

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

Midcontinent Independent System Operator, Inc.      )  
  )  
  )      Docket No. ER21-2066

**COMMENTS OF JOINT STAKEHOLDERS ON MISO’S PROPOSED TARIFF  
MODIFICATION REGARDING DATA ACCESS**

Pursuant to Rules 211, 213, and 214 of the Federal Energy Regulatory Commission’s Rules of Practice and Procedure,<sup>1</sup> 350 New Orleans, Clean Grid Alliance, Environmental Law & Policy Center, Fresh Energy, Natural Resources Defense Council, Southern Renewable Energy Association, Sustainable FERC Project, Union of Concerned Scientists, and the American Clean Power Association, (collectively, Joint Stakeholders) respectfully submit these comments and support the Midcontinent Independent System Operator, Inc.’s (MISO) June 2, 2021 filing<sup>2</sup> under Section 205 of the Federal Power Act (FPA) in the above-captioned proceeding. In this filing, MISO asks the Commission to approve revisions to its Tariff which would enhance stakeholder participation in its transmission planning process and clarify access to planning data classified as Confidential Information and/or Critical Energy Infrastructure Information (CEII). In these comments, the undersigned parties urge the Federal Energy Regulatory Commission (Commission) to accept MISO’s proposed Tariff modification to enhance transparency by specifying the release of planning information to an expanded audience. This Tariff modification, which was broadly supported in the stakeholder process, is necessary for the signing organizations and other entities to access the planning data and models that enable full

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<sup>1</sup> 18 C.F.R. §§ 385.211, 213, 214 (2018).

<sup>2</sup> June 5, 2020, Docket No. ER20-2005 (“Deliverability Filing” or “Proposal”).

and robust participation in MISO's transmission planning process. In addition, the Commission's policies on openness and transparency and past orders make clear that this data should be available to all stakeholders who, like several of the undersigned parties, are able and willing to comply with necessary security precautions.

**I. The Environmental Sector is a valuable stakeholder group at MISO with valid reasons for seeking confidential/CEII planning data.**

The MISO Environmental Sector (Sector) is an active group of organizations that devote significant resources to participating as stakeholders at MISO. These organizations share an overarching goal of reliably decarbonizing the electric sector while ensuring just and reasonable rates. Because of the important roles that transmission planning, resource adequacy, and market design play in shaping the future energy landscape, advocacy at MISO is crucial for advancing the Sector members' goals. The supportive organizations joining this filing are organizations that frequently collaborate with Sector members on MISO-related decarbonization work. These entities understand that MISO's proposal will not grant their organizations the ability to request non-public information from MISO unless they become official members of an Advisory Committee Sector. However, they have an interest generally in assuring the openness and transparency of MISO planning and more specifically in receiving the public results of studies that Sector members will produce with the use of confidential/CEII data.

The Sector participates via elected representatives in the MISO Advisory Committee and Planning Advisory Committee. Its members also regularly engage in most other MISO forums. Joint Stakeholders and their consultants hold expertise in several key planning areas. MISO regularly asks stakeholders for input on key issues; in some instances, access to confidential/CEII data is necessary to provide fully informed feedback.

Recently, as part of their stakeholder efforts to improve MISO's planning processes, Sector members requested access to non-public MISO planning data. In response, MISO stated that it was not authorized to share confidential/CEII information with the Sector's members without a specific enabling provision in the Tariff. Due to the lack of clarity in the existing Tariff, Environmental Sector members were at that time denied the ability to request any non-public planning data (despite having signed, and being fully ready to comply with, all relevant non-disclosure agreements (NDAs)). We appreciate that MISO has worked with the Environmental Sector and through the full stakeholder process to bring forward these proposed tariff changes that would allow members of the Sector as well as members of other Advisory Committee Sectors appropriate access to this data going forward.

Joint Stakeholders must be able to request access to confidential/CEII planning data to allow full and robust participation in MISO transmission expansion planning processes.<sup>3</sup> This is particularly important now, with Long Range Transmission Planning (LRTP) underway at MISO. Joint Stakeholders are currently unable to access the models underlying the LRTP transmission maps, which hinders their ability to give comprehensive feedback. Accordingly, we enthusiastically support MISO's Tariff filing because it will rectify this situation. MISO's filing supports the Sector's efforts to provide comprehensive, well-informed feedback on planning issues. We acknowledge and support the fact that MISO's proposed revisions will also allow

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<sup>3</sup> Though this revision will not allow Advisory Committee Sector members to request access to confidential/CEII data related to Generator Interconnection, MISO has assured us that stakeholders or their consultants who have independent authorization to access interconnection data and transmission planning data through separate NDAs will be able to perform comparative analyses between the planning and interconnection studies, and may share results of those analyses publicly so long as confidential/CEII information is not disclosed to those without authorization.

other stakeholders beyond the Environmental Sector to access important planning models and data so that all active stakeholders that are members of an Advisory Committee Sector will be able to more fully participate in MISO's planning process.

## **II. FERC and MISO precedent supports the right of all stakeholders to access planning data.**

Commission precedent offers support for our position. FERC Orders, MISO's Tariff, and other governing documents outline MISO's obligations to "stakeholders." Environmental Sector members and members of other Advisory Committee sectors are undoubtedly stakeholders. Order 1000 defines the term "stakeholder" broadly: "[t]he term 'stakeholder' is intended to include any party interested in the regional transmission planning process."<sup>4</sup> In addition, MISO's Transmission Owner Agreement explicitly refers to the Environment Sector's members as "environmental stakeholder groups."<sup>5</sup>

### **A. Order Nos. 890 and 1000**

Order Nos. 890 and 1000 repeatedly state that regional transmission organization (RTO) transmission planning must be conducted in a manner that is open and transparent. Order No. 890 mandates that stakeholders be allowed access to the information necessary for them to "replicate" planning studies:

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<sup>4</sup> Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) at P 151, fn. 143, order on reh'g, Order No. 1000-A, 139 FERC ¶ 61,132, order on reh'g, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

<sup>5</sup> See MISO Tariff, Rate Schedule 1 (TOA), Art. II, § VI.A.1 ("At all times there shall exist an Advisory Committee to the Board consisting of a total of twenty-five representatives from the following stakeholder groups . . . (viii) two (2) representatives of environmental stakeholder groups.").

The Commission . . . require[s] transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans. In addition, transmission providers will be required to reduce to writing and make available the basic methodology, criteria, and processes they use to develop their transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. This information should enable customers, other stakeholders, or an independent third party to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. . . . We believe that the same safeguards developed as discussed above regarding the openness principle, such as confidentiality agreements and password protected access to information, will adequately protect against inappropriate disclosure of confidential information or CEII.<sup>6</sup>

Openness and transparency are required in several other places throughout Order No. 890.<sup>7</sup>

These principles apply not only to the RTOs but also to the transmission owners whose data is incorporated into each planning study: “stakeholders must be able to participate in each underlying transmission owner’s planning process. . . regional RTO or [independent system operator (ISO)] planning process[es] will not comply with the requirements of the Final Rule to the extent they incorporate and rely on information prepared by underlying transmission owners that, in turn, have not complied with the Final Rule.”<sup>8</sup> Order No. 1000 emphasizes the

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<sup>6</sup> Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 at P 471, order on reh’g, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), order on reh’g and clarification, Order No. 890-B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), order on reh’g, Order No. 890-C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), order on clarification, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009); *see also* FERC Order No. 1000-A ¶ 281 (reiterating the same requirements).

<sup>7</sup> *See, e.g.*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460, 476 (“The Commission . . . will require that transmission planning meetings be open to all affected parties including, but not limited to, all transmission and interconnection customers, state commissions and other stakeholders. . . [W]e believe that transmission providers should make as much transmission planning information publicly available as possible. . .”).

<sup>8</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440.

importance of openness and transparency and expands the reach of Order No. 890's planning principles to encompass the full regional transmission planning process.<sup>9</sup>

As explicitly noted in Order No. 890, transmission providers are required to disclose data to stakeholders so that they may independently “replicate” planning studies.<sup>10</sup> Joint Stakeholders and their consultants cannot meaningfully “replicate” MISO's models without the underlying methodology, data, criteria, and processes. MISO's proposed Tariff changes would allow Sector organizations and their consultants to access this data so that they could replicate MISO's models and analysis and conduct their own analysis of MISO's system.

#### **B. MISO's Tariff and Transmission Planning Business Practices Manual**

MISO's Tariff states that “[m]odels will be posted on a secure application maintained by the Transmission Provider and accessible to stakeholders with security measures as provided for in the [Transmission Planning Business Practices Manual (TPBPM)].”<sup>11</sup> The TPBPM explains that stakeholders who agree to sign NDAs will be able to access planning models and information on MISO's secure sites.<sup>12</sup> Neither the Tariff nor the TPBPM expressly limits the ability to sign

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<sup>9</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 151 (“Specifically, the requirements of this Final Rule build on the following transmission planning principles that we required in Order No. 890: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning. In Order No. 890, we required that each utility transmission provider adopt these transmission planning principles as part of its individual transmission planning process. In this Final Rule, we expand the Order No. 890 requirements by directing public utility transmission providers to adopt these requirements with respect to the process used to produce a regional transmission plan. We conclude that it is appropriate to do so to ensure that regional transmission planning processes are coordinated, open, and transparent.”).

<sup>10</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471.

<sup>11</sup> MISO, FERC Electric Tariff, Attachment FF, § I.C.iii.7.

<sup>12</sup> See MISO Business Practices Manual No. 20 §2.6.7-2.7 (“[A]ll MISO planning meetings are open to all stakeholders . . . The Transmission Provider will utilize a Non-Disclosure and

NDA to MISO members. In fact, as in Order Nos. 890 and 1000, robust stakeholder involvement in the planning process is contemplated throughout the Tariff and TPBPM.<sup>13</sup> However, the Tariff and TPBPM do not explicitly allow all stakeholders, or even Advisory Committee Sector members, to request access to confidential/CEII data. This has created confusion for stakeholders and has led MISO to deny Environmental Sector members' access requests during the past year.

The Tariff clarification that MISO has proposed addresses this confusion and clearly establishes which stakeholders can request access to confidential/CEII data. Under the new language, any member of an Advisory Committee Sector—including those who are not market participants or regulators—may seek to enter into the relevant NDAs and request confidential/CEII data. In addition to resolving confusion about which entities may request data, the proposal provides a clear path for stakeholders who are not current members of an Advisory Committee Sector but are interested in obtaining confidential/CEII data: they must join a sector before making a data request. Because no entities are categorically blocked from joining a MISO stakeholder sector, this allows any stakeholder who is committed to participating at MISO (and able to comply with security protocols) the opportunity to access the data needed for that participation. This addresses

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Confidentiality Agreement (NDA) to address sharing of [CEII] transmission planning information.”).

<sup>13</sup> See, e.g., *id.*; MISO, FERC Electric Tariff, Attachment FF, § I.C.i.1.b.i (“The regional planning process evaluates, with stakeholder input throughout the cycle, the local plans of the Transmission Owners.”); MISO, FERC Electric Tariff, Attachment FF, § C.i.2 (MISO “shall facilitate discussions with its Transmission Customers, Transmission Owners, OMS Committee, and other stakeholders about the Transmission Issues and solutions involving both transferred and non-transferred facilities.”); MISO Tariff Attachment FF, § I.C.iii.2.c.ii (“SPM Guidelines. The Sub-regional Planning Meeting participants shall . . . (e) Promote other stakeholder (i.e., environmental agencies, and load and generation developers) involvement in development of the sub-regional plans.”).

our concerns about limitations on access and stakeholder participation for MISO members who are not market participants or regulators. Apart from being legally sound, MISO's proposal is also broadly supported by its stakeholders.

**III. MISO conducted a robust stakeholder process on this issue and the proposal is widely supported.**

As MISO outlined in its filing, this proposal has been extensively vetted through the stakeholder process, where conversations began one year ago. The Environmental Sector expressed concerns and views to MISO at numerous public and private meetings. The Sector also submitted written comments via email, and publicly through MISO's feedback tool in response to this Tariff revision proposal. MISO took its stakeholders' input seriously and developed a thoughtful and comprehensive solution.

MISO's proposal properly balances the need for an open and transparent planning process with important security concerns. The Joint Stakeholders are fully aware that while this change will allow any Advisory Committee Sector members to *request* confidential/CEII data, it does not *guarantee* access to that data. Furthermore, one member employee's or consultant's access to confidential/CEII data will not allow that person to share such data with other Sector members (or to others within their own organizations) who have not been authorized to receive it.

Joint Stakeholders fully understand that they must complete all steps outlined in the Tariff and TPBPM and strictly follow all requirements contained in the relevant NDAs. They and/or their consultants have the ability and willingness to ensure that confidential/CEII data is fully protected, as outlined in the governing documents and NDAs. It is incumbent upon them to make this showing to MISO to receive and use any requested data. However, it is critical that Advisory



Committee Sector members can make such a showing and request confidential/CEII data so that MISO's planning processes are as open and transparent as possible.

Advisory Committee Sectors, including the Environmental Sector members, possess a wealth of expertise and have valuable contributions to make to MISO planning. Also, the Environmental Sector's decarbonization-focused interests are unique amongst MISO's stakeholders; other groups do not conduct the same type of review and analysis that the Sector has done and plans to do. MISO's proposed Tariff change recognizes that it is inappropriate for an entire stakeholder sector to be prohibited from requesting confidential/CEII data access and fully participating in the planning process. The Tariff modification will cure this insufficiency as it pertains to the Environmental Sector and similarly situated members of any other sector and will offer a path for any engaged MISO stakeholder to request data via Advisory Committee membership.

### **CONCLUSION**

Under MISO's existing tariff, all Environmental Sector members are unable to request confidential/CEII data from MISO, regardless of the need for the information, its intended use, or the member's ability to comply with security protocols. This prohibition may also affect other Advisory Committee Sectors, such as the Affiliate Sector. This is unacceptable and contrary to the "open and transparent" style of planning mandated by Order Nos. 890 and 1000. MISO has proposed a Tariff modification that will cure the confusion caused by the current absence of a rule regarding data access by Advisory Committee Sector members by clearly allowing all members to request access to confidential/CEII data for use in planning.

The undersigned Joint Stakeholders are grateful to MISO for conducting a robust stakeholder process that resulted in this important filing. We urge the Commission to accept MISO's filing and allow the changes to come into effect as requested by MISO on August 2, 2021.

Respectfully submitted

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