

147 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER14-1835-000

ORDER ACCEPTING REVISIONS TO TRANSMISSION OWNERS AGREEMENT
AND BYLAWS

(Issued June 27, 2014)

1. In this order, the Commission accepts Midcontinent Independent System Operator, Inc.'s (MISO) proposed revisions to the Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc. (MISO Transmission Owners Agreement)¹ and its Bylaws² to: (1) increase the size of the MISO Board of Directors from seven to nine independent directors, adding each of the new independent directors annually to begin service in January 2015 and January 2016, respectively; (2) specify that the two new independent directors will occupy Category One seats; and (3) permit a quorum of the Board of Directors with a simple majority to reflect the addition of new independent directors (e.g., five directors will constitute a majority in 2015 and six directors will constitute a majority in 2016 as the Board of Directors increases in size from eight to ten total members, respectively) (Proposed Revisions).

I. Background

2. On May 1, 2014, MISO filed the Proposed Revisions, to begin with the election of an independent director in December 2014 to begin service in January 2015, and election

¹ MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, 31.0.0.

² MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owners Agreement, Appendix F (BYLAWS), 32.0.0.

of a second independent director in December 2015 to begin service in January 2016. MISO requests an effective date of July 1, 2014.

3. MISO states that, when its original Board of Directors was established, it contained seven independent directors plus the Chief Executive Officer (or President), serving as the non-independent director. MISO explains that the independent directors serve three-year staggered terms, and that there are four categories of directors. Specifically, under the Bylaws, four of the independent directors are to have expertise and experience in corporate leadership at the senior management or board of directors level, or in the professional disciplines of finance, accounting, engineering, or utility laws and regulation (Category One). Of the other three independent directors, one is to have expertise and experience in the operation of electric transmission systems (Category Two), one is to have expertise and experience in the planning of electric transmission systems (Category Three), and one is to have expertise and experience in commercial markets and trading and associated risk management (Category Four).³

4. MISO states that, in response to its regional growth and the increasing complexity of its operations (e.g., new MISO South Region, increased compliance obligations, cyber and physical security, as well as regulatory and environmental developments), MISO has spent the last several months discussing with its Board of Directors and stakeholder community the need for possible changes to its governance structure. As part of these discussions, MISO states that parties considered a proposal to add two additional Category One seats, which would expand the current Board of Directors from seven to nine independent directors.⁴

5. MISO states that Article Two, Section IX(C)(2) of the MISO Transmission Owners Agreement provides the Board of Directors with independent authority to change the qualifications for and number of directors, subject to Commission approval.⁵ On November 1, 2013, the Corporate Governance & Strategic Planning Committee of the MISO Board of Directors met to discuss the Board of Directors expansion proposal. MISO states that, during this meeting, the committee agreed to recommend to the full

³ MISO Transmittal at 1.

⁴ *Id.* at 2.

⁵ Article Two, Section IX(C)(2) states: “[t]he qualifications for, and total number of Directors on, the Board, as set forth in Article Two, Section III of this Agreement, may be changed by action of the Board, subject to approval by the FERC, without approval by the Owners.” *Id.* at 2, n.3 (citing MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, Article Two, § IX(C)(2)).

Board of Directors that it increase the Board of Directors from seven to nine independent directors, that the two new directors occupy Category One seats, and that the first new director be elected to a three-year term in December 2014 to begin service in January 2015, with the second new director being elected to a three-year term in December 2015 to begin service in January 2016.⁶

6. MISO further states that, during its discussions with the Board of Directors and the stakeholder community, it identified a number of reasons to support its proposal to add two additional Category One seats to the Board of Directors. MISO points out that its regional footprint, as well as the complexity of its operations, has grown tremendously in recent years. It argues that the Board of Directors' expansion proposal provides an opportunity for new directors and new ideas to address the changing landscape in which MISO conducts business, as well as an orderly succession as incumbent directors leave the Board of Directors. MISO also states that Category One seats afford the greatest flexibility when choosing directors based on the current needs of the organization, as this category provides the broadest scope of requisite skills and experience.⁷

7. MISO notes that certain commenters preferred that MISO require the new seats to be of particular qualifications; however, MISO states that its experience suggests that not all requirements need to be hard-coded in the Bylaws. For example, MISO states that directors who currently serve in Category One seats come from a variety of backgrounds, including experience in information technology, as well as serving as a former Commissioner of the Public Utility Commission of Texas, a former Senior Vice President of International, Regulatory & Governmental Affairs for United Airlines, a former Chairman and CEO of the Boston Stock Exchange, and a Senior Advisor for New Mountain Capital. MISO argues that keeping these new Director seats in the generalist category (i.e., Category One) maximizes the freedom of the Board Nominating Committee to obtain the most qualified candidates for MISO's needs.⁸

8. Furthermore, MISO states that expanding the Board of Directors from seven to nine independent directors would bring MISO's Board of Directors in line with PJM Interconnection, L.L.C. (PJM) and ISO New England Inc. (ISO New England), which currently have nine independent directors serving on their boards.⁹

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.*

II. Proposed Revisions to the MISO Transmission Owners Agreement and Bylaws

9. MISO proposes to revise Article Two, Section III, Paragraph A(1) (Board of Directors) of the Transmission Owners Agreement to state, in relevant part:

The Board of Directors of MISO (hereinafter sometimes referred to as “Board”), shall consist of ~~seven (7)~~ nine (9) persons plus the Chief Executive Officer (or if the Board chooses not to elect the Chief Executive Officer, the President). To achieve this nine (9) member Board, one new Director will be elected to a three (3)-year term in December 2014 to begin service in January 2015, and a second new Director will be elected to a three (3)-year term in December 2015 to begin service in January 2016.^[10]

10. In addition, MISO proposes to revise Article Two, Section III, Paragraph A(2) (Qualifications) of the Transmission Owners Agreement to state, in relevant part:

Of the ~~seven (7)~~ nine (9) Directors, ~~four (4)~~ six (6) shall have expertise and experience in corporate leadership at the senior management or board of directors level, or in the professional disciplines of finance, accounting, engineering, or utility laws and regulation. The additional Directors who are elected in December 2014 and December 2015 shall have expertise or experience in one of these areas.^[11]

11. MISO also proposes to revise Article Four, Section 4.1 (General Powers) of Appendix F (Bylaws) of the Transmission Owners Agreement to state, in relevant part:

There shall be a Board of Directors of MISO which shall consist of ~~seven (7)~~ nine (9) persons, plus the Chief Executive Officer (or if the Board chooses not to elect the Chief

¹⁰ *Id.* at 4 (citing MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, Article Two, § III, Paragraph A(1) (Board of Directors) 31.0.0).

¹¹ *Id.* (citing MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, Article Two, § III, Paragraph A(2) (Qualifications) 31.0.0).

Executive Officer, the President). To achieve this nine (9) member Board, one new Director will be elected to a three (3)- year term in December 2014 to begin service in January 2015, and a second new Director will be elected to a three (3)-year term in December 2015 to begin service in January 2016^[12]

12. MISO proposes to revise Article Four, Section 4.2 (Qualifications) of Appendix F (Bylaws) of the Transmission Owners Agreement to state, in relevant part:

Of the ~~seven (7)~~ nine (9) Directors, ~~four (4)~~ six (6) shall have expertise and experience in corporate leadership at the senior management or board of directors level, or in the professional disciplines of finance, accounting, engineering, or utility laws and regulation. The additional Directors who are elected in December 2014 and December 2015 shall have expertise or experience in one of these areas.^[13]

13. MISO states that Section III.C.2 of the Transmission Owners Agreement, as well as the parallel provision of the Bylaws, currently provides that five directors shall constitute a quorum of the Board of Directors. To account for a larger Board of Directors consisting of ten – nine independent directors plus the Chief Executive Officer – MISO also proposes to make corresponding revisions to the existing quorum requirements to provide that a majority of directors serving on the Board of Directors constitutes a quorum. MISO states that in practice this means that five directors will constitute a quorum when the Board of Directors consists of nine directors (when the first new independent director is added in 2015) and six directors will constitute a quorum when the Board of Directors ultimately consists of ten directors (when the second new independent director is added in 2016). Accordingly, MISO proposes to revise Article Two, Section III.C.2 of Transmission Owners Agreement and Article Four, Section 4.9 (Quorum; Voting) of Appendix F (Bylaws) to the Transmission Owners Agreement to

¹² *Id.* (citing MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owners Agreement, Appendix F (BYLAWS), Article Four, § 4.1 (General Powers) 32.0.0).

¹³ *Id.* at 5 (citing MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owners Agreement, Appendix F (BYLAWS), Article Four, § 4.2 (Qualifications) 32.0.0).

state, in relevant part, that a majority of directors shall constitute a quorum of the Board of Directors.¹⁴

III. Notice of Filing and Responsive Pleadings

14. Notice of MISO's filing published in the *Federal Register*, 79 Fed. Reg. 26,424 (2014), with interventions and protests due on or before May 22, 2014. Calpine Corporation, Consumers Energy Company, East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., Exelon Corporation, NRG Power Marketing LLC, GenOn Energy Management, LLC, Public Service Enterprise Group Incorporated, Wisconsin Electric Power Company, and Wisconsin Public Service Corp. filed timely motions to intervene. Duke Energy Indiana, Inc. (Duke Indiana); Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company (collectively, Dynegy); Electric Power Supply Association (EPSA); MISO Transmission Owners;¹⁵ Big Rivers Electric Corporation, Dairyland Power Cooperative, Hoosier Energy Rural Electric Cooperative, Inc., Indianapolis Power & Light Company, and Southern Illinois Power Cooperative (collectively, Joint Commenters); Southern Indiana Gas and Electric Company (Southern Indiana); and Xcel Energy Services Inc. (Xcel) filed timely motions to intervene and comments or protests. DC Energy, LLC (DC Energy) filed a motion to intervene out of time. On June 6, 2014, MISO submitted an answer to the comments and protests. On June 23, 2014, DC Energy submitted an answer to the comments and protests.

¹⁴ *Id.* at 5-6.

¹⁵ MISO Transmission Owners consist of: Ameren Services Company, American Transmission Company LLC, Arkansas Electric Cooperative Corporation, Central Minnesota Municipal Power Agency, City Water, Light & Power (Springfield, IL), Cleco Power LLC, East Texas Electric Cooperative, Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Gulf States Louisiana, L.L.C., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., Great River Energy, MidAmerican Energy Company, Minnesota Power (and its subsidiary Superior Water, L&P), Montana-Dakota Utilities Co., Northwestern Wisconsin Electric Company, Otter Tail Power Company, Prairie Power Inc., Southern Minnesota Municipal Power Agency, and Wolverine Power Supply Cooperative, Inc.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant DC Energy's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's and DC Energy's answers because they have provided information that assisted us in our decision-making process.

B. Comments/Protests

18. MISO Transmission Owners, Xcel, and EPSA state that MISO's filing addresses only one of several governance issues currently pending in the MISO stakeholder process, and they suggest that a more comprehensive proposal aimed at addressing all the pending governance issues is preferable to a piecemeal approach.¹⁶ MISO Transmission Owners and Dynegy request that, if the Commission accepts MISO's instant proposal, it should condition that acceptance on a requirement that MISO comprehensively address other pending governance issues and report back to the Commission on such discussions (and submit any necessary revisions to the MISO tariff, MISO Transmission Owners Agreement, and/or Bylaws) within a specified timeframe.¹⁷ Xcel and Joint Commenters add that if the Commission accepts the proposed revisions, the Commission should

¹⁶ MISO Transmission Owners Comments at 2, 4, 10; Xcel Comments at 4-5; EPSA Comments at 3.

¹⁷ MISO Transmission Owners Comments at 2, 4, 10; Dynegy Comments at 3-4. MISO Transmission Owners state that several governance-related revisions are currently under consideration, including Board of Director age and term limits and changes to the Nominating Committee process. MISO Transmission Owners Comments at 6.

require MISO to submit a compliance report addressing the status of the governance reforms pending in the MISO stakeholder process.¹⁸

19. MISO Transmission Owners, Joint Commenters, EPSA, and Dynegy state that, given the new role of MISO and the MISO Board of Directors in determining who will develop new transmission facilities, modifications to the Board of Directors election process are necessary to ensure the continued independence of the Board of Directors. First, MISO Transmission Owners, Joint Commenters, EPSA, and Dynegy state that MISO should revise the Transmission Owners Agreement and Bylaws to require that MISO engage an independent third party to receive and tally the votes for Board of Director elections.¹⁹ MISO Transmission Owners argue that this approach will enhance independence by ensuring that a disinterested party is responsible for determining the winner of the elections. Second, MISO Transmission Owners, Joint Commenters, and Dynegy argue that it is critical that members of the Board of Directors and MISO employees remain unaware of how individual MISO members voted.²⁰ Southern Indiana also supports transparency in the nomination and selection processes and encourages MISO to provide more opportunities for stakeholders and the Board of Directors to interact both formally and informally.²¹ EPSA adds that the Board of Directors should engage in greater stakeholder interaction by, for example, participating in MISO stakeholder groups, which would result in justification of the additional administrative expense and lead to more informed decision-making at the Board of Director level.²²

20. MISO Transmission Owners and Joint Commenters state that the Board of Directors already have four well qualified independent directors with Category One experience and expertise, and the two new independent directors should be required to have specific expertise in Category Two (electric transmission system operations), Category Three (electric transmission system planning), Category Four (commercial markets and trading and associated risk management), or a new “Category Five,” aimed at electric utility operations and/or Regional Transmission Organization (RTO) executive

¹⁸ Xcel Comments at 6; Joint Commenters Protest at 6, 13, 15.

¹⁹ MISO Transmission Owners Comments at 5; Joint Commenters Protest at 13-14; EPSA Comments at 5; Dynegy Comments at 3.

²⁰ MISO Transmission Owners Comments at 5; Joint Commenters Protest at 13-14; Dynegy Comments at 3.

²¹ Southern Indiana Comments at 3.

²² EPSA Comments at 6-7.

experience.²³ EPSA and Dynegy add that, while they support the addition of two new independent directors to the Board of Directors, new independent directors should be added from Category Two, Category Three, or Category Four in order to address certain technical issues better.²⁴ MISO Transmission Owners and Xcel argue that adding two additional independent directors with general corporate leadership experience will not enhance MISO's ability to address the increased operational complexities that MISO identifies (i.e., increased compliance obligations, cyber and physical security, regulatory and environmental developments, integration of the new MISO South region).²⁵ Southern Indiana adds that expertise in regulatory oversight and reliability functions would bring added value to MISO's governance.²⁶

21. MISO Transmission Owners, Joint Commenters, and EPSA also seek modifications to the nomination process in order to facilitate orderly succession of members of the Board of Directors. MISO Transmission Owners state that presently the Nominating Committee consists of five members, three members of the current Board of Directors and two Advisory Committee members (i.e., stakeholders), resulting in a majority favoring the current Board of Directors. MISO Transmission Owners, Joint Commenters, and EPSA state that reversing the composition of the Nominating Committee to three Advisory Committee members and two members of the current Board of Directors would enhance independence and provide stronger stakeholder input into the nomination process.²⁷ EPSA argues that the Nominating Committee composition and size should be reformed in order to ensure that all membership sectors are equally represented.²⁸ In the alternative, MISO Transmission Owners, Joint Commenters, and Dynegy suggest imposing term limits on the Board of Directors.²⁹

²³ MISO Transmission Owners Comments at 7; Joint Commenters Protest at 9-10.

²⁴ EPSA Comments at 4-5; Dynegy Comments at 4.

²⁵ MISO Transmission Owners Comments at 7 (citing MISO Transmittal at 2); Xcel Comments at 5-6 (citing MISO Transmittal at 2).

²⁶ Southern Indiana Comments at 3.

²⁷ MISO Transmission Owners Comments at 8; Joint Commenters Protest at 10-11; EPSA Comments at 5.

²⁸ EPSA Comments at 6.

²⁹ MISO Transmission Owners Comments at 9; Joint Commenters Protest at 12; Dynegy Comments at 3.

22. Xcel and Joint Commenters state that the Transmission Owners Agreement is a rate schedule on file with the Commission under section 205 of the Federal Power Act (FPA), and MISO's instant proposal must be evaluated under the FPA legal standards and Commission policy.³⁰ Joint Commenters argue that MISO does not justify the additional costs that will be passed along to consumers from expanding the Board of Directors from seven to nine independent directors.³¹ Specifically, Joint Commenters argue that MISO's proposal is not just and reasonable and that the filing does not explain what the additional administrative costs will be or how consumers will benefit, aside from MISO stating that adding two new independent directors to the Board of Directors will enable MISO to address new operational complexities.³²

23. Duke Indiana states that it supports MISO's proposed revisions and requests that the Commission approve the revisions to Transmission Owners Agreement and Bylaws.³³

C. Answers

24. MISO states that the estimated cost of adding two additional independent directors is approximately \$305,000.³⁴ MISO states that the Board of Directors ultimately determined, after months of discussions with stakeholders, that this cost is outweighed by the benefits of having two additional independent directors, which include expanding the existing Board of Directors' knowledge base and experience, facilitating an orderly succession, optimizing the effectiveness of the Board of Directors committee operations, and aligning the size of the Board of Directors with others in the industry.³⁵

³⁰ Xcel Comments at 4; Joint Commenters Protest at 7 (citing 16 U.S.C. § 824d (2012)).

³¹ Joint Commenters Protest at 7-9.

³² Joint Commenters Protest at 8, n.13 (citing MISO Transmittal at 2).

³³ Duke Indiana Comments at 2.

³⁴ MISO Answer at 5. The estimated cost will vary depending on meeting frequency. *See id.* at 5, n.6 (citing November 1, 2013 Corporate Governance and Strategic Planning Committee of the MISO Board of Directors' presentation at <https://www.misoenergy.org/Events/Pages/20131101BODCGSP.aspx>).

³⁵ *Id.* at 5-6.

25. DC Energy supports MISO's proposed revisions.³⁶

D. Commission Determination

26. We will accept MISO's proposed revisions to the MISO Transmission Owners Agreement and its Bylaws, effective July 1, 2014, as requested. We agree with MISO that regional growth and the increasing complexity of its operations justifies its proposal to expand the number of independent directors serving on its Board of Directors. Given the additional burdens the MISO Board of Directors will be taking on, we find that MISO has sufficiently justified that the benefits of increasing the size of the Board of Directors are expected to exceed the costs. We thus disagree with Joint Commenters' argument that MISO has not justified the additional costs that its proposal entails. The Commission declined in Order No. 2000 to impose specific, detailed requirements on RTO governance, including requirements concerning the size of RTO boards. The Commission only required in Order No. 2000 that RTO governing boards satisfy the overall principle that their decision-making process be independent of any market participant or class of market participants.³⁷ The Commission thus allows considerable flexibility with regard to the size of RTO boards. Moreover, as MISO points out, the enlargement of its Board of Directors would result in a board that is comparable in size to the PJM³⁸ and ISO New England³⁹ boards. This fact provides additional assurance that MISO's proposal is just and reasonable.

27. We will not condition the acceptance of MISO's filing on a requirement that MISO comprehensively address other pending governance issues and report back to the Commission on such discussions within a specified timeframe. MISO has demonstrated

³⁶ DC Energy Answer at 2.

³⁷ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,073-74 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

³⁸ *See PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,188 (2003) (accepting, among other things, PJM's proposal to increase the size of the PJM Board of Managers from seven to nine members).

³⁹ *See* section 3.2 of the ISO New England Bylaws at http://www.iso-ne.com/aboutiso/corp_gov/bylaws/bylaws_of_ISO_NE.pdf and section 7(b) of the ISO New England Second Restated Certificate of Incorporation at http://www.iso-ne.com/aboutiso/corp_gov/cert_inc/Second_Restated_Certificate_of_Incorporation.pdf.

that the Proposed Revisions are just and reasonable, and there appear to be no reasons why acceptance should be conditioned on other governance-related issues that are outside the scope of the instant proceeding.

28. We will not set any requirements regarding the type of expertise that the new MISO independent directors should possess. The objections to MISO's decision that the two new independent directors have Category One rest, in part, on the assumption that Category One is limited to general corporate expertise and experience. Category One also includes persons with expertise and experience in finance, accounting, engineering, or utility laws and regulation. We do not interpret the Bylaws as precluding Category One directors from having experience and expertise that falls into one of the other three categories, as Category One is itself broad enough to encompass a wide range of experience and expertise. Instead, the existence of these other categories ensures that the Board of Directors includes persons with the specific experience and expertise covered in those categories. As a result, we agree with MISO that Category One provides the broadest scope of requisite skills and experience, and we accept its decision that this category affords the greatest flexibility when choosing independent directors based on the current needs of the organization.

29. We find no grounds for addressing here modifications to MISO's current director nomination process. MISO states that its Corporate Governance & Strategic Planning Committee currently is considering this issue,⁴⁰ and it thus would be premature for us to address it here. Finally, we likewise find no grounds to consider here the suggestion that MISO engage an independent third party to receive and tally the votes for Board of Director elections or the suggestion that MISO develop an additional category of board member expertise and experience. These suggestions may merit further discussion by MISO, its Board of Directors, and its stakeholders, but they do not affect our finding that MISO's proposal before us is just and reasonable.

⁴⁰ MISO Transmittal at n.2.

The Commission orders:

MISO's Proposed Revisions are accepted, to be effective July 1, 2014, as discussed in the body of this order.

By the Commission.

Kimberly D. Bose,
Secretary.