

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

Industrial Energy Consumers of America, et al.)	
Complainants,)	
)	
v.)	Docket No. EL22-78-000
)	
Midcontinent Independent System Operator, Inc.)	
Respondent.)	
)	

**STATUS UPDATE, SUPPLEMENTAL COMMENTS, AND REQUEST FOR RULING
OF THE CONSUMER ALLIANCE**

On July 22, 2022, consumer-oriented parties that pay ever increasing transmission costs (“the Consumer Alliance”)¹ filed a complaint² contending that state level transmission development incumbent utility preference or right-of-first-refusal (“ROFR”) laws interfere with the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) exclusive jurisdiction to set just and reasonable rates for transmission in interstate commerce (“Complaint”) in the Midcontinent Independent System Operator, Inc.’s (“MISO”) region. Despite the significant rate impact on consumers, the Commission’s recognition of transmission price escalations over the past decade,³ and forecasted increases in decades to come,⁴ the Commission has not ruled on the

¹ The Consumer Alliance is comprised of the Industrial Energy Consumers of America (“IECA”), the Coalition of MISO Transmission Customers (“CMTC”), the Wisconsin Industrial Energy Group (“WIEG”), Resale Power Group of Iowa (“RPGI”), the Association of Businesses Advocating Tariff Equity (“ABATE”), and the Michigan Chemistry Council (“MCC”).

² Complaint of *Industrial Energy Consumers of America, et al. v. MISO*, Docket No. EL22-78-000 (filed July 22, 2022) (“Complaint”).

³ See *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, FERC Order No. 1920, 187 FERC ¶ 61,068 at P 92, 89 Fed. Reg. 49,280 (June 11, 2024) “transmission spending has continued to increase nationwide”).

⁴ Order No. 1920 at P 93.

Complaint. Given MISO’s plan to approve \$21 billion in new transmission projects via Tranche 2.1 of MISO’s Long Range Transmission Plan (“LRTP”) in December 2024,⁵ the Consumer Alliance asks the Commission to act on this Complaint now.

I. WITH \$21 BILLION IN LRTP TRANSMISSION COSTS SET FOR APPROVAL IN DECEMBER 2024, THE COMMISSION HAS AN OBLIGATION TO ENSURE JUST AND REASONABLE RATES BY REMOVING THE UNJUST AND UNREASONABLE STATE LAW IMPEDIMENTS TO TRANSMISSION COMPETITION IN THE MISO REGION

The Complaint was filed in July 2022 in advance of MISO’s plans to approve \$10.3 billion in Tranche 1 of MISO’s LRTP.⁶ Complainants demonstrated that the accommodation of preferential state and local laws in Attachment FF in MISO’s Open Access Transmission Tariff (“Tariff”) directly harms consumers by allowing individual states to insist that preferred in-state utilities build new transmission paid for by regional consumers regardless of whether that utility is the more efficient or cost effective developer.⁷ MISO excluded \$5.5 billion in projects in its Tranche 1 from competition and handed those projects to incumbents⁸ pursuant to Section VIII.A.1 in Attachment FF of MISO’s Tariff that requires MISO to circumvent competition

⁵ See “Long Range Transmission Planning – Tranche 2 – Frequently Asked Questions,” MISO, at p. 15 (July 10, 2024), available at <https://cdn.misoenergy.org/MISO Long-Range Transmission Planning LRTP Tranche 2 FAQs631005.pdf> (last accessed Sep. 19, 2024) (hereinafter “MISO July 2024 LRTP FAQs”). MISO has posted an updated cost analysis indicating that, as of September 10, 2024, the estimated cost of Tranche 2.1 is approximately \$21 billion (in 2024 dollars). See “LRTP Tranche 2.1 Portfolio Update,” Slide 2 (Sep. 10, 2024), available at <https://cdn.misoenergy.org/20240910 LRTP Workshop Item 02 Tranche 2.1 Facilities Update646679.pdf> (last accessed Sep. 19, 2024).

⁶ See Complaint at 18-20.

⁷ See Complaint at 84-92 (explaining the need for transmission competition to help the Commission ensure just and reasonable rates). Because the Commission has not asserted its exclusive jurisdiction over transmission rates to ensure that the more efficient or cost-effective transmission developer is selected for projects where costs are allocated broadly throughout the region, incumbent transmission owners have used their state lobbying muscle to have preference/ROFR laws passed in multiple MISO states. Complaint at 8, 27-38.

⁸ See Complaint at 5 ((explaining that consumers throughout MISO’s northern and central regions will pay higher costs – as much as \$1 billion – for those regional transmission projects in the absence of transmission competition).

when a “duly promulgated”⁹ state law allows an incumbent transmission owner to claim the project.¹⁰

On June 10, 2024, MISO presented a near-final portfolio of transmission projects in Tranche 2.1, initially estimating just the first half of the Tranche 2 portfolio at \$23-\$27 billion prior to adjusting the estimate to \$21 billion.¹¹ **The entire 2024 MISO Transmission Expansion Plan is estimated at \$30 billion.**¹² MISO is holding more LTRP workshops this fall and Tranche 2.1 is anticipated to be set for MISO Board approval in December 2024. Although competition for the development of these projects is the default rule under MISO’s Tariff, Attachment FF authorizes MISO to invoke one of three exceptions to the Competitive Transmission Process: 1) State or Local Rights of First Refusal (Section VIII.A.1); 2) Upgrades to Existing Transmission Facilities; and 3) Immediate Need Reliability Projects (Section VIII.A.3). Consumers remain concerned that, for MISO’s long-range planning, the first two exceptions will continue to dwarf the default rule, as illustrated in the below MISO slide for Tranche 1.¹³

⁹ Section VIII.A.1. in the Tariff only grants MISO authority to comply with any *Applicable Laws and Regulations*, which are defined in Module A as “[a]ll **duly promulgated** applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders...” MISO Tariff, Module A (definition of *Applicable Laws and Regulations*) (emphasis added).

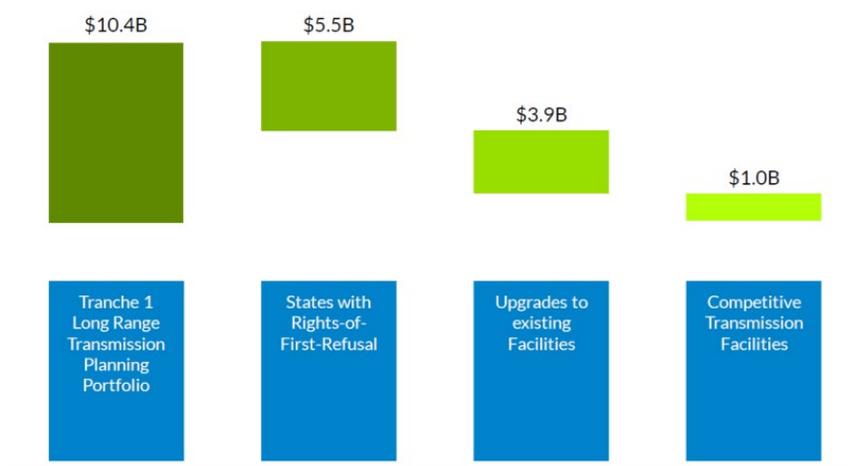
¹⁰ See Complaint at 25-27, 64-82.

¹¹ See “Tranche 2.1 Near Final Portfolio,” MISO LRTP Workshop (June 10, 2024), available at https://cdn.misoenergy.org/20240610_LRTP_Workshop_Item_02_Near-Final_Portfolio633836.pdf (last accessed Sep. 19, 2024).

¹² See “LRTP Tranche 2.1 Project Status & Schedule Review,” Slide 5 (Sep. 10, 2024), available at https://cdn.misoenergy.org/20240910_LRTP_Workshop_Item_01_Project_Status_Schedule_Review646684.pdf (last accessed Sep. 19, 2024).

¹³ See Complaint at 20, Attachment C (MISO Competitive Transmission Update to the System Planning Committee of the Board of Directors) (June 15, 2022) at Slide 6.

State laws and the nature of each project within a transmission portfolio also impact what facilities are subject to competition



As the Complaint demonstrated, the current regime in MISO does not enable the Commission to fully exercise its jurisdiction to ensure transmission rates are just and reasonable. The Commission’s obligation to ensure just and reasonable transmission rates through competition where feasible is especially critical now given the billions and billions of dollars in planned spending. As has been demonstrated, even if transmission construction costs for incumbent transmission developers and nonincumbent developers are exactly the same, competition brings millions to billions of reductions in the cost of equity.¹⁴ Without transmission competition, the Commission’s return on equity and capital structure proxies do not reflect just and reasonable transmission rates as they do not reflect what qualified developers are willing to contractually provide.¹⁵ In Order No. 1920, the Commission emphasized that “**transmission spending has continued to increase nationwide.**”¹⁶ Transmission costs continue to increase as a portion of

¹⁴ Comments of LS Power Grid, LLC In Response To The Commission’s Advance Notice Of Proposed Rulemaking, Appendix II at 11 (comparing costs of competed and non-competed projects in MISO), filed October 12, 2021 in Docket No. RM 21-17-000.

¹⁵ Complaint at pp 75-78.

¹⁶ Order No. 1920 at P 92 (emphasis added).

customers’ overall electricity bills, underscoring the importance of ensuring that transmission investments are efficient and cost-effective.¹⁷ The Commission in Order No. 1920 found that **“transmission investment is likely to substantially increase in coming years”**¹⁸ and there will be **“sustained transmission spending through at least 2050.”**¹⁹ Given the billions of dollars in planned spending in MISO this year (approximately \$30 billion set for approval in December)²⁰ and in the near future in Tranche 2.2, Tranche 3, and Tranche 4,²¹ the Commission has an obligation to limit transmission cost exposure for consumers to unjust and unreasonable transmission rates caused by MISO’s recognition and application of preferential state laws by ordering the removal of the ROFR law exception in MISO’s Tariff.

II. THE STATE ROFR LAW LITIGATION IN IOWA CONFIRMS THE UNJUSTNESS AND UNREASONABLENESS OF MISO’S TARIFF

In their February 9, 2024 Status Update and Supplemental Comments, the Consumer Alliance informed the Commission as to the continued efforts by both MISO and two of its incumbent Transmission Owners²² to apply an invalid and unconstitutional Iowa ROFR law to the Iowa-based projects in Tranche 1 of MISO’s long-range transmission plan (“Iowa Projects”).²³ The Consumer Alliance explained that the facts and litigation in the State of Iowa provided a

¹⁷ Order No. 1920 at P 92.

¹⁸ Order No. 1920 at P 93 (emphasis added).

¹⁹ Order No. 1920 at P 93 (emphasis added).

²⁰ See “MTEP, LRTP and JTIQ Review Process Update,” MISO Planning Advisory Committee (Aug. 28, 2024) at Slide 3, available at https://cdn.misoenergy.org/20240828_PAC_Item_08a_MTEP_LRTP_and_JTIQ_Review_Process_Update644466.pdf (last accessed Sep. 19, 2024).

²¹ See MISO July 2024 LRTP FAQs at p. 3 (explaining that Tranche 2 is focused on the Midwest subregion, Tranche 3 is focused on MISO South, and Tranche 4 is focused on the north/south interface).

²² ITC Midwest LLC and MidAmerican Energy Company.

²³The Iowa Projects are LRTP-7, LRTP-8, LRTP-9, LRTP-12, and LRTP-13. See MISO MTEP21 at p. 3, available at [MTEP21 Addendum-LRTP Tranche 1 Report with Executive Summary625790.pdf \(misoenergy.org\)](https://cdn.misoenergy.org/MTEP21_Addendum-LRTP_Tranche_1_Report_with_Executive_Summary625790.pdf) (last accessed Sep. 19, 2024).

concrete example of why the deference in MISO’s Tariff to state laws interfering with competition is unjust and unreasonable, further substantiating the allegations in the Complaint.

In December 2023, the Iowa District Court ruled that the Iowa ROFR was unconstitutionally enacted and thus void *ab initio*.²⁴ As a result, the Iowa District Court enjoined the incumbent Transmission Owners (ITC Midwest and MidAmerican) and the Iowa Utilities Board from further developing or siting the Iowa Projects claimed by the incumbents under the ROFR law after MISO assigned the projects to them pursuant to that preferential law and MISO Tariff Attachment FF, Section VIII.A.1. MISO and the Transmission Owners’ post judgment efforts to persuade the Iowa District Court to reconsider its injunction came up short,²⁵ and in April 2024, the Transmission Owners appealed the District Court’s injunction, launching a second round of appellate review.²⁶ The Transmission Owners moved for a stay of the District Court’s injunction while the appeal is pending. The motion was initially granted but subsequently vacated pursuant to Iowa’s quorum review process, leading the Iowa Supreme Court to rule that the injunction remains in place.²⁷ MISO filed an amicus brief with the Iowa Supreme Court in support of the relief sought by its incumbent Transmission Owners.²⁸ The appeal is pending, and the Transmission Owners remain enjoined from developing the Iowa Projects.

²⁴ See *Supplemental Information Submitted by LSP Transmission Holdings II, LLC and LS Power Midcontinent, LLC*, Accession No. 20231212-5163, Exhibit 2 (*LS Power Midcontinent, LLC, et al v. State of Iowa, et al*, Ruling on Motions for Summary Judgment, Case No. CVCV060840, District Court for Polk County, issued Dec. 4, 2023).

²⁵ See Ruling on Defendant and Intervenor’s Motions for Reconsideration; Ruling on Motion for Leave to File Amicus Curiae Brief Filed by Midcontinent Independent System Operator, Inc., *LS Power Midcontinent, LLC et al v. State of Iowa, et al*, Case No. CVCV060840, District Court for Polk County, issued Mar. 19, 2024.

²⁶ See Notices of Appeal, *LS Power Midcontinent, LLC, et al v. State of Iowa, et al*, Case No. 24-0641, Supreme Court of Iowa, filed Apr. 17, 2024.

²⁷ See Order, *LS Power Midcontinent LLC, et al. v. Iowa, et al.*, Case No. 24-0641, issued Aug. 7, 2024.

²⁸ See Brief of Amicus Curiae, *LS Power Midcontinent, LLC, et al v. State of Iowa, et al*, Case No. 24-0641, Supreme Court of Iowa, filed Jul. 2, 2024.

Notwithstanding that an injunction had been in place since March 2023, it was not until May 30, 2024 that MISO finally²⁹ issued Variance Analysis³⁰ notices for the Iowa Projects in light of the impediments resulting from the ongoing Iowa ROFR law litigation.³¹ Three months later, on August 29, 2024, MISO posted the outcomes of its Variance Analyses.³² MISO determined that each and every Iowa Project would remain with the incumbent Transmission Owners, as originally assigned pursuant to the Iowa ROFR law.

MISO's delayed involvement and engagement with respect to both the Iowa ROFR law litigation and with respect to the administration of the Tariff's Variance Analysis procedures has resulted in project delays, uncertainty, and additional litigation for the Iowa Projects. Notwithstanding that under Iowa law the unconstitutionally enacted law was 'never in effect,' and thus not a duly promulgated law under MISO's exception to competition, MISO's Variance Analysis seems to suggest that MISO must nevertheless treat it as if it were in effect and that

²⁹ The Iowa Supreme Court's March 2023 injunction temporarily halted development of the Iowa Projects and continued in effect until the Iowa District Court made the injunction permanent in December 2023. *See Supplemental Information Submitted by LSP Transmission Holdings II, LLC and LS Power Midcontinent, LLC*, Accession No. 20231212-5163, Exhibit 1 (*LS Power Midcontinent LLC, et al. v. Iowa, et al.*, 988 N.W.2d 316 (Iowa 2023)). Accordingly, "the circumstances or events" that triggered the need for the Variance Analysis, had been in place over a year prior to MISO's commencement of that Variance Analysis on May 29, 2024. *See* Tariff, Attachment FF, Sec. IX (noting that the analysis is triggered by "certain circumstances or events that may significantly affect the cost, schedule, or the ability of the Selected Developers and Transmission Owners to complete and place into service the facilities comprising an Eligible Project for which the are responsible.").

³⁰ *See*, MISO Tariff, Attachment FF, Section IX.

³¹ *See, e.g.*, Skunk River – Ipava Transmission Project Commencement of Variance Analysis, <https://cdn.misoenergy.org/Skunk%20River%20-%20Ipava%20Variance%20Analysis%20Public%20Notice633080.pdf> (misoenergy.org), posted May 30, 2024.

³² *See* Madison – Ottumwa – Skunk River Transmission Project Notice of Variance Analysis Outcome – Mitigation Plan, <https://cdn.misoenergy.org/Madison - Ottumwa - Skunk River Variance Analysis Mitigation Plan Public Notice645355.pdf> (posted Aug. 29, 2024); Orient – Denny – Fairport Transmission Project Notice of Variance Analysis Outcome – Mitigation Plan, <https://cdn.misoenergy.org/Orient - Denny - Fairport Variance Analysis Mitigation Plan Public Notice645356.pdf> (posted Aug. 29, 2024); Skunk River – Ipava Transmission Project Notice of Variance Analysis Outcome – Mitigation Plan, <https://cdn.misoenergy.org/Skunk%20River%20-%20Ipava%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645357.pdf> (posted Aug. 29, 2024); Webster – Franklin – Marshalltown – Morgan Valley Transmission Project Notice of Variance Analysis Outcome – Mitigation Plan, <https://cdn.misoenergy.org/Webster-Franklin-Marshalltown-MorganValley Variance Analysis Mitigation Plan Public Notice645353.pdf> (posted Aug. 29, 2024).

MISO's initial decision to direct project assignment to an incumbent instead of engaging in mandated competition cannot be subsequently undone, although the law relied on by MISO was being challenged at the time of assignment. And the outcome of the recent Variance Analyses demonstrates a preference to avoid competitive bidding – all to the continuing detriment of Iowa consumers and consumers outside of Iowa in the MISO North-Central region that will be allocated higher costs for Multi-Value Projects as a result of the State ROFR law exception in MISO's Tariff.³³

³³ See Tariff Attachment FF, Section VIII.A.1.

III. CONCLUSION

The Consumer Alliance respectfully requests that the Commission, pursuant to its obligation to ensure just and reasonable rates, expeditiously grant the Complaint and issue any other appropriate relief to ensure continued timely, efficient, cost-effective, and competitive transmission planning and development in the MISO region.

Respectfully submitted,

/s/ Kenneth R. Stark

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Date: September 19, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of September 2024 served or caused to serve the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

By: /s/ Kenneth R. Stark

Kenneth R. Stark
McNees Wallace & Nurick LLC