

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

**Southwest Power Pool, Inc.**

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**Docket No. ER16-209-000**

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**MOTION TO INTERVENE OUT OF TIME AND COMMENTS  
OF THE MIDCONTINENT INDEPENDENT  
SYSTEM OPERATOR, INC.**

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Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.214 (2015), the Midcontinent Independent System Operator, Inc. (“MISO”) respectfully seeks leave to intervene out of time and submit comments in the above-captioned proceeding concerning the Southwest Power Pool, Inc.’s (“SPP”) proposed revisions to its Open Access Transmission Tariff (“OATT” or “Tariff”) to add an Annual Transmission Revenue Requirement (“ATRR”) and implement a formula rate template and implementation protocols (together, the “Formula Rate”) for transmission service using the facilities of Central Power Electric Cooperative, Inc. (“Central Power”) when Central Power transfers functional control of its transmission facilities to SPP on January 1, 2016 (“Central Power Integration Filing”). In support hereof, MISO states as follows:

**I. NOTICE AND COMMUNICATIONS**

The persons to whom correspondence, pleadings, and other papers with regard to this proceeding should be addressed and the persons whose names are to be placed on the

Commission's official service list are designated as follows, in accordance with Rule 203, 18 C.F.R. § 385.203 (2015):<sup>1</sup>

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## **II. MOTION TO INTERVENE OUT OF TIME**

MISO is the FERC-approved RTO providing open access transmission service and administering the day-ahead, real-time, and financial transmission rights markets in the Midwest region consisting of 15 states and one Canadian province. MISO's transmission and market footprint is directly adjacent to that of SPP, with the two organizations managing congestion and loop flows between their respective footprints in accordance with the "Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. and Southwest Power Pool, Inc." ("JOA").

Several MISO stakeholders, in addition to Otter Tail, have filed to intervene in the proceeding stating their interests and concerns. The MISO Transmission Owners (and Xcel Energy separately) filed doc-less Motions to Intervene noting that the SPP filing implicated their interests. Missouri River Energy Services ("MRES") and Arkansas Electric Cooperative Corporation ("AECC") have filed comments, with MRES listing numerous deficiencies in the

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<sup>1</sup> To the extent necessary, the MISO respectfully requests a waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b), to permit all of the persons listed to be placed on the official service list for this proceeding.

filing and AECC raising the same objections to the Commission's seams policy that it has argued in other proceedings.<sup>2</sup> The Minnesota Public Utilities Commission and the North Dakota Public Service Commission also filed Notices of Intervention.

Central Power transmission facilities are highly integrated with those of Otter Tail Power Company ("Otter Tail"). Otter Tail is a transmission owning member of MISO and the Otter Tail facilities integrated with those of Central Power are under the functional control of MISO (or subject to the MISO Appendix G Agency Agreement) and are a part of the MISO Transmission System as defined in MISO's Tariff. MISO is the Transmission Service Provider for the Otter Tail facilities, and has confirmed a Network Integration Transmission Service ("NITS") reservation for Central Power, beginning January 1, 2016, which will use the Otter Tail facilities.

Consequently, MISO has a substantial interest in the outcome of this proceeding that cannot be adequately represented by any other party. MISO submits that granting its intervention is in the public interest.

MISO seeks permission to intervene out of time in Docket ER16-209. Pursuant to Rule 214(d), the Commission will grant a late filed intervention where good cause is shown and the parties to the proceeding will not be prejudiced by the intervention. MISO had been following developments in Docket ER14-2850 in which the status of Central Power and Otter Tail facilities were being discussed in an effort to resolve related issues in that docket. Otter Tail's recent protest indicates that there are disputed issues remaining that involve MISO's Transmission System and service to one or more of its transmission customers. Because the dispute could result in an order or in settlement judge proceedings affecting MISO's Transmission System and

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<sup>2</sup> See, e.g., *Motion to Intervene and Answer of Arkansas Electric Cooperative Corporation*, Docket No. EL 14-30-000, filed March 10, 2014, at pp. 6-11.

service to one or both parties to this dispute, MISO's intervention is now necessary. Approval of MISO's motion to intervene out of time at this date will not cause any disruption to the proceedings nor prejudice any other party to the proceeding as the process has just begun<sup>3</sup> and MISO is willing to accept the record as it stands. MISO's interests are not adequately represented by another party to this proceeding; therefore, this intervention is in the public interest and meets the threshold requirements for intervention under the Commission's procedural rules.

### **III. COMMENTS**

MISO does not protest the filing by SPP, nor the planned integration of Central Power into SPP.<sup>4</sup> MISO accepts the policy of the Commission that RTO choices are voluntary and that those choices, particularly where non-jurisdictional owners seek to join an RTO, should be accommodated if reasonably possible. However, MISO does agree with several of the concerns expressed in Otter Tail's Protest and believes that the Commission should fashion a remedy that will leave the owners, Central Power and Otter Tail, in no worse position than that in which they had been operating before the Commission set about encouraging RTO participation.

MISO notes that when Otter Tail decided to join an RTO, and Central Power and Basin Electric declined to do so, MISO settled the status of the Integrated Transmission Agreement

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<sup>3</sup> See, e.g., *PacifiCorp, Order of Chief Judge Confirming Grant of Motion To Intervene Out of Time*, Docket No. ER07-882 (August 24, 2007) (allowing intervention even after proceeding set for settlement); *Entergy Services, Inc., Order of Chief Judge Granting Motion To Intervene Out of Time*, Docket No. ER07-985 (Aug. 17, 2007) (to same effect).

<sup>4</sup> Rather than restate the procedural history of this dispute, and the technical description of the facilities encompassed by the Integrated Transmission Agreement ("ITA") MISO adopts and incorporates those portions of the Otter Tail Protest, specifically pages 4 through 8 into these Comments.

(“ITA”) not by qualifying it as a Grandfathered Agreement<sup>5</sup> under the MISO Tariff, but by treating Central Power as being out of the energy markets.<sup>6</sup> Consequently, Central Power was not (and is not now) subject to any transmission or market charges by MISO, even though some Central Power load could not be adequately served but for the use of the Otter Tail/MISO transmission facilities.<sup>7</sup> A similar, reciprocal, remedy would not be unreasonable following Central Power’s decision to join an RTO. MISO believes this is an example of a practical seams solution the Commission had in mind in Order 2000:

We will continue to encourage reciprocal waivers of access charges between RTOs as long as they are reasonable in terms of cost recovery, cost shifting, efficiency, and discrimination. We also encourage terms and procedures that are compatible from region to region to the extent appropriate. *Accordingly, we have added an RTO function to integrate reliability and market interface practices with other regions, as discussed above.* [emphasis added]<sup>8</sup>

In other words, the burden is on the RTOs to insure that their tariffs and operations do not impose unduly discriminatory rates at their seams. Central Power and Otter Tail, as parties to their ITA contract, have the absolute right to terminate that agreement on its own terms,

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<sup>5</sup> Otter Tail’s Protest describes ITA as a MISO GFA. *Motion to Intervene and Protest of Otter Tail Power Company*, November 20, 2015, note 50 (“Otter Tail Protest”). While the agreement was assigned a GFA number in Attachment P to MISO’s Tariff, the settlement agreement provided for “out of market” treatment, not GFA treatment which would have required settlement as Option A, B or C, or a Carved-Out GFA. As a part of the 2004-2005 settlement process, a number of parties requested that their contracts, whether GFAs or not, be so listed to memorialize their status. In Attachment P, such contracts are correctly identified as other than GFAs even though they have been assigned a GFA number.

<sup>6</sup> *Explanatory Statement in Support of Settlement Agreement*, p. 7, n. 23, Docket Nos. EL04-104 et al. April 1, 2005. This treatment resulted in some cost shifting to market participants, but was consistent with MISO’s obligations as an Order No. 2000 RTO: “We believe that it is critically important for RTOs to develop ratemaking practices that: eliminate regional rate pancaking; manage congestion; internalize parallel path flows; *deal effectively and fairly with transmission owning utilities that choose not to participate in RTOs*; and provide incentives for transmission owning utilities to efficiently operate and invest in their systems. [emphasis added]” *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 at 505.

<sup>7</sup> As explained by Central Power in 2004, the ITA provided each party a license to flow energy across the facilities owned by the other party. *Central Power Electric Cooperative, Inc. and East River Electric Power Cooperative, Inc.’s Response to Otter Tail Power Company’s Briefs Regarding Mobile-Sierra*, Dockets No. ER04-691-000 and No. EL04-104-000, July 16, 2004, p. 2.

<sup>8</sup> *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 at 519.

eliminating the joint use provisions that typically allow such integrated systems to function. Though Central Power is non-jurisdictional, SPP is subject to the Commission's jurisdiction. Under the MISO and SPP tariffs, virtually all of the NITS revenues to be paid by Central Power to MISO, and by Otter Tail to SPP, will be distributed to the two respective owners of the facilities now governed by the ITA. The Commission can, and should, require MISO and SPP to develop a seams solution for this integration that does not penalize either party because of their respective RTO choices.<sup>9</sup> The Commission's earlier encouragement of waiver of charges in this limited circumstance would avoid significant cost shifts, and costs of administration, that will otherwise occur after Central Power integrates into SPP.

As to operating issues, MISO and SPP have a Joint Operating Agreement, but as Otter Tail's Protest notes,<sup>10</sup> substantial portions of the integrated system are lower voltage facilities and would not likely fall within the JOA provisions for coordination of congestion, planning, or the reliability coordinator functions. Although the integrated facilities technically qualify as "transmission" under the Commission's seven factor analysis, they are not part of the Bulk Electric System, nor are they likely to adversely affect the BES, as defined by NERC standards. Historically, Central Power and Otter Tail have coordinated local operations to maintain the reliability of the integrated facilities.

Nonetheless, MISO and SPP should, as a part of a Commission remedy, agree to study (with the participation of Otter Tail, Basin and Central Power) the anticipated change in

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<sup>9</sup> For example, as Otter Tail correctly notes, MISO does not require customers to purchase backup transmission if they have adequate transmission capacity during normal operating conditions. A NITS customer who requires additional service can purchase that service as needed, either with an after the fact emergency point to point reservation, or through actual metered use coincident with the zonal peak. Otter Tail Protest, Exhibit OTP-1, Prepared Direct Testimony of Stacie M. Hebert at 8. Apparently, SPP does require customers to pay for all contingent loads.

<sup>10</sup> Id., at 5.

operations that may occur after Central Power's integration into the SPP markets to ensure that further RTO coordination is not necessary. Participation in a centrally dispatched energy market alters the dispatch and the flows on a transmission system, even one operated at lower voltages. If Central Power loads and Otter Tail loads are served in two different markets, the market to non-market flows on the integrated facilities, in place since 2004, will change. If the RTOs conclude that additional coordination is needed, they should address that in operating guides, JOA amendments, or in amended tariff provisions, as appropriate.

#### **IV. CONCLUSION**

WHEREFORE, the MISO respectfully requests that the Commission grant MISO's motion to intervene out of time in this proceeding and accept MISO's Comments into the record.

Respectfully submitted,

/s/ Gregory A. Troxell

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MIDCONTINENT INDEPENDENT  
SYSTEM OPERATOR, INC.

Dated: November 25, 2015

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day e-served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 25th day of November 2015 in Carmel, Indiana.

*/s/ Amy R. Jones*

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Amy Jones