136 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket No. ER11-3728-000

ORDER DENYING REQUEST FOR TARIFF WAIVER

(Issued September 27, 2011)

1. On June 3, 2011, Midwest Independent Transmission System Operator, Inc. (MISO) made a filing (June 3 Filing) seeking waiver of the provisions of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) regarding the planning and cost allocation of network upgrades, in order to establish a transition for the integration of Entergy Corporation and its operating companies[1] (collectively, Entergy) into MISO as new transmission-owning members. In this order, we deny MISO's waiver request.

I. Background

2. On April 25, 2011, Entergy announced its intention to join MISO as a transmission-owning member, subject to state regulatory approvals. In the June 3 Filing, MISO requests waiver of its tariff provisions regarding the cost allocation for network upgrades in order to establish a transition for Entergy's integration into MISO.[2] MISO states that, during the transition period, the cost of network upgrades located entirely within either its current footprint (which it calls the Northern Planning Region) or Entergy (which it calls the Southern Planning Region) will be allocated only within each respective planning region. MISO states that its waiver request includes, but is not limited to the relevant cost allocation rules set forth in Attachments X (Generator

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[1] The Entergy operating companies are Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

[2] MISO June 3 Filing at 2.

Interconnection Procedures), N (Recovery of Costs Associated with New Facilities), CC (Cross-Border Allocation Projects Revenue Requirements Calculations), FF (Transmission Expansion Planning Protocol), GG (Network Upgrade Charge), and MM (Multi-Value Project Charge); Schedules 25 (Cross-Border Allocation Tariff Provisions), 26 (Network Upgrade From Transmission Expansion Plan), and 26-A (Multi-Value Project Usage Rate); the associated definitions in Module A; and cross-references in other Tariff provisions.[3]

3. MISO states that a transition period is necessary because MISO and Entergy have not had any opportunity to study the levels, and to address the interaction, of congestion and the level of infrastructure in the other's area. If their systems are not comparable in those respects, and if such non-comparability is not addressed, MISO contends that subsidization could occur between the Northern and Southern Planning Regions. Moreover, MISO states, the Northern Planning Region is nearing completion of an analysis resulting in a portfolio of Multi-Value Projects (MVP)[4] that did not consider the Southern Planning Region. According to MISO, additional analysis is required to ensure that the portfolio provides widespread benefits to the Southern Planning Region before costs are shared across both planning regions.[5] MISO adds that the proposed transition period is consistent with Order No. 890, which requires fairness in the allocation of network upgrade costs among those who cause the construction of, and derive benefits

[3] *Id.* at 6 (citing Moeller Test. at 5).

[4] An MVP is a transmission project that meets at least one of three criteria:

> Under Criterion 1, an MVP must support a qualifying policy initiative and 'must be shown to enable the transmission system to deliver such energy in a manner that is more reliable and/or more economic than it otherwise would be without the transmission upgrade.' Criterion 2 requires that an MVP provide multiple types of economic benefits across multiple pricing zones, and Criterion 3 requires that an MVP address one transmission issue associated with a projected violation of a [North American Electric Reliability Corporation] or Regional Entity standard and at least one economic-based transmission issue that provides economic value across multiple pricing zones.

Midwest Indep. Transmission Sys. Operator, Inc., 133 FERC ¶ 61,221, at P 207 (2010) (MVP Order).

[5] MISO June 3 Filing at 4-5 (citing Moeller Test. at 10).

from, such upgrades,[6] and the cost allocation principles articulated by the United States Court of Appeals for the Seventh Circuit.[7] MISO does not expect the transition to have undesirable consequences.[8]

4. MISO proposes to begin the transition period when at least one of the Entergy operating companies joins MISO, which is currently expected to occur in December 2013. MISO states that the proposed transition would consist of a study period of at least five years, and not more than ten years in which the cost of network upgrades terminating entirely within one planning region would be allocated only within that planning area (i.e., the Northern or Southern Planning Region). According to MISO, during the initial five-year period, various studies would be performed to apply MISO's planning criteria in the Southern Planning Region, and steps would be taken to achieve comparability of the Southern Planning Region to the Northern Planning Region. If such comparability has been attained on or before the completion of the initial five-year period,[9] MISO states that the transition period would end upon termination of that five-year period. If comparability has not yet been achieved at that time, the transition period would continue for up to another five years, to the extent necessary to achieve comparability.[10] If

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[6] *Id.* at 5 (citing *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)).

[7] *Id.* (citing *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 476-77 (7th Cir. 2009) (*Illinois Commerce Commission*)).

[8] *Id.* at 6 (citing Moeller Test. at 5).

[9] MISO states that comparability assessments will include an evaluation of congestion in each planning region and the application of MISO's economic planning criteria against those congestion levels to determine where a transmission solution would be economically appropriate. MISO states that congestion across the regions will be considered roughly commensurate when all economic solutions have been identified in both regions. MISO adds that MVP infrastructure will be considered comparable when additional MVPs have been identified, including in the Southern Planning Region, such that, in the aggregate, the MVPs create benefits spread across the combined planning areas and are roughly commensurate with the costs incurred. *Id.* at 9-10 (citing Moeller Test. at 8-9).

[10] *Id.* at 6 (citing Moeller Test. at 6).

comparability has not been achieved at the end of the ten-year maximum transition period, MISO states that it will study and propose alternative cost allocation approaches appropriate for the circumstances prevailing at that time. MISO proposes to submit annual reports to the Commission regarding its progress in attaining comparability. MISO states that, after the transition period, its existing regional cost sharing rules would apply to Baseline Reliability Projects, Market Efficiency Projects, and Generator Interconnection Projects approved after the transition period, and regional sharing of MVP costs would be phased in over the following four years.[11]

5. MISO requests that the Commission act on the filing prior to July 31, 2011, and grant an effective date of August 1, 2011 for the requested waiver, citing the need to provide state officials in Entergy's footprint with sufficient time "to review and take into account the planning and cost allocation rules MISO will apply to the integration of Entergy into MISO."[12]

II. Notice of Filing and Responsive Pleadings

6. Notice of MISO's filing was published in the *Federal Register*, 76 Fed. Reg. 36531 (2011), with interventions and protests due on or before June 24, 2011. Notices of intervention, raising no substantive issues, were filed by: Arkansas Cities;[13] Arkansas Public Service Commission; Council of the City of New Orleans, Louisiana; Louisiana Public Service Commission (Louisiana Commission); Michigan Public Service Commission; and Organization of MISO States. Timely motions to intervene, raising no substantive issues, were filed by: American Municipal Power, Inc.; Calpine Corporation; City of North Little Rock, Arkansas; Consumers Energy Company (Consumers); Dairyland Power Cooperative (Dairyland); DC Energy Midwest LLC; Detroit Edison Company (Detroit Edison); Duke Energy Corporation (Duke);[14] Electric Power Supply Association; Empire District Electric Company; Exelon Corporation; GDF SUEZ Energy

[11] *Id.* at 10.

[12] *Id.* at 11.

[13] Arkansas Cities consist of: City of Benton, Arkansas; City of Osceola, Arkansas; City of Prescott, Arkansas; Conway Corp.; Hope Water & Light Commission; and West Memphis Utilities Commission.

[14] Duke submitted its filing on behalf of its affiliates, Duke Energy Business Services, LLC; Duke Energy Kentucky, Inc.; Duke Energy Indiana, Inc.; and Duke Energy Ohio, Inc.

Marketing North America, Inc.; Integrys;[15] Lafayette Utilities System; Louisiana Energy and Power Authority; Michigan Attorney General Bill Schuette (Michigan AG); Michigan Municipal Electric Association (MMEA); Michigan Public Power Agency (MPPA); Mississippi Delta Energy Agency; Municipal Energy Agency of Mississippi; NRG Companies;[16] South Mississippi Electric Power Association; and Wisconsin Electric Power Company.

7. Missouri Public Service Commission (Missouri Commission) filed a notice of intervention and protest. Timely motions to intervene and protests were filed by: Coalition of Midwest Transmission Customers (Midwest Transmission Customers);[17] Arkansas Electric Cooperative Corporation (Arkansas Cooperative); Cleco Power LLC (Cleco); East Texas Cooperatives;[18] and FirstEnergy Service Company (FirstEnergy).[19]

8. Notices of intervention and comments were filed by: Illinois Commerce Commission (Illinois Commission); Indiana Utility Regulatory Commission (Indiana Commission); and Public Service Commission of Wisconsin (Wisconsin Commission). Timely motions to intervene and comments were filed by: Alliant Energy Corporate Services, Inc. (Alliant); Association of Businesses Advocating Tariff Equity (ABATE);

[15] Integrys consists of: Integrys Energy Services, Inc.; Upper Peninsula Power Co.; and Wisconsin Public Service Corp.

[16] NRG Companies consist of: Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; Cottonwood Energy Co. LP; Louisiana Generating LLC; and NRG Sterlington Power LLC.

[17] Midwest Transmission Customers state that they are an ad hoc association of large, industrial end-users of electricity. All members operate one or more manufacturing facilities in the Midwest and purchase electric delivery service or bundled electric service from at least one of the transmission owners encompassed by MISO.

[18] East Texas Cooperatives consist of: East Texas Electric Cooperative, Inc.; Sam Rayburn G&T Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.

[19] FirstEnergy filed on behalf of its affiliate operating utility companies, The Cleveland Electric Illuminating Co., Ohio Edison Co., Pennsylvania Power Co., and The Toledo Edison Co.; its power marketing affiliate FirstEnergy Solutions Corp.; and its electric transmission affiliate American Transmission Systems, Inc. (ATSI).

Entergy Services, Inc. (Entergy Services);[20] MISO Northeast Transmission Customers;[21] MISO Transmission Owners (MISO TOs);[22] and Union Power Partners, L.P. (Union Power).

9. On June 27, 2011, Great River and NSP Companies (collectively, Great River–NSP Companies) filed comments one day out of time.[23]

10. On July 5, 2011, MISO filed an answer to the comments and protests. On July 11, 2011, Entergy Services filed limited supplemental comments.

11. On July 13, 2011, Nebraska Public Power District (NPPD) filed a motion to intervene out of time[24] and request for clarification.

12. On July 15, 2011, Louisiana Commission filed comments out of time.

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[20] Entergy Services filed its comments on behalf of the Entergy operating companies.

[21] MISO Northeast Transmission Customers consist of: ABATE; Consumers; Detroit Edison; Michigan AG; MMEA; and MPPA.

[22] For purposes of this filing, MISO TOs are: Ameren Services Co., as agent for Union Electric Co.; American Transmission Co. LLC; Big Rivers Electric Corp.; Central Minnesota Municipal Power Agency; City Water, Light & Power; Dairyland; Duke; Great River Energy (Great River); Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Co.; International Transmission Co.; ITC Midwest LLC; Michigan Electric Transmission Co., LLC; MidAmerican Energy Co.; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Co.; Northern States Power Co., a Wisconsin corporation, and Northern States Power Co., a Minnesota corporation (jointly, NSP Companies); Northwestern Wisconsin Electric Co.; Otter Tail Power Co.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Co.; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[23] Great River and NSP Companies intervened as part of MISO TOs.

[24] NPPD states that it did not know until the issuance of the Commission's July 1, 2011 order in Docket No. EL11-34-000 (*Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,010 (2011) (July 1 Order)) that NPPD may have an interest in this proceeding.

13. On July 19, 2011, Arkansas Cooperative and East Texas Cooperatives filed answers to MISO's answer and Great River-NSP Companies filed an answer to Entergy Services' limited supplemental comments.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding. We will also accept Great River-NSP Companies' and Louisiana Commission's late comments and grant NPPD's motion to intervene out of time, given their interest in the proceeding, the early stage of the proceeding and absence of any undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers and will, therefore, reject them.[25]

B. Substantive Matters

1. Comments and Protests

16. Arkansas Cooperative, East Texas Cooperatives, and Missouri Commission argue that the proposed waiver does not meet the Commission's standards for granting waivers because MISO has failed to identify a concrete problem that needs to be remedied. Arkansas Cooperative claims that identification of a problem must precede a request for waiver, but in effect, MISO admits that it does not know whether a problem exists with regard to comparable levels of infrastructure and congestion between the Northern and Southern Planning Regions. East Texas Cooperatives contend that MISO would plan for any transmission expansion needed to bring the Northern and Southern Planning Regions into a comparable state under its existing Tariff and, therefore, the proposed waiver is

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[25] We note that MISO proffered significantly more information in its answer than in its June 3 Filing. We remind applicants that they should provide complete support in their original filings pursuant to section 205(c) of the FPA. *See* 18 C.F.R. § 35.1(a) (2011). *See also, e.g., Transwestern Pipeline Co.*, 85 FERC ¶ 61,374, at 62,428 (1998). Further, although Entergy Services styles its July 11, 2011 pleading as "limited supplemental comments," we deem the pleading to be an answer.

unnecessary to fulfill this purpose. They add that MISO focuses on MVPs and has not supported the need to waive the cost allocation provisions for other project types. Missouri Commission argues that without a full understanding of whether the two systems are already comparable, the waiver is premature and should either be rejected or made contingent upon a preliminary comparability assessment.[26] Illinois Commission adds that it is irrelevant that, historically, MISO has not planned system upgrades in close coordination with Entergy, as there is no requirement that transmission companies must have planned their systems in close coordination in order to join an RTO.

17. As for the specific Tariff provisions that would be covered by the June 3 Filing, several commenters argue that MISO should provide greater specificity and/or proposed Tariff provisions to clarify its requested waiver. Union Power argues that the June 3 Filing does not specifically identify the Tariff provisions for which MISO seeks a waiver, but instead requests waiver of cost allocation rules that include "but are not limited to" certain Tariff provisions, which suggests that MISO could inappropriately waive additional, unspecified Tariff provisions. Arkansas Commission, East Texas Cooperatives, and Illinois Commission argue that, due to its lack of specificity, the June 3 Filing fails to comply with the Commission's requirement that waiver requests be limited in scope. Arkansas Commission maintains that, typically, the Commission has granted waivers only of specific, enumerated Tariff sections.[27] Arkansas Commission asserts that certain, unspecified portions of the Tariff provisions identified in the waiver request would continue to be in force during the transition period. Illinois Commission claims that the requested waiver covers at least 885 pages of the Tariff, and East Texas Cooperatives assert the generic waiver request includes "no less than six major elements of [MISO's] planning and cost allocation provisions."[28] MISO TOs argue that MISO must submit Tariff changes under section 205 of the FPA because the cost allocation rules proposed for the transition period will affect MISO's rates and charges. Illinois Commission claims that, consistent with section 205 and relevant precedent,[29] Tariff

[26] Missouri Commission notes that there was no stakeholder input into the proposed waiver and claims that the stakeholder process could have addressed many of its concerns.

[27] Arkansas Commission Protest at 9-11 (citing, *e.g.*, *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,191, at P 2 (2011)).

[28] East Texas Cooperatives Protest at 10.

[29] Illinois Commission Comments at 12-14 (citing, *e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc., MidAmerican Energy Co.*, 128 FERC ¶ 61,047 (2009); *Illinois Commerce Commission*, 576 F.3d at 476).

provisions are needed to allow stakeholders and the Commission to assess the waiver request, as well as to avoid giving MISO undue discretion in applying the waiver. Illinois Commission adds that several aspects of MISO's cost allocation proposal are unclear or contradictory, such that stakeholders cannot provide substantive comments, and the Commission cannot accept the proposal. Indiana Commission argues that MISO failed to file the Tariff language necessary to implement the requested waiver. Great River-NRG Companies state that, to the extent necessary, MISO should submit additional Tariff language to clarify its waiver request.

18. Several commenters object to the requested duration of the transition period and the amount of discretion that MISO would afford itself to determine when the Northern and Southern Planning Regions are comparable. They argue that MISO should establish objective metrics for making this determination. In particular, Illinois Commission argues that the proposed comparability assessment inappropriately gives MISO "unlimited discretion" in determining when comparability has been achieved.[30] Alliant seeks clarification of what cost allocation proposal will apply if comparability is not achieved within 10 years and whether the comparability assessment will consider planned or in-service transmission projects. East Texas Cooperatives are concerned that the proposed transition period could be extended beyond 10 years.

19. Wisconsin Commission claims that a stakeholder task force should recommend measures of comparability, and any comparability determination should be made only after consulting the appropriate state commissions. Indiana Commission asserts that approval by the MISO Board of Directors should be the final stage in the comparability assessment. MISO TOs argue that MISO's vague description of its comparability assessment does not permit the Commission or interested parties to evaluate the proposal. They add that the proposed ten-year maximum duration has not been justified and request that comparability be assessed on an annual basis, subject to Commission review. Illinois Commission asserts that the requested waiver is not of limited duration because, if comparability has not been achieved at the end of the ten-year period, MISO may study and propose alternative cost allocation approaches. Wisconsin Commission contends that MISO should conduct a "'reality check' no more than two years after its threshold comparability assessment that triggers any region-wide cost sharing of transmission costs," as congestion is likely to be best revealed after Entergy joins MISO's markets.[31]

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[30] *Id.* at 22.

[31] Wisconsin Commission Comments at 6. Wisconsin Commission also argues that, due to the length of the phase-in process, the waiver needs to be conditioned upon the right of any affected party to "seek reopening" if federal law fundamentally changes. Wisconsin Commission Comments at 5, 9-10.

In addition, since MISO's models assess system conditions five years out, Union Power requests further explanation of how MISO will implement its planning processes and cost allocation rules during the initial five-year transition period.

20. Arkansas Cooperative, East Texas Cooperatives, and Missouri Commission argue that MISO has presented no evidence supporting its assertion that the proposed waiver would not have undesirable consequences. Arkansas Cooperative asserts that the requested waiver would change the relative transmission expansion payments of entities in the Northern and Southern Planning Regions, which would, in turn, affect transmission flows and the price of electricity in both regions. East Texas Cooperatives maintain that, under the proposal, Entergy could enjoy the benefits of MISO's markets while avoiding making any necessary system upgrades because Entergy would have transmission planning and cost allocation rules separate from those of MISO.

21. With regard to the proposed allocation of costs during the transition period, Illinois Commission contends that, even if comparability is achieved, cost-shifting and subsidization will occur unless MISO adopts a transmission cost allocation method that identifies the beneficiaries of transmission upgrades and allocates costs accordingly.[32] In contrast, Entergy Services asserts that MISO's proposal is consistent with: (1) the principle that transmission costs should be allocated in a manner that is consistent with the planning assumptions that give rise to the incurrence of such costs, (2) the beneficiaries-pay principle of cost allocation, as well as (3) the principle that those who are responsible for the incurrence of costs ought to be those who bear the cost burdens.[33] Entergy Services further argues that MISO's proposal is consistent with Commission policy that disfavors the reallocation of sunk costs,[34] as well as the Commission's policy encouraging RTO participation.

22. Great River-NSP Companies generally support the proposed transition period, but are concerned that, if projects needed to achieve comparability are inappropriately classified as MVPs, the Northern Planning Region could inappropriately subsidize

[32] Illinois Commission adds that, if MISO were to adopt such a cost allocation methodology, the proposed waiver would be unnecessary. Illinois Commission Comments at 17-18.

[33] Entergy Services Comments at 5-8 (citing, *e.g.*, *Illinois Commerce Commission*, 576 F.3d at 476).

[34] *Id.* at 9-11 (citing, *e.g.*, *Inquiry Concerning the Comm'n's Pricing Policy for Transmission Serv. Provided by Pub. Utils. Under the Fed. Power Act*, FERC Stats. & Regs. ¶ 31,005, at 31,144 (1994)).

projects that help the Southern Planning Region. Missouri Commission argues that, if transmission planning in the Northern Planning Region assumes the existence of the Southern Planning Region during the transition period, transmission upgrades may be constructed in the Northern Planning Region that provide benefits to the Southern Planning Region; as such, the Southern Planning Region should be responsible for a portion of the associated costs. Missouri Commission also urges the Commission to require MISO to provide information regarding how it will divide the Southern Planning Region into sub-regions when applying its existing cost allocation rules. Wisconsin Commission contends that MISO provides no support for its proposal to share the costs of non-MVP projects that terminate partly in both the Northern and Southern Planning Regions on a footprint-wide basis.[35] Cleco argues that any cost allocation methodology for the Southern Planning Region should be submitted with appropriate tariff sheets subject to notice and comment, rather than through the proposed waiver.[36]

23. Several commenters draw parallels between the requested waiver and the Commission's findings in the MVP Order. FirstEnergy argues that ATSI is similarly situated to Entergy, and notes that MISO did not request a similar Tariff waiver for ATSI. FirstEnergy requests that the Commission reject the proposed waiver or, in the alternative, require MISO to offer a similar waiver to any zone that was not considered in MVP planning until MISO demonstrates that MVPs will benefit that zone. Arkansas Cooperative and East Texas Cooperatives argue that MISO's rationale for the requested waiver contradicts several of the Commission's findings in the MVP Order, including that all loads using the MISO transmission system would benefit from MVPs.[37] They also maintain that MISO has not shown that the existing Tariff provisions regarding the treatment of new transmission-owning members of MISO should not apply to Entergy. ABATE and MISO Northeast Transmission Customers state that they do not object to tariff designations that recognize the limited interconnections of the transmission planning sub-regions within MISO. They note that, in Docket No. ER10-1791-001,

[35] Wisconsin Commission Comments at 5, 8-9.

[36] Cleco states that it is evaluating whether to join MISO and argues that steps taken to integrate Entergy into MISO should, to the extent possible, be neutral toward Cleco.

[37] *See, e.g.*, Arkansas Cooperative Protest at 16-17 (citing MVP Order, 133 FERC ¶ 61,221 at P 203, 385); East Texas Cooperatives Protest at 18-19 (citing MVP Order, 133 FERC ¶ 61,221 at P 439).

MISO Northeast Transmission Customers request rehearing of the MVP Order regarding the treatment of Michigan.[38]

24. Some commenters raise procedural objections to the requested waiver. East Texas Cooperatives maintain that the Commission has made clear that the treatment of new transmission-owning members of MISO with regard to cost allocation should be addressed when the prospective member applies to join MISO,[39] but that no such application has been made by Entergy. In addition, Illinois Commission argues that MISO has not shown good cause for expedited treatment, asserting that MISO fails to show that Commission action on the proposed waiver is needed to enable certain state officials to make determinations regarding Entergy's proposal to join MISO.

25. In addition, NPPD notes that, in Docket No. EL11-34-000, the Commission declined to address arguments concerning the impacts of Entergy Arkansas joining MISO and anticipated that such issues "would be raised and addressed in the filings required to implement any decision by Entergy Arkansas to join MISO as a transmission-owing member."[40] NPPD seeks clarification that the June 3 Filing is not one of those dockets in which issues concerning the potential impacts of Entergy Arkansas joining MISO could be raised and addressed.[41]

26. Finally, according to Louisiana Commission, Entergy has indicated that it intends to submit an application to Louisiana Commission seeking approval to join MISO in a filing planned for September 2011. Louisiana Commission states that timely action on the June 3 Filing will assistant it in considering such an application.

2. <u>Commission Determination</u>

27. We find that the requested waiver of certain sections of the MISO Tariff is an inappropriate vehicle for implementing the transition period that MISO seeks for Entergy,

[38] *See, e.g.*, MISO Northeast Transmission Customers Comments at 5 (citing MISO Northeast Transmission Customers January 18, 2011 Request for Rehearing, Docket No. ER10-1791-001).

[39] East Texas Cooperatives Protest at 20 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,203 (2011) (citations omitted)).

[40] NPPD Request for Clarification at 4 (citing July 1 Order, 136 FERC ¶ 61,010 at P 67).

[41] If this is such a docket, then NPPD requests that the Commission establish procedures to address and resolve external loop flow issues.

and we will deny MISO's request for the waiver. We make no findings here as to the nature or the duration of any transition arrangements that may be appropriate to integrate Entergy into MISO.

28. We find that MISO's proposal would alter the existing cost allocation methodology for the existing MISO footprint and apply a new cost allocation methodology to Entergy during the proposed transition period. The treatment of network upgrades under the proposal would vary depending on the type of project (i.e., Baseline Reliability Project, generator interconnection project, Market Efficiency Project, or MVP) and whether the project terminates partly in both the Northern and Southern Planning Regions or wholly within one planning region. As a result, we find that MISO's proposal would significantly affect the rates and charges for jurisdictional service. Pursuant to section 205(c) of the FPA, ". . . every public utility shall file with the Commission . . . schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges . . . ."[42] Such changes should not be effectuated by a waiver of the Tariff, but should be submitted via a properly-supported section 205 filing with Tariff sheets setting forth the cost allocation provisions that would apply to the Northern and Southern Planning Regions during the transition period.[43]

29. Further, the requested waiver does not satisfy the Commission's requirements for waiver of tariff provisions.[44] MISO's proposed waiver is not limited in scope and lacks specificity. The proposed waiver involves significant portions of the Tariff in that it addresses the cost allocation Tariff provisions for transmission projects within and between the Northern and Southern Planning Regions during the proposed transition

[42] 16 U.S.C. § 824d (2006).

[43] Among other things, such a filing should provide sufficient detail for all parties to understand what provisions of the existing Tariff would continue to apply during the transition period and which provisions would be revised. It should also properly support why the proposed duration of the transition period is just and reasonable, and not unduly discriminatory or preferential. In addition, we note that, pursuant to section 35.7 of the Commission's regulations, all section 205 filings must be made electronically through the eTariff system.

[44] In granting waivers of tariff provisions, the Commission has generally required that the requested waiver be of limited scope, address a concrete problem that needs to be remedied, and not have undesirable consequences, such as harming third parties. *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,162, at P 8 (2009); *see also Southwest Power Pool, Inc.*, 124 FERC ¶ 61,316 (2008).

period. MISO's waiver request lacks specificity regarding which Tariff provisions would be waived and which would apply to Entergy, as well as other details necessary to support such a waiver. For example, MISO states that the duration of the requested waiver shall be at least five years, but not more than ten years; this lack of specificity does not provide adequate notice of what cost allocation rules would apply at what times during that five-year interval. MISO's waiver request also fails to provide a sufficient explanation of the concrete problem being remedied and how progress toward addressing that problem would be measured. Moreover, MISO does not identify and address the consequences to third parties of its waiver request.

30. Finally, NPPD's concern as to whether the instant proceeding would address its loop flow concerns is moot in view of our denial of MISO's waiver request.

The Commission orders:

MISO's request for waiver of certain portions of its Tariff is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.