

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

SOUTHWEST POWER POOL, INC.

|

DOCKET NO. ER12-1586-000

**RESPONSE OF SOUTHWEST POWER POOL,
WESTERN AREA POWER ADMINISTRATION,
BASIN ELECTRIC POWER COOPERATIVE AND
HEARTLAND CONSUMERS POWER DISTRICT
TO ANSWER OF
MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**

Southwest Power Pool, Inc. (“SPP”), Western Area Power Administration (“Western”), Basin Electric Power Cooperative (“Basin Electric”) and Heartland Consumers Power District (“Heartland”) (Western, Basin Electric and Heartland are referred to as the “IS Parties”) hereby request permission to respond, and submit this response to, the Answer of the Midwest Independent Transmission System Operator, Inc. (“MISO”). This Response refutes MISO’s assertions that a transmission provider should not have to take into consideration the capability of its system when providing transmission service and that all flows on other systems, including flows caused by transmission service that MISO provides in excess of its system’s capability, are permissible loop flows.

I. MOTION FOR LEAVE TO ANSWER

Rule 213(a)(2) provides that a party may answer a protest in circumstances where the decisional authority permits the answer for good cause shown. The Commission has permitted answers to protests that clarify the record, contribute to an understanding of the issues or assist

the decision-making process.¹ MISO's Answer advances an interpretation of its rights with respect to providing transmission service that is at odds with the Commission's long-standing policies and MISO's own Joint Operating Agreement with SPP. This Response will assist the Commission in its decision-making process by clarifying the positions of the parties. Therefore, good cause exists to grant this motion for leave to answer.

II. ANSWER

MISO's Protest and Answer in this docket, as well as its Protest in SPP's and the IS Parties' request for a declaratory order in Docket No. EL12-60-000, are based on the premise that all loop flows are permissible and need not be compensated unless the loop flow jeopardizes the reliability of the transmission system or diminishes the ability of another transmission provider to use its system in the most economical manner.² If MISO's assertion were true, a transmission provider would have *carte blanche* to grant transmission service without regard to the capability of its system and that would result in no compensation to neighboring transmission providers for transmission service that they are forced to provide as a result of the other transmission provider's disregard of its system capability. MISO's interpretation of its rights would never result in compensation to neighboring systems because Transmission Loading Relief ("TLR") procedures always would ensure that system reliability would not be compromised. However, since TLR is implemented on a pro rata basis, the transmission

¹ See, e.g., *Northwestern Corporation*, 127 FERC ¶ 61,266, at P 15 (2009) (answers to protest accepted because they assisted the Commission in its decision-making process); *Mountain States Transmission Intertie, LLC*, 127 FERC ¶ 61,270, at P 55 (2009) (answers to protest accepted because they assisted the Commission in its decision-making process); *S. Natural Gas Co.*, 121 FERC ¶ 61,118, at P 5 (2007) (answer to protest accepted because it assisted the Commission in understanding the issues and ensured a complete record); *N.Y. Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,112, at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

² E.g., MISO Answer at p. 5.

provider who created the overload by providing more transmission service than its system was capable of providing would be curtailed proportionately with the neighboring systems who granted service within the capability of their systems. MISO's interpretation of its rights to grant transmission service without regard to the capability of its system and its contractual rights to use other systems' capability would amount to piracy of its neighbors' transmission systems.

MISO's assertions that the SPP-Western JOA is unjust and unreasonable because it respects contract path rights and that SPP's and the IS Parties' interpretation of Commission policy is "novel" are incorrect. The Commission's policy is that unauthorized use of the transmission system is not permissible and that transmission customers that make unauthorized use of a transmission system can be charged twice the otherwise applicable rate.³ MISO has adopted that policy in Section 13.7 of its Tariff, which provides for penalties for customers' unreserved use of its transmission system. It would be entirely illogical for the Commission to hold that its policy prohibiting unauthorized use of transmission service applies only to transmission customers who use more than their reserved transmission service but does not apply to transmission customers who use neighboring transmission systems as a result of deliberately over-scheduling transmission service or as a result of a transmission provider disregarding its contractual and physical transmission system capability. Requiring transmission providers to respect their system capability and their contract rights to transmission capacity is not only just and reasonable, but is required by the public interest.

MISO's assertion that the SPP-Western JOA is not just and reasonable because it requires the parties to respect contract path rights is inconsistent with MISO's JOA with SPP. Section 5.2

³ *Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 118 FERC ¶ 61,119 P 826-842 (2007).*

Docket No. ER12-1586-000

Page 4

of the MISO-SPP JOA provides that “If the Parties have contract paths to the same entity, the combined contract path capacity will be made available for use by both Parties. This will not create new contract paths for either Party that did not previously exist.” The MISO-SPP JOA therefore requires the parties to respect contract path limitations. For instance, the MISO-SPP JOA does not give MISO the right to use the contract path capacity of Western. The only difference between the MISO-SPP JOA and the SPP-Western JOA is that the former permits the parties to use each other’s contract path capacity and the latter does not. Neither JOA permits the parties to ignore contract path capacity. Consequently, MISO’s assertion that the SPP-Western JOA is not just and reasonable because it provides for the parties to respect their contract path capacity is invalid.

III. CONCLUSION

Wherefore, SPP and the IS Parties request that the Commission grant their motion for leave to respond to MISO’s Answer and make the SPP-Western JOA effective on April 30, 2012 without modification or suspension.

Respectfully submitted,

/s/ _____
Matthew Harward
Attorney
Southwest Power Pool, Inc.
415 N. McKinley, Suite 140
Little Rock, AR 72205

/s/ _____
Ronald J. Klinefelter
Attorney
Office of General Counsel
Western Area Power Administration
12155 W. Alameda Parkway
P. O. Box 281123
Lakewood, CO 80228-8213

Docket No. ER12-1586-000

Page 5

/s/

Thomas L. Blackburn
Nicole S. Allen
Bruder, Gentile & Marcoux, L.L.P.
1701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20006-5807
Telephone: 202/296-1500
Facsimile: 202/296-0627

Counsel for Basin Electric Power Cooperative

/s/

Jeffrey C. Genzer
Thomas L. Rudebusch
Duncan, Weinberg, Genzer
& Pembroke, P.C.
1615 M Street, NW
Suite 800
Washington, DC 20036

Counsel for Heartland Consumers Power District

June 15, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have served this day copies of the foregoing on the official service list compiled by the Office of the Secretary in accordance with Rule 2010 of the Commission Rules of Practice and Procedure.

Dated at Washington, D.C. this 15th day of June, 2012.

/s/

Thomas L. Blackburn

Bruder, Gentile & Marcoux, L.L.P.
1701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20006-5807
Telephone: 202/296-1500
Facsimile: 202/296-0627
E-Mail: tlblackburn@brudergentile.com

Counsel for
Basin Electric Power Cooperative

M:\WDOX\CLIENTS\116bepc\00148374.DOCX

Document Content(s)

00148374.PDF.....1-6