

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:	
INVESTIGATION INTO A COMPREHENSIVE PLAN FOR IOWA’S TRANSMISSION GRID OF THE FUTURE	DOCKET NO. INU-2021-0001

POST WORKSHOP COMMENTS

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, pursuant to the Iowa Utilities Board’s Order Setting Workshop Agenda issued on August 25, 2021, provides the following Comments.

The Iowa Utilities Board (Board or IUB) opened this docket to investigate the development of a comprehensive plan for Iowa’s transmission grid of the future. In order to meet its obligations under Iowa Code chapter 478, the Board states that it must gather information regarding Iowa’s transmission grid, the plans for expansion of the transmission grid, the plans for expansion of generation in Iowa, and how the plans reasonably relate to an overall plan for transmitting electricity in the public interest.¹ As explained in its Initial Comments, OCA agrees with this finding. Many commenters suggest that the Board’s concerns can be addressed if the Board actively participates in the regional planning processes.²

¹ Docket No. INU-2021-0001, Order Initiating Investigation at 4.

² Joint Response of MidAmerican Energy Company, certain subsidiaries of NextEra Energy Resources, LLC, the Iowa Association of Electric Cooperatives and its member generation and transmission cooperatives, the Iowa Conservative Energy Forum, the Iowa State Conference of the IBEW, the Iowa Association of Municipal Utilities, the American Clean Power Association, the Clean Grid Alliance, Interstate Power and Light Company, Scout Clean Energy, LLC, Silver Queen Wind Farm, LLC, ITC Midwest LLC, National Grid Renewables, the Iowa Utility Association (collectively, “Joint Parties”)(July 30, 2021); Comments of Midcontinent Independent System Operator (MISO) (Aug. 2, 2021); Comments of Environmental Law and Policy Center and Iowa Environmental Council (Aug. 2, 2021); Comments of ITC Midwest LLC (Aug. 2, 2021); Clean Energy Districts of Iowa (Aug. 2, 2021).

Informational and resource barriers have made it difficult for OCA to actively participate in the numerous transmission planning processes conducted by the Midcontinent Independent System Operator (MISO) and Iowa's transmission owning utilities. The information sought by the Board in this investigation proceeding is essential to the Board's and OCA's ability to actively participate in existing transmission planning processes. OCA believes that the efficient gathering of this transmission planning information through existing local planning processes or a statewide planning effort will greatly assist the Board, OCA, and other Iowa stakeholders in being able to actively participate in existing transmission planning processes.

1. The existence of regional and interregional transmission planning processes does not displace or preempt state oversight of local resource needs and planning assumptions.

Joint Parties acknowledge that the Federal Energy Regulatory Commission's (FERC) jurisdiction over facilities for the transmission or sale of electricity under the Federal Power Act does not extend to facilities used for the generation of electric energy, over facilities used in local distribution, or only for the transmission of electric energy in intrastate commerce.³ In other words, states continue to oversee resource adequacy, distribution resources, and intrastate transmission facilities. State oversight of local resource needs is then used to inform regional and interregional transmission planning.

Local resource planning and needs are embodied in the evidentiary criteria governing applications for new transmission lines. Iowa Code section 478.3(2)(a) (2021) requires an electric transmission line petition to set forth an allegation that the proposed construction is necessary to service a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. The petition must substantiate this allegation

³ Joint Response at 8, n. 25, *citing* 16 U.S.C. § 824(b)(1).

through a demonstration of the following factors, which are indicative of need for the transmission line:

- The relationship of the proposed project to present and future economic development of the area;
- The relationship of the project to comprehensive electric utility plan;
- The relationship of the proposed project to the needs of the public presently served and future projections based on population trends;
- The relationship of the proposed project to any other power system planned for the future; and
- The possible use of alternative routes and methods of supply.

Iowa Code § 478.3(2)(a)(1)–(6).

MISO incorporates consideration of these local planning factors in its regional transmission planning functions. A state resource planning process is therefore essential to ensure that transmission plans for the state are predicated on local resource planning needs and planning assumptions which have been reviewed and subject to stakeholder input.

A stakeholder cannot actively and meaningfully participate in MISO planning processes if the stakeholder does not have access to or an opportunity to review the information and assumptions that are integrated in regional transmission plans. The Board’s proposal to “gather information regarding Iowa’s transmission grid, the plans for expansion of the transmission grid, the plans for expansion of generation in Iowa, and how the plans reasonably relate to an overall plan for transmitting electricity in the public interest” will help address an information gap that currently exists and will enable the Board to satisfy its oversight of local resource adequacy and planning in accordance with Iowa public policy. This does not conflict with existing processes or the legal parameters of state and federal jurisdiction.

2. State regulators and consumer advocates have a critically important role in the local planning process that is integrated in MISO's regional transmission plans.

The goal of the MISO regional planning process is the development of a comprehensive expansion plan that meets both reliability and economic expansion needs. The planning process identifies solutions to reliability issues that arise from the expected dispatch of Network Resources.⁴ MISO performs regional planning in accordance with FERC Planning Principles delineated in Order 890, which provide mechanisms to ensure that the regional planning process is open, transparent, coordinated, includes both reliability and economic planning considerations, and includes mechanisms for equitable cost sharing of expansion costs.⁵ In fact, as Joint Parties recognize, MISO's planning process contemplates and requires consideration of stakeholder and regulator participation.⁶ MISO, through the regional planning process, "*integrates the local planning processes of its Member companies and the advice and guidance of stakeholders* into a coordinated regional transmission plan" and identifies additional expansions as needed to provide for an efficient and reliable transmission system that delivers reliable power supply to connected Load customers, expands trading opportunities, better integrates the grid, alleviates congestion, provides access to diverse energy resources, and enables state and federal energy policies to be met.⁷

A key component of MISO planning is the identification of Transmission Issues. In most cases, Transmission Issues include economic value opportunities and public policy compliance issues. "Public policy issues are typically derived from *federal, state, and local laws and mandates* that govern the maximum or minimum amount of energy or capacity that can be

⁴ MISO BPM-020-r24 section 2.1.

⁵ MISO BPM-020-r24 section 2.6.1 – General Process Responsibilities of the Transmission Provider.

⁶ Joint Parties at 17.

⁷ MISO BPM-020-r24 section 2.6.1 – General Process Responsibilities of the Transmission Provider (emphasis added).

generated by specific types of resources.”⁸ Public policy is a primary driver of large regional transmission initiatives. The nearly completed \$6.6 billion Multi-Value Project (MVP) portfolio, approved by MISO in 2011, is projected to enable over 50 million MWh of renewable energy per year to meet state goals and mandates and to create \$7 to \$39 billion in net benefits.⁹ The MVPs were designed to facilitate expanded renewable energy investment, to address congestion and reliability issues resulting in part from expanded renewable energy investment, and to export renewable energy to regional energy markets.¹⁰

Citing a clear fleet transition underway that has implications for system operations, MISO has initiated a new Long-Range Transmission Planning (LRTP) initiative based on Future scenarios defined in the MISO Futures Report (April 2021).¹¹ This is a key element of MISO’s plan for addressing a “Reliability Imperative.” The Futures are intended to enable the diverse goals and policies of MISO’s states and utilities while addressing the “Reliability Imperative” created by the ongoing expansion of new renewable energy resources.¹² MISO is not an integrated resource planner and relies on its stakeholders, policy direction, and industry trends to bridge the gap between what the generation fleet is today and what it will be in the future.

MISO received a clear message of urgency from its stakeholders including member utilities, policy makers, and large end-users asking MISO to move quickly from identifying high-level needs to providing solutions that allow states and utilities to reach their energy transition goals.¹³

⁸ MISO BPM-020-r24 section 4.4.2.3 (emphasis added).

⁹ Docket No. INU-2021-0001, MISO Informational Materials, at 12 and Appendix at 14 (Aug. 27, 2021).

¹⁰ See, e.g., In re: High Voltage Transmission Projects, “Order Opening Inquiry” Docket No. INU-2011-0002 (IUB, Aug. 16, 2011); In re: ITC Midwest LLC and Dairyland Power Coop., Docket No. E-22386, “Order Granting Petition for Franchises and Right of Eminent Domain” at 6-8 (IUB, May 27, 2020) (discussing MISO’s planning process and the Multi Value Project portfolio of transmission projects).

¹¹ MISO Futures Report (April 2021), at 2, available at <https://cdn.misoenergy.org/MISO%20Futures%20Report538224.pdf> (last visited Sept. 9, 2021).

¹² *Id.*

¹³ *Id.* at 7.

Rather than focusing strictly on policy pronouncements established through laws and mandates, MISO LRTP has incorporated state and utility goals relative to carbon and renewable energy percentages into the models. Renewable goals were modeled by converting utility/state goals into relative percentages of MISO load and taking the summation of these values to create footprint trajectories. MISO added IRP units into the base model to account for the announced goals of states and utilities. Resources were assigned to their respective areas in the siting process based on Generation Interconnection (GI) queue projects ranked based on GI queue status.¹⁴ MISO's EGEAS modeling for MISO LRTP Futures development apparently relied heavily on MidAmerican's goal of 100% renewable energy in 2021 for Iowa and Illinois.

The LRTP efforts currently underway at MISO are guided by planning criteria which seek to "meet policy and transmission owner planning criteria while safeguarding local and regional reliability" and to "align planning for changing resources with state and federal policy."¹⁵ MISO's planning process "ensures local needs" are integrated with regional requirements. The LRTP develops planning Futures from resource forecasts and siting based on assessments of subregional needs. The use of planning Futures allows MISO "to incorporate and bookend uncertainty." Future 1, the least aggressive planning Future from the standpoint of footprint-wide carbon emission reductions, is designed to meet "100% of utility [Integrated Resource Plans (IRPs)] and 85% of utility announcements, state mandates, goals, or preferences." The LRTP projects "will promote regional bulk energy transfer, interzonal support, resource integration, and retirements."¹⁶ All of the Futures come with a very significant

¹⁴ *Id.* at 10-12, 42.

¹⁵ Docket No. INU-2021-0001, MISO Informational Materials at 3 (Aug. 27, 2021).

¹⁶ Docket No. INU-2021-0001, MISO Informational Materials at 20 (Aug. 27, 2021).

price tag, estimated at \$165 billion for Scenario 1, inclusive of new generation/resources and new transmission solutions.¹⁷

Utility preferences and goals appear to be significant drivers of projected new resources and resource retirements for Iowa's Load Resource Zone (LRZ) 3 in the Futures modeled for the LRTP.¹⁸ The Futures modeled by MISO apparently assume that MidAmerican will not retire any of the coal units it currently operates during the long-term planning horizon – even in the most aggressive Future 3 scenario.¹⁹ Iowa utility plans also seem to drive rather low projections of new thermal generating resources in the EGEAS expansion modeling for LRZ 3. Distributed solar and battery deployment in the long transmission range plan also appear to be relatively constrained in Iowa's LRZ 3.²⁰ OCA has been unable to access or review the LRTP model and results because a non-disclosure agreement for critical energy infrastructure information is required.²¹ Although the Joint Parties agree that Board participation in these processes is fully contemplated and required, OCA is concerned that current processes are not enabling full participation. The Board and OCA should be able to review, get supporting explanation, and comment on the assumptions underlying the LRTP modeling for LRZ 3.

It is difficult to participate in these stakeholder processes without the ability to access the model inputs and assumptions. Stakeholders have limited visibility into “IRP” or similar planning assumptions being modeled, which is contrary to the stakeholder review and participation contemplated in MISO's tariff and FERC Order 890 planning protocol.²² Perhaps

¹⁷ Docket No. INU-2021-0001, MISO Informational Materials at 20 (Aug. 27, 2021).

¹⁸ MISO Futures Report at 11-12, 56-57.

¹⁹ MISO Futures Report for at 17, 18, 19.

²⁰ MISO Futures Report for at 80.

²¹ See e.g., MISO Long Range Transmission Planning *Technical Study Status*, slide 7 (Workshop, July 30, 2021), located at

<https://cdn.misoenergy.org/20210730%20LRTP%20Workshop%20Item%2003%20Status%20Update574928.pdf>.

²² MISO FERC Electric Tariff, Attachment FF, Transmission Expansion Planning Protocol (unnumbered page).

this is due to the lack of a formal IRP process in Iowa. Regardless, these information deficiencies and participation barriers must be addressed.

In response to the Board's concerns about the need for sufficient storage capacity resources, Joint Parties state they are actively involved in the MISO planning process in which MISO is evaluating the role that energy storage systems and cost-effective transmission can play and encourage the Board to engage in the regional transmission planning process on this issue.²³ It is unclear to OCA why the Joint Parties consider MISO's LRTP planning assumptions for battery storage in LRZ 3, calling for only 15 MW of battery resources in 2039, to be a good and sufficient answer. The Board is responsible for overseeing resource planning and is appropriately asking for answers to these important planning questions which have significant impact on LRTP costs that will be borne by Iowa customers.

Joint Parties suggest that Iowa law promotes the development of renewable energy resources without limit. (Joint Parties at 22, 24). OCA concedes that Iowa Code section 476.53A expresses a legislative desire to construct renewable energy generation with the express purpose of exporting the energy. Iowa utility customers are particularly vulnerable to costs associated with renewable energy development because Iowa utilities are permitted to recover regional transmission costs through automatic cost recovery mechanisms. This is exacerbated by Iowa's Right of First Refusal law, Iowa Code section 478.16, which excuses incumbent transmission owners from competitive bidding requirements. Unless the Board requires a showing of prudent cost management as a part of a transmission franchise, there is no ability to ensure prudent cost management for new transmission development in Iowa.

²³ Joint Parties at 29-30.

While OCA acknowledges the benefits that renewable energy delivers to Iowans, OCA is concerned that the proposed scale of renewable energy expansion represented in the LRTP Futures could invite system reliability issues and could produce sub-optimal resource planning decisions and result in excessive utility rates. The Board is appropriately seeking to gather information about the LRTP planning assumptions and technology alternatives to help control the scale and cost of new regional transmission plans. It is important for the Board, OCA, and policymakers to actively monitor the LRTP process and to advocate to ensure the plans abide by a prudent planning process, are aligned with Iowa policies, and will not introduce undue harm or adverse consequences to Iowans.

As noted by the Joint Parties, the MISO planning process encompasses multiple planning functions addressing different phases and aspects of transmission planning, such as the development of models, cyclical bottom-up and top-down planning and transmission access planning, coordinated inter-regional planning with other RTOs and regions, non-cyclical planning needs, system support resources for unit de-commissioning, transmission interconnections, load interconnections, and focus studies.²⁴ Each of these functions and activities occur at different times, but combine to produce the MTEP, which constitutes an overall transmission plan for the entire region. MISO notes 75+ meetings of stakeholder committees, working groups and workshops for input.²⁵ In order to actively participate in the complex and multi-layered planning processes administered by MISO, Iowa stakeholders, including the OCA and IUB, must have access to the planning assumptions and must devote significant personnel time and resources to these processes. OCA believes that more frequent meetings with MISO and its Iowa members and targeted enhancements in the information

²⁴ Joint Response at 14. MISO Transmission Planning Business Practices Manual (BPM), BPM-020-r24 at 2.2.1.

²⁵ Docket No. INU-2021-0001, MISO Informational Materials at 7 (Aug. 27, 2021).

provided and discussed in the transmission owners' local planning processes, well in advance of LRTP approval and transmission franchise applications, could alleviate some of these barriers and resource challenges.

3. The information sought in this Investigation is currently gathered and submitted by Iowa's MISO transmission owners to MISO for use in the regional transmission planning process.

Among other functions, MISO planning staff is responsible for developing regional planning models and for providing the requirements and timelines for exchange of information with Load Serving Entities, Generation Owners, transmission, Customers Transmission Owner(s), and neighboring Transmission Entities necessary for model development. Such information includes Load Forecasts and geographic distribution of such forecasts on a transmission substation basis, generating resource commitments, Generator operational and economic performance data, and existing and proposed transmission upgrades. MISO planning staff is responsible for making models available for stakeholder review subject to protection of CEII and commercially sensitive data.²⁶

MISO's MTEP process gathers and considers the information sought by the Board in this proceeding.

Inputs to the MISO transmission expansion tool include, but are not limited to a) resource requirements driven by regulatory mandates, state laws and/or federal laws (e.g., State Renewable Portfolio Standards, State implementation plans for EPA compliance, etc.), b) other intelligence on new generation projects and long-range integrated resource plans not yet reflected in the MISO Generation Interconnection Queue, and c) specific input from Generation Developers.²⁷

²⁶ BPM-020-r24 Section 2.6.1

²⁷ BPM-020-r24 Section 4.4.2.2

OCA concurs with several commenters that many of the Board's questions and concerns could be addressed through active participation in the MISO's Transmission Planning process provided in MISO's Transmission Expansion Planning Tariff, Attachment FF, including MidAmerican's local transmission process contained therein, and the Transmission Planning Business Practices Manual. According to MidAmerican's local transmission process provided in MISO Tariff Attachment FF, it appears that MidAmerican's working group is designed to provide detailed information and analysis that would allow for stakeholder review and feedback on transmission planning information prior to the plans being finalized. OCA believes that broader involvement of OCA and IUB representatives in MidAmerican's working group and stakeholder process, if they are allowed access to the Critical Energy Infrastructure Information (CEII) planning information specified in MidAmerican's local transmission plan contained in MISO Tariff Attachment FF, would likely address and be responsive to a good portion of the information sought through this investigation at least with respect to MidAmerican's transmission plans.

ITC's transmission planning process is not set out in the MISO Tariff. OCA understands that ITC meets frequently with Interstate Power and Light and CIPCO to discuss transmission plans. OCA also understands that ITC holds a semi-annual Partners in Business Meeting in which it provides high level discussion of projects to be included MTEP and other ongoing projects. While OCA appreciates the opportunity to participate in these meetings, OCA believes a regular stakeholder meeting to review and discuss the more granular details of ITC's local planning would be helpful and would reduce some of the current burdens that arise with trying to understand and gather information about informal planning discussions. OCA notes that IPL's recent IRP planning process addressed in Docket No. EPB-2020-0150 has brought more clarity

to the planning assumptions that will feed into ITC's transmission plans. However, IPL does not represent the entirety of resource planning relevant to ITC. It is important for stakeholders to have access to transparent transmission planning information well in advance of the plans being finalized in order for stakeholders to have the opportunity to review, ask questions, and provide feedback on preliminary plans.

4. Changes are needed to ensure that transmission planning processes are truly transparent and open to stakeholder participation.

Long-term planning "is an open and transparent process, compliant with FERC Orders 888, 890, and 1000, which depends upon the collective input of stakeholders and regulators throughout all phases."²⁸ As noted above, MISO planning staff is responsible for gathering local planning information and making model inputs available for stakeholder review;²⁹ however, much of this information is treated as confidential CEII transmission planning information and is not available for stakeholder review unless MISO deems the stakeholder eligible to enter into a non-disclosure agreement (NDA) and executes the NDA.³⁰

Joint Parties note that the MTEP process contemplates and requires the input of other entities, including generation owners, load serving entities, transmission customers, other RTOs, and stakeholders.³¹ Stakeholders, including regulatory commissions, are supposed to provide MISO with essential stakeholder input and review of MTEP Plans, particularly with respect to load growth projections, resource requirements, transmission siting authority and environmental concerns.³² This input helps ensure the development of realistic transmission expansion projects

²⁸ BPM-020-r24 Section 4.4.1; Figure 2.2.2-1.

²⁹ *See also*, MISO Tariff.

³⁰ BPM-020-r24 Section 2.6.1; Section 2.7.

³¹ Joint Party Response at p. 17, n. 68, citing BPM-020-r24 Section 2.6.7.

³² *Id.*

and alternatives.³³ However, this critical stakeholder input depends on a stakeholder's ability to access CEII transmission planning information.³⁴ Once the data submittal process is complete, MISO planning staff creates preliminary base models for stakeholder review through MISO's secure Planning Portal and Models FTP site.³⁵ Access to MTEP models also requires the execution of non-disclosure agreements.³⁶

Although OCA believes it meets the definition of an "Authorized Agency" as set out in MISO's Uniform NDA and Confidentiality Agreement for Authorized Agencies, MISO has denied OCA's request to execute the Uniform NDA. [OCA Attachment A]. Consequently, OCA has been unable to access the confidential planning information or base models through MISO's planning processes. Detailed cost information for the largest transmission projects is also limited to State regulators that have executed non-disclosure and confidentiality agreements. While OCA could seek some of this information individually from the Iowa entities, and appreciates the recent cooperation of ITC Midwest in this regard, this does not provide access to the model and broader local stakeholder inputs. It creates an unnecessary burden and duplication of efforts for OCA that runs contrary to the stated transparency and stakeholder involvement contemplated in RTO planning processes and required by Order 890.

MISO is considering remedies to this current information barrier. MISO's Planning Advisory Council (PAC) was presented with a proposal to improve sector member's access to Confidential/CEII transmission planning data and would expand eligible entities to any member of a MISO sector, subject to executing the appropriate NDA. According to the minutes of the March 17, 2021 PAC meeting, the proposed Tariff addition to Attachment FF, Section 1.C12 and

³³ *Id.*

³⁴ BPM-020-r24 Section 2.7

³⁵ BPM-020-r24 Section 3.2.1.3

³⁶ BPM-020-r24 Section 3.2.1.5.3

planning-related NDA will need to be developed. OCA is not aware of further developments to advance this proposal.

MISO planning processes are relied on to establish need for proposed transmission lines and serve as a proxy for the need factors specified in section 478.3(2)(a)(1)–(6).³⁷ Without the ability to readily access MISO planning data inputs and review and provide input on the planning assumptions supporting the need for the line and resource alternatives, OCA is hampered in its ability to assess the justification for a transmission line and the reasonableness of a transmission plan.

The MISO planning process plays an important role in guiding an overall plan for transmitting electricity and should continue to do so. However, enhancements in this process are needed to ensure that the Board and stakeholders are allowed to timely review and provide input and oversight of public interest factors to be considered in the need for new transmission lines, while ensuring transmission projects represent a reasonable relationship to an overall plan of transmitting electricity. If this cannot be accomplished, the Board should move forward with a separate planning process to gather this local planning information and require periodic updates as plans are implemented, new plans are developed, and planning assumptions change. The availability of overall plans will help ensure that developers needing generation interconnection lines are aware of transmission plans and coordinate with nearby utilities.

³⁷ See, e.g., *In re: ITC Midwest LLC and Dairyland Power Coop.*, Docket No. E-22386, “Order Granting Petition for Franchises and Right of Eminent Domain” at 6-8, 24-27 (IUB, May 27, 2020).

5. Comprehensive utility planning, independent of transmission planning processes, will still be needed.

Participation in MISO's transmission planning processes does not displace the need for IUB oversight of overall plans and local state-level planning assumptions that are within the IUB's broad general regulatory authority and relevant to the MISO planning process.

The Board notes that independent power producers and transmission owners have requested that the Board support long-range transmission planning and the proposed continued expansion of transmission within Iowa and across the MISO footprint. The development and ongoing maintenance of an overall statewide plan will assist the Board and stakeholders in assessing the adequacy of planned storage capacity, the increasing prevalence of distributed energy resources, the justification for generation plans and renewable energy goals that are driving long-range planning efforts at MISO (including questions and concerns about whether Iowa customers need and are benefitting from renewable energy investment³⁸), and projected rate impacts for Iowa electric consumers associated with the long-range transmission plan. An overall plan that addresses these important issues will help encourage the prudent development of energy delivery infrastructure as contemplated by the Iowa Energy Plan and ensure that only transmission lines needed to address known issues and system needs (*e.g.*, congestion relief, reliability, new generation, and new customers) are built, particularly if Iowa customers will bear the cost of such lines.

While the resource plans of Iowa utilities and their renewable energy goals are considered in the MISO planning process, the transparency, accessibility, and accountability for this information within an RTO-administered advisory planning process is not equivalent to a process administered by an agency that is bound by transparency and due process requirements

³⁸ INU-2021-0001, "Order Initiating Inquiry" at 3.

in its decision making. The Board's proposal to develop a comprehensive plan for Iowa's transmission grid of the future should better ensure stakeholder participation, access to, and review of planning assumptions and factors guiding the public interest determination in Iowa Code section 478.3(2)(a) and the reasonableness of the planning assumptions used to develop MISO's long-range transmission plans.

WHEREFORE, OCA is appreciative of the opportunity to participate in this important investigation and urges consideration of the foregoing comments.

Respectfully submitted,

/s/ Jennifer C. Easler

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Consumer Advocate

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OFFICE OF CONSUMER ADVOCATE

8/3/2021

State of Iowa Mail - Non-disclosure agreement question



Cook, Jeffrey <[REDACTED]>

Non-disclosure agreement question

2 messages

Cook, Jeffrey <[REDACTED]>
To: clientrelations@misoenergy.org

Thu, Jan 14, 2021 at 3:50 PM

I work for the Iowa Office of Consumer Advocate, which is part of the Iowa Department of Justice. We represent the public interest of Iowans before the Iowa Utilities Board and FERC. We recently met with ITC Midwest about their MTEP 21 plans. They indicated MISO maintains a Sharefile that contains ITC's MTEP application. We are interested in viewing ITC's MTEP application as well as MidAmerican Energy's application. I reviewed the non-disclosure agreements on MISO's site, and I believe the "Universal NDA Authorized Agency" would be applicable to my office. Section 1 (iii) fits the description of my office. Further, Iowa's open records law includes provisions providing for the confidentiality of critical infrastructure so I don't see an issue with my office executing a CEII NDA. See Iowa Code Ch. 22.

Please advise on whether my office is allowed to gain access to the MTEP Sharefile and on which NDAs we should execute to obtain that access.

Thank you for your help and please contact me with any questions.

**Jeff Cook****Attorney**Office of Consumer Advocate
1375 East Court Avenue

Des Moines, Iowa 50319

Main: (515) 725-7200 | Direct: (515)-725-7205

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Lorraine Landers <[REDACTED]>
To: "Cook, Jeffrey" <[REDACTED]>
Cc: Jeffrey Small <[REDACTED]>

Fri, Jan 15, 2021 at 3:07 PM

Good Afternoon Mr. Cook,

Here is the response I received back from MISO's Legal team.

"OCA is not an entity for which a UNDA is appropriate."

Please contact Jeffrey Small <[REDACTED]> regarding other means by which the OCA may obtain the information that you seek.

8/3/2021

State of Iowa Mail - Non-disclosure agreement question

Thank you,

Lori Landers

Client Services and Readiness



317-249-5642 (office)

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From: Cook, Jeffrey <[REDACTED]>
Sent: Thursday, January 14, 2021 4:51 PM
To: Client Relations Inbox <ClientRelations@misoenergy.org>
Subject: [EXT] Non-disclosure agreement question

External E-mail: Please be cautious and evaluate before you click on links, open attachments, or provide credentials or data.

[Quoted text hidden]

INFORMATION ONLY

UNIVERSAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT FOR AUTHORIZED AGENCIES

This Universal Non-Disclosure and Confidentiality Agreement (the "Agreement") is entered into on this _____ day of _____, 20____ and effective as of the _____ day of _____, 20____ (the "Effective Date"), by and between Midcontinent Independent System Operator, Inc. ("MISO") and _____, ("Authorized Agency") whose principal offices are located at _____. MISO and Authorized Agency each may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, MISO is prepared to disclose confidential information under this Agreement to Authorized Agency in connection with the directives under Order No. 890 of the Federal Energy Regulatory Commission (FERC) to provide for an open planning process (the "Purpose");

WHEREAS, Authorized Agency represents that it desires to receive confidential information pursuant to this Agreement; and,

WHEREAS, MISO and Authorized Agency desire to set forth in writing the terms and conditions of their agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate and adopt as part of this Agreement the three (3) WHEREAS clarification clauses contained above and further agree as follows:

1. **Authorized Agency.** "Authorized Agency" as used in this Agreement means (i) a State public utility commission within the geographic limits of the Transmission Provider Region that regulates the distribution or supply of electricity to retail customers or is legally charged with monitoring the operation of wholesale or retail markets serving retail suppliers or customers within its State; (ii) the Organization of MISO States or any successor organization, formed to act as a regional state committee within the Transmission Provider Region; or (iii) a state agency that has both access to documents in the possession of a state public utility commission pursuant to state statute and the ability to protect those documents in accordance with the Non-Disclosure Agreement.

2. **Confidential Information.** "Confidential Information" as used in this Agreement means all information disclosed to Authorized Agency by MISO or its employees, agents, contractors, representatives, consultants and advisors (collectively "Disclosing Party") in connection with the Purpose. Confidential Information includes, without limitation, (i) any and all business, technical, marketing, financial or other information, whether in electronic, oral or written form; (ii) trade secrets, business plans, techniques, methods, or systems, data, know-how, formulae, compositions, designs, sketches, mock-ups, prototypes, photographs, charts, graphs, forms, documents, drawings, samples, inventions, ideas, research and development, customer and vendor lists (including, without limitation, the identity, characteristics, contact persons, product

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and service needs thereof), rates, price lists, computer software programs and systems, financial statements, and budgets; (iii) all memoranda, summaries, notes, analyses, compilations, studies or those portions of other documents prepared by Authorized Agency to the extent they contain or reflect such information of, or the contents of discussions with the Disclosing Party ("Authorized Agency's Material"), including the contents or existence of discussions or negotiations related to the Purpose; (iv) information not generally known or readily ascertainable; (v) information that provides a competitive advantage for Disclosing Party; and (vi) information that is marked "Confidential" or nonpublic information which under the circumstances surrounding disclosure a reasonable person would conclude should be treated as confidential. Confidential Information shall not include information that (a) is or becomes part of the public domain other than as a result of disclosure by Authorized Agency, (b) becomes available to Authorized Agency on a non-confidential basis from a source other than Disclosing Party, provided that, to the best of Authorized Agency's knowledge, such source is not prohibited from transmitting such information by a contractual, legal, or other obligation, or (c) was in Authorized Agency's possession prior to disclosure of the same by Disclosing Party.

3. **Non-Use; Protection and Dissemination of Confidential Information.**

Authorized Agency agrees not to disclose, discuss, use, reproduce, duplicate, distribute, copy, reconstruct or in any way communicate, directly or indirectly, the Confidential Information for purposes other than in connection with the Purpose. Authorized Agency shall not disclose, discuss, use, reproduce, duplicate, distribute or in any way communicate, directly or indirectly, the Confidential Information to any other party and will use all reasonable efforts to protect the confidentiality of such information. Authorized Agency will require that Authorized Agency's employees, officers, directors, agents, contractors, representatives, consultants and advisors who need to have access to such Confidential Information in order to assist Authorized Agency in connection with the Purpose (1) are aware of the Authorized Agency's confidentiality obligation hereunder, and (2) agree to be bound by such confidentiality obligations. Authorized Agency shall notify Disclosing Party immediately of any loss, misuse, or misappropriation of any Confidential Information of which Authorized Agency becomes aware.

4. **Ownership and Return.** All Confidential Information, including Authorized Agency's Material, shall be and remain the property of Disclosing Party, and no right or license is granted to Authorized Agency with respect to any Confidential Information. No transfer or creation of ownership rights in any intellectual property comprising Confidential Information is intended or shall be inferred by the disclosure of Confidential Information by Disclosing Party, and any and all intellectual property comprising Confidential Information disclosed and any derivations thereof, shall continue to be the exclusive intellectual property of Disclosing Party. Upon the termination by any Party of the Purpose, or sooner if so requested, Authorized Agency agrees to immediately return all Confidential Information, including Authorized Agency's Material, to Disclosing Party or to destroy all Confidential Information, including all copies of the same, however, Authorized Agency shall not be required to destroy Confidential Information that has become embedded in Authorized Agency's planning models. Upon request, the fact of any such destruction shall be certified in writing to Disclosing Party by Authorized Agency. Nothing in this Agreement obligates Disclosing Party to disclose any information to Authorized Agency or creates any agency or partnership relation between them.

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5. **Compliance and Protection of Confidential Information.** Authorized Agency represents and warrants that it has practices and procedures adequate to protect against the unauthorized release of Confidential Information received. Authorized Agency must educate its employees, agents, and assigns in the provisions of this Agreement and provide to Disclosing Party upon request any information necessary to determine compliance with the terms of this Agreement.

6. **Compelled Disclosure.** If Authorized Agency is requested or required by legal or administrative process to disclose any Confidential Information, Authorized Agency shall promptly notify Disclosing Party of such request or requirement so that Disclosing Party may seek an appropriate protective order or other relief. In any case, Authorized Agency will (a) disclose only that portion of the Confidential Information that its legal counsel advises is required to be disclosed, (b) use its reasonable efforts to ensure that such Confidential Information is treated confidentially, including seeking an appropriate protective order, and (c) notify Disclosing Party as soon as reasonably practicable of the items of Confidential Information so disclosed.

7. **Remedies.** The Parties acknowledge that remedies at law may be inadequate to protect Disclosing Party against any actual or threatened breach of this Agreement by Authorized Agency, and, without prejudice to any other rights and remedies otherwise available to Disclosing Party, agree to the immediate granting of preliminary and final injunctive relief (without prior notice and without posting any bond) in favor of Disclosing Party to enjoin and restrain any breach or violation, either actual or anticipatory, of this Agreement.

8. **Limitations.** None of the Parties will be under any legal obligation of any kind whatsoever with respect to the Purpose by virtue of this Agreement, except for those matters specifically agreed to herein. No representation or warranty is made by the Disclosing Party as to the accuracy or completeness of any information provided to the Authorized Agency.

9. **Term and Termination.** Authorized Agency's obligations under this Agreement shall be effective on the date set forth above and shall be perpetual, notwithstanding any expiration, cancellation or termination of this Agreement. Upon termination of the Agreement, Authorized Agency shall either promptly (1) deliver or cause to be delivered to Disclosing Party or (2) certify to the Disclosing Party the destruction of, all Confidential Information, including all copies of the Confidential Information in Authorized Agency's possession or control including, without limitation, originals and copies of documents, customer lists, prospect lists, price lists, operations manuals, and all other documents reflecting or referencing the Confidential Information, as well as all other materials furnished to or acquired by Authorized Agency to facilitate the Purpose of the Agreement.

10. **Agency.** This Agreement is binding on Authorized Agency, its employees, agents, contractors, representatives, consultants, advisors, successors and assigns. In the event of a dispute regarding liability for breach of this Agreement, common law agency principles apply.

11. **Waiver.** No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by an

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authorized representative of the Party making the waiver. The failure of either Party in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasion.

12. **Modification.** This Agreement may not be amended except in a writing signed by authorized representatives of both Parties.

13. **Governing Law.** Indiana law shall govern the interpretation and implementation of the Agreement and the resolution of any dispute between the parties regarding the effect of the Agreement without giving effect to principles of conflicts of law, and shall supplement, but not replace, the Uniform Trade Secrets Act as enacted by the State of Indiana. Each Party hereby submits itself for the sole purpose of this Agreement and any controversy arising hereunder to the exclusive jurisdiction of the federal or state courts located in the State of Indiana serving the counties of Hamilton and Marion, and any courts of appeal therefrom, and waives any objection (on the grounds of lack of jurisdiction, or forum not convenient or otherwise) to the exercise of such jurisdiction over it by any such courts.

14. **Severability and Survival.** Should any clause, portion or paragraph of this Agreement be unenforceable or invalid for any reason, such unenforceability or invalidity will not affect the enforceability or validity of the remainder of this Agreement, and any court having jurisdiction is specifically authorized and encouraged by the Parties to hold inviolate all portions of this Agreement that are valid and enforceable without consideration of any invalid or unenforceable portions hereof. The headings of the sections in this Agreement are for the purposes of convenient reference only and are not intended to be part of this Agreement, or to limit or affect the meaning or interpretation of any of the terms hereof.

15. **Assignment and Succession.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. Any successor to or assignee of MISO shall assume its rights and obligations under this Agreement with or without notice to Authorized Agency. Authorized Agency may not assign its rights hereunder without the written permission of MISO.

16. **Employees Bound by Agreement.** The representative executing this Agreement hereby acknowledges and agrees that he/she is duly authorized to execute this Agreement on behalf of Authorized Agency and that this Agreement shall bind and be enforceable by and against the employees, agents, or consultants of Authorized Agency. The authorized representative of Authorized Agency further acknowledges and agrees that only those employees who are listed on the attached Appendix A incorporated herein shall be authorized to receive Confidential Information directly from MISO and that he/she will notify MISO in writing of any modification to Appendix A prior to releasing Confidential Information to those employees listed on Appendix A.

17. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgment

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of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

if to MISO, to: 720 City Center Drive
Carmel, Indiana 46032
Attn: General Counsel
Facsimile No.: (317) 249-5912

if to Authorized Agency, to: _____

Facsimile No.: _____

18. **Entire Agreement.** The Parties agree that this Agreement, including Appendix A incorporated herein and as modified, constitute their entire agreement with respect to the subject matter hereof and that it supersedes any prior agreements or understandings between them, whether written or oral.

Authorized Agency acknowledges that it has read the Agreement, had the opportunity to discuss it with counsel, and is executing it with an understanding of its provisions. This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same document.

remainder of page left intentionally blank

[signatures appear on following page]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, effective as of the day, month and year written above.

**Midcontinent Independent System
Operator, Inc.**

Authorized Agency:

By: _____

By: _____

Print name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

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APPENDIX A
TO UNIVERSAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT
FOR AUTHORIZED AGENCIES

Authorized Agency, _____ Employees, Agents, or Consultants subject to Confidentiality Agreement as of this _____ day of _____, 20____:

Print Name

Title

E-mail Address

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.



(Attach Additional Pages If Necessary)

NOTE: Any changes to the information on this Appendix A must be sent immediately by e-mail to the MISO Client Services and Readiness Department at help@misoenergy.org.