compliance Filing Answer at 68.

consequently not bound by membership obligations, thus it is logical that the MISO Tariff limit cost recovery associated with ownership of transmission facilities to Transmission Owners that are subject to the obligations under, and the benefits of, MISO's Tariff provisions on cost recovery for such facilities.⁷⁵²

(c) **Commission Determination**

408. We find that Attachment FF provides that when a nonincumbent becomes a Selected Transmission Developer, the nonincumbent becomes eligible to sign the Transmission Owners Agreement and to turn over the functional control of the facilities to MISO once the New Transmission Facilities become energized. At that point, an entity become a Transmission Owner and is afforded the right to cost recovery. Although Non-owner Members are ineligible to recover costs (i.e., CWIP) until such time as they are eligible to sign the Transmission Owners Agreement, we do not find this prevents a nonincumbent from participating in the MISO planning process or becoming a Selected Transmission Developer and using the regional cost allocation method for Open Transmission Projects. Regardless, as discussed above, cost recovery issues are outside the scope of Order No. 1000.⁷⁵³ Therefore, we reject LS Power's proposed language as unnecessary since Non-owner Members and Transmission Owners both have the opportunity to use the regional cost allocation method upon being selected as the Selected Transmission Developer for an Open Transmission Project, as discussed above. We therefore decline to require MISO to revise the Transmission Owners Agreement to change "Owner" in order to allow transmission developers prior to owning transmission facilities within the MISO footprint to become eligible to sign the Transmission Owners Agreement.

3. Cost Allocation

409. Order No. 1000 requires each public utility transmission provider to have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation.⁷⁵⁴ If a public utility transmission provider is in an RTO or ISO, Order No. 1000 requires that the regional cost allocation method or methods be set forth in the RTO or ISO tariff. In a

⁷⁵² *Id.*

⁷⁵³ The Commission appreciates that nonincumbents may not have the appropriate rate structures in place with which to recover costs (i.e., CWIP). If proposals on this issue are filed under FPA section 205 or FPA section 206, the Commission will consider such proposals on a case-by-case basis.

⁷⁵⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558.

non-RTO/ISO transmission planning region, each public utility transmission provider located within the region must set forth in its tariff the same language regarding the cost allocation method or methods that is used in its transmission planning region.⁷⁵⁵ Each public utility transmission provider must have a regional cost allocation method for any transmission facility selected in a regional transmission plan for purposes of cost allocation.⁷⁵⁶

410. Each public utility transmission provider must show on compliance that its regional cost allocation method or methods are just and reasonable and not unduly discriminatory or preferential by demonstrating that each method satisfies six regional cost allocation principles described in Order No. 1000.⁷⁵⁷ The Commission took a principles-based approach because it recognized that regional differences may warrant distinctions in cost allocation methods among transmission planning regions.⁷⁵⁸ In addition, Order No. 1000 permits participant funding, but not as a regional or interregional cost allocation method.⁷⁵⁹

411. Regional Cost Allocation Principle 1 specifies that 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. Cost allocation methods must clearly and definitively specify the benefits and the class of beneficiaries.⁷⁶⁰ 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, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.⁷⁶¹ Regional Cost Allocation Principle 1 precludes an allocation where the benefits received are trivial in relation to the costs to be borne.⁷⁶²

⁷⁵⁵ *Id.* P 558.

⁷⁵⁶ *Id.* P 690.

⁷⁵⁷ *Id.* P 603.

⁷⁵⁸ *Id.* P 604.

⁷⁵⁹ *Id.* P 723.

⁷⁶⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 678.

⁷⁶¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622.

⁷⁶² *Id.* P 639.

412. Order No. 1000 does not prescribe a particular definition of “benefits” or “beneficiaries.”⁷⁶³ The Commission stated in Order No. 1000-A that while Order No. 1000 does not define benefits and beneficiaries, it does require the public utility transmission providers in each transmission planning region to be definite about benefits and beneficiaries for purposes of their cost allocation methods.⁷⁶⁴ In addition, for a cost allocation method or methods to be accepted by the Commission as Order No. 1000-compliant, they will have to specify clearly and definitively the benefits and the class of beneficiaries.⁷⁶⁵ A benefit used by public utility transmission providers in a regional cost allocation method or methods must be an identifiable benefit, and the transmission facility cost allocated must be roughly commensurate with that benefit.⁷⁶⁶ Each regional transmission planning process must provide entities who will receive regional or interregional cost allocation an understanding of the identified benefits on which the cost allocation is based.⁷⁶⁷ The public utility transmission providers in a transmission planning region may propose a cost allocation method that considers the benefits and costs of a group of new transmission facilities, although there is no requirement to do so.⁷⁶⁸

413. The regional transmission plan must include a clear cost allocation method or methods that identify beneficiaries for each of the transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁷⁶⁹ Order No. 1000-A stated that public utility transmission providers in each transmission planning region, in consultation with their stakeholders, may consider proposals to allocate costs directly to generators as beneficiaries that could be subject to regional or interregional cost allocation, but any such allocation must not be inconsistent with the generator interconnection process under Order No. 2003.⁷⁷⁰

⁷⁶³ *Id.* P 624.

⁷⁶⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 679.

⁷⁶⁵ *Id.* P 678.

⁷⁶⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 625.

⁷⁶⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 746.

⁷⁶⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 627, 641.

⁷⁶⁹ *Id.* P 11; Order No. 1000-A, 139 FERC ¶ 61,132 at P 585.

⁷⁷⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

414. Regional Cost Allocation Principle 2 specifies that 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.⁷⁷¹ All cost allocation methods must provide for allocation of the entire prudently incurred cost of a transmission project to prevent stranded costs.⁷⁷² To the extent that public utility transmission providers propose a cost allocation method or methods that consider the benefits and costs of a group of new transmission facilities and adequately support their proposal, Regional Cost Allocation Principle 2 would not require a showing that every individual transmission facility in the group of transmission facilities provides benefits to every beneficiary allocated a share of costs of that group of transmission facilities.⁷⁷³

415. The Commission clarified in Order No. 1000-A that public utility transmission providers may rely on scenario analyses in the preparation of a regional transmission plan and the selection of new transmission facilities in the regional transmission plan for purposes of cost allocation. Regional Cost Allocation Principle 2 would be satisfied if a project or group of projects is shown to have benefits in one or more of the transmission planning scenarios identified by public utility transmission providers in their Commission-approved Order No. 1000-compliant cost allocation methods.⁷⁷⁴ The Commission clarified in Order No. 1000-B that it did not intend to remove the “likely future scenarios” concept from transmission planning and that likely future scenarios can be an important factor in public utility transmission providers’ consideration of transmission projects and in the identification of beneficiaries consistent with the cost causation principle.⁷⁷⁵

416. Regional Cost Allocation Principle 3 specifies that 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, the threshold must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. Public utility transmission providers 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 exceed 1.25 unless the

⁷⁷¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 637.

⁷⁷² *Id.* P 640.

⁷⁷³ *Id.* P 641.

⁷⁷⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 690.

⁷⁷⁵ Order No. 1000-B, 141 FERC ¶ 61,044 at P 72.

transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.⁷⁷⁶

417. Regional Cost Allocation Principle 4 specifies that the allocation method for the cost of a transmission facility selected in a regional transmission plan for purposes of cost allocation 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.⁷⁷⁷

418. Regional Cost Allocation Principle 5 specifies that 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.⁷⁷⁸

419. Regional Cost Allocation Principle 6 specifies that a transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief, or to achieve Public Policy Requirements.⁷⁷⁹ If the public utility transmission providers choose to have a different cost allocation method for each type of transmission facility, there can be only one cost allocation method for each type.⁷⁸⁰ In addition, if public utility transmission providers choose to propose a different cost allocation method or methods for different types of transmission facilities, each method would have to be determined in advance for each type of facility.⁷⁸¹ A regional cost allocation method for one type of regional transmission facility or for all regional transmission facilities may include voting requirements for identified beneficiaries to

⁷⁷⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

⁷⁷⁷ *Id.* P 657.

⁷⁷⁸ *Id.* P 668.

⁷⁷⁹ *Id.* P 685.

⁷⁸⁰ *Id.* P 686; *see also id.* P 560.

⁷⁸¹ *Id.*

vote on proposed transmission facilities.⁷⁸² However, the public utility transmission providers in a region may not designate a type of transmission facility that has no regional cost allocation method applied to it.⁷⁸³

a. MISO's Filing

420. MISO states that its existing Tariff already complies with the requirement of Order No. 1000 to have in place mechanisms to allocate the costs of new transmission facilities that have been selected in MISO's regional transmission plan for purposes of cost allocation. MISO explains that it currently has three categories of projects that are selected in the MTEP for purposes of cost allocation: (1) Baseline Reliability Projects;⁷⁸⁴ (2) MEPs; and (3) MVPs. MISO states that projects that are not included in the regional transmission plan for purposes of cost allocation include: local transmission facilities whose costs are recovered from load in the pricing zone where the transmission facility is located; projects that are funded by a Market Participant(s) requesting the facility; and Generation Interconnection Projects, which are excluded from the scope of Order No. 1000.

421. MISO states that its Tariff complies with the first regional cost allocation principle by ensuring that the allocation of the costs of MVPs and MEPs is at least roughly commensurate with estimated benefits by tailoring the cost allocation to the nature and/or scope of the needs, benefits, and beneficiaries associated with each type of project. With regard to MVPs, MISO states that the Tariff requires consideration, on a portfolio basis, of the regional benefits of MVPs, relating to public-policy-driven-needs or combinations of economic and/or reliability needs or benefits. MISO states that because MVP benefits are spread broadly across the footprint,⁷⁸⁵ 100 percent of their costs are allocated regionally. On the other hand, MISO states that MEPs are focused on addressing congestion relief.⁷⁸⁶ MISO states that, based on the approximate proportion of regional and non-regional benefits of MEPs, 20 percent of their costs are allocated on a system-

⁷⁸² *Id.* P 689.

⁷⁸³ *Id.* P 690.

⁷⁸⁴ Baseline Reliability Projects are described and discussed in a separate section below because MISO made a separate filing on these projects in Docket No. ER13-168-000.

⁷⁸⁵ MISO Compliance Transmittal at 22-23 (citing MISO, FERC Electric Tariff, Attachment FF, § II.C.1 (8.0.0)).

⁷⁸⁶ *Id.* at 23 (citing MISO, FERC Electric Tariff, Attachment FF, § II.B (8.0.0)).

wide basis, and the remaining 80 percent is allocated based on the distribution of the adjusted production cost savings across the MISO Local Resource Zones.⁷⁸⁷

422. MISO states that Order No. 1000 does not require benefits to be determined “with exacting precision” and states that the determination of regional MVP benefits on a portfolio basis and of MEP benefits to the level of Local Resource Zones⁷⁸⁸ amply satisfies Order No. 1000’s requirement that costs be allocated in a manner roughly commensurate with benefits. MISO further states that both incumbent Transmission Owners and nonincumbent transmission developers have an opportunity to seek regional cost allocation of MVPs and MEPs that they are selected to be built under the inclusive evaluation process.

423. MISO states that its Tariff complies with the second regional cost allocation principle because its planning process properly identifies anticipated beneficiaries, at present and/or in likely future scenarios. MISO states that, by basing MVP and MEP cost allocation on the appropriate projection of their estimated benefits, MISO’s Tariff ensures that such costs are not involuntarily allocated to those who receive no current or likely future benefits from MVPs or MEPs.⁷⁸⁹

424. MISO states that its Tariff complies with the third regional cost allocation principle because the Tariff uses a cost-benefit threshold of 1.0 or greater for Criterion 2⁷⁹⁰ and Criterion 3⁷⁹¹ for MVPs; and 1.25 for MEPs.⁷⁹² MISO states that the

⁷⁸⁷ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § III.A.2.f (8.0.0)).

⁷⁸⁸ *Id.* (citing MISO, FERC Electric Tariff, Attachment WW (0.0.0)).

⁷⁸⁹ *Id.* at 24.

⁷⁹⁰ The Tariff defines Criterion 2 as follows: “[An MVP] must provide multiple types of economic value across multiple pricing zones with a Total MVP Benefit-to-Cost [R]atio of 1.0 or higher where the Total MVP Benefit-to-Cost [R]atio is described in Section II.C.7 of [] Attachment FF. The reduction of production costs and the associated reduction of [locational marginal prices] resulting from a transmission congestion relief project are not additive and are considered a single type of economic value.” MISO, FERC Electric Tariff, Attachment FF, § II.C.2.b (8.0.0).

⁷⁹¹ The Tariff defines Criterion 3 as follows: “[An MVP] must address at least one Transmission Issue associated with a projected violation of a [North American Electric Reliability Corporation (NERC)] or Regional Entity standard and at least one economic-based Transmission Issue that provides economic value across multiple pricing zones. The project must generate total financially quantifiable benefits, including quantifiable reliability benefits, in excess of the total project costs based on the definition of financial

(continued . . .)

Commission has previously determined that “because MVPs are projects that provide regional benefits ... a benefit to cost ratio of 1.0 is just and reasonable because it ensures that the multiple economic benefits to all users is at least equal to the costs allocated to all users over the 20 years of service that are evaluated.”⁷⁹³ MISO states that the Commission has also recently held that the MEP “fixed benefit to cost ratio of 1.25 is just and reasonable because it balances the economic uncertainty of transmission projects with the prospect of approving and constructing projects that provide benefits.”⁷⁹⁴ MISO therefore asserts that the MVP and MEP benefit-to-cost ratios under its Tariff are compliant with the 1.25 threshold set by Order No. 1000.

425. MISO states that its Tariff complies with the fourth regional cost allocation principle because the costs of MVPs⁷⁹⁵ and MEPs⁷⁹⁶ are only allocated to load in the MISO region, or to export and wheel-through transactions that customers voluntarily enter into.⁷⁹⁷ MISO states that its transmission planning process also takes into account transmission expansion impacts on other transmission planning regions.⁷⁹⁸ In addition, MISO states that its Tariff includes interregional coordination mechanisms that facilitate

benefits and Project Costs provided in Section II.C.7 of Attachment FF.” MISO, FERC Electric Tariff, Attachment FF, § II.C.2.c (8.0.0).

⁷⁹² MISO Compliance Transmittal at 25 (citing MISO, FERC Electric Tariff, Attachment FF, § II.B.1.e (8.0.0)).

⁷⁹³ *Id.* (citing MVP Order, 133 FERC ¶ 61,221 at P 214).

⁷⁹⁴ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,261, at P 32 (2012) (MEP Order)).

⁷⁹⁵ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § III.A.2.g (8.0.0)).

⁷⁹⁶ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § III.A.2.f (8.0.0)).

⁷⁹⁷ *Id.* at 25-26 (stating that MVP and MEP charges are not assessed on Grandfathered Agreements).

⁷⁹⁸ *Id.* at 26 (stating that section 4.3.6 of the Transmission Planning Business Practice Manual states: “Where MISO and non-MISO systems were highly integrated, contingencies on non-MISO systems were also analyzed for impacts on MISO members’ systems.”). *See* MISO, Transmission Planning Business Practice Manual at 66.

the evaluation of such impacts,⁷⁹⁹ and states that MISO can share certain upgrade costs with other regions pursuant to appropriate agreements.⁸⁰⁰

426. MISO states that its Tariff complies with the fifth regional cost allocation principle because the allocation and benefit determination methods for the projects are duly specified in the Tariff, as supplemented by the Transmission Planning Business Practice Manual. MISO further states that the cost allocation methods are applied in the context of MISO's open planning process where, consistent with Order No. 890, stakeholders and customers have numerous opportunities to participate in various forums through which they can review the documentation and details of each project's justification. In addition, MISO states that the results of its analysis of project benefits are appropriately documented through studies, such as "business case" reports, and the resulting recommendations are embodied in each year's MTEP report,⁸⁰¹ which MISO posts publicly on its website. Thus, MISO claims that its cost allocation method, application, and results are properly transparent.

427. MISO states that its Tariff complies with the sixth regional cost allocation principle because the Tariff provides for different cost allocation methodologies for different types of projects. MISO states that the project categories that are selected in the regional transmission plan for purposes of cost allocation are MVPs (whose costs are 100 percent allocated regionally) and MEPs (whose allocation includes a 20 percent regional cost allocation). MISO states that the proposed Tariff revisions do not modify these cost allocation percentages for MVPs and MEPs.⁸⁰²

b. Protests/Comments

428. MISO Transmission Owners and the ITC Companies support MISO's proposed revisions to the regional cost allocation provisions of the Transmission Owners Agreement and Tariff. Public Interest Organizations believe that MISO's cost allocation methods for MVPs and MEPs, which the Commission has already approved, meet the requirements of Order No. 1000. Public Interest Organizations state that allocating costs

⁷⁹⁹ MISO Compliance Transmittal at 26 (citing MISO, FERC Electric Tariff, Attachment FF, § I.C (8.0.0)).

⁸⁰⁰ *Id.* (stating, as an example, that MISO's Joint Operating Agreement with PJM (JOA) includes provisions on the cost-sharing of cross-border MEPs).

⁸⁰¹ *Id.* at 27 (citing MISO, FERC Electric Tariff, § 1.419 (Midwest ISO Transmission Expansion Plan) (1.0.0)).

⁸⁰² *Id.* at 28.

of MVPs equally across the MISO footprint is appropriate since the MISO region and market as a whole receives the benefits.⁸⁰³

429. Illinois Commerce Commission opposes MISO's proposal, arguing that the postage stamp components of MISO's cost allocation methods do not comply with several provisions of Order No. 1000. Illinois Commerce Commission states that MISO has not demonstrated that the benefits are distributed evenly to beneficiaries (pro-rata on load) across the MISO footprint. Illinois Commerce Commission asserts that MISO's postage stamp cost allocation method does not identify the benefits and beneficiaries associated with the 20 percent postage stamp allocation for Baseline Reliability Projects and MEPs, that those benefits do not seem to be allocated evenly across the MISO footprint on a megawatt-hour basis, and that the postage stamp is based on an assumption regarding the distribution of beneficiaries associated with those purported benefits.⁸⁰⁴

430. Illinois Commerce Commission argues that legal precedent, combined with Order No. 1000's regional cost allocation principles, requires MISO to impose burdens that are roughly commensurate with benefits.⁸⁰⁵ For example, Illinois Commerce Commission states that the United States Court of Appeals has determined that all approved rates must in some way reflect the costs actually incurred by the customer and the benefits drawn by that party and that this precedent, combined with cost allocation principles established in Order No. 1000, require a greater amount of clarity of how benefits will be roughly commensurate with costs. Illinois Commerce Commission further argues that the Commission's previous findings that MISO's transmission planning process was appropriate are not determinative in the instant proceeding because the Commission stated in Order No. 1000 that "[w]hether an existing process was approved previously by the Commission is not dispositive of whether that process complies with this Final Rule."⁸⁰⁶

431. Clean Line supports an approach that would allow regions to partially allocate costs, using the regional cost allocation method, of merchant transmission lines if the commensurate benefits can be shown. Clean Line argues that the Commission should

⁸⁰³ Public Interest Organizations Protest at 26 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646).

⁸⁰⁴ Illinois Commerce Commission Comments to MISO Compliance Filing at 4-6.

⁸⁰⁵ *Id.* at 8-9 (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009)).

⁸⁰⁶ *Id.* at 6 (citing Order No. 1000, FERC Stats. and Regs. ¶ 31,323 at P 795).

require MISO to allow for partial cost allocation of facilities instead of utilizing a binary mechanism in which facilities are either cost allocated or not cost allocated.⁸⁰⁷

432. Clean Line states that no interregional project may be excluded from regional cost allocation purely because it exists in multiple regions. Clean Line argues that if a project provides sufficient benefits to a region such that it is selected in that region's plan for purposes of regional cost allocation, that project must remain eligible for regional cost allocation even if it is not cost allocated at the interregional level. Clean Line states that it will again raise this issue when MISO submits its Order No. 1000 interregional compliance filing.⁸⁰⁸

c. Answer

433. MISO responds to Illinois Commerce Commission comments that MISO's cost allocation method is not fully in line with Order No. 1000's regional cost allocation principles by explaining that the postage stamp components of MISO's cost allocation methods were developed through a robust stakeholder process and are just and reasonable. MISO states that the Commission has always accepted the postage stamp approach as just and reasonable when commensurate with benefits, and that the MISO planning process determines benefits and identifies beneficiaries in an open and transparent manner, and allocates the cost of transmission projects regionally to the extent commensurate with their regional benefits.⁸⁰⁹

d. Commission Determination

434. We find that MISO has demonstrated that its regional cost allocation methods for MEPs and MVPs, which the Commission has previously approved, partially comply with the six regional cost allocation principles required in Order No. 1000. Specifically, we find that the regional cost allocation methods for MEPs and MVPs: (1) allocate costs in a manner that is at least roughly commensurate with estimated benefits; (2) do not involuntarily allocated to those who receive no benefits; (3) include clearly defined benefit-to-cost thresholds that do not exceed 1.25; (4) allocate costs solely within the affected transmission planning region, (5) provide for methods for determining the benefits and beneficiaries that are transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility; and (6) represent different cost allocation methods for different types of facilities that are set

⁸⁰⁷ Clean Line Protest at 6-7.

⁸⁰⁸ *Id.* at 9.

⁸⁰⁹ MISO Compliance Filing Answer at 28-29.

out clearly and explained in detail. However, MISO's Tariff does not provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region, as required by Order No. 1000. Accordingly, MISO must make a further compliance filing to revise its Tariff, as discussed below.

435. We agree with Illinois Commerce Commission's assertion that the previous Commission findings on MISO's cost allocation methods cannot be solely determinative of the Commission's findings in the instant proceeding. Accordingly, our finding here that MISO complies with the regional cost allocation principles of Order No. 1000 is based on the evidence in the record before us.

436. First, we find that MISO's regional cost allocation methods for MEPs and MVPs comply with Regional Cost Allocation Principle 1. With respect to MVPs, we find persuasive MISO's explanation that its Tariff requires the consideration, on a portfolio basis, of the regional benefits of MVPs and that, because the benefits of MVPs are spread broadly across the MISO footprint, 100 percent of their costs are allocated regionally. We note that the Commission similarly found, in accepting MISO's proposal to allocate 100 percent of MVP costs regionally, that the costs of MVPs are allocated "on a basis that is 'roughly commensurate' with the benefits of [MVP] projects[.]"⁸¹⁰ In making this finding that costs of MVPs are allocated at least roughly commensurate with the benefits MVPs provide to the MISO region, the Commission relied on four principle aspects. First, the Commission found that the initial screen determining whether each project meets one of three criteria ensures that each project benefits the MISO region.⁸¹¹ Second, the Commission found that the portfolio approach helps to ensure that the benefits, as well as the costs, of MVPs are spread broadly across the MISO region.⁸¹² Third, the Commission found that stakeholder review of cost-benefit calculations allows stakeholders to challenge studies quantifying the costs and benefits of MVPs.⁸¹³ Finally, the Commission noted that the MVP proposal was generally supported by state authorities and other MISO stakeholders.⁸¹⁴ Upon review of MISO's existing MVP cost allocation method in the context of Order No. 1000, we find that, for the reasons the

⁸¹⁰ See MVP Order, 133 FERC ¶ 61,221 at P 200.

⁸¹¹ *Id.* P 201.

⁸¹² *Id.* P 202.

⁸¹³ *Id.* P 203.

⁸¹⁴ *Id.* P 204.

Commission outlined in the MVP Order, MISO's regional cost allocation method for MVPs allocates costs in a manner that is at least roughly commensurate with the benefits that they provide.

437. With respect to MEPs, MISO explains that based on the approximate proportion of regional and non-regional benefits of MEPs, 20 percent of their costs are allocated on a system-wide basis, and the remaining 80 percent is allocated based on the distribution of the adjusted production cost savings across the MISO local resource zones. We note that the Commission found, in accepting MISO's revised MEP cost allocation procedures, that by allocating 20 percent of MEP costs regionally, while amending the procedures so that the remaining 80 percent is allocated based on the adjusted production costs savings across MISO's local resource zones, that the costs of MEPs are allocated based on a just and reasonable "calculation of the benefits of MEPs [to] ensure that costs are allocated to those who benefit[.]"⁸¹⁵ Upon review of the MEP cost allocation method in the context of Order No. 1000, we find that, for the reasons outlined in the MEP Order, MISO's regional cost allocation method for MEPs allocate the costs of such projects in a manner that is at least roughly commensurate with the benefits they provide in that the costs associated with regional benefits are allocated regionally, while the costs associated with each MISO local resource zone's adjusted production costs savings are allocated based on the distribution of those benefits among the zones. We therefore reject Illinois Commerce Commission's argument that MISO's current regional cost allocation methods do not satisfy the Regional Cost Allocation Principle 1 and the Seventh Circuit's directive that transmission costs of a project be "roughly commensurate" with the benefits of a transmission project.

438. Similarly, we find that MISO's regional cost allocation methods for MVPs and MEPs comply with Regional Cost Allocation Principle 2, which requires that 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. As discussed above, we find that MISO's regional cost allocation methods for MVPs and MEPs allocate costs in a manner at least roughly commensurate with estimated benefits, and thus do not allocate costs to those that receive no benefit. In addition, with regard to MVPs, the Commission has found that the MVP usage charge allocates costs based on usage over time and, therefore, allocates costs to load in a manner that reflects changes in MVP beneficiaries over time,⁸¹⁶ and we find that, in the context of Order No. 1000, this helps ensure that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, will not be involuntarily allocated any of the costs of an MVP facility. With regard to MEPs, the

⁸¹⁵ See MEP Order, 139 FERC ¶ 61,261 at P 45.

⁸¹⁶ MVP Order, 133 FERC ¶ 61,221 at P 383.

Commission has found that the granularity of the benefits calculation, i.e., 80 percent allocated to local resource zones, which are further allocated to each pricing zone within each local resource zone on a load ratio share-basis, ensure that the costs are allocated to those that benefit,⁸¹⁷ and we find, in the context of Order No. 1000, this will also help ensure that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, will not be involuntarily allocated any of the costs of an MEP facility. In addition, MISO states that its Tariff ensures that such costs are not involuntarily allocated to those who receive no current or likely future benefits from MVPs or MEPs because its planning process identifies anticipated beneficiaries, at present and/or in likely future scenarios. Therefore, we reject Illinois Commerce Commission's argument that MISO's regional cost allocation methods do not comply with Regional Cost Allocation Principle 2.

439. Regional Cost Allocation Principle 3 requires that 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, the threshold must not exceed 1.25.⁸¹⁸ MISO states that it uses a benefit to cost threshold of 1.0 or greater for Criterion 2 and Criterion 3 for MVPs and of 1.25 for MEPs. Thus, we find that MISO's regional cost allocation methods for MEPs and MVPs comply with Regional Cost Allocation Principle 3.

440. With respect to Regional Cost Allocation Principle 4, MISO asserts that the costs of MVPs and MEPs are only allocated to load in the MISO region, or to export and wheel-through transactions that customers voluntarily enter into. As the Commission already explained in the MVP Order, allocating costs to export and wheel-through transactions is not an involuntary allocation given that such an allocation applies to customers that are taking service under the MISO Tariff rather than an external entity taking no service or buying no energy from MISO, who will not be charged under MISO's existing MEP and MVP cost allocation method.⁸¹⁹ We therefore find that MISO's regional cost allocation methods for MEPs and MVPs comply with Regional Cost Allocation Principle 4's requirement that the allocation method for the cost of a transmission facility selected in a regional transmission plan for purposes of cost

⁸¹⁷ MEP Order, 139 FERC ¶ 61,261 at P 45.

⁸¹⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

⁸¹⁹ *See, e.g.*, MVP Order, 133 FERC ¶ 61,221 at P 439 (“We also note that there is no involuntary assignment of costs here given that the MVP usage rate applies to export and wheel-through transactions (i.e., customers that are taking service from Midwest ISO), rather than an external entity taking no service or buying no energy from Midwest ISO, which would not be charged under this proposal.”).

allocation 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.

441. However, MISO does not comply with the Regional Cost Allocation Principle 4 requirement that the regional transmission planning process identify the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region. MISO also does not address whether the MISO region has agreed to bear the costs associated with any required upgrades in another transmission planning region or, if so, how such costs will be allocated within the MISO transmission planning region. While MISO states that its transmission planning process takes into account transmission expansion impacts on other transmission planning regions, the provisions to which MISO cites do not state that MISO will identify consequences of a transmission facility selected in the MTEP for purposes of cost allocation. In addition, the provisions MISO cites do not address the costs associated with the consequences on other regions that it identifies. We therefore direct MISO to file a further compliance filing, within 120 days of the date of issuance of this order, revising its Tariff to provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation. MISO must also address in the further compliance whether the MISO region has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated within the MISO transmission planning region.

442. We also find persuasive MISO's explanations for why its regional cost allocation methods for MEPs and MVPs meet the requirement of Regional Cost Allocation Principle 5 that the cost allocation methods be transparent. MISO states that the allocation and benefit determination methods for projects are specified in its Tariff and supplemented by the Business Practices Manual for Transmission Planning, the cost allocation methods are applied consistent with Order No. 890 with numerous opportunities for stakeholder participation, and MISO's analysis of projected benefits are documented through studies and are published in each year's MTEP report, which is posted on MISO's website. Therefore, we reject Illinois Commerce Commission's argument that MISO's regional cost allocation methods do not comply with Regional Cost Allocation Principle 5.

443. Finally, we find that MISO's regional cost allocation methods for MEPs and MVPs comply with Regional Cost Allocation Principle 6. MISO has chosen to use a different cost allocation method for different types of transmission facilities in the regional transmission plan. MISO has not designated a type of transmission facility that has no regional cost allocation method applied to it.

444. While Order No. 1000 requires each public utility transmission provider to have in place a method, or set of methods, for allocating the costs of new transmission facilities

selected in the regional transmission plan for purposes of cost allocation,⁸²⁰ it does not require a public utility transmission provider to establish a cost allocation method that would apply to any portion of the costs of a merchant transmission project not recovered through negotiated rates. Therefore, we deny Clean Line's request that the Commission require MISO to allow for partial allocation of the costs of a merchant transmission facility through the regional transmission cost allocation method as beyond the scope of Order No. 1000.

445. With respect to Clean Line's request for assurance that a project may remain eligible for regional cost allocation even if the project is not cost allocated at the interregional level, we note that Order No. 1000 defines a regional facility as one that is "located solely within a single transmission planning region."⁸²¹ Accordingly, Clean Line's arguments are directed at Order No. 1000 and interregional cost allocation, rather than the regional cost allocation methods proposed here, and are outside of the scope of this proceeding. Such concerns should be raised when MISO submits its compliance filing to comply with Order No. 1000's interregional requirements.

V. Entergy and Cleco

A. MISO

1. MISO's Filing

446. MISO states in its Order No. 1000 compliance filing that Entergy and Cleco, which own both transmission and generation assets currently located outside of MISO's existing planning area, have announced their intent to join MISO.⁸²² MISO states that once Entergy and Cleco integrate into MISO, MISO will take over all responsibility for planning their transmission systems pursuant to the MISO Tariff.⁸²³

447. MISO asserts that Entergy announced its decision to seek integration into MISO on April 25, 2011. MISO further asserts that the integration process will involve a five-year transition period that is described in the proposed Tariff revisions. MISO states that details of the process mostly appear in a new Attachment FF-6, which the Commission

⁸²⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558.

⁸²¹ *Id.* P 63.

⁸²² MISO Compliance Transmittal at 17.

⁸²³ *Id.*

conditionally accepted on April 19, 2012, and will become effective on June 1, 2013.⁸²⁴ According to MISO, the Entergy Operating Companies intend to sign the Transmission Owners Agreement prior to June 1, 2013, which will be governed by MISO's transmission planning process beginning with the planning cycle commencing on that date. MISO claims that Entergy will transfer functional control of its transmission facilities and integrate its generation and load into MISO by December 2013.⁸²⁵ MISO therefore asserts that to the extent that the Commission determines that MISO's transmission planning and cost allocation process is compliant with Order Nos. 1000 and 1000-A, it should also find Entergy compliant.⁸²⁶

448. MISO also notes that Cleco announced that it has decided to join MISO.⁸²⁷ MISO thus similarly argues that if the Commission determines that the MISO process is compliant with Order Nos. 1000 and 1000-A, it should also find Cleco compliant.⁸²⁸

449. MISO states that on September 24, 2012, MISO, Entergy, and ITC made parallel filings before the Commission relating to the merger of Entergy's and ITC's transmission business.⁸²⁹ MISO claims that if the mergers close as scheduled on June 30, 2013, Entergy's transmission assets will be transferred to MISO's functional control on that date only for purposes of transmission, not market, services. Additionally, MISO states that the five-year transition period will commence as soon as the mergers close (i.e., six

⁸²⁴ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,056, *order on reh'g and compliance*, 141 FERC ¶ 61,128 (2012)). Attachment FF-6 of the MISO Tariff outlines "Transmission Expansion Planning and Cost Allocation for Second Area's Transition."

⁸²⁵ MISO Compliance Transmittal at 17.

⁸²⁶ *Id.* at 18.

⁸²⁷ *Id.* (citing Cleco, Transmittal Letter, Docket No. ER13-84-000, at 1-2 (filed Oct. 11, 2012) (Cleco Transmittal)).

⁸²⁸ *Id.*

⁸²⁹ MISO states that the merger will be accomplished by forming the following ITC subsidiaries collectively referred to as ITC Midsouth Companies (ITC Midsouth): ITC Arkansas LLC, ITC Louisiana LLC, ITC Mississippi LLC, and ITC Texas LLC. *Id.*

months earlier than without the merger).⁸³⁰ MISO states that Entergy's generation and load will be integrated into MISO's markets in December 2013.⁸³¹

450. MISO states that, regardless of whether the above-described merger closes, MISO intends for its planning and transmission cost allocation pursuant to Order No. 1000 to become effective on June 1st of the Planning Year after the Commission issues an order accepting the proposed Tariff revisions.⁸³² MISO states that, as a result, it will commence transmission planning and cost allocation for Entergy and Cleco in the same Planning Year. MISO explains that Entergy's and Cleco's respective existing planning processes will be allowed to continue and will conclude by December 2013 in parallel with their initial participation in the Planning Year 2014 process at MISO.⁸³³

451. MISO contends that the various phases of the Entergy and Cleco integration and the corresponding Order No. 1000 compliance are consistent with the flexibility that the Commission accords RTOs in complying with Order No. 1000. MISO comments that the Commission previously allowed a phased approach for a new Transmission Owner's integration.⁸³⁴ MISO has not provided Tariff revisions related to the integration as part of its compliance filing. MISO instead states that it will file the necessary revisions with the Commission no later than 60 days prior to the effective date of its proposed modifications.⁸³⁵

2. Protests/Comments

452. Arkansas Electric argues that the Commission should require MISO to eliminate from the Tariff and the Transmission Owners Agreement any federal right of first refusal that would apply to Entergy or ITC Midsouth if they were to join MISO. Arkansas Electric explains that the *Mobile-Sierra* doctrine does not protect the MISO Tariff and the Transmission Owners Agreement against modifications directed at parties who executed

⁸³⁰ *Id.*

⁸³¹ *Id.*

⁸³² *Id.* at 18-19.

⁸³³ *Id.* at 19.

⁸³⁴ MISO Compliance Transmittal at 19 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,221 (2009), *order on reh'g*, 131 FERC ¶ 61,161, at P 26 (2010)).

⁸³⁵ MISO Compliance Transmittal at 21.

the Transmission Owners Agreement after the effective date of Order No. 1000.⁸³⁶ Arkansas Electric therefore states that because Entergy and ITC Midsouth did not execute the Transmission Owners Agreement before Order No. 1000 became effective, they cannot now claim *Mobile-Sierra* protection.⁸³⁷ Thus, Arkansas Electric asserts that the Commission does not need to make a *Mobile-Sierra* finding about the federal right of first refusal in the MISO Tariff and the Transmission Owners Agreement before ordering Entergy and ITC Midsouth to comply with Order No. 1000.⁸³⁸

453. Arkansas Electric contends that although MISO asserts that “[t]o the extent that MISO’s transmission planning and cost allocation process, as modified in this filing, is found compliant with Order No. 1000 and 1000-A, Entergy will also be compliant,” the Commission has no basis for making such a finding in this proceeding.⁸³⁹ Arkansas Electric asserts that until MISO and Entergy provide the Commission with complete details regarding the integration, the Commission cannot conclude that Entergy has complied with Order No. 1000.⁸⁴⁰

454. Arkansas Electric further contends that MISO does not request that the Commission determine that ITC Midsouth will comply with Order No. 1000 if they join MISO as Transmission Owners.⁸⁴¹ Arkansas Electric notes that the proposed ITC transaction is still pending approval before the Commission⁸⁴² and states that MISO’s proposed transitional provisions that were conditionally accepted by the Commission do not automatically apply if ITC Midsouth transfers functional control of transmission facilities to MISO.⁸⁴³ Accordingly, Arkansas Electric argues that the Commission should

⁸³⁶ Arkansas Electric, Protest, Docket Nos. ER13-187-000 and ER13-001, at 3-4 (filed Dec. 10, 2012).

⁸³⁷ *Id.* at 3.

⁸³⁸ *Id.* at 12 (citing MISO Compliance Transmittal at 33-39).

⁸³⁹ *Id.* at 3 (citing MISO Compliance Transmittal at 18).

⁸⁴⁰ *Id.* at 3-6.

⁸⁴¹ *Id.* at 6.

⁸⁴² *Id.*

⁸⁴³ *Id.* at 7 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,056, *order on reh’g and compliance*, 141 FERC ¶ 61,128 (2012) (accepting certain changes to the Tariff’s transmission-planning and cost-allocation regimes to provide for a
(continued . . .)

require ITC Midsouth to demonstrate compliance with Order No. 1000 when applying for Commission approval to integrate its transmission facilities with MISO.⁸⁴⁴

3. Answer

455. MISO and ITC argue that membership in an RTO with an approved Order No. 1000 compliance plan constitutes compliance with Order No. 1000 and that there would be no need for an independent finding that specific MISO members have complied.⁸⁴⁵

456. ITC argues that ITC Midsouth is entitled to rely on the MISO Transmission Owners Agreement as it exists when it signs the agreement, including any federal right of first refusal provisions. ITC claims that Arkansas Electric's *Mobile-Sierra* argument is premature since the Commission has not yet determined whether the Transmission Owners Agreement is subject to *Mobile-Sierra* protection.⁸⁴⁶ ITC argues that modification of the Transmission Owners Agreement to comply with Order No. 1000 will apply to all MISO members, regardless of when they sign the Transmission Owners Agreement.⁸⁴⁷

457. MISO argues that the Transmission Owners Agreement is entitled to protection under the *Mobile-Sierra* doctrine. MISO also states that to the extent the Commission finds that MISO's planning process complies with Order No. 1000, new Transmission Owners that participate in MISO's planning process will be in compliance with Order No. 1000's requirement to participate in a regional planning process. MISO asserts that any successor-in-interest of a signatory to the Transmission Owners Agreement would be subject to the same planning process that governed the predecessor entity.⁸⁴⁸

five-year transition period after the Entergy Operating Companies transfer operational control of their transmission facilities to MISO)).

⁸⁴⁴ *Id.* at 7.

⁸⁴⁵ ITC, Answer, Docket Nos. ER13-187-000 and ER13-187-001, at 4 (filed Jan. 4, 2013) (ITC Answer); MISO Compliance Filing Answer at 34-36.

⁸⁴⁶ ITC Answer at 5-6.

⁸⁴⁷ *Id.* at 6.

⁸⁴⁸ MISO Compliance Filing Answer at 13, 34-36.

4. Commission Determination

458. MISO proposed in its Order No. 1000 compliance filing that Order No. 1000's requirements apply to projects evaluated and approved as part of MTEP14, which begins on June 1, 2013. We understand MISO's proposal to mean that any project included in MTEP Appendix A before June 1, 2013 (including those in the Entergy 2014-2018 Construction Plan) will not be subject to the requirements of Order No. 1000. However, it is not clear how MISO will consider projects that have been previously approved in the Entergy transmission planning process. For example, in a related filing, MISO submitted changes to its Tariff related to ITC's proposed purchase of Entergy's transmission assets. In that filing, MISO proposes that all projects in the Energy 2014-2018 Construction Plan be included in the MTEP Appendix A as "previously approved projects," thus potentially not subjecting the projects to the requirements of Order No. 1000.⁸⁴⁹ We are concerned that MISO's proposal in Docket No. ER12-2682-000 will exempt *all* transmission facilities in the Entergy 2014-2018 Construction Plan from the requirements of Order No. 1000 by including those projects in the MTEP Appendix A as "previously approved projects." Exempting all facilities identified in the Entergy 2014-2018 Construction Plan may conflict with the requirements of Order No. 1000 that apply to the evaluation or reevaluation of any transmission facility that occurs after the effective date of the public utility's Order No. 1000 compliance filing. Our concern is based on the fact that MISO has yet to provide tariff language detailing how it intends to incorporate Entergy's existing planning processes into the MTEP.⁸⁵⁰

⁸⁴⁹ On September 24, 2012 as amended December 31, 2012, MISO filed in Docket No. ER12-2682-000 a proposed Module B-1 to its Tariff as one of several filings to effectuate the transfer from Entergy to ITC of Entergy's jurisdictional transmission facilities and the integration of those facilities into MISO. Under Module B-1, MISO will provide open access transmission services on the Entergy/ITC jurisdictional transmission facilities during the transition period until the full integration of Entergy into MISO in December 2013. Attachment 5 of Module B-1 covers transmission planning on the Entergy system during the interim period during 2013, including the completion of the 2014-2018 Construction Plan. Of interest to this proceeding, Module B-1, Attachment 5, Section 4.5 states that "Projects in the Construction Plan will be included in the MTEP Appendix A as "previously approved projects," but the cost allocation provisions in Attachment FF of the Tariff shall not be applicable to such projects."

⁸⁵⁰ In its compliance filing, MISO listed areas of its Tariff that may need to be revised once Entergy and Cleco are integrated into the MISO system, but MISO did not submit actual Tariff changes. *See* MISO Compliance Transmittal at 21.

459. We therefore conditionally accept Cleco's and Entergy's proposal to comply with Order No. 1000 by participating in the MISO regional transmission planning process starting in June 2013, subject to the outcome of the proceedings on MISO's proposed modifications to its Tariff that are needed to effectuate the transition to transmission planning by MISO of the Entergy and Cleco transmission systems.⁸⁵¹ In addition, we direct MISO to submit a compliance filing, within 120 days of the date of the issuance of this order, which provides further explanation of (1) its proposal to include all facilities in Entergy's 2014-2018 Construction Plan as "previously approved projects" under Appendix A of the MTEP; (2) what evaluation (or reevaluation) it will perform on the previously approved projects or facilities identified in the Entergy 2014-2018 Construction Plan; and (3) what regional cost allocation method will apply to the facilities MISO evaluates (or reevaluates).

460. We agree with Arkansas Electric that the Commission cannot yet determine whether Entergy will comply with Order No. 1000 upon joining MISO since MISO, Entergy and Cleco have not provided the necessary details of how Entergy and Cleco will participate in the MTEP process, and MISO has not yet proposed Tariff revisions affecting the integrations. MISO asserts that it intends to submit the Tariff revisions necessary to integrate Entergy and Cleco into its region, including modifications to MTEP, 60 days prior to the effective date of the proposed modifications, at this time, the Commission has not been able to review such modifications. We address *Mobile-Sierra* issues as they relate to the Transmission Owners Agreement elsewhere in this order, and our conclusions apply equally to Entergy and Cleco.⁸⁵²

B. Entergy (Docket No. ER13-95-000)

1. Entergy's Filing

461. Entergy states that it will comply with Order No. 1000 by participating in the MISO MTEP, beginning in June 2013 for the MTEP 2014 planning cycle, which includes participation by Entergy in the MISO local transmission planning process.⁸⁵³ Entergy intends to be fully integrated into MISO by December 2013.⁸⁵⁴ Entergy explains that Entergy and MISO, which is currently Entergy's Independent Coordinator of

⁸⁵¹ See *supra* note 26.

⁸⁵² See *supra* PP 174-193.

⁸⁵³ Entergy, Transmittal Letter, Docket No. ER13-95-000, at 3 (filed Oct. 11, 2012) (Entergy Transmittal).

⁸⁵⁴ *Id.* at 1, 3.

Transmission (ICT), will complete Entergy's existing regional and inter-regional coordination processes by the fourth quarter of 2012, and those processes will then terminate.⁸⁵⁵

462. However, Entergy further explains that it will continue to prepare, under the oversight of the ICT, the 2014-2018 Construction Plan, which it intends to complete by December 2013. According to Entergy, the 2014-2018 Construction Plan will include: (1) all reliability projects identified during 2013; (2) transmission upgrades required to grant transmission or generation interconnection service; and (3) any economic projects identified after the 2013-2017 Construction Plan was completed.⁸⁵⁶

463. Entergy explains that it is in the process of integrating into the MISO system and has taken several significant steps towards transferring functional control of its transmission system to MISO in December 2013. In Docket No. ER12-480-000, MISO proposed and the Commission approved, a five-year transition period for the allocation of transmission upgrade costs between the existing MISO footprint and the Entergy Operating Companies footprint.⁸⁵⁷ Entergy notes that it has also filed applications to transfer functional control of its transmission system to MISO with the Arkansas Public Service Commission, the Council of the City of New Orleans, the Louisiana Public Service Commission, the Mississippi Public Service Commission and the Public Utility Commission of Texas.

464. Entergy proposes revisions to Attachment K of the current Entergy Tariff, proposing that the Regional Planning Process contained within section 13.1 continue to apply until the process initiated in calendar year 2012 is completed, and the inter-regional planning processes of section 13.2 continue to apply until the Southeast Inter-Regional Participation Process initiated in calendar year 2012 is completed. Similarly, Entergy proposes that the provisions of section 14, regarding economic planning studies, continue to apply until the studies initiated in calendar year 2012 are completed.

465. Entergy also proposes adding a new section 15 to Attachment K stating that Entergy will participate in regional and inter-regional transmission planning through

⁸⁵⁵ Specifically, Entergy will terminate its participation in the Southeast Inter-Regional Participation Process (SIRPP) and will no longer apply the provisions in the Entergy Tariff that provide for regional coordination between Entergy and SPP.

⁸⁵⁶ Entergy Transmittal at 1, 4.

⁸⁵⁷ See *Midwest Indep. Trans. Sys. Operator, Inc.*, 139 FERC ¶ 61,056, *order on reh'g and compliance*, 141 FERC ¶ 61,128 (2012).

MISO beginning with the MISO MTEP 2014 planning cycle commencing in June 2013. Entergy states that it will participate pursuant to Attachment FF of MISO's Tariff.

466. Entergy requests an effective date of October 11, 2012 for its proposed Attachment K revisions.⁸⁵⁸ Entergy states that MISO will need to make a filing before June 2013 to amend the MISO Tariff to provide for the Entergy Operating Companies' participation in the MTEP process.

2. Protests/Comments

467. LS Power states that development of Entergy's 2014-2018 Construction Plan occurs outside of the MTEP process and will not commence until early 2013, which is after the October 11, 2012 effective date that Entergy requested for its Order No. 1000 compliance filing. LS Power therefore argues that Entergy cannot claim that the 2014-2018 Construction Plan is the completion of a current transmission planning cycle. In addition, LS Power claims that because none of the projects in Entergy's 2014-2018 Construction plan will be subject to MISO's proposed competitive bidding process, Entergy (and, upon its purchase of Entergy's transmission assets, ITC) will essentially have a *de facto* right of first refusal through 2018.⁸⁵⁹

468. LS Power argues that Entergy has a long history of under-investment in its transmission system and that the plan to integrate Entergy into MISO addresses the disparity between the level of planning in MISO and in Entergy. LS Power states that members of MISO did not want to bear the costs of improvements needed to raise Entergy's infrastructure to a level comparable to the rest of MISO.⁸⁶⁰

469. Lafayette notes that Entergy made limited changes to the Entergy Tariff in its compliance filing that do comply with Order No. 1000. Lafayette argues that if Entergy does not successfully integrate into MISO, the Commission should require Entergy to revise the Entergy Tariff on an expedited basis to comply with Order No. 1000.⁸⁶¹

3. Answer

470. Entergy states that the Commission should reject LS Power's protest. Entergy argues that participating in MTEP 2014 will enable it to comply with Order No. 1000 on

⁸⁵⁸ Entergy Transmittal at 6.

⁸⁵⁹ LS Power, Protest, Docket No. ER13-95-000, at 8 (filed Nov. 26, 2012).

⁸⁶⁰ *Id.* at 4.

⁸⁶¹ Lafayette, Comments, Docket No. ER13-95-000, at 3-4 (filed Nov. 26, 2012).

the same basis and in the same time frame as current Transmission Owner members of MISO. Entergy also claims that the ICT (MISO) will oversee the development of the 2014-2018 Construction Plan and will ensure that a transmission plan is developed for the 2013 transmission planning cycle. Entergy acknowledges that cost allocation under Attachment FF of the MISO Tariff will not apply to the projects in the 2014-2018 Construction Plan.⁸⁶² Entergy argues that LS Power's claims that Entergy has a long history of under-investment in transmission are baseless and beyond the scope of the Order No. 1000 proceeding.⁸⁶³

471. In response to Lafayette, Entergy states that the proposed divestiture of the Entergy transmission system is not a prerequisite for compliance with Order No. 1000. Entergy asserts that all of Entergy's retail regulators have conditionally approved the transfer of functional control of the Entergy transmission system to MISO and that each Entergy Operating Company has executed the MISO Transmission Owners Agreement. Entergy agrees with Lafayette, however, that if any Entergy Operating Company fails to transfer functional control of its transmission system to MISO, Entergy will need to make an additional Order No. 1000 compliance filing with the Commission.⁸⁶⁴

4. Commission Determination

472. We conditionally accept Entergy's revisions to its tariff that state it will participate in the MISO regional transmission planning process starting in June 2013, subject to the outcome of the proceedings on MISO's proposed modifications to its Tariff that are needed to effectuate the transition to transmission planning by MISO of the Entergy transmission system.⁸⁶⁵ We find that Entergy's proposal to develop and complete the 2014-2018 Construction Plan using its current planning process partially complies with Order No. 1000 but require MISO to provide further explanation of its proposal to exempt all facilities in Entergy's 2014-2018 Construction Plan from the requirements of Order No. 1000, as discussed below.

473. In Order No. 1000, the Commission recognized that the issuance of Order No. 1000 was likely to fall within the middle of ongoing transmission planning cycles and stated that the Commission's intent is not to delay current studies being undertaken

⁸⁶² *Id.* at 4.

⁸⁶³ Entergy, Answer, Docket No. ER13-95-000, at 5-6 (filed Dec. 11, 2012) (Entergy Answer).

⁸⁶⁴ *Id.* at 5.

⁸⁶⁵ *See supra* note 26.

pursuant to existing regional transmission planning processes or impede progress on implementing existing transmission plans. The Commission directed public utility transmission providers to explain in their compliance filings how they will determine which facilities evaluated in their local and regional transmission planning processes will be subject to the requirements of Order No. 1000.⁸⁶⁶ In its filing, Entergy explained that it intends to comply with Order No. 1000 by participating in MTEP 2014, beginning in June 2013, but that it also intends to continue its current transmission planning cycle during the period leading up to and overlapping with its participation in MTEP 2014 by completing its 2014-2018 Construction Plan. In its answer, Entergy states that completion of the 2014-2018 Construction Plan will ensure that a transmission plan is developed for the 2013 transmission planning cycle.⁸⁶⁷

474. The planning process for the 2014-2018 Construction Plan has been underway since October 2012.⁸⁶⁸ Therefore, allowing Entergy to complete this planning cycle does not conflict with the requirements of Order No. 1000. In addition, the Commission notes that MISO, in its role as Entergy's ICT, will oversee Entergy's development of the 2014-2018 Construction Plan until June 1, 2013. Thereafter, MISO will oversee continued development and completion of the 2014-2018 Construction Plan, as outlined in MISO's proposed Tariff changes in Docket No. ER12-2682-000 related to ITC's purchase of Entergy's transmission assets.⁸⁶⁹ As discussed above, however, we are directing MISO to submit a compliance filing, within 120 days of the date of the issuance of this order, which provides further explanation of (1) its proposal to include all facilities in Entergy's 2014-2018 Construction Plan as "previously approved projects" under Appendix A of the MTEP; (2) what evaluation (or reevaluation) it will perform on the previously approved projects or facilities identified in the Entergy 2014-2018 Construction Plan; and (3) what regional cost allocation method will apply to the facilities MISO evaluates (or reevaluates).

⁸⁶⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65.

⁸⁶⁷ Entergy Answer at 4.

⁸⁶⁸ Entergy Arkansas, Inc., Open Access Transmission Tariff, Attachment K, App. 6 (Transmission Planning Process) (1.0.0).

⁸⁶⁹ The oversight provisions proposed in Docket No. ER12-2682-000 apply only in the event that ITC completes the transaction to purchase Entergy's assets. However, pursuant to section 9 of the Transmission Service Protocol of Entergy Tariff Attachment S, MISO would exercise oversight authority as the ICT in the event that the ITC transaction is not completed.

475. We agree with Lafayette that if Entergy is unable to transfer functional control of its transmission system to MISO as planned, additional compliance will be necessary to meet the requirements of Order No. 1000. Therefore, we require Entergy to notify the Commission by June 1, 2013 should it fail to join the MTEP 2014 process as proposed. We will decide at that time what action is necessary to ensure Entergy's compliance with Order No. 1000. We will not prejudge, however, whether the divestiture of Entergy's transmission assets will impact its ability to comply with the requirements of Order No. 1000.

476. We find that comments regarding the historical investment Entergy has made to its transmission system are not relevant to the current filing and we therefore do not address them here.

C. Cleco (Docket No. ER13-84-000)

1. Cleco's Filing

477. Cleco states that it will comply with Order No. 1000 by participating in the MISO MTEP process beginning in June 2013 for the MTEP 2014 planning cycle. Cleco explains that it will conclude and terminate its current transmission planning process by that time. Cleco asserts that because Entergy is also integrating into MISO, it is in Cleco's best interests to integrate at the same time. Cleco states that it is currently in the process of preparing an application for approval of such integration to the Louisiana Public Service Commission, and plans to sign the Transmission Owners Agreement prior to June 2013.⁸⁷⁰

478. Cleco proposes limited changes to its existing Attachment K, asserting in sections 1.0, 2.0, 11.1.4 and 13.3 that it intends to participate in the MISO MTEP process beginning in June 2013. In sections 2.0 and 13.3, Cleco indicates that its regional transmission cost allocation will be governed by Attachment FF-6 (Transmission Expansion Planning and Cost Allocation for Second Area's Transition) of the MISO Tariff. Cleco proposes no further changes to the Cleco Tariff.

479. Cleco requests an effective date of October 11, 2012, for the changes to its existing Attachment K. Cleco states that MISO will need to make a filing before June 2013 to amend the MISO Tariff to provide for Cleco's participation in the MTEP process.

⁸⁷⁰ Cleco Transmittal at 5.

2. Protests/Comments

480. Lafayette and LS Power contend that Cleco's proposed changes do not comply with Order No. 1000.⁸⁷¹ Lafayette and LS Power argue that Cleco has made no filing with any regulator, federal or state, committing to join MISO.⁸⁷² LS Power also argues that while Cleco states its intent to join MISO by June 1, 2013, Cleco has yet to execute the Transmission Owners Agreement.⁸⁷³ LS Power asserts that if Cleco experiences any delays in obtaining the necessary regulatory approvals, Cleco's plan to complete and terminate its existing regional planning process prior to participation in the MISO MTEP may result in Cleco not having a regional planning process as of June 2013. LS Power contends that the Cleco filing should therefore be rejected as deficient.⁸⁷⁴

481. Lafayette recommends that the Commission require Cleco to: (1) promptly inform the Commission if it believes it will join MISO at a date later than proposed; (2) make a detailed filing regarding its plans for compliance with Order No. 1000 if it has not joined MISO by June 1, 2013; and (3) revise its Tariff to fully comply with Order No. 1000 on an expedited basis if Cleco's plans for integration into the MISO system are cancelled.⁸⁷⁵

3. Commission Determination

482. We conditionally accept Cleco's revisions to its tariff that state it will participate in the MISO regional transmission planning process starting in June 2013, subject to the outcome of the proceedings on MISO's proposed modifications to its Tariff that are needed to effectuate the transition to transmission planning by MISO of the Cleco transmission system.⁸⁷⁶ Cleco asserts in its compliance filing that it intends to utilize the Attachment FF-6 regional cost allocation proposal conditionally approved by the

⁸⁷¹ Lafayette, Comments, Docket No. ER13-84-000, at 2 (filed Nov. 26, 2012) (Lafayette Comments to Cleco Compliance Filing); LS Power, Protest, Docket No. ER13-84-000, at 1-2 (filed Nov. 26, 2012) (LS Power Protest to Cleco Compliance Filing at 1-2).

⁸⁷² Lafayette Comments to Cleco Compliance Filing at 3; LS Power Protest to Cleco Compliance Filing at 2-3.

⁸⁷³ LS Power Protest to Cleco Compliance Filing at 2-3.

⁸⁷⁴ *Id.* at 3.

⁸⁷⁵ Lafayette Comments to Cleco Compliance Filing at 3.

⁸⁷⁶ *See supra* note 26.

Commission for Entergy's transition into MISO,⁸⁷⁷ and proposes tariff revisions to that effect. Whether Cleco will be subject to the cost allocation provisions of Attachment FF-6 is outside the scope of this compliance proceeding, and must be determined through separate application.

483. Further, we note that on December 6, 2012, Cleco filed an application with the Louisiana Public Service Commission seeking approval to join MISO.⁸⁷⁸ In response to the protest by LS Power, we decline to reject Cleco's filing as deficient at this time. However, we require Cleco to notify the Commission by June 1, 2013 should it fail to join the MTEP 2014 process as proposed. We will decide at that time what action is necessary to ensure Order No. 1000 compliance by Cleco.

VI. Baseline Reliability Project Filing (Docket No. ER13-186-000)

A. MISO's Filing

484. Baseline Reliability Projects are network upgrades required to ensure that the MISO transmission system remains in compliance with NERC reliability standards. Baseline Reliability Projects include projects operating at 100 kV or above that are needed to maintain reliability while accommodating the ongoing needs of existing transmission customers.⁸⁷⁹ MISO states that under the existing Tariff, a Baseline Reliability Project is categorized as "cost shared" or "not cost shared" depending on project cost. A Baseline Reliability Project is currently eligible for cost sharing if it has a project cost of: (1) \$5 million or greater, or (2) under \$5 million that is five percent or more of the constructing Transmission Owner's net transmission plant. MISO asserts that for cost shared Baseline Reliability Projects, the costs are primarily allocated to individual transmission pricing zones on the basis of a Line Outage Distribution Factor

⁸⁷⁷ See *Midwest Indep. Trans. Sys. Operator, Inc.*, 139 FERC ¶ 61,056, *order on reh'g and compliance*, 141 FERC ¶ 61,128 (2012).

⁸⁷⁸ See Louisiana Public Service Commission Docket No. U-32631 *Cleco Power LLC; In re: Application of Cleco Power LLC for: (i) public interest finding in favor of the transfer of functional control of certain transmission assets to the Midwest Independent Transmission System Operator, Inc. Regional Transmission Organization; (ii) an accounting order deferring costs related to Cleco Power LLC's transition into the Midwest Independent Transmission System Operator, Inc. Regional Transmission Organization; and (iii) expedited treatment.*

⁸⁷⁹ MISO, FERC Electric Tariff, Attachment FF, § II.A.1 (7.0.0).

(LODF) analysis.⁸⁸⁰ For cost shared Baseline Reliability Projects operating at 345 kV and above, 20 percent of the costs are allocated regionally, with the remaining 80 percent of the Baseline Reliability Project costs allocated to individual transmission pricing zones based on the LODF analysis. MISO states that the costs allocated based on LODF analysis may be spread across one or more transmission pricing zones.

485. MISO proposes to modify the existing Baseline Reliability Project cost allocation method to eliminate any cost sharing as between transmission pricing zones. Instead, MISO proposes to allocate all Baseline Reliability Project costs to the pricing zone where the Baseline Reliability Project is located. The proposed Tariff revisions replace the existing cost allocation method based on LODF and partial regional cost allocation for projects operating at 345 kV or above. MISO is not proposing to change the definition of Baseline Reliability Projects and states that projects that qualify as Baseline Reliability Projects under the current method will continue to qualify as such.

486. MISO states that, given the evolution of MISO's transmission planning process and creation of additional project types such as MEPs and MVPs, allocating all Baseline Reliability Project costs to the pricing zone where the Baseline Reliability Project is located is consistent with the primary use of such facilities and is just and reasonable. According to MISO, the primary benefits of Baseline Reliability Projects are realized at the local level and MISO's adoption of project categories such as MEPs, which are evaluated at the subregional and regional level, and MVPs, which are evaluated at the regional level on a portfolio (rather than individual) basis, has greatly diminished the role of Baseline Reliability Projects in providing subregional and region-wide benefits.⁸⁸¹

487. MISO explains that since the MTEP process was adopted in 2006, 62 Baseline Reliability Projects, or 80 percent of the 78 total Baseline Reliability Projects approved, had at least 75 percent of their costs allocated to the pricing zone where the Baseline Reliability Project is located. MISO further explains that more than half of all approved cost shared Baseline Reliability Projects have had only minimal costs allocated outside of the pricing zone where the project is located, with more than 90 percent of the costs actually being allocated to the pricing zone where the project is located. Because the LODF methodology determines which pricing zones have flows impacted by Baseline Reliability Projects, MISO contends that its current Baseline Reliability Project cost

⁸⁸⁰ MISO explains that the LODF analysis identifies the beneficiaries of a Baseline Reliability Project based on the impact that the Baseline Reliability Project would have on the total flows in any other zone as a percentage of its total impact on flows in all other zones.

⁸⁸¹ MISO, Transmittal Letter, Docket No. ER13-186-000, at 5 (filed Oct. 25, 2012) (Baseline Reliability Project Transmittal).

allocation method demonstrates that the benefits provided by Baseline Reliability Projects are realized primarily in the pricing zone where the Baseline Reliability Project is located.⁸⁸² In addition to the minimal cost sharing resulting from the LODF analysis,⁸⁸³ MISO states that only 17 of the 78 Baseline Reliability Projects have received 20 percent regional cost sharing. Furthermore, MISO explains that 90 percent of the 78 approved cost shared Baseline Reliability Projects are located exclusively in a single pricing zone. MISO contends that given the local nature and benefits of Baseline Reliability Projects, eliminating the allocation of Baseline Reliability Project costs outside of the pricing zone where the Baseline Reliability Project is located complies with both the letter and the intent of Order No. 1000.

488. Moreover, MISO contends that it will pursue an MEP or MVP if it will resolve multiple transmission needs more efficiently and cost-effectively than individual Baseline Reliability Projects, and as long as the MEP or MVP can be implemented in time to meet the reliability needs that the Baseline Reliability Projects were needed to address. Therefore, MISO contends that its cost allocation proposal for Baseline Reliability Projects will not circumvent Order No. 1000's requirement that public utility transmission providers remove a federal right of first refusal for transmission facilities selected in the regional transmission plan for purposes of cost allocation. MISO states that its top-down planning process seeks transmission solutions to more cost-effectively address multiple transmission needs rather than developing individual solutions to each discrete need.⁸⁸⁴ MISO further explains that if a Baseline Reliability Project also qualifies as an MEP or MVP, the project will be considered an MEP or MVP.⁸⁸⁵ Finally, MISO argues that with the addition of the MVP project category and the recent study process improvement and modifications to the regional cost allocation method for MEPs, multiple local reliability issues may be addressed through these categories of projects.⁸⁸⁶ In fact, MISO states that its recent experience with MVPs demonstrates a trend towards

⁸⁸² *Id.* at 6.

⁸⁸³ *Id.*

⁸⁸⁴ *Id.* at 15-16.

⁸⁸⁵ *Id.* at 16 (citing MISO, FERC Electric Tariff, Attachment FF, §§ II.C.4, III.A.2.h (7.0.0)).

⁸⁸⁶ *Id.* at 17.

regional solutions in that its 2011 MTEP MVP portfolio displaced the need for 23 future Baseline Reliability Projects.⁸⁸⁷

B. Protests/Comments

489. Illinois Commerce Commission supports MISO's proposed revisions. Illinois Commerce Commission states that a Baseline Reliability Project's purpose is to address specific reliability violations forecasted through the planning process and that such violations are physically located in specific zones.⁸⁸⁸ Illinois Commerce Commission states that MISO's analysis and study results suggest that costs should fall mostly on users located in the local zone where the forecasted violation is located.⁸⁸⁹ Illinois Commerce Commission asserts that MISO's proposal to eliminate the cost sharing from Baseline Reliability Projects and allocate costs to users in the zone in which the transmission facility will be physically located is consistent with established principles for allocating costs to cost causers and direct beneficiaries.⁸⁹⁰

490. Illinois Commerce Commission claims that MISO is proposing to modify the cost allocation methodology for Baseline Reliability Projects to give the MISO Transmission Owners the ability to construct local transmission facilities without potentially running afoul of the Commission's right of first refusal elimination requirement and the consequent competitive developer selection process.⁸⁹¹

491. Illinois Commerce Commission states that MISO has failed to determine benefits and identify beneficiaries to justify a postage stamp Baseline Reliability Project cost allocation component. Illinois Commerce Commission states that MISO has likewise failed to identify "data requirements" for determining benefits outside the local zone equal to twenty percent, or that twenty percent of the benefits of Baseline Reliability Projects are spread evenly across the MISO region on a postage stamp basis.⁸⁹²

⁸⁸⁷ *Id.* (citing Direct Testimony of Jennifer Curran, Exhibit to Baseline Reliability Project Transmittal, at 17-18 (Baseline Reliability Project Curran Test.)).

⁸⁸⁸ Illinois Commerce Commission, Comments, Docket No. ER13-186-000, at 5 (filed Dec. 10, 2012) (citing Baseline Reliability Project Transmittal at 3).

⁸⁸⁹ *Id.* at 5-6.

⁸⁹⁰ *Id.* at 6.

⁸⁹¹ *Id.* at 9 (citing Baseline Reliability Project Transmittal at 12).

⁸⁹² *Id.* at 10-11.

492. According to Illinois Commerce Commission, Order No. 1000 does not permit the “allocation of costs to persons that benefit in some way from the existence of a transmission facility even if they use no transmission service at all.”⁸⁹³ For this reason, Illinois Commerce Commission concludes that implementing a twenty percent postage stamp allocation does not comply with any of the Order No. 1000 requirements.⁸⁹⁴ The Illinois Commerce Commission states that MISO claims that the LODF analysis identifies the Baseline Reliability Project beneficiaries based on a flow-based impact that the new transmission line would have on the total flows in any other zone as a total percentage of all other zones.⁸⁹⁵ Illinois Commerce Commission therefore argues that even if the Commission chooses not to eliminate the LODF component of Baseline Reliability Project cost allocation, the Commission must accept MISO’s proposal to eliminate the twenty percent region-wide postage stamp cost allocation component for Baseline Reliability Projects with a voltage class of 345 kV or greater.⁸⁹⁶

493. Illinois Commerce Commission contends that by eliminating the sharing of project costs outside the zone in which the Baseline Reliability Project is located, the Commission will provide a strong incentive for the incumbent developer within that zone to adopt the “more efficient or cost-effective solution” to satisfy the particular reliability need. According to Illinois Commerce Commission, if a state’s consumers will pay for a project’s entire cost, the state authority will have maximum incentive to ensure that the project is efficient and cost effective.⁸⁹⁷ Conversely, Illinois Commerce Commission states that if a substantial portion of the project’s cost will be allocated by MISO to zones outside the state, the cost/benefit calculus considered by the state authority for the zone where the project will be located may not take into account all project costs.⁸⁹⁸ Therefore, Illinois Commerce Commission contends that allocating one hundred percent of Baseline Reliability Project costs to the zone where the Baseline Reliability Project will be

⁸⁹³ *Id.* at 11-12 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 575).

⁸⁹⁴ *Id.*

⁸⁹⁵ *Id.* at 12 (citing Baseline Reliability Project Transmittal at n.7).

⁸⁹⁶ *Id.*

⁸⁹⁷ *Id.* at 13-14.

⁸⁹⁸ *Id.* at 14.

physically located will effectively ensure the selection and development of the most efficient and cost-effective transmission projects.⁸⁹⁹

494. Alternatively, if the Commission permits Baseline Reliability Project cost sharing, Illinois Commerce Commission states that the Commission must eliminate the right of first refusal for such projects and impose a competitive developer selection process as described in Order No. 1000.⁹⁰⁰ Illinois Commerce Commission also asks the Commission to include an active decision-making role for the state regulatory commission of each state whose consumers will be allocated costs for the project.

495. LS Power, AEP, and ATC/Duke/Transource assert that MISO's proposal is inconsistent with Order No. 1000. LS Power argues that MISO's effort to reclassify Baseline Reliability Projects as "local facilities" is an attempt by MISO to exclude the majority of reliability projects from the requirements of Order No. 1000.⁹⁰¹ Joint State Commissions request that the Commission require MISO to maintain the current cost-sharing methodology, eliminate any federal right of first refusal, and subject the projects to the competitive process. Joint State Commissions and Iowa Board believe that the extremely limited timeframe and severely compressed stakeholder process did not adhere to Order No. 1000 and Order No. 890's open and transparent planning process requirements.⁹⁰² Joint State Commissions assert that there was no consensus among stakeholders in that short month about the direction that MISO should take on this issue.⁹⁰³ Iowa Board urges the Commission to reject MISO's proposal to remove cost sharing for Baseline Reliability Projects and further requests that the Commission require that any changes to cost allocation methodology for Baseline Reliability Projects be properly vetted through the MISO stakeholder process where all proposals can be

⁸⁹⁹ *Id.* at 14-15 (explaining that when costs of a project are allocated pursuant to FERC directives outside of the state where the project is physically located, the regulatory agencies in that state do not have the authority to ensure the reasonableness of those costs because of the application of the federal filed rate doctrine).

⁹⁰⁰ *Id.* at 15.

⁹⁰¹ LS Power Protest to MISO Compliance Filing at 6-7, n.13 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 423).

⁹⁰² Joint State Commissions, Protest, Docket Nos. ER13-186-000, ER13-187-000, and ER13-187-001, at 9-10 (filed Dec. 10, 2012) (Joint State Commissions Protest); Iowa Board, Comments, Docket No. ER13-186-000, at 4-5 (filed Dec. 18, 2012) (Iowa Board Comments).

⁹⁰³ Joint State Commissions Protest at 10.

considered.⁹⁰⁴ Joint State Commissions request that the Commission clarify that the application of this waiver would be in place until the MISO stakeholder process could consider this proposal and other alternatives for a long-term solution. Joint State Commissions assert that the Commission should establish a timeline for consideration and vetting of any approach in the MISO stakeholder process, with the goal of completing that process in advance of MTEP 14.⁹⁰⁵ ATC/Duke/Transource request that the Commission direct MISO to obtain additional input with respect to any changes to the cost allocation methodology for Baseline Reliability Projects to allow for a proper and thorough vetting that would adhere to the open and transparent planning process requirements of Order No. 1000 and Order No. 890.⁹⁰⁶

496. Several commenters state that MISO should not be permitted to change a Commission approved cost allocation methodology as a way to circumvent the requirement to remove federal right of first refusals under Order No. 1000.⁹⁰⁷ AEP states that as long as the required in-service date for a Baseline Reliability Project can accommodate the competitive process (i.e., longer lead time projects), the presence of project schedule risk and developer performance risk should not justify retention of the federal right of first refusal.⁹⁰⁸ LS Power states that the Commission should order the removal of right of first refusal for Baseline Reliability Projects from all Commission-approved tariffs and agreements consistent with Order No. 1000. AEP asserts that significant Baseline Reliability Projects will continue to be needed given significant changes that can and will occur on the system between MVP and MEP cycles, and thus,

⁹⁰⁴ Iowa Board Comments at 5.

⁹⁰⁵ Joint State Commissions Protest at 5.

⁹⁰⁶ *Id.* at 10.

⁹⁰⁷ Iowa Board Comments at 4; Joint State Parties, Protest, Docket No. ER13-186-000, at 4 (filed Dec. 10, 2012) (Joint State Parties Protest); AWEA/WOW Comments at 21-22; LS Power, Protest, Docket No. ER13-186-000, at 4 (filed Dec. 10, 2012) (LS Power Protest to Baseline Reliability Project Filing); AEP Protest at 6-7; Indiana Commission, Protest, Docket No. ER13-187-000, at 3 (filed Dec. 10, 2012); Joint State Commissions Protest at 4.

⁹⁰⁸ AEP Protest 10-11 (citing PJM Interconnection, LLC, Transmittal Letter, Docket No. ER13-198-000, at 52-54 (filed Oct. 25, 2012) (mitigating risk of delay by providing flexibility so that if the needed in-service date for a given project dictates designation to the incumbent, such designation is permitted)).

the right of first refusal elimination policy should be applied to this category of transmission projects.⁹⁰⁹

497. In contrast, Joint State Parties assert that MISO should have requested, and the Commission should grant, a waiver for all Baseline Reliability Projects from the Commission's requirement of the elimination of a federal right of first refusal from MISO's Tariff to protect baseline reliability for states that do not have a state-based right of first refusal.⁹¹⁰

498. LS Power argues that, because more than zero percent of costs are regionally cost-allocated for Baseline Reliability Projects, such projects should properly be defined as regional, not local, projects and specifically included in the definition of Open Transmission Project.⁹¹¹ Without a restriction in the Baseline Reliability Project definition that a Baseline Reliability Project must be located solely in a single transmission provider's retail distribution service territory, LS Power argues that the request to treat all Baseline Reliability Projects as local must fail regardless of how the costs are allocated.⁹¹² LS Power and AWEA/WOW state that restricting a Baseline Reliability Project to a single transmission provider's retail distribution service territory or footprint could lead MISO to divide projects up in a manner that would not otherwise be appropriate or to select a combination of projects that are not the more efficient or cost effective simply to retain a right of first refusal.⁹¹³

499. Iowa Board, AWEA/WOW, and Joint State Parties state that MISO has not demonstrated that the current Baseline Reliability Project cost allocation methodology is no longer just and reasonable.⁹¹⁴ Iowa Board asserts that MISO has provided stakeholders with data indicating that a number of transmission lines provide benefits to Transmission Owners other than the host Transmission Owner and, in some cases, these benefits represent a significant portion of the costs of the upgrade or addition.⁹¹⁵ If a

⁹⁰⁹ *Id.* at 12-13.

⁹¹⁰ Joint State Parties Protest at 6.

⁹¹¹ LS Power Protest to MISO Compliance Filing at 7.

⁹¹² LS Power Protest to Baseline Reliability Project Filing at 9.

⁹¹³ *Id.* at 9-10; AWEA/WOW Comments at 27.

⁹¹⁴ Iowa Board Comments at 3-4; AWEA/WOW Comments at 23; Joint State Parties Protest at 4.

⁹¹⁵ Iowa Board Comments at 3-4.

determination that the current Baseline Reliability Project cost allocation methodology is no longer just and reasonable were made, Iowa Board and Joint State Parties argue that the Commission should require MISO to use the stakeholder process for review of principles and development of changes.⁹¹⁶

500. AWEA/WOW state that MISO staff indicated during stakeholder discussions that it would not be proposing this cost allocation change if it were not for the requirement in Order No. 1000 to remove the federal right of first refusal for any project where costs are shared beyond the local Transmission Owner. AWEA/WOW therefore request that the Commission direct MISO to develop a different solution to their concern that reliability projects will be delayed due to the requirements in Order No. 1000 to remove the federal right of first refusal.⁹¹⁷

501. Consumers Energy Company, LS Power, and the Joint State Commissions agree that MISO has not provided a reasonable basis to abandon the current policy.⁹¹⁸ Consumers Energy Company states that if the primary benefits of Baseline Reliability Projects are realized at the local level, the current Baseline Reliability Project cost allocation methodology should be retained. According to Consumers Energy Company, the current Baseline Reliability Project cost allocation methodology results in cost sharing that is commensurate with the benefits outside of a single pricing zone.⁹¹⁹ Consumers Energy Company further argues that nothing in MISO's analysis changes the fact that many Baseline Reliability Projects provide both local and regional benefits. Consumers Energy Company notes that Attachment FF currently effectively recognizes both the local and regional benefits of Baseline Reliability Projects and allocates costs accordingly.⁹²⁰ Joint State Commissions and the Joint State Parties state that the Commission determined that the proposed 20 percent system-wide postage stamp rate for Baseline Reliability Projects is just and reasonable after a significant stakeholder process and technical conferences.⁹²¹ Joint State Commissions argue that nearly 28 percent of the

⁹¹⁶ *Id.*; Joint State Parties Protest at 4.

⁹¹⁷ AWEA/WOW Comments at 23.

⁹¹⁸ Consumers Energy Company Protest to Baseline Reliability Project Filing at 5; LS Power Protest to Baseline Reliability Project Filing at 5-6; Joint State Commissions Protest at 8-9.

⁹¹⁹ Consumers Energy Company Protest to Baseline Reliability Project Filing at 3.

⁹²⁰ *Id.* at 4-5.

⁹²¹ Joint State Commissions Protest at 7-8 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241, at 62,239 (2006)).

total cost of Baseline Reliability Projects have been shared outside of the pricing zone where the project was physically located.⁹²²

502. AEP asserts that a review of the 2011 and 2009 MTEP results demonstrates that Baseline Reliability Projects represent significant capital investments in MISO, and that a large percentage of approved Baseline Reliability Projects have costs allocated to more than one MISO Transmission Owner. Specifically, in the 2011 MTEP, four of the twelve approved Baseline Reliability Projects, representing \$68 million out of a total \$253 million, were cost allocated to multiple zones. Since 2009, AEP states that MISO has approved eleven Baseline Reliability Project's greater than \$20 million and three Baseline Reliability Projects greater than \$50 million. AEP argues that there are substantial benefits to be gained from implementing a competitive process that helps to ensure that, in the future, large investments like these are as cost-effective as possible.⁹²³

503. LS Power contends that the provided information indicates that allocating the cost of Baseline Reliability Projects solely to the pricing zone in which they are located is not just and reasonable.⁹²⁴ In fact, LS Power claims that statistics reveal that "in 20 percent of the cases, the current cost allocation methodology says that entities outside the pricing zone [where] the facility is located receive at least 25 percent of the benefits."⁹²⁵

504. Under MISO's proposal, LS Power states, 100 percent of these Baseline Reliability Project costs would be allocated to the pricing zone where the project is located. Although MISO's testimony provides that fewer 345 kV facilities would be categorized as Baseline Reliability Projects going forward,⁹²⁶ LS Power states that neither the testimony nor MISO conclusively and affirmatively state that such projects will not be classified as Baseline Reliability Projects in the future. LS Power asserts that

⁹²² *Id.* at 8 (explaining that the Midwestern State Coalition does not have sufficient information to break down this figure to determine which portion of this sharing was done pursuant to the 20 percent regional cost sharing and which portion was shared pursuant to the LODF analysis).

⁹²³ AEP Protest at 9.

⁹²⁴ LS Power Protest to Baseline Reliability Project Filing at 5-6.

⁹²⁵ *Id.* at 6 (stating that if MISO arbitrarily allocates 100 percent of the costs to a single group, anyone outside that group will not be responsible for any costs regardless of whether they benefit or not).

⁹²⁶ *Id.* at 8 (citing Baseline Reliability Project Curran Test. at 11, lines 12-14).

if the Commission grants MISO's request, more projects will be categorized as Baseline Reliability Projects, not less.⁹²⁷

505. Several commenters state that MISO should not be permitted to change a Commission approved cost allocation methodology as a way to circumvent the requirement to removal of federal right of first refusal under Order No. 1000. Though commenters recognize that requiring projects to be subjected to the competitive process may delay reliability projects, they do not believe that this concern is sufficient to justify eliminating cost sharing for all Baseline Reliability Projects in order to avoid the elimination of the federal right of first refusal for such projects. AEP states that as long as the required in-service date for a Baseline Reliability Projects can accommodate the competitive process (i.e., longer lead time projects), the presence of project schedule risk and developer performance risk should not justify retention of the federal right of first refusal. AWEA/WOW note that other RTOs have addressed this issue without resorting to modifying their cost allocation methodologies for reliability driven projects. AWEA/WOW raise the concern that MISO may avoid identifying the most efficient and cost-effective reliability solutions if they extend beyond one Transmission Owners' service territory in order to avoid the removal of a federal right of first refusal. LS Power states that, as a category, Baseline Reliability Projects cannot be defined as local and cannot be assigned to incumbent Transmission Owners "in accordance with the [Transmission Owners Agreement]."

506. Joint State Commissions propose a "middle ground proposal" that maintains cost sharing for larger Baseline Reliability Projects, which have been previously shown to provide regional benefits that should be paid by beneficiaries outside the zone where the project is located. Joint State Commissions assert that its proposal also recognizes that smaller projects are driven more by local reliability needs and may require quicker action to avoid reliability concerns, which may be frustrated by potential delays associated with the competitive process. Joint State Commissions state that the Commission should approve its proposal on an interim basis and allow the MISO stakeholder process to identify and consider this and other potential long-term solutions. Joint State Commissions note that the Commission may wish to set a specific timeline for consideration of its proposal (or potentially others) by stakeholders.⁹²⁸

507. AEP and AWEA/WOW assert that MISO's proposal to remove regional cost sharing from Baseline Reliability Projects will counterproductively limit inter-regional coordination on reliability projects.⁹²⁹ AEP asserts that categorically excluding Baseline

⁹²⁷ *Id.* at 7-8.

⁹²⁸ Joint State Commissions Protest at 12.

⁹²⁹ AEP Protest at 8; AWEA/WOW Comments at 24.

Reliability Projects from being considered “interregional transmission facilities” clashes with the Commission’s concerns in Order No. 1000 about the lack of coordinated planning across neighboring regions.⁹³⁰ AWEA/WOW request that if the Commission approves MISO’s filing, that the Commission provide MISO with direction regarding the importance of considering and evaluating reliability benefits for interregional projects, as well as evaluating the public policy benefits of interregional projects.⁹³¹

508. AWEA/WOW further state that MISO has indicated that it can only develop interregional cost allocation approaches that correspond directly with its regional cost allocation methodologies and may therefore not be able to propose an interregional cost allocation approach if it removes all regional cost allocation for reliability projects in its Baseline Reliability Project Filing in Docket No. ER13-186-000. AWEA/WOW claim that MISO intends to apply this restriction to its development of cost allocation for interregional projects, which would limit the application of interregional cost allocation to only economic projects.⁹³² AWEA/WOW state that they believe that an interregional cost allocation proposal that only includes recognition of economic benefits falls short of the requirements in Order No. 1000 that costs be allocated commensurate with benefits.⁹³³

509. Exelon seeks clarification that the cost allocation proposal does not impact the interregional cost-allocation provisions in the JOA between PJM Interconnection, LLC and MISO. Exelon states that the JOA sets forth the cost allocation for projects that meet the criteria for designation as a “cross-border baseline reliability project” (Baseline Reliability Project) or a “cross-border market-efficiency project” (CBMEP). Exelon notes that one of the criteria for cross-border cost allocation between PJM and MISO is that “the project must be a baseline reliability project as defined under the Midwest ISO or PJM Tariffs.”⁹³⁴ Exelon is concerned that because Baseline Reliability Project projects may also be Baseline Reliability Projects under the JOA, some party might argue

⁹³⁰ AEP Protest at 8 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 350).

⁹³¹ AWEA/WOW Comments at 26.

⁹³² *Id.* at 24.

⁹³³ *Id.* at 24-25.

⁹³⁴ Exelon, Comments, Docket No. ER13-186-000, at 3, n.11 (filed Dec. 10, 2012) (citing JOA, § 9.4.3.1.1 (providing the criteria for Baseline Reliability Projects)).

that the cost allocation proposal impacts the cross-border cost allocation set forth in the JOA.⁹³⁵

510. Exelon also seeks clarification that the cost allocation proposal does not impact interregional cost allocation for projects that result from the Order No. 1000 interregional planning process, or specifically, that the proposed Tariff revisions do not restrict projects meeting the Baseline Reliability Project definition in MISO's Tariff from being considered as part of the interregional transmission planning process. Exelon believes that certain projects that meet the Baseline Reliability Project definition in MISO's Tariff may properly be considered in the interregional planning process. Because the discussions are ongoing between MISO and PJM, Exelon claims that modifying interregional cost allocations within the current unilateral MISO proposal would be improper and premature.⁹³⁶

511. ITC Companies claim that the omission of the necessary conforming changes to Attachment FF, section III.A.2.d.4 render invalid that section, even though this is a "filed rate" approved by this Commission in Docket No. ER07-1141-000. ITC Companies state that section III.A.2.d.4(d) cross-references sections III.A.2.c.i and III.A.2.c.ii, but that the proposed revisions to section III.A.2.c filed in the instant docket would delete those provisions. The proposed revisions thus would render invalid section III.A.2.d.4(d), which the Commission approved in Docket No. ER07-1141-000.⁹³⁷ ITC Companies therefore request that the Commission direct MISO to amend their proposed revisions to the Tariff to include the necessary conforming changes to section III.A.2.d.4 of Attachment FF.⁹³⁸

⁹³⁵ *Id.* at 3, n.12 (citing JOA, § 9.4.3.2 (setting forth "cross-border project shares")).

⁹³⁶ *Id.* at 1.

⁹³⁷ ITC Companies, Protest, Docket No. ER13-186-000, at 4, n.5 (filed Dec. 10, 2012) (citing *International Transmission Co., Michigan Electric Transmission Co., LLC, and Midwest Independent Transmission System Operator, Inc.*, 120 FERC ¶ 61,220 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008); *ITC Midwest, LLC and Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,150 (2008)). ITC Companies state that section III.A.2.d.4 of Attachment FF addresses the allocation of costs for Generation Interconnection Projects that are interconnected with ITC Companies.

⁹³⁸ *Id.* at 2 (providing suggested language changes in Exhibit A of its filing).

C. Answer

512. MISO asserts that it provided substantial evidence that the proposed Baseline Reliability Project cost allocation methodology is just and reasonable. MISO states that they are not required to demonstrate a 100 percent match between costs and benefits to justify the Baseline Reliability Project cost allocation methodology under FPA section 205. MISO further states that Baseline Reliability Projects are primarily for local use and provide local benefits, so allocating the costs of such Baseline Reliability Projects locally is “at least roughly commensurate” with benefits and cost causation.⁹³⁹

513. MISO argues that it is unreasonable for LS Power to demand “exacting precision and perfection” because the just and reasonable standard for cost allocation is based on what is roughly commensurate, not on an exact dollar-for-dollar, project-for-project matching of costs to cost causers.⁹⁴⁰ MISO further argues that Midwestern State Coalition’s concerns are unfounded because the Commission does not require that a certain study or analysis be used in support of a cost allocation proposal. Furthermore, MISO states that it has provided an actual, historical analysis demonstrating that the majority of benefits from Baseline Reliability Projects remain within the pricing zone in which the Baseline Reliability Project is located. Specifically, MISO asserts that historical evidence demonstrates that approximately 80 percent of the benefits of Baseline Reliability Projects accrue to the host pricing zone and therefore allocating 100 percent of the Baseline Reliability Project costs to the host pricing zone is consistent with the roughly commensurate standard.⁹⁴¹

514. MISO also asserts that the intention of its Baseline Reliability Project Filing “was to align Baseline Reliability Project cost allocation with cost causation, not to address MISO’s compliance with Order No. 1000.”⁹⁴² MISO argues that, despite protestor complaints, Order Nos. 1000 and 1000-A permit public utility transmission providers to

⁹³⁹ MISO Answer, Docket No. ER13-186-000, at 8-9 (filed Jan. 17, 2013) (MISO Baseline Reliability Project Answer) (citing *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, at 477 (2009)).

⁹⁴⁰ *Id.* at 10.

⁹⁴¹ *Id.* 11-12.

⁹⁴² *Id.* at 13.

retain federal right of first refusals for local transmission facilities whose costs are allocated 100 percent to a single pricing zone.⁹⁴³

515. Next, MISO asserts that although it must demonstrate that their proposed methodology is just and reasonable and not unduly discriminatory or preferential,⁹⁴⁴ they need not demonstrate that the existing methodology is no longer just and reasonable. According to MISO, “[t]he Commission ... has stated that the ‘just and reasonable standard under the FPA is not so rigid as to limit rates to a ‘best rate’ or ‘more efficient rate’ standard ... [but that] a range of alternative approaches often may be just and reasonable.’”⁹⁴⁵ MISO argues that, even when an existing tariff provision is just and reasonable, the FPA allows the Commission to approve a just and reasonable alternative.⁹⁴⁶

516. Further, MISO asserts that, as a proponent of a tariff change, it has the discretion to determine what to file under section 205 of the FPA. MISO also argues that its compliance filing will not encourage MISO to approve Baseline Reliability Projects in lieu of more efficient, cost-effective regional solutions.⁹⁴⁷ In fact, MISO states that under its Tariff it is required to identify the most efficient and cost-effective transmission plan.⁹⁴⁸ MISO further asserts that its changes to the Baseline Reliability Project cost allocation were properly vetted through its stakeholder process.

⁹⁴³ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 262 and Order No. 1000-A, 139 FERC ¶ 61,132 at P 423).

⁹⁴⁴ *Id.* at 15 (citing 16 U.S.C. § 824d).

⁹⁴⁵ *Id.* (citing *Louisville Gas & Elec. Co.*, 114 FERC ¶ 61,282, at P 29 (2006); *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 124 (2010); *Cal. Indep. Sys. Operator, Corp.*, 128 FERC ¶ 61,282, at P 31 (2009)).

⁹⁴⁶ *Id.* at 15-16 (citing *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239, 266 (D.C. Cir. 2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,185, at P 25 (2010)).

⁹⁴⁷ *Id.* at 18 (citing AEP Protest at 7-9; AWEA/WOW Comments at 26-27; LS Power Protest at 10).

⁹⁴⁸ *Id.* (citing MISO Compliance Transmittal at 16; MISO, FERC Electric Tariff, Attachment FF, §§ II.C.2.c, III.A.2.h (7.0.0)).

517. MISO next claims that arguments related to the compliance filing's impact on interregional coordination and cost allocation are premature and do not provide the Commission with a basis to reject the filing. MISO asserts that concerns related to the impact of the modified Baseline Reliability Project methodology on MISO's interregional compliance should be raised, if at all, when MISO submits its Order No. 1000 interregional compliance filing for review.⁹⁴⁹

D. Commission Determination

518. We find that MISO's Baseline Reliability Project Filing, submitted pursuant to FPA section 205, to assign all Baseline Reliability Project costs to the pricing zone in which the Baseline Reliability Project is located as just and reasonable and not unduly discriminatory or preferential. As discussed below, we find that MISO's proposal assigns the costs of Baseline Reliability Projects in a manner that roughly commensurate with the benefits that these projects provide.

519. At the outset, we note that MISO's proposed cost allocation method for Baseline Reliability Projects is not the regional cost allocation method that MISO has proposed to comply with Order No. 1000. As discussed in an earlier section, MISO is relying on its cost allocation methods for MEPs and MVPs to comply with the Order No. 1000 requirement that each public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation⁹⁵⁰ that satisfies six regional cost allocation principles described in Order No. 1000.⁹⁵¹ Our analysis of MISO's compliance with this requirement is based only on MISO's MEP and MVP cost allocation methods, and we do not consider, and do not find necessary to comply with Order No. 1000, MISO's existing cost allocation method for Baseline Reliability Projects. As discussed above, MISO's regional cost allocation method for MEPs accounts for regional economic benefits and its regional cost allocation method for MVPs considers three categories of regional benefits: (1) a combination of the benefits associated with the satisfaction of public policy mandates and reliability and economic benefits; (2) multiple economic benefits; and (3) a combination of economic and reliability benefits.⁹⁵² Thus, we find that MISO's Baseline Reliability Project Filing

⁹⁴⁹ MISO Baseline Reliability Project Answer at 19-20.

⁹⁵⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558.

⁹⁵¹ *Id.* P 603.

⁹⁵² MISO Compliance Transmittal at 11-12 (referencing MISO, FERC Electric Tariff, Attachment FF, § II.C.2 (8.0.0)).

proposal to eliminate regional cost sharing for Baseline Reliability Projects is not inconsistent with the Order No. 1000 statement that a region may not designate a type of transmission facility that has no regional cost allocation method applied to it,⁹⁵³ since transmission projects with reliability benefits selected in the regional plan for purposes of cost allocation are covered by MVPs. Furthermore, we find persuasive MISO's contention that, going forward, its MEP and MVP project categories will displace Baseline Reliability Projects when more efficient or cost-effective regional solutions (i.e., MEPs or MVPs) are available to meet multiple transmission needs.⁹⁵⁴ However, we require MISO to submit an informational filing following the completion of MTEP 2015 that outlines the number of MVPs, MEPs, and Baseline Reliability Projects approved during the MTEP 2014 and MTEP 2015 cycles. We also require MISO to include in the informational filing an analysis of Baseline Reliability Projects approved during the MTEP 2014 and MTEP 2015 cycles, similar to the analysis of Baseline Reliability Projects approved in previous MTEP cycles described by MISO in its filing.⁹⁵⁵

520. Turning to MISO's cost allocation proposal in its Baseline Reliability Project Filing under FPA section 205, the Commission has considered whether the proposed method allocates the costs of jurisdictional transmission facilities in a manner that satisfies the "cost causation" principle, which requires that "rates reflect to some degree the costs actually caused by the customer who must pay them" and that "the costs allocated to a beneficiary under a cost allocation method are at least roughly commensurate with the benefits that are expected to accrue to that entity."⁹⁵⁶ We conclude that it does. MISO has shown that the benefits of a Baseline Reliability Project are realized primarily in the pricing zone in which the project is located. Thus, we find that, under the particular circumstance presented by MISO in this proceeding, assigning all of the costs of a Baseline Reliability Project to the pricing zone in which the project is located allocates costs roughly commensurate with the benefits that the project is expected to provide.

⁹⁵³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 690.

⁹⁵⁴ MISO, FERC Electric Tariff, Attachment FF, § II.C.4 (Transmission Planning Protocol) (7.0.0) ("Any transmission project that qualifies as a Multi-Value Project shall be classified as a MVP irrespective of whether such project is also a Baseline Reliability Project and/or Market Efficiency Project.").

⁹⁵⁵ See *supra* P 487. The Commission does not intend to issue public notices, accept comments, or issue orders on such informational filings.

⁹⁵⁶ See *Sw Power Pool, Inc.*, 131 FERC ¶ 61,252 at PP 66-67 (citing *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470 at 476-477) (additional citations omitted).

521. Protestors argue that, because a portion of the costs of some Baseline Reliability Projects are currently allocated to pricing zones other than the pricing zone in which the project is located, some Baseline Reliability Projects provide benefits outside of the pricing zone in which they are located and thus costs are not allocated roughly commensurate with benefits under MISO's proposal to eliminate all cost sharing for Baseline Reliability Projects. We disagree. The Commission must demonstrate that it has an articulable and plausible reason to believe that costs will be allocated at least roughly commensurate with benefits.⁹⁵⁷ As we found above, MISO has presented convincing support for its claim that the pricing zone in which a Baseline Reliability Project is located receives most of the benefits provided by that project and, therefore, we find that assigning all of the associated costs to that pricing zone results in an allocation of costs that is roughly commensurate to the distribution of the project's benefits. Moreover, we find persuasive MISO's contention that, going forward, its MEP and MVP project categories will displace Baseline Reliability Projects when more efficient or cost-effective regional transmission solutions (i.e., MEPs or MVPs) are available to meet multiple transmission needs.

522. Contrary to the arguments of some protestors, we note that MISO is not required to show as part of this FPA section 205 proceeding that MISO's current cost allocation method for Baseline Reliability Projects is unjust, unreasonable, or unduly discriminatory. Instead, MISO's obligation is to demonstrate that its proposed cost allocation method will result in just and reasonable rates,⁹⁵⁸ which we find that MISO has done here. Moreover, we do not require MISO to revise its proposed cost allocation method for Baseline Reliability Projects in response to any of the alternative cost allocation methods proposed by protestors because we have found MISO's proposal to be just and reasonable. As the Commission has previously stated, "[a] proposal need not be perfect, or the most desirable way of doing things, it need only be just and reasonable."⁹⁵⁹

⁹⁵⁷ See *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470 at 477 (finding that the Commission "does not have to calculate benefits to the last penny, or for that matter, to the last million or ten million or perhaps hundred million dollars"; it merely must demonstrate that "it has an articulable and plausible reason" to believe that the benefits are at least roughly commensurate with costs).

⁹⁵⁸ See *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917 (utility needed to establish that its proposed rate is reasonable, not that it is superior to alternatives); *Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023, at P 45, n.34 (2007), *aff'd sub nom. Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (D.C. Cir. 2010).

⁹⁵⁹ *Entergy Servs., Inc.*, 116 FERC ¶ 61,275, at P 32 (2006); see also *Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶ 63,026, at P 57 (2004).

523. We also decline to order MISO to obtain additional stakeholder input on this proposal, as requested by some stakeholders. MISO explains in its answer that it did discuss the proposal at stakeholder meetings in June and September 2012.⁹⁶⁰

524. Order No. 1000-A clarified that Order No. 1000 does not require elimination of a federal right of first refusal for a new transmission facility if the regional cost allocation method results in an allocation of 100 percent of the facility's costs to the public utility transmission provider in whose retail distribution service territory or footprint the facility is to be located.⁹⁶¹ As MISO acknowledges in its filing, the instant proposal will allow Transmission Owners to retain a federal right of first refusal for a Baseline Reliability Project located within its retail distribution service territory or footprint.⁹⁶² Given that MISO has demonstrated that Baseline Reliability Projects primarily benefit the pricing zone in which they are located, as described above, we conclude that the result of MISO's proposal to allocate the costs of these facilities at least roughly commensurate with benefits (i.e., a MISO Transmission Owner may retain a federal right of first refusal for a Baseline Reliability Project located within its pricing zone) does not violate the requirements of Order No. 1000. Moreover, MISO explains that its recent experience demonstrates that going forward, with the introduction of MEPs and MVPs, many Baseline Reliability Projects will likely be displaced by projects that qualify for selection in the regional transmission plan for purposes of cost allocation as an MEP or MVP.

525. In response to LS Power, Order No. 1000 does not require removal of a federal right of first refusal for any transmission facility located in more than one transmission provider's retail distribution service territory or footprint unless that transmission facility is also selected in the regional transmission plan for purposes of cost allocation. Instead, Order No. 1000 requires that each public utility transmission provider eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁹⁶³

⁹⁶⁰ MISO Baseline Reliability Project Answer at 19.

⁹⁶¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 423.

⁹⁶² Baseline Reliability Project Transmittal at 11.

⁹⁶³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. The phrase "a federal right of first refusal" refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

526. Similarly, we disagree with comments from LS Power and AWEA/WOW that restricting a Baseline Reliability Project to a single transmission provider's retail distribution territory may cause MISO to divide projects or select a combination of projects that are not more efficient or cost-effective. In its answer, MISO states that it is required under its Tariff to identify the more efficient or cost-effective transmission plan. Moreover, Order No. 1000 requires that MISO produce a transmission plan that can meet transmission needs more efficiently or cost-effectively.

527. Joint State Parties suggest that the Commission should reject MISO's proposal to eliminate cost sharing for Baseline Reliability Projects and instead grant a waiver for all Baseline Reliability Projects from the Commission's requirement to eliminate the federal right of first refusal for projects that receive regional cost sharing. We decline to do so. MISO has not requested such a waiver, nor has a compelling argument for granting such a waiver been put forth in this proceeding. Joint State Parties state that they request the waiver in order to allow the MISO stakeholder process to consider the proposal, but as we have already noted, the MISO stakeholder process has had an opportunity to review the proposal.

528. As for AWEA/WOW's contention that the proposal to eliminate regional cost allocation for Baseline Reliability Projects could significantly impact MISO's ability to develop just, reasonable and comprehensive interregional cost allocation approaches, we find that concern to be beyond the scope of this proceeding. It would be premature to address here MISO's future interregional Order No. 1000 compliance filing. We also find Exelon's request for clarification that this proposal does not impact interregional cost allocation to be beyond the scope of this proceeding. Any concerns regarding MISO's interregional compliance filing should be addressed in that proceeding, once it has been filed.

529. Finally, as requested by ITC Companies, we direct MISO to make a compliance filing within 120 days from the date of issuance of this order, to correct the cross references included in the proposed section III.A.2.d.4 of Attachment FF, in order to preserve the Tariff provisions not intended to be changed in this proceeding.⁹⁶⁴

The Commission orders:

(A) MISO's compliance filing is hereby conditionally accepted, as modified, effective June 1, 2013, subject to further compliance, as discussed in the body of this order;

⁹⁶⁴ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER13-254-000 (Dec. 21, 2012) (delegated letter order).

(B) MidAmerican's and American Transmission's compliance filings are hereby conditionally accepted, as modified, effective October 11, 2012, subject to further compliance, as discussed in the body of this order;

(C) Cleco and Entergy's compliance filings are hereby conditionally accepted, effective October 11, 2012, as discussed in the body of this order;

(D) MISO's proposed revisions to the Tariff to modify the cost allocation methodology for Baseline Reliability Projects are hereby conditionally accepted, effective June 1, 2013, as discussed in the body of this order;

(E) MISO, MidAmerican, and American Transmission are hereby directed to submit further compliance filings, within 120 days of the date of this order, as discussed in the body of this order; and

(F) Entergy and Cleco are hereby directed to notify the Commission by June 1, 2013 should they fail to join the MTEP 2014 process as proposed.

By the Commission. Commissioners Moeller and Clark are dissenting with separate statements attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A: List of Intervenors, Commenters, and Entities Submitting Answers

MISO's Compliance Filing; Docket Nos. ER13-187-000 and ER13-187-001

Notices of intervention and comments were filed by:

Illinois Commerce Commission
PSC of Wisconsin
Organization of MISO States

Notices of intervention and protests were filed by:

Indiana Commission
Joint State Commissions

Timely motions to intervene were filed by:

National Rural Electric Cooperative Association
Arkansas Electric Cooperative Corporation
American Municipal Power
Old Dominion Electric Cooperative
Entergy Services, Inc.
Prairie Power, Inc.
Kansas City Power & Light Company and KCP & L Greater Missouri Operations Company
Wisconsin Electric Power Company
Hoosier Energy Rural Electric Cooperative, Inc.
Coalition of Midwest Transmission Customers
Transource Energy, LLC
Wisconsin Public Service Corp. and Upper Peninsula Power Co.
Iberdrola Renewables, LLC
Dairyland Power Cooperative
E.ON Climate & Renewables North America, LLC
NextEra Energy Resources, LLC
The Detroit Edison Company
NRG Companies

Timely motions to intervene and comments were filed by:

Alliant Energy
Consumers Energy Company
Interstate Renewable
ITC Companies
Midwest TDUs
MISO Transmission Owners
AWEA/WOW

Timely motions to intervene and protests were filed by:

AEP
Arkansas Electric
Clean Line
Exelon
Indiana Consumer Counselor
ATC/Duke/Transource
LS Power, including a supplemental protest regarding *Mobile-Sierra* claims
Public Interest Organizations

A motion to intervene out-of-time was filed by:

ITC

Answers were filed by:

MISO
American Municipal Power
ITC
American Transmission
ATC/Duke/Transource
Public Interest Organizations
Indianapolis Power & Light Company

MISO's Baseline Reliability Project Filing; Docket No. ER13-186-000

Notices of intervention and comments were filed by:

Illinois Commerce Commission
PSC of Wisconsin

Notices of intervention and protests were filed by:

Joint State Parties
Joint State Commissions

Timely motions to intervene were filed by:

American Transmission
American Municipal Power
Prairie Power, Inc.
Wabash Valley Power Association, Inc.
Alliant Energy
Kansas City Power & Light Company and KCP & L Greater Missouri Operations
Company
Exelon
Wisconsin Electric Power Company
Transource Energy, LLC

E.ON Climate & Renewables North America
NextEra Energy Resources, LLC
The Detroit Edison Company
Wisconsin Public Service Corporation and Upper Peninsula Power Company

Timely motions to intervene and comments were filed by:

Exelon
Iowa Board
Midwest TDUs
AWEA/WOW

Timely motions to intervene and protests were filed by:

AEP
Consumers Energy Company
Indiana Consumer Counselor
ITC Companies
LS Power
Public Interest Organizations

A motion to intervene out-of-time was filed by:

MidAmerican

Answers were filed by:

MISO
Indianapolis Power & Light Company

MidAmerican's Compliance Filing; Docket No. ER13-89-000

Timely motions to intervene were filed by:

American Wind Energy Association
Abengoa Transmission & Distribution, Inc.

A timely motion to intervene and comments was filed by:

E.ON Climate & Renewables North America, LLC

American Transmission's Compliance Filing; Docket Nos. ER13-101-000 and ER13-101-001

Timely motions to intervene were filed by:

Wisconsin Public Service Corp. and Upper Peninsula Power Co.
The Coalition of Midwest Transmission Customers
Consumers Energy Company
NRG Companies

NextEra Energy Resources, LLC
Wisconsin Electric Power Company
Dairyland Power Cooperative
American Wind Energy Association
Abengoa Transmission & Distribution, Inc.

A timely motion to intervene and comments was filed by:
E.ON Climate & Renewables North America, LLC

An answer was filed by:
American Transmission

Cleco's Compliance Filing; Docket No. ER13-84-000

A timely motion to intervene was filed by:
American Wind Energy Association

A timely motion to intervene and comments was filed by:
Lafayette

A timely motion to intervene and protest was filed by:
LS Power

Entergy's Compliance Filing; Docket No. ER13-95-000

Timely motions to intervene were filed by:
Exelon
NRG Companies
Arkansas Electric Cooperative Corporation
American Electric Power Service Corporation
American Wind Energy Association

A timely motion to intervene and comments was filed by:
Lafayette

A timely motion to intervene and protest was filed by:
LS Power

An answer was filed by:
Entergy

Appendix B: Abbreviated Names of Commenters

Abbreviation	Commenter Names
AEP	American Electric Power Service Corporation
Alliant Energy	Alliant Energy Corporate Services, Inc.
American Municipal Power	American Municipal Power, Inc.
American Transmission	American Transmission Company LLC
Arkansas Electric	Arkansas Electric Cooperative Corporation
ATC/Duke/Transource	American Transmission Company LLC, by its corporate manager, ATC Management Inc.; Duke-American Transmission Company, LLC; Duke Energy Transmission Holding Company, LLC; and American Electric Power Service Corporation, on behalf of Transource Energy, LLC
AWEA/WOW	American Wind Energy Association and Wind on the Wires
Clean Line	Clean Line Energy Partners LLC
Consumers Energy Company	Consumers Energy Company
Entergy	Entergy Services, Inc.
E.ON Climate & Renewables North America	E.ON Climate & Renewables North America, LLC
Exelon	Exelon Corp.
Illinois Commerce Commission	Illinois Commerce Commission
Indiana Commission	Indiana Utility Regulatory Commission
Indiana Consumer Counselor	Indiana Office of Utility Consumer Counselor

Abbreviation	Commenter Names
Interstate Renewable	Interstate Renewable Energy Council, Inc.
Iowa Board	Iowa Utilities Board
ITC	ITC Holdings Corp.
ITC Companies	International Transmission Company; Michigan Electric Transmission Company, LLC; ITC Midwest LLC; ITC Great Plains, LLC; and Green Power Express LP
Joint State Commissions	Public Service Commission of Wisconsin, Michigan Public Service Commission, Missouri Public Service Commission
Joint State Parties	Indiana Utility Regulatory Commission and Minnesota Public Utilities Commission
Lafayette	Lafayette Utilities System
LS Power	LS Power Transmission, LLC and LSP Transmission Holdings, LLC
MidAmerican	MidAmerican Energy Company
Midwest TDUs	Great Lakes Utilities; Indiana Municipal Power Agency; Madison Gas and Electric Company; Midwest Municipal Transmission Group; Missouri Joint Municipal Electric Utility Commission; Missouri River Energy Services; and WPPI Energy
MISO Transmission Owners	Ameren Services Company; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; MidAmerican Energy Company; Minnesota Power; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company (MN); Northern States Power Company (WI); Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; and Southern Minnesota Municipal

Abbreviation	Commenter Names
Organization of MISO States	Power Agency Organization of MISO States
PSC of Wisconsin	Public Service Commission of Wisconsin
Public Interest Organizations	Center for Rural Affairs, Earthjustice, Environmental Defense Fund, Environmental Law & Policy Center, Great Plains Institute, Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, and Union of Concerned Scientists

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners	Docket Nos. ER13-187-000 ER13-187-001
Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners	ER13-186-000
MidAmerican Energy Company and the Midwest Independent Transmission System Operator, Inc.	ER13-89-000
American Transmission Company LLC and the Midwest Independent Transmission System Operator, Inc.	ER13-101-000 ER13-101-001
Cleco Power LLC	ER13-84-000
Entergy Arkansas, Inc.	ER13-95-000

(Issued March 22, 2013)

MOELLER, Commissioner, *dissenting*:

When Order No. 1000 was first proposed three years ago, I promised “to do my part to ensure that this Commission does not lose sight of the ultimate goal: a final rule that results in needed capital investment.”¹ This ultimate objective is critical, as, “the lack of adequate transmission investments often disproportionately raises consumer rates due to congestion, threatens the reliability of the nation’s bulk power system, and increases reliance on older and dirtier generating resources.”²

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,660 (2010) (Moeller, Comm’r, concurring).

² *Id.*

While this was a difficult decision for me, the order as drafted is too unbalanced in favor of rulings that discourage the construction of needed transmission. As I observed in my partial dissent on Order No. 1000, “instead of encouraging more regional cooperation, the rule could ultimately discourage such cooperation by encouraging more local transmission projects.”³

By building needed transmission, our nation can continue to maintain electric reliability at levels that are the envy of the world, while simultaneously improving consumer access to new sources of power generation.

Accordingly, I respectfully dissent.

Philip D. Moeller
Commissioner

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) (Moeller, Comm’r, dissenting in part), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

UNITED STATES OF AMERICA
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Cleco Power LLC	ER13-84-000
Entergy Arkansas, Inc.	ER13-95-000

(Issued March 22, 2013)

CLARK, Commissioner, *dissenting*:

There is a good deal in these Order No. 1000¹ compliance filing orders that I could support. Unfortunately, I find myself today in the position of needing to dissent.

A primary goal of Order No. 1000 is to speed along the development of needed electric transmission projects in an efficient manner.² This is especially true for those projects that are required for matters of reliability. I fear that some of the logistical calls in today's order are at cross-purposes with that goal.

One major source of contention involves the nonincumbent transmission developer reforms that were approved in Order No. 1000. In today's final order, the Commission found that allowing the Midwest Independent Transmission Operators, Inc. (MISO) to acknowledge the reality of certain state and local laws in its planning process was a violation of these Order No. 1000 reforms. I disagree.

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 2.

Effectively, the Commission asks MISO to ignore the very state and local laws that the Commission itself has acknowledged.³ As this is the case, MISO will be compelled to select project developers that may have no legal possibility of ever building a project. The Commission would allow an “after-the-fact” examination if the selected facility ultimately is not successful. It is not until this autopsy report that MISO can acknowledge the state and local laws—only then will MISO be allowed to evaluate viable alternative transmission solutions.⁴

The Commission’s decision puts MISO on a collision course for litigation, as opposed to a pathway towards transmission development. Whether or not the Commission agrees with these state and local laws, requiring regions to make plans that do not factor them in is a waste of time and resources. This is especially troubling when the projects under consideration are reliability projects. Such a convoluted process fails to comport with Order 1000’s main goal of “more efficient and cost-effective regional transmission planning.”⁵ Additionally, the state designation process envisioned by MISO, which is rejected in this order, could have helped streamline this entire process.

Beyond the logistical problems with this approach, it raises broader policy questions about where the Commission may be heading in terms of the philosophical underpinnings of Order No. 1000. One of the core stated principles of Order No. 1000 is to ensure regional transmission planners take into consideration the various state and local public policy requirements.⁶ Yet the Commission’s decision here seems to be arbitrary and capricious by directing transmission planners to take into consideration only those legal requirements favored by the Commission, such as transmission to meet state renewable portfolio mandates, but not those less favored such as state and local laws that may limit who is and who is not eligible to construct facilities within that state’s borders.

Such an implication is a slippery slope for a Commission whose authority in these matters stems only from the Federal Power Act.

As a related matter, these orders also present the first opportunity for me to weigh in on Order No. 1000’s revocation of a transmission provider’s federal right of first refusal. I

³ Order No. 1000 stated that “[n]othing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.” *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 253, n.231

⁴ 142 FERC ¶ 61,215 at P 207.

⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2.

⁶ *Id.* at PP 2, 205, and 214.

concur with the assessment of my colleague, Commissioner Moeller, who has previously written about these matters.⁷

Order No. 1000 did maintain a federal right of first refusal for local projects where the incumbent does not seek to share the costs of those projects, upgrades to existing assets, and projects on existing rights of way. I would have also preserved a federal right of first refusal for projects selected for cost allocation in the Order No. 1000 planning process that are (1) determined by the regional planning coordinator as necessary to satisfy NERC reliability standards and (2) located entirely within the transmission provider's franchised service territory.

The Commission should have maintained a federal right of first refusal for the reasons Commissioner Moeller mentioned—reinforcing the Commission's commitment to reliability and avoiding the need for a blanket penalty waiver in the case that a competitor failed to build a necessary reliability project. Additionally, a federal right of first refusal for reliability projects would have recognized the need for speedy development of these reliability projects and greatly simplified the Order No. 1000 compliance process.

For these reasons, I respectfully dissent from this order.

Tony Clark
Commissioner

⁷ *Id.* (Moeller, Comm'r, dissenting in part).

