

180 FERC ¶ 61,040
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Midcontinent Independent System Operator, Inc.

Docket No. ER22-1955-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued July 26, 2022)

1. On May 25, 2022, as amended on May 27, 2022,¹ pursuant to section 205 of the Federal Power Act (FPA)² and section 35.13 of the Commission's regulations,³ Midcontinent Independent System Operator, Inc. (MISO) filed proposed revisions to sections VIII.A.2 and VIII.A.2.1.1 of Attachment FF in MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to provide that, if 80% or more of the total cost of a transmission project eligible for consideration in MISO's Competitive Transmission Process⁴ constitutes an upgrade to existing transmission facilities, such a project will be assigned to the incumbent transmission owner(s) and will not be subject to the Competitive Transmission Process (Proposal).⁵ In this order, we accept MISO's Proposal, effective July 25, 2022, as requested.

¹ The May 27, 2022 filing corrected a typographical error in the proposed tariff record.

² 16 U.S.C. § 824d.

³ 18 C.F.R. § 35.13 (2021).

⁴ The Competitive Transmission Process describes the processes and requirements associated with identifying Competitive Transmission Projects, certifying entities as Qualified Transmission Developers, soliciting and evaluating Proposals from Qualified Transmission Developers, and designating a Selected Proposal and Selected Developer(s). MISO, Tariff, attach. FF, § VIII. (86.0.0).

⁵ Midcontinent Independent System Operator, Inc., FERC Electric Tariff, [attach. FF, \(Transmission Expansion Planning Protocol\) \(88.0.0\)](#).

I. Background

A. Order No. 1000

2. In Order No. 1000,⁶ the Commission “adopted a framework of reforms to ensure that nonincumbent transmission developers have the opportunity to participate in the transmission development process.”⁷ The Commission required public utility transmission providers to eliminate federal rights of first refusal for incumbent transmission providers from Commission-jurisdictional tariffs and agreements with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁸

3. The Commission’s requirement to eliminate federal rights of first refusal does not apply, however, to the right of an incumbent public utility transmission provider to build, own, and recover costs for “upgrades” to its own transmission facilities, “regardless of whether an upgrade has been selected in the regional transmission plan for purposes of cost allocation.”⁹ The Commission clarified that “the term upgrade means an improvement to, addition to, or replacement of a part of, an existing transmission facility.”¹⁰ The Commission found that it was not feasible to list every type of improvement or addition, or name all the parts of lines, towers, and other equipment that

⁶ *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127, at P 77 (2014) (MISO Second Compliance Order).

⁸ Order No. 1000, 136 FERC ¶ 61,051 at P 313. A transmission facility selected in a regional transmission plan for purposes of cost allocation is one that has been selected pursuant to a transmission planning region’s Commission-approved regional transmission process for inclusion in a regional transmission plan for purposes of cost allocation because it is the more efficient or cost-effective solution to a regional transmission need. *Id.* P 63.

⁹ MISO Second Compliance Order, 147 FERC ¶ 61,127 at P 78. *See also* Order No. 1000, 136 FERC ¶ 61,051 at PP 226, 319.

¹⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

may be replaced or otherwise be considered upgrades.¹¹ However, the Commission stated that “[t]he term upgrades does not refer to an entirely new transmission facility.”¹²

B. Transmission Projects Including Both Upgrades to Existing Transmission Facilities and New Transmission Facilities

4. During separate Order No. 1000 compliance proceedings initiated by MISO and Southwest Power Pool, Inc. (SPP), the Commission confronted the issue of how to apply an incumbent transmission provider’s right to build, own and recover the costs for upgrades to its own transmission facilities in the context of proposed transmission projects that consist of both upgrades to existing transmission facilities and new transmission facilities.¹³ In doing so, the Commission explained that the Commission’s decision in Order No. 1000 regarding upgrades to existing transmission facilities “was the result of balancing the need to expand competition while also not adversely affecting the right of an incumbent transmission provider to build upgrades to its own transmission facilities.”¹⁴

5. SPP proposed in its Order No. 1000 compliance proceeding that, for transmission projects that consist of both rebuild and new transmission facility components, if 80% or more of the total cost of a project consists of the rebuild of existing transmission facilities, then SPP will designate the transmission owner that owns the rebuild portion as

¹¹ *Id.*

¹² *Id.*

¹³ See, e.g., *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 184 (2013) (SPP First Compliance Order) (directing SPP to submit a further compliance filing clarifying how SPP would classify projects containing both upgrades to existing facilities and new transmission facilities), *order on reh’g and compliance*, 149 FERC ¶ 61,048 (2014) (SPP Second Compliance Order); *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 215 (2013) (MISO First Compliance Order) (directing MISO to submit a further compliance filing justifying or removing a provision detailing how MISO would classify projects containing both upgrades to existing facilities and new transmission facilities), *order on reh’g and compliance*, MISO Second Compliance Order, 147 FERC ¶ 61,127, *order on reh’g and compliance*, 150 FERC ¶ 61,037 (2015) (MISO Third Compliance Order).

¹⁴ MISO First Compliance Order, 142 FERC ¶ 61,215 at P 226.

the transmission owner designated to develop the entire transmission project.¹⁵ The Commission accepted SPP's proposal, stating:

We find that SPP's proposal to classify an entire transmission project as an upgrade only if more than 80[%] of the total cost of the project consists of a rebuild of existing transmission facilities complies with the requirement to clarify how SPP will classify transmission projects that contain both upgrades to existing facilities and new transmission facilities. We find that this proposal strikes a reasonable balance between expanding competition in transmission development and promoting administrative, regulatory, and economic efficiency by excluding from the competitive bidding process transmission projects that, while they include some new transmission facilities, are primarily upgrades to existing transmission facilities.¹⁶

The Commission also found that, under SPP's proposal, "it is reasonable, for the sake of administrative efficiency, to divide into portions only a transmission project where at least 20[%] of the cost of the transmission project are for new transmission facilities."¹⁷

6. In MISO's Order No. 1000 compliance proceeding, MISO initially proposed that an incumbent transmission provider should be able to exercise its right to build, own and recover the costs for upgrades to its own transmission facilities where a new transmission project consisted of a combination of new transmission line sections and upgrades to existing transmission lines, provided that the length of a new transmission line section did not meet or exceed 20 contiguous miles. The Commission found that the proposal did not comply with Order No. 1000, explaining that MISO had not sufficiently supported the 20-mile threshold and that MISO's proposal may include an unnecessarily broad and not sufficiently justified spectrum of transmission projects, some of which should be eligible for selection in the regional transmission plan for purposes of cost allocation.¹⁸ The Commission also noted that, while it was rejecting MISO's proposal, it was not prohibiting all exceptions to the requirement to eliminate a federal right of first refusal that would exclude from the competitive transmission development process certain minor

¹⁵ SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 149.

¹⁶ *Id.* P 159.

¹⁷ *Id.* P 160.

¹⁸ *Id.* P 182.

and/or relatively inexpensive transmission projects containing both new transmission facilities and upgrades to existing transmission facilities.¹⁹

7. MISO then proposed that a transmission project consisting of both new transmission line sections and upgrades to existing transmission line sections would be considered an upgrade for the purpose of retaining a federal right of first refusal, unless: (1) more than 50% of the total transmission project cost is for the new transmission line sections; and (2) each new transmission line section is at least five miles in length. The Commission again rejected MISO's proposal, finding that it continued to apply to an unnecessarily broad spectrum of transmission projects and failed to strike a reasonable balance between expanding competition in transmission development and promoting administrative, regulatory, and economic efficiency, as it would exclude from the competitive bidding process transmission projects that, while including some upgrades, may also include significant new transmission facilities.²⁰ The Commission noted that, while it was rejecting MISO's proposal, the Commission had found that SPP's proposal of an 80% threshold struck a reasonable balance between expanding competition in transmission development and promoting administrative, regulatory, and economic efficiency.²¹

C. MISO Long Range Transmission Planning

8. MISO states that it uses the Long Range Transmission Planning (LRTP) initiative to meet its responsibility to maintain and improve reliability. MISO explains that its LRTP initiative involves various planning and forecasting analyses and tools to predict and prepare for the operational complexity and reliability impacts of emergent and potential changes to MISO's systems and markets. MISO explains that it has used several means of anticipating probable and possible future scenarios, such as MISO Futures, the Renewable Integration Impact Assessment, and other certain forecasts.²² MISO states that the LRTP is a multi-year transmission planning effort that is focused on

¹⁹ *Id.* P 183.

²⁰ MISO Third Compliance Order, 150 FERC ¶ 61,037 at P 51.

²¹ *Id.* P 52.

²² Transmittal Letter at 5 (citing MISO, *MISO Futures Report* (Dec. 2021), <https://cdn.misoenergy.org/MISO%20Futures%20Report538224.pdf>; MISO, *Renewable Integration Impact Assessment Summary Report* (Feb. 2021), <https://www.misoenergy.org/planning/policy-studies/Renewable-integration-impact-assessment>). Note that in referring herein to MISO's Transmittal Letter, we use the letter submitted with MISO's amended May 27, 2022 filing.

building needed, new transmission infrastructure in the MISO footprint.²³ MISO explains that the LRTP initiative identifies MISO's long-term transmission needs and then translates those needs into portfolios of transmission projects that can be evaluated and approved in the MISO Transmission Expansion Planning (MTEP) process.²⁴

9. MISO states that it has identified the first LRTP portfolio, LRTP Tranche 1, which consists of 18 projects totaling \$10.4 billion spread throughout the MISO Midwest Subregion. MISO indicates that LRTP Tranche 1 is ready to proceed.²⁵ MISO asserts that the Tranche 1 portfolio is urgently needed to address many of the challenges identified by futures analyses and to meet the Tariff criteria for Multi-Value Projects (MVP).²⁶ MISO indicates that LRTP Tranche 1 is scheduled to be presented to the MISO Board of Directors for approval at its meeting on July 25, 2022. MISO notes that the LRTP initiative is expected to result in additional tranches of proposed transmission projects in the next several years.²⁷

II. Filing

10. MISO proposes revisions to its Tariff to provide that, if 80% or more of the total cost of the transmission facilities included in a transmission project are upgrades, as currently defined in the MISO Tariff,²⁸ then such a project will not be subject to MISO's Competitive Transmission Process and will instead be assigned to the incumbent

²³ *Id.* at 6 (citing Doner Test. at 11-12). MISO engaged in an 18-month process to develop several futures scenarios to serve as the foundation of the LRTP effort, which were themselves the result of stakeholder collaboration and resulted in a published public report. *Id.* at 6 n.37 (citing MISO Futures Report (updated Dec. 2021)).

²⁴ *Id.* at 6 (citing Doner Test. at 12).

²⁵ *Id.*

²⁶ An MVP is one or more transmission facilities that address a common set of transmission issues and satisfy certain conditions set forth in sections II.C.1, II.C.2, and II.C.3 of Attachment FF in MISO's Tariff. MISO, Tariff, Module A, § 1.M (Definitions – M) (69.0.0).

²⁷ Transmittal Letter at 6 (citing Doner Test. at 12).

²⁸ *See* MISO, Tariff, attach. FF, §§ VIII.A.2.1, VIII.A.2.1.1, VIII.A.2.2, and VIII.A.2.2.1 (86.0.0).

transmission owner(s).²⁹ MISO explains that, when it reviewed proposed transmission projects for LRTP Tranche 1, it identified certain challenges and inefficiencies primarily involving the application of the currently effective Competitive Transmission Process rules to certain short transmission line segments and conductor-only facilities.³⁰ According to MISO, the proposed revisions will resolve these challenges. MISO also proposes to include clarifying provisions in its Tariff to remove potential ambiguity that, once an Eligible Project³¹ is determined to be subject to the proposed 80% rule, all segments constituting the Eligible Project will be exempt from the Competitive Transmission Process.³² MISO states that its proposal is consistent with Order No. 1000 and is similar to a proposal that the Commission accepted for the SPP region.³³

11. MISO asserts that the proposed revisions are reasonable because they represent a timely adjustment to the MISO Competitive Transmission Process and are informed by MISO's experience with LRTP Tranche 1. According to MISO, these proposed revisions address a set of inefficiencies and challenges in its Competitive Transmission Process, which are implicated in the processing of large transmission project portfolios, such as LRTP Tranche 1. MISO contends that these inefficiencies will undermine and delay delivery of the cost-effective LRTP Tranche 1 portfolio of transmission projects to MISO stakeholders by creating unnecessary complexities and challenges if they are not addressed.³⁴

12. Specifically, MISO asserts that the Competitive Transmission Process provides the greatest benefit when the competitive portion of a transmission project is significant. MISO contends that the benefits of the Competitive Transmission Process diminish when the competitive portion is limited to just one small facility of a project or a few, short segments of a project. MISO states that, under such circumstances, there is less

²⁹ Transmittal Letter at 1, 10; Doner Test. at 3. Proposed MISO, Tariff, attach. FF, § VIII.A.2 (88.0.0).

³⁰ Doner Test. at 3.

³¹ An Eligible Project is any Market Efficiency Project or MVP approved by MISO's Board of Directors. MISO, Tariff, Module A, § 1.E (Definitions – E) (81.0.0).

³² Transmittal Letter at 10. Proposed MISO, Tariff, attach. FF, § VIII.A.2.1.1 (88.0.0).

³³ Transmittal Letter at 1-2 (citing SPP Second Compliance Order, 149 FERC ¶ 61,048); Doner Test. at 4.

³⁴ Transmittal Letter at 11.

opportunity for the competitive developer to differentiate its proposal from what would be provided by the incumbent transmission owner.³⁵

13. MISO explains that, in the case where a transmission developer selected through the Competitive Transmission Process is dependent upon the work of an incumbent transmission owner, difficulties such as project feasibility, costs, and proposed schedules arise. MISO notes that, for small competitive transmission line segments surrounded by or embedded in transmission facilities that would otherwise qualify as upgrades, such as where a single-circuit transmission line is replaced with a double-circuit transmission line, there is resulting uncertainty and a lengthy multi-party process that will increase costs and delay transmission project implementation while providing little or no countervailing competitive benefit. Specifically, MISO explains that the incumbent transmission owner would need to design the transmission line to provide the details necessary for potential non-incumbent transmission developers to prepare a proposal on short segments of the new transmission facility that do not qualify as an upgrade, and the design would be shared with transmission developers to allow for proposals to be offered on segments, with the incumbent transmission owner needing to spend additional time and resources to coordinate and optimize system design with the selected developer.³⁶ MISO adds that, once the new transmission project is completed, coordination agreements and protocols will need to be in place to facilitate operations and maintenance of the transmission line, further adding complexity to the process.³⁷

14. Further, MISO states that lower voltage single-circuit transmission lines, which may traverse a small town and require a bypass due to right-of-way limitations, may contain very short segments that cannot be expanded to a double-circuit transmission line, subjecting isolated bypass segments to the Competitive Transmission Process. MISO states that, for short greenfield segments on single-circuit to double-circuit transmission projects, the length of such segments would not be known until the state or local permitting process is complete and may differ from what was included in the request for proposal. MISO explains that these instances may result in high inefficiency and delays in developing projects, and such inefficiencies would not be offset by competitive process benefits because there would be little opportunity for competitors to significantly differentiate themselves on something as narrow as a conductor-only proposal.³⁸

³⁵ *Id.* at 7 (citing Doner Test. at 14).

³⁶ *Id.* at 7-8 (citing Doner Test. at 15).

³⁷ *Id.* at 8 (citing Doner Test. at 16).

³⁸ *Id.* (citing Doner Test. at 16-17).

15. To further justify the need for the proposal, MISO contends that adding a second entity to the permitting process for minor transmission facilities adds significant complexity to transmission project development. MISO notes that the state transmission siting process may require both the incumbent transmission owner and the selected transmission developer to file for the various regulatory permits required, resulting in delays, potential disputes, coordination difficulties, and inefficiencies in construction due to increased coordination needed to obtain necessary permits and the involvement of multiple contractors working on the same project.³⁹

16. MISO states that, in instances where there is damage to a Competitive Transmission Facility that creates public safety issues or requires emergency repair, two entities are needed to secure the damaged facilities and make the repairs. MISO states that this requires additional coordination between the entities to secure the scene or restore service to the transmission line, and each entity must perform routine line inspections focusing on particular components it owns and is responsible for as part of a preventative maintenance program. MISO asserts that subjecting minor facilities such as short segment and conductor-only facilities to the Competitive Transmission Process could result in more complex and costly maintenance programs and additional operational and maintenance burdens.⁴⁰

17. MISO asserts that the proposed revisions are just and reasonable because they strike an appropriate balance between expanding competition in transmission development, in accordance with Order No. 1000, and promoting administrative, regulatory, and economic efficiency. MISO explains that, if a proposed project primarily involves upgrades to existing transmission facilities, any possible benefit of the Competitive Transmission Process for the small portion of new facilities would likely be outweighed by the additional costs, risks, inefficiencies, and complexities of the Competitive Transmission Process, as well as by regulatory permitting, project implementation, and operations and maintenance processes that would result from splitting the project into multiple segments. Thus, according to MISO, the proposed 80% threshold ensures that transmission projects that are predominately upgrades to existing transmission facilities will be constructed in a more efficient and cost-effective manner, consistent with the goals of Order No. 1000, while also continuing to permit projects that have a significant new facility component to be open to the Competitive Transmission Process with respect to that component.⁴¹

³⁹ *Id.* at 8-9 (citing Doner Test. at 17-18).

⁴⁰ *Id.* at 9 (citing Doner Test. at 19).

⁴¹ *Id.* at 11.

18. MISO also highlights that, during its Order No. 1000 compliance proceeding, the Commission noted that it had accepted a proposal by SPP (similar to the instant Proposal) that struck “a reasonable balance between expanding competition in transmission development and promoting administrative, regulatory and economic efficiency by excluding from the Competitive Transmission Process transmission projects that, while they include some new transmission facilities, are primarily upgrades to existing transmission facilities.”⁴² According to MISO, the same balance is struck by the proposed revisions, which closely parallel language in SPP’s tariff.⁴³

19. MISO further asserts that the Proposal will not adversely affect its Competitive Transmission Process. MISO explains that, with an initial LRTP Tranche 1 portfolio of \$10.4 billion, and with the limited exception proposed herein, MISO expects significant opportunity for competitive development of transmission facilities in its region, further asserting that this LRTP effort will represent the largest portfolio of competitive projects presented in the MISO footprint. MISO contends that, by promoting administrative, regulatory, and economic efficiency, the Proposal will allow MISO to devote its limited resources to larger competitive transmission line segments and projects that are more likely to bring substantial benefits to MISO’s footprint. MISO notes that, when the Commission accepted SPP’s similar proposal, the Commission held that “it is reasonable, for the sake of administrative efficiency, to divide into portions only a transmission project where at least 20[%] of the cost of the transmission project are for new transmission facilities.”⁴⁴ MISO asserts that the same conclusion applies here.⁴⁵

20. MISO claims that, given the need to move forward expeditiously and provide maximum certainty to all affected parties, and due to the limited scope of the Proposal, MISO’s decision to proceed without vetting the Proposal in the MISO stakeholder process is reasonable.⁴⁶ MISO contends that the concept of the Proposal was discussed in its Order No. 1000 compliance proceeding and represents an application of

⁴² *Id.* at 12 (citing MISO Third Compliance Order, 150 FERC ¶ 61,037 at P 52 (quoting SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 159)).

⁴³ *Id.*

⁴⁴ *Id.* (citing SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 160).

⁴⁵ *Id.*

⁴⁶ *Id.*; Doner Test. at 24-25.

long-standing precedent, rather than a novel method where stakeholder vetting would be more beneficial.⁴⁷

21. MISO explains that the proposed Tariff revisions are narrowly tailored to implement the 80% cost cap and are similar to provisions currently in effect in the SPP tariff. MISO states that the proposed Tariff revisions relate to Eligible Projects that contain both upgrades to existing transmission facilities and new transmission facilities that are not upgrades, as defined in sections VIII.A.2.1 through VIII.A.2.2.1 of Attachment FF. For new transmission facilities that are not upgrades, MISO proposes that the transmission provider shall apply a set of rules to assign the facilities included in the Eligible Project to the applicable incumbent transmission owner(s) or Selected Developer.⁴⁸

22. MISO asserts that its Proposal is just and reasonable and not unduly discriminatory or preferential. MISO contends that the proposed changes are reasonable because they represent a timely adjustment to the Competitive Transmission Process and are informed by MISO's experience with LRTP Tranche 1 thus far. MISO further asserts that its proposed Tariff revisions address a set of inefficiencies and challenges in the current Competitive Transmission Process associated with the processing of large project portfolios, such as LRTP Tranche 1. MISO asserts that leaving these inefficiencies unaddressed would undermine and delay delivering the cost-effective Tranche 1 portfolio to MISO stakeholders by creating unnecessary complexities and challenges. MISO asserts that such inefficiencies and challenges will impede progress in meeting the Reliability Imperative and delivering value and reliability to MISO stakeholders.⁴⁹

23. MISO requests that the Commission accept the proposed Tariff revisions effective July 25, 2022, the effective date requested in its initial May 25, 2022 filing. MISO states that, to the extent necessary, it requests waiver of the Commission's prior notice requirements pursuant to 18 C.F.R. § 35.3(a)(1) (2021), in order to grant the requested effective date. MISO asserts that good cause exists to grant waiver because the May 27, 2022 filing corrected a minor typographical error that did not affect the substance of the filing nor the supporting rationale. MISO also contends that the requested effective date is in the public interest and is required to provide certainty to all affected parties.⁵⁰

⁴⁷ Transmittal Letter at 12; Doner Test. at 24-25.

⁴⁸ Transmittal Letter at 10. Proposed MISO, Tariff, attach. FF, §§ VIII.A.2 and VIII.A.2.1.1 (88.0.0).

⁴⁹ Transmittal Letter at 11.

⁵⁰ *Id.* at 2.

Finally, MISO requests that the Commission accept the Proposal no later than July 22, 2022, the last business day before the MISO Board of Directors' July 25, 2022 meeting.⁵¹

III. Notice of Filing and Responsive Pleadings

24. Notice of MISO's filing in Docket No. ER22-1955-000 was published in the *Federal Register*, 87 Fed. Reg. 33,145 (June 1, 2022), with interventions and protests due on or before June 15, 2022. Notice of MISO's amended filing in Docket No. ER22-1955-001 was published in the *Federal Register*, 87 Fed. Reg. 33,770 (June 3, 2022), with interventions and protests due on or before June 17, 2022.

25. The Appendix to this order lists the entities that filed notices of intervention or motions to intervene.⁵² On June 17, 2022, the following entities submitted comments or protests: MISO Transmission Owners, Consumer Alliance, LS Power, NextEra, and ITC Companies.

26. On June 24, 2022, the Mississippi Commission submitted an answer to certain of the comments and protests. On July 5, 2022, MISO Transmission Owners submitted a motion for leave to answer and answer to certain of the protests. On July 8, 2022, MISO submitted an answer to certain of the comments and protests.

IV. Pleadings

A. Comments in Support

27. MISO Transmission Owners state that they support the Proposal as a necessary revision to enable the efficient, timely processing of needed LRTP projects that MISO has identified and to avoid delays and other inefficiencies that would otherwise result.⁵³ MISO Transmission Owners explain that the Proposal offers a bright-line rule for transmission projects, the vast majority of which consist of upgrades to existing transmission facilities. MISO Transmission Owners further note that MISO modeled the Proposal on a similar construct that SPP adopted for its region nearly a decade ago and that the Commission suggested MISO adopt.⁵⁴ MISO Transmission Owners assert that

⁵¹ *Id.* at 13.

⁵² Abbreviations for intervenors discussed herein also are listed in the Appendix and will be used throughout this order. On July 20, 2022, Wisconsin Commission submitted an out-of-time motion to intervene.

⁵³ MISO Transmission Owners Comments at 2.

⁵⁴ *Id.* at 3 (citing MISO Third Compliance Order, 150 FERC ¶ 61,037 at P 52).

the Proposal will assign transmission projects such that the development of the projects will avoid the inefficiencies and challenges that MISO documents in the Proposal. MISO Transmission Owners stress that this is important because MISO is on the verge of approving numerous LRTP projects that are urgently needed.⁵⁵

28. MISO Transmission Owners also state that the Proposal offers certain other benefits for efficient transmission development, such as administrative consistency with SPP, a neighboring regional transmission organization (RTO), because the Proposal is a “nearly verbatim” copy of SPP’s rule and could ease the administrative processing of some cross-border projects.⁵⁶ MISO Transmission Owners explain that, should the Commission accept the Proposal, SPP and MISO will process cross-border projects that involve both upgrades and new segments using the same threshold, providing greater certainty to potential competitive bidders to determine whether and what portions of a cross-border project may be subject to either RTO’s competitive bidding process.⁵⁷

29. ITC Companies state that they support the Proposal because it recognizes the need for cost-effective, timely implementation of MISO’s LRTP initiative that would otherwise be stymied by the current Competitive Transmission Process, given the time and administrative effort required to solicit and evaluate proposals for transmission projects that consist largely of upgrades to existing transmission facilities. It is ITC Companies’ view that the Proposal is narrowly tailored and essentially identical to the tariff provisions previously accepted by the Commission for SPP and that MISO has met its burden under section 205 of the FPA.⁵⁸ ITC Companies also state that the Proposal highlights broader issues with Order No. 1000-mandated transmission competition and argue that MISO’s Competitive Transmission Process undermines the timely, efficient implementation of LRTP Tranche 1, as well as future transmission development in the MISO region. ITC Companies assert that the Proposal evidences the growing sentiment that, when real world transmission buildout is at stake, less Order No. 1000-mandated developer solicitation is consistently better than more. ITC Companies

⁵⁵ *Id.* at 3-4 (citing MISO, Proposed Revisions to MISO Tariff to Modify Cost Allocation for Multi-Value Projects, Docket No. ER22-995-000, at 3 (filed Feb. 4, 2022)).

⁵⁶ *Id.* at 10-11 (citing Transmittal Letter at 12 n.64).

⁵⁷ *Id.* at 11.

⁵⁸ ITC Companies Comments at 1-2.

state that, although this sentiment does not impact the approvability of the Proposal, it is important that the Commission not lose sight of this larger policy reality.⁵⁹

B. Protests

30. NextEra and Consumer Alliance oppose the Proposal and urge the Commission to reject it because they claim MISO has not demonstrated that the Proposal is just and reasonable.⁶⁰

31. Consumer Alliance contends that MISO fails to describe the Proposal's specific impact on LRTP Tranche 1 projects, the scope and configuration of those projects and facilities, the process for determining exempted upgrades, and the associated cost consequences, including the impact on competition. Consumer Alliance states that it is also unclear how the Proposal will impact the costs of future tranches of LRTP projects and MISO Midwest Transmission Expansion Plan projects, and that, for these reasons, the Commission should reject the Proposal.⁶¹ Consumer Alliance argues, for example, that MISO is not separating out new transmission project investment from existing transmission facility upgrades and that there is no clear way of verifying the information it has provided.⁶² Similarly, NextEra asserts that the application of the 80/20 approach will have a significant impact on whether new transmission facilities associated with MISO's LRTP initiative are eligible for competition and that MISO provided no examples or details as to the impact of the Proposal on Tranche 1 projects, even though MISO should have this information.⁶³

32. NextEra states that, based on its analysis of the information MISO has provided, it estimates that the application of the 80/20 approach to the LRTP Tranche 1 projects will prevent new transmission facilities valued at approximately \$489 million from being eligible for competition.⁶⁴ NextEra states that, based on its own analysis, the foregone competitive transmission facilities consist of approximately 81 total miles of new 345 kV

⁵⁹ *Id.* at 6.

⁶⁰ LS Power states that it supports NextEra's protest and, for the reasons set forth therein, LS Power also believes that MISO has not demonstrated that the Proposal is just and reasonable and not unduly discriminatory or preferential. LS Power Protest at 1.

⁶¹ Consumer Alliance Protest at 8-9.

⁶² *Id.* at 17.

⁶³ NextEra Protest at 4.

⁶⁴ *Id.* at 4 n.14.

single circuit transmission lines and 601 total miles of 345 kV conductor-only facilities. NextEra argues that consumers will not be provided with the opportunity to benefit through cost containment mechanisms and innovative technological and engineering solutions for these facilities. NextEra contends that, according to a Brattle Group study, the estimated potential cost savings to customers from expanding competitive processes ranges from 20% to 30%, whereas customers could expect to pay up to \$146.7 million more in capital costs as a result of the Proposal and the foregone competitive opportunities associated with it.⁶⁵

33. Consumer Alliance asserts that competition in the development of new transmission infrastructure has proven to reduce overall costs to customers by 15% to 20%, and Consumer Alliance emphasizes that MISO's LRTP process is expected to result in up to \$100 billion in infrastructure investment, causing transmission costs to rapidly rise across the MISO footprint. Consumer Alliance contends that, as a result, customers across the MISO footprint will be saddled with unnecessary, higher costs for LRTP Tranche 1 projects and future MTEP projects, and that guardrails should be put in place to prevent gaming and to foster competition.⁶⁶ Consumer Alliance notes that the Competitive Transmission Processes that MISO held for the Duff-Coleman 345 kV project and the Hartburg-Sabine Junction 500 kV project resulted in innovative technical approaches and cost caps that saved customers tens of millions of dollars because a nonincumbent transmission developer developed the projects instead of a MISO transmission owner.⁶⁷

34. NextEra argues that, irrespective of the Proposal's significant impacts to competitive transmission, the Proposal is overly broad and therefore unjust and unreasonable. NextEra disagrees with MISO's claim that the Proposal is "essentially identical" to SPP's 80/20 approach previously approved by the Commission, as the MISO and SPP tariff definitions of upgrades to existing transmission facilities are significantly different. NextEra emphasizes that, unlike SPP's tariff definition of a "Rebuild," MISO's tariff definitions do not limit upgrades only to the replacement of *part of* existing transmission facilities, and that the Proposal could result in MISO classifying entirely new transmission facilities as an upgrade. Thus, it is NextEra's view that the Proposal encompasses a far more expansive set of transmission facilities than the

⁶⁵ *Id.* at 5 (citing Johannes Pfeifenberger, et al., Brattle Group, *Cost Savings Offered by Competition in Electric Transmission: Experience to Date and Potential Value for Electricity Consumers*, at 1 (Dec. 11, 2019)).

⁶⁶ Consumer Alliance Protest at 17.

⁶⁷ *Id.* at 12-14.

SPP approach and is facially inconsistent with the Commission's directive in Order No. 1000-A and its ruling in the SPP proceeding.⁶⁸

35. Consumer Alliance also highlights that MISO's definition for upgrade differs from SPP's definition for rebuild, as neither the Proposal nor the MISO Tariff limits replacement of an existing transmission facility to part of an existing transmission facility. Consumer Alliance points out that existing section VIII.A.2.1 of Attachment FF provides that "[u]pgrades to existing transmission line facilities include any expansion, replacement, or modification, for any purpose, made to existing transmission line facilities that are classified as transmission plant and owned by one or more Transmission Owners," and that, similarly, section VIII.A.2.2 allows for the replacement, in part of or in whole, to existing substations. Consumer Alliance states that it is unclear why MISO's definition of an upgrade includes the replacement of an entire existing transmission line when Order No. 1000-A defined an upgrade as "an improvement to, addition to, or replacement of a part of, an existing transmission facility," and specifically stated that the term "does not refer to an entirely new transmission facility."⁶⁹ Consumer Alliance points out that the Commission required SPP to clarify its tariff to ensure that the definition of Rebuild reflected the limits imposed by Order No. 1000.⁷⁰

36. Moreover, Consumer Alliance alleges that applying MISO's definition of upgrade and SPP's definition of Rebuild in combination with the 80/20 approach to a hypothetical example included in MISO's filing demonstrates that there would be different outcomes depending on whether the MISO or SPP definition is used. Consumer Alliance states that certain portions of MISO's hypothetical example would be competitive based on SPP's Rebuild definition, whereas using MISO's 80/20 proposed approach would exempt the whole project from competition. Consumer Alliance argues that the hypothetical example illustrates why the combination of MISO's existing definition of upgrades and the 80/20 approach will not result in the same balance that the Commission found appropriate in SPP.⁷¹ Consumer Alliance contends, for example, that LRTP Tranche 1 projects in Wisconsin likely consist of rebuilding and would be considered upgrades

⁶⁸ NextEra Protest at 5-6 (citing SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 158).

⁶⁹ Consumer Alliance Protest at 22 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

⁷⁰ *Id.* (citing SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 158).

⁷¹ *Id.* at 23 (citing Doner Test., Ex. A at 1-2).

under MISO's Proposal but would be subject to competitive bidding if the SPP tariff definition were applied.⁷²

37. Consumer Alliance also argues that, while MISO asserts that its 80/20 approach will result in minor impacts on small transmission segments, the filing does not clearly define "projects" or "facilities," thereby creating incentives for MISO and incumbent transmission owners to conduct small, piecemeal updates to the transmission system and to configure a project's scope so that the project is treated as an upgrade that is exempt from the Competitive Transmission Process. Consumer Alliance contends that the Proposal does not provide any guardrails or protections to prevent such gaming or otherwise safeguard or maximize competition. It is Consumer Alliance's view that the Commission should require MISO to submit transmission projects to competitive bidding to the greatest extent possible instead of granting MISO robust discretion to determine the exact projects and configurations that will be subject to competition.⁷³

38. Further, Consumer Alliance states that the development of MISO's Proposal did not include any stakeholder advisory on the merits or substance of the Proposal, and MISO did not suggest that implementing the LRTP would require any tariff amendments like the one proposed. Consumer Alliance alleges that MISO minimized the importance of the Proposal and waited until after it submitted the Proposal to present it to stakeholders.⁷⁴ Consumer Alliance argues that the outcome of this proceeding will impact the transmission rates that consumers pay and that stakeholder input on the merits and substance of the Proposal should have been taken into consideration, given the hundreds of millions of dollars in competitive transmission facilities that could be impacted.⁷⁵ Consumer Alliance also notes that, in Order No. 890,⁷⁶ the Commission

⁷² *Id.* at 17.

⁷³ *Id.* at 15.

⁷⁴ *Id.* at 9.

⁷⁵ *Id.* at 9-10.

⁷⁶ *Id.* at 10 (citing *Preventing Undue Discrimination and Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, at PP 44-45, 51, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

found that a lack of transparency undermines confidence in open access and limits opportunities for stakeholders to detect undue discrimination.⁷⁷

39. Similarly, NextEra argues that it is unreasonable to abdicate existing stakeholder processes in the development of a substantial tariff revision related to the development of the LRTP Tranche 1 portfolio, especially given that MISO has not made any filings that attempt to address situations where a transmission project consists of a combination of new transmission line segments and upgrades to existing transmission line segments since the Commission's final order rejecting MISO's previous proposals in 2015. It is NextEra's view that any proposal to expand the right of incumbent transmission providers to exercise its right to build, own and recover the costs for upgrades to its own transmission facilities should receive careful and thorough consideration through the existing stakeholder processes so that criteria can be established to ensure that smaller projects, and inefficiencies and challenges associated with those projects, are removed from competition, while preserving competition for larger transmission and substation projects.⁷⁸

C. Answers

40. The Mississippi Commission states that, while it supports MISO stakeholder process that allows for full debate of tariff proposals, it nevertheless supports MISO's Proposal in this instance.⁷⁹ The Mississippi Commission states that it believes competition offers the promise of savings to consumers, but that if inefficiencies and delays in MISO's Competitive Transmission Process are a reason to avoid the competitive development of transmission, then MISO should fix the process. The Mississippi Commission further argues that MISO should include in its Business Practice Manuals clear and concise definitions and procedures to address the language ambiguity raised in the NextEra and Consumer Alliance Protests, and that this rule should be made clear and applied consistently to all LRTP projects.⁸⁰

41. MISO Transmission Owners disagree with Consumer Alliance's and NextEra's argument that the Proposal will reduce competition and lead to increased consumer

⁷⁷ *Id.* at 10-11 (citing Order No. 890, 118 FERC ¶ 61,119 at PP 44-45, 51).

⁷⁸ NextEra Protest at 6 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 151).

⁷⁹ Mississippi Commission Response at 1-2.

⁸⁰ *Id.* at 1, 3.

prices.⁸¹ MISO Transmission Owners argue that many of the savings statistics included in the protests are presented as facts despite the fact that a study on which the protestors rely was found to be fundamentally flawed and lacked a full picture of the added costs incurred from competitive solicitations.⁸²

42. MISO argues it has shown that the Proposal is just and reasonable and not unduly discriminatory or preferential, and that MISO is not required to demonstrate that the Proposal is superior to potential alternatives. MISO further argues that the Proposal is a timely, needed adjustment to the Competitive Transmission Process that involves relatively small and technical changes that are needed to ensure that the LRTP Tranche 1 portfolio can be processed efficiently.⁸³

43. MISO again contends that a substantively identical provision has been in effect in SPP for some time and that, in contrast to the time period of MISO's own Order No. 1000 compliance process, when small segments and conductor-only issues were theoretical, MISO now has identified actual issues with the Competitive Transmission Process. MISO argues that the Proposal strikes an appropriate balance between expanding competition and promoting efficiency.⁸⁴

44. MISO argues that protesting parties' claims that the Proposal is "unsupported" ignores the record and that MISO has provided detailed factual testimony describing the current challenges associated with the upgrade determination process involving "small segment" and "conductor-only" facilities.⁸⁵ MISO contends that under the FPA and in relation to the testimony it provided, "the findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."⁸⁶ MISO further argues that the courts have explained that the substantial evidence standard is not very exacting and "requires more than a scintilla, but can be satisfied by less than a preponderance of

⁸¹ MISO Transmission Owners Answer at 4 (citing ITC Companies Comments at 7).

⁸² *Id.*

⁸³ MISO Answer at 7-8.

⁸⁴ *Id.* at 9.

⁸⁵ *Id.* at 10 (citing Consumer Alliance Protest at 9).

⁸⁶ *Id.* (citing 16 U.S.C. § 825l(b)).

evidence.”⁸⁷ MISO contends that no party has been able to refute the evidence provided in its Proposal and that no rebuttal testimony has been submitted.⁸⁸

45. MISO argues that protesting parties’ claims—that the Proposal does not clearly define “projects” or “facilities” and creates incentives for MISO and incumbent transmission owners to configure a project’s scope to avoid competitive developer eligibility—ignores that the Competitive Transmission Process is limited to MVPs and Market Efficiency Projects (MEP).⁸⁹ MISO explains that MVPs involve large regional or subregional portfolios of projects measured in billions of dollars, and that MEPs are regional facilities of substantial scope that must meet rigorous tests. MISO asserts that both MVPs and MEPs cannot be manipulated to conduct small, piecemeal updates to the system based on the scope of the projects.⁹⁰

46. MISO argues that it makes independent scoping decisions, and that its transmission planning process allows all affected stakeholders to bring any concerns or complaints to MISO’s attention. MISO further explains that the Competitive Transmission Process begins only after MISO completes its planning process and MISO’s Board of Directors approves proposed projects and portfolios. MISO asserts that the LRTP Tranche 1 portfolio is the result of the collaborative development of the most efficient, robust, and cost-effective solutions with stakeholders⁹¹ and that this process was fair, equitable, and consistent with Commission guidance.⁹²

47. MISO argues that, contrary to protesting parties’ assertion that the proposed exception lacks “guardrails,” the current Tariff provisions and process provide adequate

⁸⁷ *Id.* (citing *La. Pub. Serv. Comm’n v. FERC*, 522 F.3d 378, 395 (D.C. Cir. 2008)).

⁸⁸ *Id.*

⁸⁹ A Market Efficiency Project is a network upgrade that provides market efficiency benefits to one or more Market Participants, but not found by MISO to be an MVP, and that provides sufficient market efficiency benefits to justify inclusion in the MTEP. MISO, Tariff, Module A, § 1.M, (Definitions – M). *See also* MISO, Tariff, attach. FF, § II.B.

⁹⁰ MISO Answer at 11-12.

⁹¹ *Id.* at 13 (citing MISO, Tariff, attach. FF, § I.C.).

⁹² *Id.* at 12-13 (citing Consumer Alliance Protest at 11-12).

parameters to ensure appropriate and fair project grouping.⁹³ MISO explains that MVPs and MEPs are defined in the Tariff as “Network Upgrades,” that such term is also defined, that the term “upgrade” is expressly defined in sections VIII.A.2.1 through VIII.A.2.2.1 of Attachment FF, and that the term “upgrade” was subject to extensive Commission review during MISO’s Order No. 1000 compliance proceeding.⁹⁴ MISO claims that protests of the existing upgrade definition are beyond the scope of the proceeding.⁹⁵

48. Further, MISO argues that Consumer Alliance’s specific examples do not illustrate an arbitrary or anti-competitive outcome of the Proposal. MISO disputes Consumer Alliance’s arguments related to certain Wisconsin transmission facilities and contends that they instead highlight the need for the Proposal. MISO explains that the Tremval-Rocky Run segment referred to by Consumer Alliance is part of the \$1.05 billion Tremval-Rocky Run-Columbia project, which includes 178 miles of replacements to existing facilities, and argues that it would be inefficient and impractical to designate the isolated segment as a Competitive Transmission Facility.⁹⁶

49. MISO also rejects Consumer Alliance’s arguments regarding certain Iowa transmission facilities. MISO states that, while Consumer Alliance acknowledges that the facilities of the Madison-Ottumwa-Skunk River project are not eligible for competition due to Iowa’s right of first refusal statute, Consumer Alliance’s argument nonetheless would fail because the project in fact would contain facilities eligible for competition by virtue of the fact that the costs associated with upgrades would be well under the 80% threshold, at approximately 65%.⁹⁷

50. MISO argues that, contrary to Consumer Alliance and NextEra’s assertion that SPP’s 80/20 approach is materially different from MISO’s Proposal, the alleged differences are insignificant and do not affect the validity of MISO’s Proposal. MISO asserts that the Commission approved SPP’s 80/20 approach because of the 80% threshold and not because of the specifics of the “Rebuild” definition.⁹⁸ MISO

⁹³ *Id.* at 13 (citing Consumer Alliance Protest at 15).

⁹⁴ *Id.* at 13-14 (citing Transmittal Letter at 2-5).

⁹⁵ *Id.* at 14 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,124, at PP 71-73, 101, 108 (2022)).

⁹⁶ *Id.* at 14-15 (citing Consumer Alliance Protest at 15-19).

⁹⁷ *Id.* at 15.

⁹⁸ *Id.* at 16 (citing SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 159).

further notes that the Commission found SPP's 80/20 approach was reasonable, for the sake of administrative efficiency, to divide into portions only a transmission project where at least 20% of the cost of the transmission project are for new transmission facilities."⁹⁹ MISO argues that, based on this precedent, the Commission rejected MISO's prior 50% threshold proposal because that threshold was not deemed to be sufficiently high, and that the MISO Proposal directly addresses this Commission concern by raising the threshold to 80%.¹⁰⁰

51. MISO argues that protesting parties' claim that MISO's definitions of "upgrades" is broader than SPP's definition of "Rebuild" is incorrect and misleading. MISO argues that the requirement that an upgrade "not refer to an entirely new transmission facility" derives from Order No. 1000-A, rather than a specific formulation of words in an RTO's tariff.¹⁰¹ MISO explains that the Commission specifically evaluated MISO's upgrade provisions against the Order No. 1000-A requirement and found that MISO's Tariff language complied.¹⁰² MISO argues that the difference in language noted by protesting parties does not suggest or demonstrate that MISO's upgrade provisions do not comply with Commission precedent.¹⁰³

52. MISO argues that, while protesting parties allege a difference in language exists between the SPP and MISO upgrade definitions, the protesting parties ignore the extensive lists included in the MISO Tariff that describe what does, or does not, constitute an upgrade for the purposes of the Proposal, including specifically in the context of the installation of additional transmission circuits. MISO argues that the Proposal explains in length why exempting certain small and "conductor-only" segments from competition would be just and reasonable when they fall under the 80% threshold, and that protesting parties' argument that such replacements involve "an existing transmission line" ignores and fails to rebut MISO's specific testimony.¹⁰⁴

53. MISO argues that the protesting parties' assertion that the Proposal would impede competition exaggerates the impact of the proposed changes and ignores MISO's record

⁹⁹ *Id.* at 16 (citing SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 160).

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 17 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

¹⁰² *Id.* (citing MISO Second Compliance Order, 147 FERC ¶ 61,127 at P 201).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 18 (citing Doner Test. at 14-18).

testimony demonstrating the benefits of the Proposal.¹⁰⁵ MISO explains that it is a strong proponent of the competitive development process and has no interest in artificially narrowing or constraining that process, and that up to one billion dollars in LRTP Tranche 1 facilities will be eligible for competition. MISO asserts that the Proposal will make the competitive process more efficient and will maximize competitive opportunities where they deliver the maximum benefit.¹⁰⁶ MISO also argues that the generic benefits of competition raised by contesting parties do little to inform whether the specific changes included in the MISO Proposal are just and reasonable. MISO explains that potential benefits of competition must be weighed against other Commission and state policies, such as those reflected in the Commission's decision to allow incumbent transmission providers to continue to exercise their rights with respect to their existing transmission facilities, state rights of first refusal, and many other relevant factors. MISO argues that potential benefits may be diminished or make the competitive process less efficient, such as in the case of small segment and conductor-only facilities, and that it has demonstrated that the MISO Proposal meets the balancing test articulated in the SPP Order.¹⁰⁷

54. MISO rejects protesting parties' arguments about that the limited use of MISO's stakeholder review process.¹⁰⁸ MISO states that it greatly values the stakeholder process and the inputs it provides but, in some cases, an exception to this general principle may be justified due to urgency or other considerations.¹⁰⁹ MISO further argues that it could not address the issues that resulted in the Proposal earlier because such issues were not evident, and it could not have done so later because it would undermine the certainty of the competitive process.¹¹⁰

¹⁰⁵ *Id.* at 19 (citing Consumer Alliance Protest at 12-14; NextEra Protest at 3-4).

¹⁰⁶ *Id.* (citing Doner Test. at 21-23).

¹⁰⁷ *Id.* at 20.

¹⁰⁸ *Id.* (citing Consumer Alliance Protest at 9-12).

¹⁰⁹ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,018, at P 35 (2009); *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,278, at P 49 (2006)).

¹¹⁰ *Id.* at 21 (citing Doner Test. at 19).

V. Discussion**A. Procedural Matters**

55. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.¹¹¹

56. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2021), we grant Wisconsin Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

57. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

58. We find that MISO's Proposal—providing that, if 80% or more of the total cost of the transmission facilities included in a transmission project are upgrades, as currently described in MISO's Tariff, then such a transmission project will not be subject to MISO's Competitive Transmission Process and will instead be assigned to the incumbent transmission owner(s)—is just and reasonable and not unduly discriminatory or preferential.¹¹² MISO has demonstrated that the proposed Tariff revisions address the challenges MISO identified by exempting from the Competitive Transmission Process transmission projects that are primarily upgrades to existing transmission facilities. We

¹¹¹ Wisconsin Electric submitted a motion to intervene on June 16, 2022, styled as an out-of-time motion to intervene. However, Wisconsin Electric submitted this motion before the intervention deadline of June 17, 2022 set for MISO's amended May 27, 2022 filing.

¹¹² We note that, while such projects will not be subject to MISO's Competitive Transmission Process, they remain subject to MISO's regional transmission planning process, which the Commission found complies with the requirements of Order No. 1000, including the regional transmission planning principles set forth therein. *See* Order No. 1000, 136 FERC ¶ 61,051 at PP 146-165 (setting forth the planning principles with which regional transmission planning processes must comply); MISO First Compliance Order, 142 FERC ¶ 61,215 at P 47 (finding that MISO's proposed regional transmission planning process complies with these principles).

find that the Proposal represents a reasonable adjustment to the MISO Competitive Transmission Process.

59. Further, and as explained above, MISO's Proposal is similar to an approach that the Commission previously accepted for the SPP region.¹¹³ In doing so, the Commission found that the SPP approach "strikes a reasonable balance between expanding competition in transmission development and promoting administrative, regulatory, and economic efficiency by excluding from the competitive bidding process transmission projects that, while they include some new transmission facilities, are primarily upgrades to existing transmission facilities."¹¹⁴ The Commission also found that "it is reasonable, for the sake of administrative efficiency, to divide into portions only a transmission project where at least 20[%] of the cost of the transmission project are for new transmission facilities."¹¹⁵

60. Here, MISO has identified circumstances in which adjustments to the Competitive Transmission Process similarly would allow MISO to better balance the expansion of competitive transmission opportunities with administrative efficiency, as well as to reduce uncertainty about which transmission projects are eligible for consideration pursuant to that process. For example, MISO explains that it may not be able to confirm the length and configuration of certain short transmission facilities before state or local permitting processes are complete, and that adding a second entity to these permitting processes may add significant complexity to transmission project development with little expected countervailing competitive transmission benefit.¹¹⁶ We agree with MISO that the proposed 80% threshold will help ensure that transmission projects that are predominately upgrades to existing transmission facilities will be constructed, and that transmission projects with significant new transmission facility components will remain eligible for MISO's Competitive Transmission Process. Thus, we are not persuaded by arguments protestors raised that MISO's Proposal would inappropriately impede competition.

61. We also disagree with protestors' arguments that the 80/20 approach in SPP is significantly different from MISO's Proposal.¹¹⁷ The Commission accepted SPP's 80/20 approach because of the high 80% threshold for the upgrade component of a

¹¹³ See MISO Third Compliance Order, 150 FERC ¶ 61,037 at P 52.

¹¹⁴ SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 159.

¹¹⁵ *Id.* P 160.

¹¹⁶ See also *supra* PP 12-16.

¹¹⁷ See Consumer Alliance Protest at 20-23; NextEra Protest at 4-6.

transmission project, and not because of SPP's definition of "Rebuild."¹¹⁸ Further, the Commission previously was not persuaded by arguments, similar to the ones protestors raise here, that SPP should have been required to divide each transmission project that has been selected in the regional transmission plan for purposes of cost allocation into portions based on whether the portion is an upgrade to existing transmission facilities or new transmission facilities, regardless of how much of the costs of the transmission project are related to upgrades.¹¹⁹ Thus, we find that protestors' claims are not supported by the applicable precedent.

62. We also find unconvincing Consumer Alliance's argument that MISO failed to use its stakeholder process and provide sufficient information on the Proposal's impact on LRTP Tranche 1.¹²⁰ We find persuasive MISO's arguments that MISO could not address the issues identified in the Proposal earlier because such issues were not evident. We also find persuasive MISO's explanation that it did not wait to submit its filing at a later time because doing so could undermine the certainty of the Competitive Transmission Process with respect to transmission projects in the LRTP Tranche 1 portfolio, which MISO states will be presented to the MISO Board at the end of July. Finally, protestors do not allege that the Tariff required MISO to submit the Proposal through the stakeholder process prior to filing or that MISO exceeded its authority by submitting the proposed revisions to the Tariff under FPA section 205.

63. We also find Consumer Alliance's challenge to the currently effective provisions in MISO's Tariff that define upgrades to existing transmission facilities to be beyond the scope of this proceeding. Specifically, Consumer Alliance raises concerns about the provisions in sections VIII.A.2.1 and VIII.A.2.2 of Attachment FF in the MISO Tariff that outline what types of transmission facilities will be considered upgrades to existing transmission facilities, which Consumer Alliance contends is broader than SPP's definition of "Rebuild." However, the Commission previously found that the existing provisions in MISO's Tariff that outline what constitutes an upgrade to an existing transmission facility comply with Order No. 1000, including Order No. 1000-A's clarification that an upgrade to an existing transmission facility cannot be an entirely new transmission facility.¹²¹ MISO's Proposal does not substantively alter these provisions.¹²²

¹¹⁸ See SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 159.

¹¹⁹ *Id.* P 160.

¹²⁰ Consumer Alliance Protest at 9-12; NextEra Protest at 6.

¹²¹ MISO Second Compliance Order, 147 FERC ¶ 61,127 at PP 198-203, 222-226.

¹²² The only clarifications MISO proposes to the existing Tariff provisions that outline what transmission facilities will be considered upgrades to existing transmission

64. Finally, we grant MISO’s request for waiver of the 60-day prior notice requirement for good cause shown.¹²³

The Commission orders:

MISO’s Proposal is hereby accepted, effective July 25, 2022, as discussed in the body of this order.

By the Commission. Chairman Glick, Commissioner Clements, Commissioner Christie, and Commissioner Phillips are concurring with a joint statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

facilities would explicitly reference the new provision that MISO will add to the MISO Tariff in the Proposal. For example, MISO proposes to add the following in section VIII.A.2.1.1. of Attachment FF of the MISO Tariff: “Except as provided by Section VIII.A.2(a) of this Attachment FF. . . .”

¹²³ See 18 C.F.R. § 35.11 (2021); *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh’g denied*, 61 FERC ¶ 61,089 (1992).

Appendix – Alphabetical List of Intervenors

Ameren Services Company, on behalf of its affiliates Union Electric Company (Union Electric), Ameren Illinois Company, and Ameren Transmission Company of Illinois

American Electric Power Service Corporation (AEP), on behalf of its affiliate AEP Indiana Michigan Transmission Company, Inc.

American Municipal Power, Inc.

Arkansas Public Service Commission

Association of Businesses Advocating Tariff Equity

Coalition of MISO Transmission Customers

Consumer Alliance, comprised of: Coalition of MISO Transmission Customers, the Resale Power Group of Iowa, the Wisconsin Industrial Energy Group, the Iowa Office of Consumer Advocate, and the Citizens Utility Board of Wisconsin

Consumers Energy Company

Cooperative Energy

Entergy Services, LLC (Entergy), on behalf of Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, and Entergy Texas, Inc. (collectively, Entergy Operating Companies)

International Transmission Company, Michigan Electric Transmission Company, LLC, and ITC Midwest LLC (collectively, ITC Companies)

LS Power Midcontinent, LLC and LSP Transmission Holdings II, LLC (collectively, LS Power)

MISO Transmission Owners, comprised of: AEP Indiana Michigan Transmission Company; Ameren, as agent for Union Electric, Ameren Illinois, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power; Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC, for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Operating Companies; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; International Transmission Company; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric

Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power and its subsidiary Superior Water, L&P; Missouri River Energy Services; Montana-Dakota Utilities Company; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Mississippi Public Service Commission (Mississippi Commission)

NextEra Energy Transmission Midwest, LLC (NextEra)

Public Service Commission of Wisconsin (Wisconsin Commission)

Resale Power Group of Iowa

Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Upper Michigan Energy Resources Corporation (collectively, Wisconsin Electric)

Wisconsin Industrial Energy Group

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.

Docket No. ER22-1955-001

(Issued July 26, 2022)

GLICK, Chairman, and CLEMENTS, CHRISTIE, and PHILLIPS, Commissioners,
concurring:

1. We concur because MISO's proposal is consistent with the Commission's approach to exempting projects that constitute "upgrades" from the competitive selection process set forth in Order No. 1000,¹ and because MISO has persuasively argued that requiring competition where only a small portion of a project is new could introduce administrative challenges and delays that may stymie the rapid construction of transmission projects that will bring benefits to consumers.²

2. Nevertheless, we write to express our concern that existing processes may not adequately protect consumers with regard to the selection and construction of many transmission projects. This order has the negative consequence of expanding the scope of projects for which the transmission owner has less incentive to reduce cost and maximize benefits to the greatest extent possible.

3. In response to the Commission's Advanced Notice of Proposed Rulemaking on regional transmission planning, cost allocation, and generator interconnection,³ many commenters including the National Association of Regulatory Utility Commissioners (NARUC), urged the Commission to apply greater scrutiny to the costs of transmission projects.⁴ Specifically, NARUC "recommends that the Commission explore whether

¹ See SPP Second Compliance Order, 149 FERC ¶ 61,048, at P 149 (2014).

² See Order at P 59.

³ *Building for the Future Through Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (2021).

⁴ See Motion to Intervene and Comments of the National Association of Regulatory Utility Commissioners, Docket No. RM21-17, at 49-58 (filed Oct. 12, 2021) (hereinafter NARUC ANOPR Initial Comments); see also Comment of the Harvard Electricity Law Initiative, Docket No. RM21-17 (filed Oct. 12, 2021); Comments of Public Interest Organizations, Docket No. RM21-17, at 60-74 (filed Oct. 12, 2021); Comments of the Electricity Consumers Resource Council, Docket No. RM21-17, at 13-

there is some limit at which the presumption of prudence no longer applies and ratepayers would benefit from an automatic review of the prudence of an expenditure.”⁵ Other commenters suggested a variety of approaches to limiting project costs, such as enhanced transparency,⁶ or utilizing an independent transmission monitor to assist the Commission in implementing appropriate cost caps.⁷

4. The need for the Commission to apply scrutiny is particularly acute for projects that are subject neither to competition at the wholesale level, nor to cost review pursuant to state jurisdictional proceedings. Accordingly, we note that a lack of competition at the regional level for an increased number of projects selected as part of its transmission planning process, coupled with a less than robust level of scrutiny of such projects at the state level, may require greater cost scrutiny of those projects by the Commission.

5. The Commission is holding a technical conference on October 6, 2022, to examine cost management of transmission investments. We hope for robust participation in this conference and urge stakeholders to provide the Commission with detailed information regarding these issues so as to inform any subsequent action the Commission may take. In particular, we urge commenters to provide a detailed picture of the extent of cost review that currently exists at the state level for different types of transmission projects, including regionally selected projects not subject to competition such as MISO’s “upgrade” projects described in this order, as well as local projects constructed by transmission owners.⁸

For these reasons, we respectfully concur.

14 (filed Oct. 12, 2021) (hereinafter ELCON ANOPR Initial Comments).

⁵ NARUC ANOPR Initial Comments at 51.

⁶ Transmission Access Policy Study Group, for example, urges the Commission to “[p]rovide for a more interactive and transparent local planning process, with regional and independent oversight.” Comments of Transmission Access Policy Study Group, Docket No. RM21-17, at 25 (filed Oct. 12, 2021).

⁷ ELCON ANOPR Initial Comments at 14.

⁸ Local projects are referred to differently in the various RTOs, for example, as “Supplemental Projects” in PJM.

<hr/> <p>Richard Glick Chairman</p>	<hr/> <p>Allison Clements Commissioner</p>
<hr/> <p>Mark C. Christie Commissioner</p>	<hr/> <p>Willie L. Phillips Commissioner</p>