

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

PJM Interconnection, L.L.C.	:	ER13-1924-000
PJM Interconnection, L.L.C.	:	ER13-1944-000
Midcontinent Independent System Operator	:	ER13-1943-000

(Not Consolidated)

**COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

September 9, 2013

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INTRODUCTION AND BACKGROUND

On July 10, 2013, PJM Interconnection, L.L.C. (PJM) and the PJM Transmission Owners (PJM TOs); Midcontinent Independent System Operator (MISO) and the MISO Transmission Owners (MISO TOs), pursuant to section 206 of the Federal Power Act (FPA) submitted, in compliance with the Federal Energy Regulatory Commission's (FERC) *Order No. 1000*,¹ dockets regarding interregional compliance filings. Specifically, PJM and MISO separately submitted proposed changes and enhancements to the

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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 and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012) (hereinafter also collectively referred to as "*Order No. 1000*").

Joint Operating Agreement between the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection L.L.C. (JOA).

PJM's interregional compliance filing maintains that its existing JOA with MISO currently is consistent with, and in some cases, exceeds the requirements of *Order No.1000*. The company's application, does propose, among other things, certain enhancements that have been agreed to by both PJM and MISO. However, both PJM's and MISO's applications reflect that each party submitted a draft JOA with MISO proposing revisions that were not agreed to by the parties. Specifically, the disputed language lies primarily in Section 9.4.3.2.1 of the JOA regarding cost allocation for cross-border baseline reliability transmission projects.

Comments in these dockets were originally due on August 26, 2013. However, on August 7, 2013, FERC granted Northern Indiana Public Service Company's request for extension of time to submit comments; thus, comments are now due on or before September 9, 2013. The Public Utilities Commission of Ohio (PUCO or Ohio Commission) hereby submits its comments responding to the PJM's and MISO's proposed *Order No. 1000* interregional compliance filings.

DISCUSSION

A. General Remarks

The state of Ohio's entire western border is located directly on the PJM and MISO seam; therefore, MISO's proposed changes to the JOA directly affect reliable electric service provided to Ohio customers. The Ohio Commission submits that MISO's unilat-

eral amendments to the JOA will result in deleterious consequences for the reliability of the electric grid. Specifically, projects that are identified by both RTOs as necessary to resolve interregional transmission constraints and provide baseline transmission reliability upgrades would be subject, under MISO's proposal, to negotiations between individual transmission owners and, in certain cases (as discussed in more detail, below) to an autonomous decision by the transmission owner not to build the project. MISO's proposal is an obvious step backwards from the current JOA, FERC *Order 1000*, and is not lawful. For all of the reasons subsequently discussed in these comments, the Ohio Commission urges FERC to reject MISO's proposed changes to the JOA. In the alternative, the Ohio Commission proposes that, if FERC finds it necessary for the parties to amend the JOA, FERC should direct MISO and PJM transmission owners to develop a specific cost allocation method for interregional reliability projects that utilizes the recently improved distribution factor analysis (DFAX) known as "solutions-based" DFAX for identifying each RTO's share of cost responsibility.

B. MISO's Proposal

Prior to the issuance of *Order No. 1000*, PJM and MISO entered into a JOA, which detailed methodologies for allocating the costs of interregional transmission projects. The RTOs believe the existing JOA meets the interregional coordination requirements of *Order No. 1000*; however, they disagree on whether the JOA's current cost allocation rules for certain interregional transmission facilities should be retained. The current JOA establishes an obligation on both RTOs to order construction of the most effi-

cient and cost effective interregional transmission baseline projects to address cross-border reliability. The projects in dispute are classified by MISO and PJM as “cross-border” baseline reliability projects (CBBRP). Today, through the JOA, costs for interregional CBBRP are allocated based on each RTO’s contribution to the reliability violation through application of the “violations-based” distribution factor analysis (DFAX).² Because the parties have agreed to the cost allocation methodology found in the JOA, project implementation is not stalled due to disputes regarding cost recovery for the new facilities.

MISO’s proposed modifications to the JOA in Section 9.4.3.2.1.b. would allow the constructing MISO TO(s) to negotiate with the PJM TO(s) to determine by mutual agreement whether all or a portion of interregional CBBRPs would be paid for by the non-constructing TO(s). Where there is no agreement, the proposed tariff language would permit MISO TO(s) to “elect not to construct” certain projects³ within MISO to solve baseline transmission reliability needs in PJM. MISO further proposes a modification to Section 9.4.3.2.1.a. that would determine ownership and responsibility to construct interregional CBBRP through transmission tie-lines based on the RTOs’

² *Midcontinent Independent System Operator Inc.’s and MISO Transmission Owners’ Compliance Filing for Order 1000, Regarding Interregional Project Coordination and Cost Allocation with PJM Interconnection L.L.C.*, FERC Docket No. ER13-1943 (Application at 29 and Tab A Section 9.4.3.2.1) (July 10, 2013) (“MISO Application”).

³ These projects are defined under MISO’s proposed tariff as “single RTO” transmission projects that are located solely in MISO but are needed to address a reliability issue in PJM. (see MISO Application at 30)

boundaries unless otherwise agreed to by the parties. In all cases, the current “violations-based” DFAX cost allocation method for interregional projects has been removed by MISO from the tariff language.⁴

MISO states that its recently revised *Order 1000* regional compliance filing, as approved by FERC, no longer allows any of its intraregion BRP to include regionally allocated costs, and, therefore, it can no longer allocate the costs of interregional facilities needed to address reliability concerns.⁵ However, the Ohio Commission submits that FERC in its Order on MISO’s compliance tariff did not prohibit MISO from including interregional CBBRPs in a transmission plan for cost allocation. Instead, FERC stated that to the extent costs for a transmission facility are allocated outside of an incumbent transmission owner’s service territory, those facilities would not be eligible for a Right-of-First-Refusal (ROFR) exemption.⁶ Although MISO and its TOs have decided not to allocate costs for *intraregional* BRPs, nothing prohibits it from continuing to allocate costs for necessary *interregional* CBBRPs as it is required to do today under the currently effective JOA. MISO’s proposal is a thinly veiled attempt to protect the ROFR of its TOs to the detriment of PJM, PJM TOs and Border States along the PJM/MISO seam.

⁴ MISO Application at 33-34 and Tab D, Testimony of MISO’s Jennifer Curran, at 12-14.

⁵ *Id.*

⁶ *Midwest, Independent Transmission System Operator, Inc.*, 142 FERC ¶61,215 (March 22, 2013) at 134-136.

C. *Order 1000* Interregional Requirements

MISO's proposed amendments to the JOA bring to mind the maxim, "If you fail to plan, you plan to fail." MISO's proposal is not a joint transmission expansion plan as required by *Order 1000*. Indeed, it is not a plan at all. MISO's plan to allow individual TOs rather than the RTOs to negotiate cost allocation for necessary inter-regional CBBRPs, and then to decide in certain circumstances, if those negotiations are not successful, to "elect not to construct the project to address the PJM reliability issue"⁷ is simply not compliant with FERC's directives in *Order 1000*. One of the objectives behind *Order 1000* was to streamline and coordinate transmission planning activities on both a regional and interregional basis to determine the most efficient and cost effective solutions for transmission system upgrades.⁸ Allowing individual negotiation and decision making along with retrospective cost allocation decisions can only result in further uncertainty, chaos, and delay and is not an efficient use of limited capital resources. MISO's proposal is several steps and many years backwards from *Order 1000* and the current JOA.

Moreover, in *Order No. 1000*, FERC required planning regions to engage in interregional transmission coordination with neighboring regions to provide for the allocation of costs of resulting transmission projects in accordance with six interregional cost allocation principles. These six principles are: (1) costs must be allocated in a way that is roughly commensurate with benefits; (2) there must be no involuntary allocation of costs

⁷ MISO Application at 30.

⁸ *Order No. 1000* at 13.

to non-beneficiaries; (3) a benefit to cost threshold ratio cannot exceed 1.25; (4) costs must be allocated solely within the transmission planning region or pair of regions unless those outside the region or pair of regions voluntarily assume costs; (5) there must be a transparent method for determining benefits and identifying beneficiaries; and (6) there may be different methods for different types of transmission facilities. FERC established that if regions have interregional planning processes and cost allocation methodologies that a transmission provider believes satisfy these requirements, such processes and cost allocation methodologies do not need to be replaced.⁹

As previously stated, FERC allows a transmission provider to describe in its compliance filing how its existing tariff provisions satisfy the requirements of *Order No. 1000*.¹⁰ In compliance with this rule, PJM submitted a filing which demonstrates that the existing JOA meets the requirements of *Order No. 1000*. PJM believes, and the Ohio Commission agrees, that the existing JOA between PJM and MISO complies with the interregional cost allocation requirements of *Order No. 1000*. Specifically, PJM used relevant facts and support to show that the existing JOA meets all six of the cost-allocation requirements of *Order No. 1000*. In its filing, MISO shows that the current Cross-Border Market Efficiency Projects (CBMEPs) meet each of these requirements, but fails to prove that the CBBRPs do not. Because MISO fails to show that CBBRPs do not meet the cost-allocation requirements of *Order No. 1000*, FERC should approve the JOA's methodology.

⁹ *Order No. 1000 at 448 and 583.*

¹⁰ *Id.* at 583.

D. MISO's Impermissible Changes to the JOA

Even if FERC believes that the JOA needs minor modifications to meet the requirements of *Order No. 1000*, such as the solutions-based DFAX (further explained, below) it should not approve MISO's proposal. The JOA is a contractual agreement between PJM and MISO, which by terms, can only be amended by agreement of both parties.¹¹ Here, MISO attempts to unilaterally change the contract by proposing a new cost-allocation methodology without PJM's permission. MISO's actions are prohibited by Provision 18.12 of the JOA, which explicitly states "neither this agreement, nor any of the terms hereof, may be amended unless such amendment is in writing and signed by the parties and such amendment has been accepted by the FERC." Even though MISO believes that the cost-allocation methodology listed in the JOA does not comply with *Order No. 1000*, it does not have the right to change the provision without PJM's approval. Because representatives from both RTOs agreed to the terms and signed the JOA, both MISO and PJM must adhere to all of the provisions of the contract.

FERC will set a bad precedent if it approves MISO's proposal without PJM's consent because it will send the message that contracts between RTOs are not always binding. It is likely that RTOs will find there is no reason to work together to create contracts if either party has the ability to make a unilateral change at any time. For this reason, such a precedent will make RTOs less willing to work together to create agreements in the future contrary to the objectives of *FERC Order 1000*. This precedent would also

¹¹ MISO-PJM JOA at section 17.1 ("This Agreement establishes terms and conditions solely of a contractual relationship between two independent entities, to facilitate the achievement of the joint objectives described in the Agreement.").

affect existing agreements between RTOs. Specifically, if FERC allows MISO to change the JOA, there is a chance that other RTOs will also attempt to unilaterally change existing agreements. For this reason, FERC should deny MISO's proposal to change the JOA.

In addition, FERC will send the proper and appropriate signals by approving the existing JOA between MISO and PJM. It is not unjust for FERC to uphold the inter-regional cost-allocation methodology listed in the JOA because it would simply be upholding a contract between the RTOs. Here, PJM is not forcing MISO to adhere to a cost-allocation methodology that it disagrees with. Instead, PJM is attempting to uphold the contract it created with MISO.

The RTOs adopted this method in the JOA after they spent a significant amount of time and effort deliberating. Specifically, PJM and MISO completed numerous coordinated studies that evaluated reliability impacts of projects along the seam, pursuant to their respective generator and merchant interconnection queues, as well as their respective regional planning processes. The two RTOs spent approximately ten years working together to create and amend the JOA, so it is obvious that MISO played a significant role in the decision to adopt the interregional cost-allocation methodology that is listed in the agreement. To ensure that both RTOs had a significant role in the creation of the JOA, they created a Joint RTO Planning Committee (JRPC), which was comprised of staff members from each RTO. In addition, the RTOs created the Inter-regional Planning Stakeholder Advisory Committee (IPSAC), which facilitated stakeholder review and input into coordinated system planning with respect to development of the Coordinated

System Plan.¹² This shows that not only did MISO approve the cost-allocation methodology at one moment in time, but it also played a large role in the development of the plan.

E. Options for Resolution of the Dispute

For all of the reasons previously discussed, the Ohio Commission recommends that FERC reject MISO's proposed contract language and find that the current JOA is compliant with contract law and Order *1000* and clarify that MISO must continue to regionally allocate costs for interregional CBBRPs with the current JOA. If FERC finds it necessary, however, for the parties to amend the current JOA, the Ohio Commission avers that FERC should utilize the opportunity to direct the parties to update the DFAX used by the parties to determine cost allocation for CBBRPs. Specifically, FERC should direct PJM and MISO to use a "solutions-based" rather than the current "violations-based" DFAX to allocate the costs of interregional facilities within the JOA.

The Ohio Commission previously commended PJM and the PJM TOs for developing the solutions-based DFAX model contained within the PJM TOs' regional cost allocation *Order 1000* compliance application approved by FERC in March 2013.¹³ This recommendation is consistent with the Ohio Commission's previous suggestion to employ a dynamic DFAX methodology to identify beneficiaries of transmission

¹² JOA at section 9.3.5.1

¹³ *In re: Public Service Electric and Gas Company, and PJM Interconnection, LLC*, FERC Docket No. ER13-90-000 (Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 6-9) (December 10, 2012).

upgrades.¹⁴ Further, because the solutions-based DFAX model is based on the new facility's flow analysis, it can easily be updated annually or even more frequently to capture changes in the distribution of benefits in a manner that avoids abrupt shifts in cost responsibility. Finally, MISO may find that some of its concerns regarding regional cost allocation will be alleviated by the solutions-based DFAX model as it identifies specific beneficiaries of transmission upgrades.

CONCLUSION

For all of the reasons previously discussed, the Ohio Commission recommends that FERC reject MISO's proposed contract language and find that the current JOA is compliant with contract law and Order 1000 and clarify that MISO must continue to regionally allocate costs for interregional CBBRPs consistent with the current JOA. The Ohio Commission thanks FERC for the opportunity to provide comments on PJM's and MISO's and their respective TOs' proposed *Order 1000* interregional compliance filings.

¹⁴

In re: PJM Interconnection, L.L.C., FERC Docket No. EL05-121-006 (Request for Rehearing of the Public Utilities Commission of Ohio at 8-10) (April 30, 2012).

Respectfully submitted,

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On behalf of

The Public Utilities Commission of Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/Thomas W. McNamee

Thomas W. McNamee

Dated at Columbus, Ohio this September 9, 2013.

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Summary: Comments submitted by Assistant Attorney General Thomas McNamee to the Federal Energy Regulatory Commission on September 9, 2013 on behalf of the Public Utilities Commission of Ohio to be filed in FERC Docket Nos. ER13-1924-000, ER13-1944-000, and ER13-1943-000, In re PJM Interconnection and Midcontinent Independent System Operator. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio