UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent System Operator, Inc.	)))	**Docket No. ER09-1431-000**

PROTEST OF THE AMERICAN WIND ENERGY ASSOCIATION AND WIND ON THE WIRES

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"),[1] the American Wind Energy Association ("AWEA") and Wind on the Wires ("WOW") respectfully submit this protest to the proposal ("Proposal") filed by the Midwest Independent System Operator, Inc ("Midwest ISO") and the Midwest ISO Transmission Owners (collectively, "Filing Parties") on July 9, 2009 in the above-captioned matter. The Filing Parties request that the Commission approve revisions to modify the method for allocating the cost of network upgrades for generation interconnection projects under the Midwest ISO's Open Access Transmission Tariff ("OATT" or "tariff"). AWEA and WOW respectfully submit that this protest, along with those filed by NextEra Energy Resources, *et al.*, ("NextEra Protest") and Renewable Energy Systems Americas, Inc., *et al.* ("RES Protest"), in this proceeding (both of which we support in general), demonstrates that the Filing Parties' Proposal is unjust and unreasonable and should be rejected.

[1] 18 C.F.R. § 385.211 (2009).

I. EXECUTIVE SUMMARY

The Obama administration, Congress, regions, and states have all taken steps to address energy security and climate change through the development of renewable energy. They have also recognized the critical importance of transmission in advancing renewable energy.[2] Many utilities and policy makers have noted that appropriate transmission cost allocation is perhaps the most important goal to increasing the penetration of renewable energy resources.[3] The Filing Parties' Proposal takes a major step backward from creating the regulatory framework needed to advance these objectives, by seeking cost allocation provisions that would result in the hindrance, not the promotion, of transmission required for the delivery of wind generation in a region that has been termed "the Saudi Arabia of wind."

The Filing Parties claim that the Midwest ISO's current cost allocation rules produce, in limited circumstances, inequitable results for a few transmission owners. In particular, they maintain that the existing cost allocation method can introduce a high cost allocation to a small group of transmission owners with facilities in the vicinity of, but whose load is not proportionally benefited by, network upgrades necessary to accommodate interconnection requests. In

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[2] *See, e.g.,* U.S. Dep't of Energy, *20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply*, 11 (2008), *available at* http://www.20percentwind.org/20percent wind energy report revOct08.pdf; The Western Governors' Assn., *Clean Energy, a Strong Economy, and a Healthy Environment*, 23 (2006), *available at* http://www.westgov.org/wga/publicat/CDEAC06.pdf; The Midwest Governors Assn., *Energy Security and Climate Stewardship Platform for the Midwest 2007*, 14-16 (2007), *available at* http://www.midwesterngovernors.org/Publications/MGA_Platform2WebVersion.pdf

[3] *See, e.g., The Future of the Grid: Proposals for Reforming National Transmission Policy: Hearing before the Subcomm. on Energy and the Env't of the H. Comm. on Energy and Com.*, 111th Cong. (2009) (statement of Jon Wellinghoff, Chairman, Federal Energy Regulatory Commission).

addition, the Filing Parties state that Otter Tail Power Company ("Otter Tail") and Montana-Dakota Utilities ("MDU"), who are most adversely impacted by the application of the current cost allocation methodology, will withdraw from the Midwest ISO if no changes are made to it.

To ensure that these two transmission owners do not take that action, the Filing Parties propose to shift almost the entirety of network upgrade costs for generator interconnection from all of the transmission owners in the Midwest ISO, not just Otter Tail and MDU, to generators.[4] In other words, in the name of addressing a problem that is impacting only a small fraction of transmission owners in the Midwest ISO's footprint, this Proposal would overhaul the cost allocation for the entire region without any justification for removing costs from the vast majority of transmission owners and imposing them on generators. As such, the Filing Parties have not demonstrated how the Proposal fairly assigns costs among participants, both those who cause them to be incurred and those who otherwise benefit from them.

In fact, the reallocation of such costs is not just and reasonable and is unduly discriminatory to generators who would have to bear all of the costs for network upgrades for generator interconnection, even though those upgrades have a clear benefit to load (*i.e.*, transmission owners). That reallocation would also materially increase the cost on developers for wind energy projects in the Midwest

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[4] Under the Proposal, all transmission owners in the region would not be required to pay 50 percent of network upgrade costs required for generator interconnections, as they currently are, but instead generators would bear virtually all the costs of network upgrades.

ISO and, therefore, would discourage wind generation development in the Upper Midwest and threaten the attainment of state and federal goals and policies for increased renewable energy development. In short, the Filing Parties' Proposal would "fix" a narrowly felt inequity with a proposal that produces a more egregious result; it is tantamount to calling in a tiger to chase away a mouse.

The Proposal also stands in stark contrast to recent Commission-approved proposals that move towards a more equitable solution to cost allocation issues. Whether recognizing the needs of location-constrained resources in the California Independent System Operator ("CAISO")[5] or the value of spreading the costs of transmission upgrades across the Southwest Power Pool ("SPP"),[6] the Commission has come to realize that a one-size-fits all approach does not necessarily work in all regions and that wind's unique attributes must be met by appropriate cost allocation. As in those matters, the Commission should make clear here that given the broad interests at stake, any cost allocation mechanism, whether it is to be implemented on either a long-term or interim basis, must assign network upgrade costs more broadly. This would be just and reasonable because broad cost allocation appropriately tracks the allocation of the benefits of building transmission.

For these reasons and those discussed further below, AWEA and WOW respectfully urge the Commission to reject the Filing Parties' proposed changes to

[5] *California Indep. Sys. Transmission Operator, Corp.* 119 FERC ¶ 61,061(2007) ("*CAISO*").
[6] *Southwest Power Pool, Inc*. 127 FERC ¶ 61,283 (2009) ("*SPP*").

the generator interconnection cost allocation rules in the Midwest ISO. If the Commission is not inclined to reject the Proposal, AWEA and WOW request that the Commission suspend the Proposal for five months and set the matter for hearing and settlement procedures, giving the parties an opportunity to work out a sound and equitable cost allocation approach. To assist those procedures, the Commission should enumerate certain principles upon which a just and reasonable cost allocation method should be based. If the Commission is inclined to grant interim relief to Otter Tail and MDU to reduce their incentive to leave the Midwest ISO, the Commission should consider, on an interim basis, adopting a more narrowly tailored solution that addresses the specific situation presented by these two transmission owners. In addition, AWEA and WOW respectfully request that the Commission convene a technical conference with Governors in the Midwest ISO region that could serve as a platform for the development of a proposal that will be an effective, equitable cost allocation solution for the long-term and accomplish the shared goals of the Commission and the Midwestern Governors Association ("MGA") to get transmission built and renewable energy to markets.

II. BACKGROUND

A. Midwest ISO's Current Cost Allocation Methodology

The costs of network upgrades (those which are not identified as baseline reliability or economic projects) for generator interconnection in the Midwest ISO are funded initially by interconnection customers. In all but three of the Midwest

ISO's pricing zones, the customer is entitled to reimbursement for 50 percent of these up-front costs when it demonstrates that the output of the generator will serve the Midwest ISO's network customers or the facility has been designated as a network resource.[7] For facilities rated 345 kV and higher, twenty percent of the refund cost is allocated to all Midwest ISO pricing zones on a postage-stamp basis and eighty percent is allocated among pricing zones using a line outage distribution factor ("LODF") method.[8]

According to the Filing Parties, for certain generator interconnection projects, the LODF method can introduce an excessively high cost allocation to transmission owners with facilities in the vicinity of, but whose load is not proportionally benefited by, network upgrades necessary to accommodate the interconnection requests.[9] In other words, when large generation projects are proposed in areas of low load density, significant transmission system upgrades are often necessary to accommodate the delivery of energy from these proposed generation facilities to major load centers. As a result, the Filing Parties state that two transmission owners, Otter Tail and MDU, who are most negatively affected

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[7] With respect to the other three zones, the Commission has approved proposals from International Transmission Company ("ITC"), Michigan Electric Transmission Company ("METC"), and American Transmission Company ("ATC") to reimburse 100 percent of generation interconnection customer's up-front funding of network upgrades. *International Transmission Company, et al.*,120 FERC ¶ 61,220 (2007), *order on reh'g*, 123 FERC 61,065 (2008) ("*ITC*").

[8] The LODF method considers the flow effects of a given facility's outage on transmission facilities in a transmission owner's zone, taking into account the length of each affected transmission facility.

[9] This appears to be due to the fact that the LODF method emphasizes the local flow reductions of such a project, resulting in a greater allocation to the pricing zone(s) in the areas in which the upgrades occurred, with limited or no consideration of whether the energy output will be delivered to load in the pricing zone for which cost responsibility is being allocated.

by the application of the LODF cost allocation methodology, will withdraw from the Midwest ISO if no changes are made to that methodology.[10]

B. Filing Parties' Proposed Cost Allocation Mechanism

In order to dissuade Otter Tail and MDU from withdrawing from the Midwest ISO, the Filing Parties propose to make a generic change to the cost allocation methodology for all the zones in the Midwest ISO's footprint. In particular, the Filing Parties propose to stop using the LODF method and instead allocate the cost of network upgrades necessitated by the interconnection of a generation resource as follows: (i) for network upgrades of a voltage class below 345 kV, 100 percent would be allocated to the interconnection customer; and (ii) for network upgrades of a voltage class of 345 kV or greater, 90 percent to the interconnection customer, with the remaining 10 percent allocated to all transmission customers through a postage stamp-type charge. In short, the Proposal would increase generators' interconnection cost responsibility from 50 percent to 90 percent, or even to 100 percent, depending on the facility ratings. The Filing Parties claim that the Proposal is to be used only until a long-range cost allocation can be developed through the Midwest ISO's stakeholder process, which they anticipate will be filed on or about July 15, 2010.[11]

III. PROTEST

A. Proposal Is Unjust, Unreasonable, and Unduly Discriminatory

[10] Both Otter Tail and MDU have given notice of their intent to withdraw from the Midwest ISO, effective December 31, 2009, if the interconnection cost allocation rules are not reformed. Filing Parties' Proposal at p. 6.

[11] Filing Parties' Proposal at pp. 2-4.

The Filing Parties' Proposal to suddenly replace the existing approach under the Midwest ISO Tariff of allocating at least 50 percent of the costs of network upgrades to transmission owners with a direct assignment to the interconnection customer of 90 percent of network upgrades operating at or above 345 kV, and 100 percent of those operating below 345 kV, is unjust, unreasonable, and unduly discriminatory. As discussed further below, it is:

- inconsistent with the principle that beneficiaries should pay in amounts that are reflective of the benefits received;
- overly broad and not narrowly tailored to address the underlying claimed problem;
- discriminatory to location-constrained resources;
- outside the zone of reasonableness; and
- discriminatory to new market entrants.

1. Proposal is Inconsistent with the Principle Beneficiaries Should Pay in Amounts That Are Reflective of the Benefits Received

When the Commission accepted the Midwest ISO's existing method for allocating the costs of Network Upgrades, it did so because it found that the "50 percent-50 percent cost sharing fairly apportions the costs between those responsible for the costs and those that benefit from the upgrades."[12] Thus, the Commission has already determined that at least 50 percent of the costs of

[12] *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 at P 68 (2006) ("*MISO*").

network upgrades should be allocated to transmission owners in accordance with the benefits they receive from network upgrades. Three years later, the Filing Parties propose to change (in all zones, except ITC's, METC's and ATC's) the cost allocation for network upgrades by dramatically shifting virtually all such costs onto the backs of interconnection customers.

The Commission has encouraged the adoption of the principle that upgrades should be paid for by parties that cause and benefit from them (all load in the region as well as generation developed in the future).[13] As such, the Proposal does not satisfy the Commission's expectation that costs be fairly apportioned between initial cost-causers and "those that benefit from the upgrades."[14]

In an order approving the proposals of ITC and METC to reimburse generator interconnection customers for 100 percent of the network upgrades that they had initially-funded, the Commission reiterated that network upgrades are part of the interconnected transmission system, benefiting all customers.[15] The D.C. Circuit has upheld the Commission's view that network upgrades funded by interconnection customers provide

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[13] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 38 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 374 U.S. App. D.C. 406 (D.C. Cir. 2007).
[14] *Id*.
[15] *International Transmission Co.*, 120 FERC ¶ 61,220 at P 13, 15 (2007).

broad benefits because, *inter alia*, a competitive transmission system, with removed or reduced barriers to entry, is in the public interest.[16]

The Commission has also found that even if network upgrades are associated with generation resources that are subsequently used to serve load outside of the Midwest ISO, customers within it will receive offsetting benefits from upgrades to the transmission grid and from a more competitive generation market.[17] The Commission explained:

> Such benefits can take the form of improved reliability, improved ability to import generation due to counterflows that are created from the exporting generator, and reduced locational marginal prices (LMP). In an energy market with LMP, such as Midwest ISO's, when supply is increased, the load affected by that increased supply will benefit from lower energy prices because the new supply will generally displace more expensive generation, which would otherwise have been dispatched. Thus other transmission owners can benefit from the increased amount of generation in their pricing zone even if that new generation capacity is not sold to them.[18]

The Midwest ISO's current interconnection cost allocation methodology satisfies these tests, as it assigns the costs of network

[16] *Entergy Services, Inc. v. FERC*, 319 F.3d 536, 543033 (D.C. Cir. 2003).
[17] *ITC*, 123 FERC ¶ 61,065 at P 18.
[18] *Id.* at P 19.

upgrades using a "beneficiary pays" principle of transmission pricing.[19] In other words, the LODF method seeks to identify the customers who benefit from transmission upgrades and allocates to them the costs of those upgrades in a manner that attempts to reflect the benefits they receive. In contrast, the Proposal fails to adhere to the fundamental basis upon which the Commission found the existing proposal to be just and reasonable, namely that allocating at least 50 percent of the costs of network upgrades to transmission owners is a fair apportionment of costs to those that benefit from the upgrades.[20] While the Commission's policy mandates that costs be matched to customers responsible for imposing the cost burden at issue or benefiting from it to the greatest practicable extent,[21] the Proposal makes essentially no attempt to identify those that benefit from the upgrades. Rather, the Proposal perfunctorily shifts to interconnection customers those costs that the Commission has already found to be fairly apportioned to transmission owners and fails to apportion any costs, except for a token 10 percent in the case of 345 kV lines, to customers that benefit from the

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[19] The Commission uses the "beneficiary pays" principle to ensure that rates charged to customers reasonably reflect the costs of serving, and benefits to, those customers. *See, e.g., Alabama Elec. Coop. Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982) ("Properly designed rates should produce revenues from each class of customers which match, as closely as practicable, the costs to serve each class or individual customer.") (citations omitted); *City of New Orleans v. FERC*, 875 F.2d 903, 905 (D.C. Cir. 1989) (accepting the Commission's position that "[p]rinciples of fairness in ratemaking support the concept that those who are responsible for the incurrence of costs be the ones who bear the cost burdens").

[20] *MISO*, 114 FERC ¶ 61,106 at P 68 (finding that the "Midwest ISO's 50 percent-50 percent cost-sharing fairly apportions the costs between those responsible for the costs and those that benefit from the upgrades").

[21] Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2008).

network upgrades associated with interconnecting new generation within the Midwest ISO, which is inconsistent with the principle of beneficiaries pay.[22]

The Filing Parties state that the "proposed revisions are intended to ensure that more interconnection-related upgrade costs are allocated to the parties that cause or benefit from such costs."[23] However, the Proposal unjustifiably exempts load from cost responsibility altogether, even though the Filing Parties have not demonstrated that load in the Midwest ISO footprint does not benefit in any way from network upgrades. In fact, there is abundant evidence, as discussed below, that load does benefit in many ways from network upgrades. Significant network upgrades, such as those being funded by developers of renewable resources in the Midwest ISO, provide reliability and competitive benefits, among others.[24] Thus, contrary to Commission precedent, the Filing Parties' proposed change to the cost allocation method for network upgrades associated with generator interconnections fails to recognize the benefits broadly accruing to customers in the Midwest ISO.

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[22] The "beneficiary pays" principle is one of the approaches the Commission employs to fulfill its basic obligation to ensure that rates charged to customers reasonably reflect the costs of serving, and benefits to, those customers. *See, e.g., Alabama Elec. Coop. Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982) ("Properly designed rates should produce revenues from each class of customers which match, as closely as practicable, the costs to serve each class or individual customer.") (citations omitted); *City of New Orleans v. FERC*, 875 F.2d 903, 905 (D.C. Cir. 1989) (accepting the Commission's position that "[p]rinciples of fairness in ratemaking support the concept that those who are responsible for the incurrence of costs be the ones who bear the cost burdens") (quoting *System Energy Resources, Inc.*, 41 FERC ¶ 61,238 at 61,616 (1987)).

[23] Filing Parties' Proposal at p. 2.

[24] *Id.* at p. 16.

2. Proposal is Overly Broad

The Filing Parties justify their proposal to drastically shift network upgrade costs to generator interconnection customers by arguing that the existing method for allocating costs among transmission owners, the LODF, imposes an unfair burden on host transmission zones located in the wind-rich areas of the northwest portion of the Midwest ISO in which numerous new renewable power projects have been sited. According to the Filing Parties, these projects will require significant transmission network upgrades and are expected to serve load outside the host zone where the projects are located. In light of these circumstances, the Filing Parties argue that the LODF allocates a disproportionate share of network upgrade costs to the host transmission zone.

As noted, Otter Tail and MDU, as well as a small number of other transmission owners, have stated that under the current rules the costs of network upgrades necessitated by the increased interconnection of wind resources within their pricing zones to serve loads outside their zones has resulted in greatly disproportionate cost allocations to their respective zones. According to the Filing Parties, the intent of the Proposal is to address the immediate problem being faced by Otter Tail and MDU and their threat to withdraw if these issues are not addressed. [25]

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[25] *Id.* at p. 10.

The Proposal, however, goes well beyond attempting to craft a solution limited to addressing this issue, as it applies to all generators regardless of whether they are located in the same zone as the load being served. As such, it attempts to address a narrowly experienced problem in an overly broad manner by changing the cost allocation policy for all transmission owners across the Midwest ISO's footprint without discriminating between zones experiencing the problem and those that do not. With the exception of the few transmission owners mentioned by the Filing Parties, nothing provided in the record suggests that other transmission owners in the Midwest ISO footprint are experiencing similar issues.

In fact, the record demonstrates that the vast majority of transmission owners are not experiencing these issues, and therefore, the record does not support applying the solution to all generators in the footprint. Indeed, the Filing Parties included two graphs in their filing that indicate that many of the Midwest ISO's transmission owners do not have a high ratio of proposed generation additions relative to their load and, accordingly, are not experiencing issues like Otter Tail and MDU.[26] In short, the Filing Parties' solution of allocating all, or virtually all, of the interconnection costs to the interconnecting generator is not narrowly

[26] *Id.* at pp. 125-26.

tailored to address the problem identified by the Filing Parties and would unnecessarily apply to all transmission owners in the Midwest ISO.

3. Proposal is Unduly Discriminatory to Location-Constrained Resources

The Filing Parties' proposal is also unduly discriminatory toward generators that are location-constrained resources, such as wind. The Filing Parties suggest that the Proposal would create an incentive for an "efficient pricing signal" that could discourage development of wind energy facilities on higher quality sites due to transmission costs.[27] In other words, they tacitly acknowledge the reality that the Proposal would only create additional challenges to location-constrained resources and make the development of attractive renewable sites less likely if they have transmission constraints.[28]

The Commission has stated that such resources are typically constrained as a result of their location, relative size, and the immobility of their fuel sources.[29] The Commission has therefore acknowledged that they

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[27] *See* Testimony of Ms. JoAnn Thompson, Filing Parties' Proposal, Attachment G at 19. It is difficult to reconcile such assertions, which appear to discourage development of wind in the wind-rich areas such as North Dakota, with state policies to promote wind energy development.

[28] In fact, the Proposal will have the effect of severely hindering wind development in the Midwest ISO and discourage development of highest quality, lowest cost wind potential in favor of lower quality and higher cost wind.

[29] *CAISO*, 119 FERC ¶ 61,061 at P 62 ("CAISO") ("The difficulties faced by generation developers seeking to interconnect location-constrained resources are real, are distinguishable from those faced by other generation developers, and such impediments can thwart the efficient development of infrastructure."), *reh'g denied*, 120 FERC ¶ 61,244 at P 64 (2007) ("Location-constrained resources present unique challenges that are not faced by other resources and that are not adequately addressed in the Commission's current interconnection policies.").

present unique challenges that are not faced by other resources. Rather than penalize them for the fact that they must often be located in remote areas in which the resource is most abundant, the Commission has chosen to take steps that would remove barriers that could serve to "impede the development of such resources altogether."[30]

For instance, in 2007, the Commission approved a CAISO proposal to promote interconnection of location-constrained resources through partial sharing of interconnection costs.[31] Similarly, in a recent case, the Commission approved a cost allocation filing by SPP that dealt with a similar problem of allocating costs to the proper beneficiaries when wind resources are not located in the same zone as the load they serve.[32] In that case, instead of allocating all of the interconnection costs to the generator, as the Filing Parties seek to do, SPP proposed to revise its cost allocation for those facilities that do not qualify for base plan funding so that one-third of the costs would be borne by the transmission customer (the load being served) and the remaining two-thirds would be borne by all load in SPP on a postage-stamp basis.[33]

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[30] *CAISO.*, 120 FERC ¶ 61,244 at P 64.
[31] *Id*. at P 62-86.
[32] *See SPP*, 127 FERC ¶ 61,283 at P 6 (2009) ("SPP states that generally, network upgrades associated with designing a wind resource are constructed in the zone where the wind resource is located (host zone). Thus, the host zone is allocated a majority of the…network upgrade costs. . . . SPP states that this outcome is reasonable when the wind resource is serving load within the same zone, because the zone that required the network upgrades receives the benefit of the upgrades and should bear the costs accordingly. However, SPP contends that this outcome is not producing reasonable results when the wind resource is designated by a customer to serve load in another zone.").
[33] *Id*. at P 10-12. SPP's then-current methodology would have allocated one-third of the costs regionally on a postage-stamp basis and two-thirds among the pricing zones based on a MW-mile methodology. *Id*. at P 4.

In its order accepting the current cost allocation method for network upgrade costs, the Commission's major concern with the 50/50 sharing approach appears to have been with respect to its effect on location-constrained resources. The Commission noted that it was:

> sensitive to . . . concerns that generator interconnection customers that use renewable natural resources tend to be located in relatively remote locations and that therefore the proposal *presents a disadvantage to such generators compared with other generators*.[34]

The Filing Parties' Proposal should greatly exacerbate the Commission's concerns about whether the Midwest ISO cost allocation scheme will disadvantage location-constrained resources. The Proposal would inflict a real and immediate disadvantage on developers of location-constrained renewable resources, including wind projects already in the Midwest ISO interconnection queue, and erects a barrier against future wind and other renewable resource projects.

Undue discrimination in rates can fundamentally affect the competitiveness of a generation technology, such as technologies using renewable resources. Undue discrimination also need not be explicit; policies that appear equal on their face can affect those subject to them very differently. Thus, the Commission's transmission policies, as they did in

[34]*MISO*, 114 FERC ¶ 61,106 at P 71 (emphasis added).

CAISO and *SPP*, should take into account the different circumstances of competing generation resources.

4. Proposal Falls Outside of the Zone of Reasonableness

In a recent order addressing SPP's cost allocation proposal, the Commission dealt with factual issues and cost allocation considerations very similar to what is presented here.[35] However, in that case, the Commission reached a result that is not compatible with the Proposal and, therefore, should dictate a rejection of the Filing Parties' Proposal in this case. In other words, it would be arbitrary and capricious for the Commission to conclude, within such a short time between *SPP* and this proceeding that these two cost allocation filings, which present diametrically opposed solutions to essentially the same problem, could both fall within the zone of reasonableness. If the Commission finds that they both satisfy that test, it would make the "zone" so large as to be virtually meaningless, as nothing would likely be found to fall outside of it.[36]

In *SPP*, as discussed, the Commission approved a cost allocation method designed to remedy a similar problem that the Filing Parties identify here (the disproportionate share of network upgrade costs that customers in the host zone pay for network upgrades needed for a wind

[35] *SPP*, 127 FERC ¶ 61,283 at P 33.
[36] Furthermore, it would be arbitrary and capricious for the Commission to establish wind transmission upgrade cost allocation rules in SPP that provide for broad cost allocation based on the unique characteristics of wind, but approve a Midwest ISO cost allocation scheme that ignore those same characteristics.

resource to serve load in another zone). SPP, unlike the Filing Parties, addressed that issue without creating a more egregious problem (disproportionately and inequitably shifting costs to generators that use location-constrained resources).

Evidence presented by SPP showed that its zones in which wind resources are more likely to be located often have the lowest load densities and are located far from the load that these resources are likely to serve. Noting that this situation resulted in a disproportionate allocation of network upgrade costs to zones in wind-rich areas, SPP proposed a cost allocation methodology that the Commission found "appropriately addresses the issues created by location-constrained wind resources."[37] Specifically, the revised SPP cost allocation method approved by the Commission was designed to decrease the amount of network upgrade costs directly assigned to wind generation serving load in another zone and increase the amount of such costs that are spread regionally.[38]

In justifying the proposal as just and reasonable, SPP stated that the cost allocation method would ensure that the beneficiary of network upgrade bears the cost accordingly.[39] In addition, SPP stated that the proposal "will reduce existing

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[37] *SPP*, 127 FERC ¶ 61,283. at P 29.
[38] *Id.* at P 11. Under SPP's prior cost allocation methodology, base plan funding allocated 33 percent of costs "to the entire SPP region on a postage stamp basis, and the remaining 67 percent . . . on a MW-mile basis to the SPP pricing zone or zones that are affected by the network upgrade based on a power flow analysis."
[39] *Id*.

barriers to wind integration"[40] in its transmission system by allowing for a more favorable allocation of network upgrade costs associated with designating wind resources than the current cost allocation methodology permits.[41] The Commission found that SPP's proposal:

> strikes a reasonable balance, insuring that the transmission customer . . . pays a reasonable share of the costs of network upgrades needed to serve its load, while the entire . . . region shares the remaining costs in recognition of the regional benefits (including any excess transmission capacity) provided by such network upgrades.[42]

In stark contrast to *SPP*, in this proceeding, as discussed above, the proposed revisions do not even attempt to strike a balance (rationally match cost allocation to benefits received from network upgrades) between assigning costs to the interconnection customer and the region as a whole, which receives benefits. Rather than proposing changes to more equitably allocate among zones the LODF portion of network upgrades previously found to have been fairly apportioned to transmission owners,[43] the Filing Parties propose to shift these costs in their entirety to interconnection customers.

5. Proposal is Discriminatory to New Market Entrants

[40] *Id.* at P 28.
[41] *Id.* at P 9.
[42] *Id.* at P 31.
[43] It is important to remember that the LODF method is used to allocate the portion of the costs that the Commission previously found were fairly apportioned to transmission owners in the aggregate.

The Proposal is also discriminatory to new interconnection customers. If the next interconnection customer(s) in line is forced to pay for the vast majority of the costs of new transmission facilities, then a free-rider problem results:[44] existing generation customers get benefits but do not have to pay for them. Furthermore, if a new interconnection customer is able to finance and develop a new transmission facility, subsequent new generation resources using that line also receive a "free ride" in obtaining the benefits of access to transmission without having to incur any costs associated with it. Existing and future generation would thus enjoy a competitive advantage, because the direct assignment of costs in the proposed method would allow them to benefit from upgrades while avoiding costs that have been absorbed by an interconnection customer.

B. Cost Allocation in Other Regions

The Proposal claims that the Proposal "fit[s] comfortably within the types of cost allocation rules that the Commission has approved for other [Regional Transmission Organizations ("RTOs")]."[45] For instance, the Filing Parties state that their proposal is similar to the cost allocation methodologies approved for PJM and the NYISO, which are based on the principle of allocating to interconnection customers the cost of interconnection-related upgrades that would not have been necessary "but for" the interconnection requests.[46]

[44] A free-rider problem occurs when a party can exploit the investment of a prior party without giving any compensation.
[45] Filing Parties' Proposal at p. 18.
[46] *Id*. at p. 19.

The PJM and NYISO grids are not similar to the Midwest ISO grid, and therefore, cost allocation for the Midwest ISO should not rely on these two examples. The cost allocation rules in PJM and NYISO were not tailored to address the needs of location-constrained resources such as those that exist in the Midwest ISO region. There are also fewer location-constrained resources seeking to connect to either of these RTOs, and the locations for development are fortuitously much closer to the high voltage grid backbone. As the grid is much tighter in these areas, load is also not as dispersed. Therefore, the wind that is being developed in PJM and NYISO is not as far from load centers and will not likely require long upgrade lines. The PJM and NYISO grids are also much tighter networks of transmission lines that results in a situation in which upgrades needed for new generators are generally shorter, lower-voltage lines and thus less costly for generators. Moreover, PJM and NYISO have a more robust, higher-capacity grid that better covers the breadth of their footprints, due to the presence of high population density and load throughout their footprints, and thus transmission upgrades in those regions, if any are needed, will tend to be less costly than those that are needed in the Midwest ISO's system.

The Filing Parties' Proposal is clearly inconsistent with the cost allocation methodology that the Commission recently adopted in SPP, which, as discussed above, does not directly assign interconnection costs to generators. The factual similarity between SPP and the Midwest ISO is also much closer than to NYISO or PJM. Both the Midwest ISO and SPP contain regions with great wind potential, with wind-rich regions located at considerable distances from customers. In addition, both the Midwest ISO and SPP grappled with the same problem of how to shield customers in a generator's host zone from network upgrade costs needed to serve loads in different zones, which was not an issue in PJM or NYISO.

C. The Stakeholder Process Neither Constituted a Regional Consensus nor Does the Majority Stakeholder Approval Make the Proposal Just and Reasonable

The Filing Parties suggest that because the Proposal represents a stakeholder "consensus" (a majority), the Commission should not consider alternatives that would be less burdensome to interconnecting generators as they were already rejected in the stakeholder process. On numerous occasions, the Commission has rejected proposals as failing to meet the just and reasonable requirement even though they had majority stakeholder support and were the result of efforts by an RTO and stakeholders.[47] The same should apply in a case such as this, in which a majority vote merely represents the result of a block of a few stakeholder groups supporting rules that have a discriminatory impact on smaller groups.

The Proposal states that: "the Midwest ISO stakeholders worked diligently over the past six months to develop interim cost allocation changes that are

[47] *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,139 (2009) (rejecting the Midwest ISO's market services proposal on the basis that it would have an adverse impact on RTO operations and consumer benefits); *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,303 (2005) (rejecting SPP's proposed imbalance market based on the finding that the filing was inadequate in several respects and that key elements must be addressed to help ensure successful implementation and monitoring of SPP's imbalance market).

supported by the Midwest ISO, the affected states, and the great majority of stakeholders."[48] In fact, the Phase I stakeholder process was speedily executed in comparison with former such efforts and did not allow for a robust stakeholder process. For example, the stakeholder processes to develop Regional Expansion and Criteria Benefits ("RECB") I and II spanned several years and numerous meetings were held over that time period. In contrast, the dramatic change that is being suggested in the Filing Parties' Proposal was developed in only four meetings.[49]

Emblematic of the fact that there was not much time for in-depth stakeholder discussions of cost allocation options or negotiations between positions was the use of "straw votes" in meetings to hasten the process for developing a cost allocation proposal. Straw votes were also not noticed prior to the meetings and were stated to simply be "indicative" of the positions of stakeholders. In addition, the use of straw voting turned the discussion of cost sharing into an either-or approach with respect to producing a solution and did not allow for a creative multi-faceted resolution that could have provided a more equitable cost allocation proposal.

[48]Filing Parties' Proposal at p. 3.

[49] Four meetings between March 11, 2009 and May 27, 2009 constituted the work to develop a proposed solution to the problem identified by Otter Tail. Meeting documents and minutes can be found on the Midwest ISO website at http://www.midwestiso.org/publish/Folder/20b78d_11ef44fc9c0_-7add0a48324a?rev=1.

By way of example of the failures of this process, at the April 22,2009 RECB Task Force meeting[50], a vote was taken early on regarding whether parties preferred a 100 percent postage stamp cost allocation, a 100 percent direct assignment to generators, or a hybrid approach of the two. The majority voted for a hybrid approach, but the idea of finding a compromise proposal that combined concepts of cost sharing and direct assignment rapidly vanished as votes became focused on whom to charge for network upgrades. As the majority of transmission owners voted for direct assignment of costs to interconnecting generators, that was the direction that was ultimately taken without proper consideration of how costs could be shared and balanced through a hybrid approach. As such, an expeditious solution was valued over one that would have garnered wide support from a diverse set of stakeholder groups.

It is also worth noting that only a small majority of stakeholders supported the proposal. The final vote of the RECB Task Force was 32 in favor (58 percent) of the proposal and 23 against it. Thus, a significant number of Midwest ISO members did not support the proposal. Additionally, the governance rules of the Midwest ISO observed by the RECB Task Force required a two-thirds majority in favor of putting forth a proposed cost allocation methodology for vote by the Midwest ISO members.[51] In light of that requirement, it was not a surprise that the

[50] Midwest ISO, RECB Task Force Draft Meeting Minutes (April 22, 2009), *available at* http://www.midwestiso.org/publish/Document/62c6cd_120e7409639_-7e9b0a48324a/RECBTF%20Draft%20Minutes%204_22_09.pdf?action=download&_property=Attachment.

[51] Testimony of Ms. Jennifer Curran, Filing Parties' Proposal, Attachment D at p. 7.

motion failed to include a vote on a proposal for postage stamping the costs (which was not favored by the majority of the transmission owners).[52]

In short, this slim majority, which represents the interests of just a few sectors of stakeholders, can hardly be called a "regional consensus." The Filing Parties nevertheless assert that the Proposal should be accepted by the Commission because the changes were discussed in various meetings with stakeholders.[53] However, for the reasons discussed above, these series of meetings should not be considered as serving as a basis for the Commission to accept the Proposal, let alone accord it the deference that the Filing Parties believe is deserved.

Although the Commission has stated that it will accord a degree of deference to cost allocation methodologies that emerge out of the stakeholder process, this does not mean that the Commission abdicates its duties to ensure that a proposal is equitable. In *SPP*, the Commission noted that "while [it] accord[s] an appropriate degree of deference to RTO stakeholder processes [with respect to cost allocation proposals], [its] decision is based on [its] assessment of the record that the proposal is just and reasonable."[54] In another decision, the Commission approved a cost allocation proposal "based on the record before [it]," rather than merely deferring to the result of an incomplete stakeholder process.[55] Additionally, in an order in response to a prior RECB proceeding, the Commission

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[52] *Id*.
[53] Filing Parties' Proposal at p. 9 n.29.
[54] *SPP*, 127 FERC ¶ 61,283 at P 33 (citation omitted).
[55] *New England Power Pool and ISO New England, Inc*., *et al*., 105 FERC ¶ 61,300 at P 34 (2003).

stated that when "consensus [is] not possible" it will base its decision "on the record before [it]" rather "than deferring to the . . . proposal."[56] The Commission has also stated that "a stakeholder vote by itself is not a sufficient basis for finding a rate just and reasonable."[57] Accordingly, the focus of the Commission should be on whether the Proposal is just and reasonable and not unduly discriminatory, "not whether all (or even most) of the market participants agree."[58]

D. There is No Guarantee that the Proposal Will Be a Temporary Measure

The Proposal states that "near-term relief is urgently needed to preserve the essential foundation for the stakeholders' efforts towards a comprehensive long-term approach to support integration of renewable resources."[59] The filing also states that the RECB Task Force is currently in the process of addressing potential enhancements and wholesale changes to the current proposal and "anticipates" making a related tariff filing with the Commission on or around July 15, 2010. However, there is no actual commitment or guarantee that this proposal, if approved, will not morph into a long-term "fix" with respect to generator interconnection cost allocation in the Midwest ISO. In particular, as there is no sunset provision for the interim solution, there is no guarantee that this proposal will be temporary.[60] Accordingly, AWEA and WOW urge the Commission not to

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[56] *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 at ¶ 26, 230 (2007).
[57] *MISO,* 114 FERC ¶ *61,106* at P 25.
[58] *Midwest Indep. Transmission Sys. Operator, Inc.,* 108 FERC ¶ 61,163 at P 31 (2004).
[59] Filing Parties' Proposal at p. 3.
[60] The Proposal is filed pursuant to section 205 of the FPA and, if approved, would become a permanent part of the Midwest ISO Tariff until supplanted.

apply a lower level of scrutiny to the Proposal simply because the Filing Parties refer to it as "interim" measure.

AWEA and WOW are concerned that if the Proposal is approved, transmission owners will be reluctant to negotiate in good faith for any other long-term proposal, regardless of how equitable it might be. In other words, since the transmission owners' proposal was adopted in Phase I, we do not believe there is much of an incentive for them to negotiate for a different outcome that may result in greater cost sharing on their part for network upgrades. Moreover, given that the positions taken by the parties during the Phase I discussions were so divergent, AWEA and WOW do not hold out much hope that the Midwest ISO's stakeholders will be able to reach an alternative compromise proposal that would be equitable to all involved and command a true majority of stakeholders. Short of a change to the Midwest ISO's governance structure itself, the next phase will likely produce a similar proposal. In addition, although other cost allocation forums are underway in the Midwest, such as the Organization of Midwest ISO States' ("OMS") Cost Allocation and Regional Planning group ("CARP") process and the Upper Midwest Transmission Development Initiative ("UMTDI") process, instituted by the governors of Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin, that may ultimately provide direction for cost allocation approaches that could serve as replacements for the Proposal, it seems that these discussions may also be challenged with respect to reaching an equitable solution in a timely manner that would address the issues raised herein.

E. Proposal Would Significantly Hamper the Development of Renewable Resources

The Filing Parties contend that the Proposal will not hamper the development of renewable energy resources in the Midwest. In reality, the Proposal would almost ensure that wind development does not continue in the region by effectively bringing a halt to the construction of new transmission for wind energy.[61]

As can be seen in Exhibit JMT-1 to the Proposal, there is a concentration of proposed generation additions in the western part of the Midwest ISO footprint.[62] Data on active interconnection requests in the Midwest ISO queue show that in fact over 70 percent of the megawatts of requests are in North Dakota, South Dakota, Minnesota, and Iowa.[63] Most of these proposed generators are wind plants. As the Proposal states, that region is one of the best wind resource areas in the United States, with wind project capacity factors often reaching 40 percent or higher. According to a recent study by the consulting firm Black and Veatch, North Dakota, South Dakota, Minnesota, and Iowa have a combined wind energy potential of 2,564,000 MW, or 31 percent of the total onshore potential in the

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[61] *See* Next Era Protest, Affidavit of Robert. B. Stoddard, at 23; *see also The Future of the Grid: Proposals for Reforming National Transmission Policy: Hearing Before the Subcomm. on Energy and the Env't of the H. Comm. on Energy and Com*., 111th Cong. (2009) (statement of Jon Wellinghoff, Chairman, Federal Energy Regulatory Commission). (In his testimony, Chairman Wellinghoff stated, "Renewable energy resources such as wind, solar, and geothermal are usually found in large quantities at dispersed locations remote from load centers. For this reason, there are often high costs associated developing transmission facilities needed to deliver power from such resources. If the resource developer or host utility is compelled to bear all of the cost of these transmission facilities, they may not be developed."

[62] *See* Testimony of Ms. JoAnnThompson, Filing Parties' Proposal, Attachment G at Exhibit JMT-1.

[63] Durgesh Manjure, Midwest ISO Spreadsheet of Active Interconnections (copy on file with Natalie McIntire, nmcintire@frontiernet.net).

lower 48 U.S states.[64] This percentage is comparable to the one provided by a 1991 Pacific Northwest National Laboratory study, which found that these four states have approximately one-third of the total onshore wind potential in the lower 48 states.[65] However, the lack of available transmission capacity in that part of the Midwest ISO means that significant transmission additions will be essential to allow wind development to continue there.

The Midwest ISO's System Planning and Analysis, which is done as part of its interconnection process, has resulted in plans for lengthy 345 kV lines traversing several states to support this wind development. Many of the projects in this part of the Midwest ISO will need several transmission upgrades in order to connect.[66] As a result, the costs for these transmission projects would be much higher than those indicated in the testimony of Eric Laverty and Joann Thompson, which is attached to the Proposal, who claim that the additional cost faced by wind plants because of the Proposal will be minor and "will not stifle development." For these and the following reasons, Laverty and Thompson have significantly underestimated what the cost of transmission will be going forward in the Midwest

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[64] Black and Veatch, 20 Percent Wind Energy Penetration in the United States: A Technical Analysis of the Energy Resource (Oct. 2007), *available at* http://www.20percentwind.org/Black_Veatch_20_Percent_Report.pdf.

[65] D.L Elliott, *et al*., Pac. Nw. Nat' Laboratory, An Assessment of the Available Windy Land Area and Wind Energy Potential in the Contiguous United States (1991).

[66] *See* Eric Laverty and Jeremiah Doner, Midwest ISO Interconnection Process Task Force (Dec. 9, 2008) (indicating that many interconnection requests in congested areas of the Midwest ISO's grid, currently in the System Planning and Analysis phase, will need to address over 10 constraints, some as many as 28 constraints, before they can achieve an interconnection) , *available at* *http://www.midwestiso.org/publish/Document/279a04_11db4d152b9*_-7d090a48324a?rev=1.

ISO, and thus have significantly underestimated the negative effect the Proposal will have on wind development in the region.

1. Proposal Underestimates the Cost That Would be Imposed on Wind Projects

According to Ms. Thompson, the increase from a 50 percent cost share to a 90 percent share (for facilities at or above 345 kV) or a 100 percent share (for facilities below 345 kV) is likely to increase the typical wind farm's overall project cost by no more than 5 percent. She concludes "[t]his is less than the standard built-in cost escalation contingency for a project" and "will not stifle development."[67] Both Mr. Laverty and Ms. Thompson indicate that they have used an estimate of $200,000/MW of wind for the cost of transmission upgrades needed by wind additions.

As stated in the Proposal, "Mr. Laverty based his estimate on several sources, including historical costs of Network Upgrades, relevant interconnection agreements, and cost figures from the Joint Coordinated System Plan ("JCSP"), a collaborative effort of the Midwest ISO and others in the Eastern Interconnection to analyze transmission and generation system expansion."[68] The Filing Parties also state that "Ms. Thompson details the underlying calculations in her testimony. Key underlying assumptions include the U. S. Department of Energy's most recent (2007) estimate of per-kW wind project construction costs, and Mr. Laverty's

[67] Testimony of Ms. JoAnn Thompson, Filing Parties' Proposal, Attachment G at p. 25.
[68] Filing Parties' Proposal at p. 13.

conservative estimate of transmission upgrade costs."[69] Indeed, the $200,000/MW figure used by Mr. Laverty and Ms. Thompson seems to have been heavily influenced by the cost estimate reached by the JCSP, which was $195,000/MW.[70]

For a number of reasons, the JCSP cost estimate is likely to be significantly lower than the real cost of building transmission in the western part of the Midwest ISO region. First, the JCSP plan achieves extreme economies of scale due to the extremely high voltage of the lines used (chiefly 765 kV and 800 KV), while in contrast the transmission lines being considered for near-term construction in the Midwest ISO region are 345 kV and below. 85 percent of the JCSP cost is for 765 kV AC lines and 800 kV DC lines, which are around 2 and 3 times cheaper respectively on a $/MW-mile basis than 345 kV lines.[71] For this reason alone, the JCSP numbers are likely to underestimate the real costs of 345 kV and below transmission development in the Midwest ISO region by a factor of two or three.

Second, the transmission build-out identified in the JCSP study was designed as the optimal solution for integrating approximately 240 GW of wind projects. The transmission expansion needs for all of these wind projects were evaluated simultaneously, which produces a much more optimal and lower-cost plan than can be obtained in real life, where a much smaller number of potential wind projects are typically evaluated simultaneously. In addition, sharing the cost

[69] *Id*. at p. 22 n.90.
[70] Andrew Mills, *et al*., The Cost of Transmission for Wind Energy: A Review of Transmission Planning Studies (Feb. 2009), *available at* http://eetd.lbl.gov/ea/ems/reports/lbnl-1471e-ppt.pdf.
[71] Joint Coordinated System Plan,, http://www.jcspstudy.org (last visited Aug. 12, 2009).

of transmission upgrades among such a large number of wind plants greatly reduces the cost assigned to each. While the Midwest ISO has transitioned to an interconnection process that simultaneously studies transmission upgrades that can serve more than one wind plant, and it is currently seeking to allow multiple generators to fund such lines rather than its current "first mover pays" approach that places the burden of all the costs of an upgrade on the first party to interconnect, this approach will still study far fewer wind projects simultaneously than was done in the JCSP analysis. Thus, Mr. Laverty's extrapolation of cost estimates from the JCSP study significantly underestimates real transmission costs for a wind project in the Midwest ISO, as it implies that future transmission in that region would be designed to connect 240 GW of wind projects simultaneously, in many cases hundreds of times more wind capacity than would be evaluated simultaneously in the real world.

Third, the JCSP did not include the cost of lower-voltage feeder lines or the cost of resolving lower-voltage overloads, which would make the true cost of real-world transmission development significantly higher. Fourth, a recent report by Lawrence Berkeley National Laboratory compiled the results of every major study ever undertaken in the U.S. to evaluate the costs of building transmission for wind, and found that the JCSP cost result of $195,000/MW was more than 55 percent below the median cost identified in these studies.[72]

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[72] Andrew Mills, *et al.*, The Cost of Transmission for Wind Energy: A Review of Transmission Planning Studies (Feb. 2009), *available at* http://eetd.lbl.gov/ea/ems/reports/lbnl-1471e-ppt.pdf.

2. Real-World Cost Figures Show Transmission Costs Going Forward are Much Higher than Those Cited in the Proposal

Studies of the real cost of interconnecting wind in the Midwest ISO footprint confirm that in many cases the regional cost of transmission upgrades is higher than the costs identified in Mr. Laverty's and Ms. Thompson's testimonials or in the JCSP study. Regardless of whether this is because the JCSP was a conceptual plan that did not adequately account for the real cost of upgrades, or because transmission costs are higher in the Midwest ISO footprint than in other regions, or for some other reason, it is clear that actual transmission costs going forward in the Midwest ISO footprint are considerably higher than the $200,000/MW figure claimed by Mr. Laverty and Ms. Thompson, and therefore, they have significantly underestimated the negative effect the Proposal would have on wind development in the region.

An excellent example of this is the Brookings Line, a 345 kV upgrade from South Dakota to near the Twin Cities in Minnesota, that is required by 1300 MW[73] of projects for a full interconnection. The estimated cost of this line is $700 million in 2007 dollars. That results in a cost of $538,000/MW (in 2007 dollars). If this cost is allocated to projects with a 90 percent direct assignment, that is an increase in cost of 24.2 percent relative to a load-based beneficiary pays cost

[73] *See* Midwest ISO, Description of Impacts of Group 5 Projects on Lakefield – Wilmarth 345 kV necessitating Brookings -Twin Cities 345 kV , *available at* http://www.midwestmarket.org/publish/Document/1d1058_12131751e87_-7fcc0a48324a/Impacts%20of%20GS5%20Projects%20on%20Lakefield%20-%20Wilmarth%20345%20kV.pdf?action=download&_property=Attachment. (detailing the impacts of the 1294.6 MWs of interconnection requests that were responsible for the Brookings upgrade on the Lakefield – Wilmarth 345 kV line).

allocation approach (based on an average installed project cost of $2000/kW), or an additional 10.7 percent cost increase beyond the Midwest ISO's current 50/50 cost allocation approach.

As another example, the cost for the full CapX transmission plan, of which the Brookings Line is a component, is more than three times higher than the cost estimate used by Mr. Laverty and Ms. Thompson. The CapX lines would serve an estimated 2400 MW of wind[74] at an estimated cost for the transmission project of $1.5 billion,[75] which works out to $625,000/MW of wind. This would correspond to a 12.5 percent increase in projects costs caused by the proposed change in cost allocation policy, and represents a 28.1 percent increase in the total project costs overall relative to a load-based beneficiary pays cost allocation approach.

In the way of an additional example, the Midwest ISO recently provided preliminary estimates related to the upgrades required for the projects in Group 6 of its interconnection queue. The upgrades identified to serve 2,800 MW of interconnection requests in the North Dakota-Minnesota area are estimated at $2.2 billion, which would result in a cost of $772,000/MW.[76] If this cost is allocated to projects with a 90 percent direct assignment, that is an increase in cost of 34.7 percent relative to a load-based beneficiary pays cost allocation approach (based

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[74] Phyllis A. Reha, Enhancing the Nation's Electricity Delivering System: Transmission System Needs (Feb. 15, 2006), *available at* http://nocapx2020.info/wp-content/uploads/2009/04/nocapx-motion-recusecommissionerreha.pdf.

[75] Midwest ISO, MTEP08: The Midwest ISO Transmission Expansion Plan – Growing the Grid Across the Heartland 4-7 (Nov. 2008), *available at* http://www.midwestiso.org/publish/Document/279a04_11db4d152b9_-7d8d0a48324a/2008-11_MTEP08_Report.pdf?action=download&_property=Attachment.

[76] Midwest ISO, Update on Generator Interconnection SPA Studies (July 22, 2009), presented at the Joint NM MB Sub-Regional Planning Group meeting on July 22, 2009.

on an average installed project cost of $2000/kW), or an additional 15.4 percent cost increase beyond the Midwest ISO's current 50/50 cost allocation approach.

It is worth bearing in mind that even these cost figures are for large transmission projects that are able to realize significant economies of scale. Moreover, these costs are for transmission projects to serve a very large number of wind projects, while the costs would likely be much larger for individual wind projects that were evaluated serially or for projects that were evaluated as part of a smaller cluster study, which most wind projects going forward likely would be. Thus, even these relatively high cost figures are likely to underestimate the cost burden that would be imposed on many wind projects in the Midwest ISO's footprint by the Filing Parties' Proposal.

The Proposal indicates that, in addition to the JCSP results, the $200,000/MW cost number is also based on "historical costs of Network Upgrades" and "relevant interconnection agreements." Historical costs of Network Upgrades are not a reliable basis for estimating future interconnection costs for several reasons. First, transmission costs have increased greatly in recent years, driven largely by increases in the price of commodities such as steel. Second, these upgrade costs are from the era before significant wind development and increased energy market activity had occurred in the Midwest ISO region, and hence the western Midwest ISO grid would have had far fewer constraints than it does today. Thus, the cost of adding additional wind projects to the grid was likely to be significantly lower in those days, as there was still some available transmission capacity on the western Midwest ISO grid.

More generally, the fact that Mr. Laverty and Ms. Thompson do not provide any details or documentation of their methodology for arriving at the $200,000/MW cost figure calls into question the relevance of their cost numbers, particularly when compared with the specific cost numbers related to real-world upgrades identified by the Midwest ISO and cited here.

3. Increased Transmission Costs Would Threaten Wind Development in the Region

It is also important to note that any additional cost, even of the 5 percent range claimed by Mr. Laverty and Ms. Thompson, will greatly inhibit wind development in the region. Due to intense competition in the power generation industry, the margins that determine the economic viability of a project are incredibly small. Adding 15 percent or more to the cost of a wind project in the Midwest ISO footprint, on top of the 20 percent or more cost increase projects currently face under today's cost allocation methodology relative to a broad load-based cost allocation approach, would greatly stifle or completely end wind development within the Midwest ISO footprint. For example, a simple conservative calculation using a 100 MW wind project with a 40 percent net capacity factor estimated that the 20-year power purchase agreement ("PPA") price must increase by $8.10/MWh if $25 million dollars of transmission upgrade costs are required, in order for the developer to remain indifferent about the impact of these additional transmission costs to the project. If upgrade costs are $50 million, the PPA price would need to increase by $16.2/MWh.[77]

A change of this magnitude in the PPA price required to make a project economically viable would almost certainly cause a large number wind projects to be canceled as utilities opt to sign PPAs with generators that can offer lower prices. The increase in a wind project's PPA price that would be caused by the Proposal is comparable to the difference between a wind project receiving or not receiving the federal production tax credit. The fact that the expirations of the federal production tax credit in 2000, 2002, and 2004 brought U.S. wind development to an almost complete halt indicates that this Proposal would have a similar effect in the Midwest ISO.[78]

Statistical evidence also supports the conclusion that broad cost allocation policies favor wind development and facilitate transmission construction, while cost-causer pays policies discourage these activities. Analysis by the Brattle Group indicates that regions with favorable cost allocation policies, like ISO New England and CAISO, have built significantly more transmission on a dollar per MWh of load basis than other regions with less favorable cost allocation policies. Specifically, transmission investment in these two regions averaged $4 per MWh of load over the 2005-2008 time period, while all other regions averaged $1-3 per

[77] This calculation is done using the net present value of the expected revenue stream from a 20-year PPA with no escalation. The calculation assumes a 100 MW wind project with a net capacity value of 40 percent and a discount rate of 9.5 percent. These price estimates are conservative given the fact that upgrade costs must be paid a year or more in advance of the beginning of a project. and that was not taken into account in the calculation.

[78] Ryan Wiser, *et al*., Annual Report on U.S. Wind Power Installation, Cost, and Performance Trends: 2007 (2008), *available at* http://eetd.lbl.gov/ea/EMS/reports/lbnl-275e.pdf.

MWh of load.[79] An NREL study has also indicated that 72 percent of wind development in the U.S. has occurred in RTO regions, even though only 44 percent of wind energy potential and only 53 percent of electric demand is in these areas, and attributed this in part to the fact that RTO regions tend to have more favorable cost allocation policies.[80]

The Filing Parties' Proposal states that because the increase in transmission costs will be a "small percentage of the overall project costs," it will not be "determinative of whether the project will be built."[81] However, the important comparison is between the size of the additional cost and the economic margin that makes wind projects economically viable; that margin is obviously a small fraction of the total project cost.

The Filing Parties' Proposal also maintains that the added transmission costs "will not stifle development," because "[t]his is less than the standard built-in cost escalation contingency for a project."[82] Regardless of the fact that the real increase in transmission cost is much higher than the 5 percent claimed by the Midwest ISO, this claim seems to imply that the added transmission cost would be included in the cost escalation contingency and thus would have no effect on the overall project viability. In reality, the increased transmission cost will add directly and in full to the overall project cost and would not be covered at all by

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[79] J. Pfeifenberger, Presentation at Aspen Institute Energy Policy Forum, Brattle Group, July 2009, on file with authors.
[80] M. Milligan, *et al*., "Impact of Electric Industry Structure on High Wind Penetration Potential," NREL/TP-550-46273, July 2009, available at http://www.nrel.gov/docs/fy09osti/46273.pdf.
[81] Filing Parties' Proposal, at p. 22.
[82] Testimony of Ms. JoAnn Thompson, Filing Parties' Proposal, Attachment G at p. 25.

the cost contingency. Moreover, cost contingencies for a project are meant to express a distribution of risks that the project will cost more (or less) than expected, and thus, a project that goes over budget by the full contingency amount may in fact not have been economically competitive and not gone forward had the real cost been known at the start of the project, which would be the case with transmission upgrade costs since they are known before development of a wind project begins.

F. Proposal Runs Counter to Goals to Promote Renewable Energy Development

By forcing virtually all of the costs of new generation interconnection transmission onto generators, the Filing Parties' request will, as discussed above, prove to be a major barrier to renewable energy development within the Midwest ISO footprint. [83] Since the Filing Parties' Proposal directly stands as a hindrance to the deployment and integration of wind energy from the largest contiguous area of high-capacity wind power density in the United States, it would create a serious impediment to achieving federal, regional, and state renewable energy objectives.

1. Federal Renewable Objectives

[83] Spencer Yang, Why is Transmission not Getting Built? Challenges to Creating Adequate Transmission Infrastructure (May 18, 2006) (explaining how the direct assignment of costs to generators impedes transmission development), *available at* http://www.bateswhite.com/news/pdf/Why is transmission not getting built.pdf.; *see also* Johannes Pfeifenberger, Assessing the Benefits of Transmission Investment (Feb. 14, 2008), http://www.brattle.com/_documents/UploadLibrary/Upload664.pdf (last visited Aug. 11, 2009).

President Barack Obama has stated the goal of doubling renewable energy generation within three years;[84] however, slowing down wind energy development in the Midwest ISO region will make it virtually impossible to meet that target. He has also frequently emphasized the importance of encouraging the development of renewable energy and transmission to access that energy.[85] At the first presidential debate, Obama stated that the country needs to "mak[e] sure that we have a new electricity grid to get the alternative energy to population centers that are using them."[86]

To that end, the American Recovery and Reinvestment Act included $11 billion in investment "for a bigger, better, and smarter grid that will move renewable energy from the rural places it is produced to the cities where it is mostly used."[87] Pending federal legislation also reflects similar goals and could increase the demand for renewable power still further. Under the Renewable Electricity Standard ("RES") included in the American Clean Energy and Security Act of 2009 (HR 2454), passed by the U.S. House of Representatives on June 26, 2009, utilities would have to obtain 20 percent of their total energy requirements

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[84] President Obama's January 24, 2009 Weekly Address, From Peril to Progress (Update 1: Full Remarks), 2009 WL 187995.

[85] *See e.g*. Maeve Reston, *Obama Unveils $2.4 Billion Grant Program to Aid Electric Cars*, N.Y. Times, Mar. 20, 2009, *available at* http://articles.latimes.com/2009/mar/20/nation/na-obama-pomona20. (quoting President Obama's speech: "We can remain one of the world's leading importers of foreign oil, or we can make the investments that would allow us to become the world's leading exporter of renewable energy.").

[86] First Presidential Debate between Senators John McCain and Barack Obama in Oxford, Miss. (Sep. 26, 2008), *available at* http://elections.nytimes.com/2008/president/debates/transcripts/first-presidential-debate.html.

[87] *See* President Obama's March 19, 2009, The Whitehouse, Issues: Energy & Environment, http://www.whitehouse.gov/issues/energy_and_environment (last visited Aug. 11, 2009).

from qualifying renewable resources by 2020.[88] HR 2454 also expressly preserves more stringent state RES requirements.[89] Therefore, if enacted in its current form, HR 2454 would increase the RES standard in some states and impose one for the first time in other states, which could increase the region-wide requirement for renewable resources in the Midwest ISO region by up to 45,000 MW.[90]

Chairman Wellinghoff has also highlighted the need for developing transmission. In his opening remarks at the Commission's Technical Conference on Integrating Renewable Resources into the Wholesale Electric Grid, he said:

> I believe that developing the transmission infrastructure needed to deliver electricity from renewable energy resources is essential to meeting our national energy goals, such as reducing greenhouse gas emissions, strengthening our national security, and revitalizing our economy.[91]

In addition, he recently recognized that FERC needs to approve variations to its policies to ensure that its policy "on allocating transmission interconnection costs [do not] present a barrier to entry by location-constrained resources like renewable energy."[92]

2. Regional Renewable Objectives

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[88] H.R. 2454, 111th Cong. § 101 (as passed by House of Representatives Jun. 26, 2009).
[89] *Id.*
[90] Filing Parties' Proposal at p. 11.
[91] Jon Wellinghoff, Chairman, FERC Technical Conference on Integrating Renewable Resources into the Wholesale Electric Grid, Docket Number AD09-4-000 (March 2, 2009), *available at* http://www.ferc.gov/news/statements-speeches/wellinghoff/2009/03-02-09-wellinghoff.asp.
[92] *Climate Change and Ensuring that America Leads the Clean Energy Transformation*: *Hearing Before the S. Comm. on the Env't and Pub. Works*, 111th Cong. (2009) (statement of Jon Wellinghoff, Chairman, Federal Energy Regulatory Commission).

On a regional level, similar policy goals with respect to the need for renewable energy and, in turn, transmission development have been set. Various governors in the Midwest, through the MGA, outlined an Energy Security and Climate Stewardship Platform for the Midwest, which among its "Key Strategies" lists: maximizing the economic and reliable integration of wind energy and developing regional electric transmission and energy delivery capacity sufficient to accommodate substantial increases in needed low- and zero-carbon energy production.[93] The MGA's platform further illustrates its commitment to the development of renewable energy by establishing measurable renewable electricity goals of 10 percent by 2015, 20 percent by 2020, 25 percent by 2025, and 30 percent by 2030.[94] To accomplish these goals, the platform also described its aim to "make [the] most efficient use of the existing transmission infrastructure and develop new infrastructure, as necessary."[95]

The UMTDI, and the CARP have also both been concerned with identifying transmission additions needed to move the region toward the integration of large quantities of renewable resources, as demanded by state and federal policies, and with developing an equitable cost-sharing methodology for ensuring sufficient transmission is built to achieve that goal.[96]

3. Midwestern States' Renewable Objectives

[93] The Midwest Governors Association, Energy Security and Climate Stewardship Platform for the Midwest 2007, 5, *available at* http://www.midwesterngovernors.org/Publications/MGA_Platform2WebVersion.pdf.

[94] *Id.* at14.

[95] *Id*.

[96] Press release and principles can be found at http://www.misostates.org/UMTDI%20To%20Support%20Wind%20Energy.pdf.

In the Midwest, nine of the states served by the Midwest ISO have mandatory RES requirements. Two more have stated RES goals, and only two of the Midwest ISO states currently have no RES mandate or goal. Thus, thousands of megawatts of new renewable power projects will be needed in the Midwest ISO to meet these goals, and the Midwest ISO's northwestern zones can be expected to have a major role in market participants' efforts to meet them. In addition, by action of its Board nearly four years ago, the Midwest ISO is expressly directed to "[s]upport state and federal renewable energy objectives by planning for access to all such resources (*e.g.*, wind, biomass, demand side management)."[97]

The UMTDI recently issued a set of cost allocation principles. One of them states:

> [B]eneficiaries should pay for the new electric network transmission needed for delivery of renewable energy resources. Determination of beneficiaries should consider more than one single metric as well as current and future needs or uses. With the passage of time there may be a reduced distinction between transmission used for reliability and economic purposes. It may not be possible to identify all beneficiaries over a project's lifetime with precision at the time the project is planned. [98]

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[97] Midwest ISO Board of Directors Statement of Guiding Principles for the Midwest ISO Transmission Expansion Plans,, http://www.midwestmarket.org/publish/Document/469a41_10a26fa6c1e_-6ebf0a48324a/GuidingPrinciplesMTEP.PDF?action=download&_property=Attachment. (last visited Aug. 11, 2009).

[98] Press Release, Upper Midwest Transmission Development Initiative, Regional Electric transmission Planning in the Upper Midwest to Support Wind Energy (June 30, 2009), *available at* http://www.misostates.org/UMTDI%20To%20Support%20Wind%20Energy.pdf.

The Filing Parties' Proposal does not meet the intent of this principle because it does not charge beneficiaries; it merely charges what the Filing Parties' view as cost causers—generators—for virtually all such costs.

G. Broad Benefits from Increased Transmission

Building transmission produces a number of benefits, yet only a small fraction if any of these benefits accrue to the generator who is connecting to the grid. Many of these benefits are spread across an entire region or even nationally, particularly the environmental, economic development, electric reliability, consumer savings, and energy security benefits of building transmission and associated renewable energy development. Hence, cost allocation policies should broadly spread the cost of building transmission to reflect the broad distribution of its benefits.

Several recent analyses by Charles River Associates ("CRA"), International, discussed in greater detail in the affidavit filed by Mr. Stoddard on behalf of the Joint Protesters, quantify the value of these broad-based benefits. One study looked at an investment in a high-voltage transmission overlay to access wind resources in Kansas, Oklahoma, and Texas. It concluded the transmission investment would provide economic benefits of around $2 billion per year for the region, more than four times the $400-500 million annual cost of the transmission investment.[99] $900 million of these benefits would be in the form of

[99] CRA International, First Two Loops of SPP EHV Overlay Transmission Expansion: Analysis of Benefits and Costs, September 26, 2008, *available at*

direct consumer savings on their electric bills, with $100 million of these savings coming from the significantly higher efficiency of high-voltage transmission, which would reduce electricity losses by 1,600 GWh each year. The remainder would stem from reduced congestion on the grid allowing customers to obtain access to cheaper power. Importantly, these consumer savings can and do accrue to different regions or groups of customers over time, as the fluctuation of fuel prices is inherently unpredictable, providing further reason that broadly allocating the cost of transmission is the only way to reflect the distribution of the future benefits.

Similarly, CRA's analysis of the proposed Green Power Express, which would connect 17 GW of wind to the grid in the Upper Midwest, found that the transmission plan would yield benefits of $4.4 to $6.5 billion per year for the region (in 2008 dollars), well above the annualized cost of the transmission, estimated to be between $1.2 billion and $1.44 billion.[100] A similar study by the Electric Reliability Council of Texas ("ERCOT") found that a $4.9 billion investment to bring wind online would save consumers $1.7 billion per year by reducing the use of natural gas to produce electricity.

Transmission is also an important mechanism to protect consumers against unpredictable volatility in the price of fuels used to produce electricity. In New

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http://www.crai.com/uploadedFiles/RELATING_MATERIALS/Publications/BC/Energy_and_Environment/files/Southwest%20Power%20Pool%20Extra-High-Voltage%20Transmission%20Study.pdf.

[100] *Green Power Express LP,* Docket No. ER09-681-000 (2009), Exhibit No. GPE-400, Direct Testimony of Dr. Ira Shavel.(Shavel testimony) at p. 5 ("Shavel Testimony". The "Region" considered by Dr. Shavel includes "the Midwest Independent Transmission System Operator, Inc., ('MISO'), the PJM Interconnection ('PJM'), and the U.S. portions of the Midwest Reliability Organization that are not in the MISO (North Dakota, South Dakota, Nebraska, and parts of Minnesota and Iowa)." *Id*.

York and New England, consumers have had no choice but to continue using oil-fired generation to meet some of their power needs even as the price of oil has gone up by a factor of five. Similar fluctuations in the price of natural gas and coal have led to drastic increases in the price of electricity for consumers in other regions. Between 1998 and 2006, consumers in Texas saw their electric bills grow from 7.6 cents per kWh to 12.9 cents per kWh as the price of natural gas, which provides half of the state's electricity, tripled. As a result, the average Texas household now spends $750 more per year on their electric bills. Similarly, consumers in the Eastern U.S. faced massive increases in their electric bills as the price of Appalachian coal, which accounts for a very large share of the electricity generation in the region, tripled in 2007 and 2008.[101]

Transmission could have significantly alleviated the negative impact of these fuel price fluctuations on consumers by making it possible to buy power from other regions and move it efficiently on the grid. This increased flexibility would in itself help to modulate swings in fuel price, as it would make demand for fuels more responsive to price as utilities would be able to respond to price signals by decreasing use of that fuel and instead importing cheaper power made from other sources.

Going forward, a robust transmission grid can provide valuable protection against a variety of uncertainties in the electricity market. Fluctuations in the price

[101] Energy Information Administration, Official Energy Statistics from the U.S. Government, http://www.eia.doe.gov/cneaf/coal/page/coalnews/coalmar.html#spot (last visited Aug. 11, 2009).

of fossil fuels are likely to continue, particularly if the electric sector becomes more reliant on natural gas. Further price risk associated with the potential enactment of policies that would establish a price for CO_2 emissions, in addition to uncertainty concerning the viability of technologies such as nuclear power and coal carbon capture and sequestration, place a further premium on the flexibility and choice provided by a robust transmission grid. For regions where the quality of renewable energy resources is comparatively low, transmission is also important for ensuring that those regions have access to low-cost, zero-emission energy sources. Given that transmission infrastructure typically remains in service for 50 years or more, it is impossible to predict how fuel prices, policies, and technologies will evolve over that time. As a result, transmission should be viewed as a valuable hedge against uncertainty and future price fluctuations for all consumers.

Transmission infrastructure is also a powerful tool for increasing competition in wholesale power markets and reducing the potential for generators to harm consumers by exercising market power. Just as consumers in a region without high quality roads to other regions and a single retailer would be at the mercy of the prices charged by that retailer, a weak grid makes it possible for generation owners in constrained sections of the grid to raise prices beyond what they would be in a competitive market. In addition, a more robust transmission grid will create strong incentives for generators to reduce the use of old, inefficient power plants, as they would be unable to compete with modern, more efficient power plants that could import their power over a less-constrained grid.

The CRA studies also found that the new transmission infrastructure to access wind resources would significantly reduce CO2 emissions. The SPP study found that the new transmission infrastructure would bring 14,000 MW of new wind plants online, reducing CO_2 emissions by 30 million tons per year, savings worth $500 million per year at $15/ton of carbon. The Green Power Express study found comparable savings, with annual CO_2 reductions of 28 to 37 million tons.[102] Of course, the benefit of these reduced emissions, like most environmental benefits of wind power, would be very broadly spread around the region and country, as would be the reduced cost to consumers for compliance with existing and proposed state, regional, and federal greenhouse gas emissions regulations.

The SPP study also found that the overall wind and transmission project would create 5,000 new permanent jobs, $60 million in annual property tax revenue, and $500 million in economic activity each year for the SPP region alone. Of course, many more manufacturing jobs associated with building the components of the transmission and wind infrastructure would be broadly distributed around the country. The Department of Energy's 2008 report, "20% Wind Energy by 2030," found that the manufacturing jobs associated with

[102] Shavel Testimony at p. 18.

deploying large amounts of wind would be broadly distributed across the entire country.[103]

The CRA studies did not even attempt to quantify some of the most broadly distributed benefits of building the wind and transmission. For example, wind power would offset the use of natural gas for electricity production, reducing prices and saving all natural gas consumers a significant amount of money. The DOE study estimated the value of these savings at around $150 billion per year in the 20 percent wind scenario.[104] These benefits would accrue to homeowners using gas for heating, chemical factories using it as a feedstock, and farmers buying fertilizer made from natural gas, just to name a few. Consumers across broad regions or even the entire county would also see a significant benefit from transmission projects to connect wind plants, as such projects would reduce the cost of compliance with existing and proposed state, regional, and federal renewable energy standards, greenhouse gas emission regulations, and other environmental regulations. Water savings produced by displacing water consumption intensive conventional generation with zero water use wind generation would also be shared among consumers across a broad region.

Electric consumers across the entire Eastern U.S. would also benefit from enhancing the reliability of the electric grid by building more transmission. A more robustly interconnected grid provides a healthy redundancy in the event of

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[103] U.S. Dep't of Energy, *20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply* (2008), *available at* http://www.20percentwind.org/20percent wind energy report revOct08.pdf.

[104] *Id*.

the failure of a certain part of the grid, as well as allowing grid operators more flexibility to respond to emerging problems by bringing in generation from other regions. Building more transmission will make the grid more reliable, significantly reducing the immense cost of power outages for American consumers and businesses. The 2003 blackout in the Northeast U.S. and Canada caused an estimated $7-10 billion in economic losses,[105] while smaller-scale power disruptions cost consumers about $80 billion on an annual basis.[106] A more robust grid is also important as a matter of national security, as it would be more resilient in the face of potential disruptions, both unintentional and intentional.

In conclusion, broadly spreading the costs of transmission is the only effective way to match the broad distribution of the benefits of transmission.

H. Alternative Cost Allocation Methodologies Exist that Are More Equitable than the Proposal

AWEA and WOW believe that alternative solutions to this Proposal that are more narrowly tailored to address the perceived issues and more equitable to all interested parties need to be explored in more detail. In general, any such alternative should include a greater level of cost sharing than the Proposal provides, because, as noted, the economic, environmental, and security benefits of renewable energy are widely shared.

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[105] ICF Consulting, The Economic Cost of the Blackout: An Issue Paper on the Northeast Blackout (Aug. 13, 2003), *available at* http://www.icfi.com/Markets/Energy/doc_files/blackout-economic-costs.pdf.

[106] Allen Chen, *Berkeley Lab Estimates $80 Billion Annual Cost of power Interruptions, Research News*, Feb. 2, 2005, *available at* http://www.lbl.gov/Science-Articles/Archive/EETD-power-interruptions.html.

AWEA and WOW discuss below a few of the various alternative cost allocation mechanisms, which we believe the Commission should explore as a means to achieve an equitable allocation in this matter and a broader regional consensus than the Filing Parties' Proposal.

1. Postage Stamp

In contrast to the "participant funding" solution proposed in the Proposal, a postage stamp approach that allocates a greater percentage of costs across a region's footprint would better recognize the region-wide benefits provided by the interconnection of new generation, especially renewable generation.[107] As the Proposal states: "the primary reason for the . . . postage stamp component for Network Upgrades . . . is driven by the fact that there are generally residual benefits to consumers of expanding the bulk transmission System in terms of increased reliability levels in general, increased flexibility for the market, and lower congestion levels."[108] The cost to typical residential consumers of postage stamp pricing would be less than the cost of an actual postage stamp on their monthly bill. By spreading costs among a larger number of beneficiaries, which results in minimal cost impacts to all parties, this approach would address the concerns of Otter Tail and MDU.

2. Location-Constrained Resource Zone Models

[107] We note that a tiny fraction of the United States' electricity grid was built under a participant funding policy. Where transmission has been built, it has been predominantly been done under a regime in which costs are shared.
[108] Testimony of Ms. Jennifer Curran, Filing Parties' Proposal, Attachment D at p. 14.

Other models for addressing transmission needs for location-constrained resources may be useful in addressing the problem facing Otter Tail and MDU and other similarly situated transmission owners. In particular, we think that the Texas Competitive Renewable Energy Zone ("CREZ") and the California Location-Constrained Resource Interconnection ("LCRI") policies serve as appropriate approaches.

Texas also faces a situation where its strongest wind resources are remote from load and transmission additions are needed to take full advantage of those resources. In order to determine which transmission upgrades would be most cost effective for bringing additional wind resources to the grid from areas with high renewable energy resource potential, the Texas legislature passed Senate Bill 20, which increased renewable energy requirements and authorized the creation of CREZs.[109] The Public Utility Commission of Texas defined the criteria for CREZs and, working with ERCOT and through data gathering, analysis, and a public stakeholder process, ultimately designated such zones.

A number of factors were considered in determining the CREZs, including the level of financial commitments already made by wind developers, as well as the number of megawatts of wind in the interconnection queue in each of the zones studied in Texas. The legislation removed the requirement to demonstrate "need" to build transmission lines to these zones, as the legislation and the CREZ

[109] Texas Legislature, Senate Bill 20, *available at* http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=791&Bill=SB20# .

process defines that need. Once the CREZ are identified, developers must provide a letter of credit, or deposit for 10 percent of their pro-rata share of the CREZ transmission additions; however, this amount is refunded back to them once the developers begin taking transmission service.[110] The legislation also guarantees cost recovery for these transmission additions. Other than the costs of generator interconnection facilities, the costs of transmission facilities to the CREZ are postage stamped across all load in ERCOT.

As noted, California also recognized the need to adopt an alternative approach to cost allocation of transmission upgrades that will enable increased renewable resource development. While California's Location-Constrained Resource Interconnection ("LCRI") rules apply to generator tie lines (network facilities in the California ISO are rolled into transmission rates), this approach may have aspects that are useful in supporting transmission additions needed for the delivery of wind resources in remote areas of the Midwest ISO grid.

CAISO's LCRI tariff allows transmission additions to be built prior to the time that those upgrades are fully subscribed, by allocating costs to all loads within the CAISO grid up-front and charging generators their pro-rata share of the costs of those lines as they interconnect and begin delivering energy. To qualify for this cost allocation treatment, transmission facilities must meet certain criteria. First, transmission facilities must be included in CAISO's transmission planning

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[110] Public Utility Commission of Texas, Substantive Rules Applicable to Electric Service Providers, §25.174. Competitive Renewable Energy Zones, *available at* http://www.puc.state.tx.us/rules/subrules/electric/25.174/25.174.pdf.

process and must be turned over to CAISO's operational control. Prior to construction, they must also demonstrate interest of 60 percent or more with respect to transmission capacity, of which at least 25 percent must come from signed interconnection agreements.

The Commission approved the LCRI tariff on December 21, 2007, stating it "believe[s] that the CAISO's LCRI proposal represents a careful balance of process, risks, benefits and cost allocation"[111] The Commission also recognized this approach "as a reasonable attempt to address the barriers to development of location-constrained resources and, thus, help California fulfill its RPS goals."[112]

AWEA and WOW believe that approaches such as the Texas CREZ and CAISO LCRI can provide examples and aspects of cost allocation approaches that could address Otter Tail-like issues while continuing to appropriately encourage renewable resource development.

3. ITC and ATC Zonal Approaches

ITC and ATC have recognized the benefits of not allocating costs of upgrades for generator interconnection entirely to generators. As indicated by the Filing Parties, the current cost allocation methodologies applicable to ATC and ITC will not be changed by the Proposal, as they have chosen to retain their current cost allocation approaches. Both ATC and ITC, each of which recently filed for a deviation from the standard Midwest ISO cost allocation methodology

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[111] *California Indep. System Operator Corp.*, 121 FERC ¶ 61,286 at P 39 (2007).
[112] *Id*. at P 49.

for generator interconnection projects, have chosen to maintain those deviations, as they believe they are not experiencing the problem that Otter Tail and MDU face with respect to disproportionate costs. ITC's and ATC's cost allocation methodologies allow them to reimburse generators 100 percent for upgrades needed to support interconnection. AWEA and WOW believe that the cost allocation approach employed by ITC and ATC is more likely to support the addition of wind resources on the grid than the Filing Parties' Proposal.[113]

IV. REQUESTED RELIEF

A. The Commission Should Reject the Proposal

For the reasons discussed above, the Filing Parties have failed to carry their burden, pursuant to section 205 of the Federal Power Act,[114] to demonstrate that their Proposal is just and reasonable. Accordingly, we respectfully request that the Commission reject the filing outright.

AWEA and WOW recognize that Commission did not prescribe a specific cost allocation methodology in Order No. 890. The Commission instead suggested that several factors be weighed in determining whether a proposed cost allocation methodology is appropriate.[115] First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be

[113] *See, e.g., ITC*, 123 FERC ¶ 61,065 at P 15 (noting the relationship of the proposed cost allocation methodology and the "importance of new transmission in encouraging new and renewable sources").
[114] 16 U.S.C. § 824d.
[115] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007) ("Order No. 890"), FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2007).

incurred and those who otherwise benefit from them.[116] Second, the cost allocation proposal should provide adequate incentives to construct new transmission.[117] Third, the cost allocation proposal should be generally supported by state authorities and participants across the region.[118]

With respect to the first factor, as discussed in previous sections, the Filing Parties have failed to demonstrate that their proposal to directly assign virtually all network upgrade costs to generators is just and reasonable, because it does not attempt to assign costs to participants who benefit from them. As for the second and third factors, the Commission has stated, in the context of considering those factors: "a cost allocation proposal that has broad support across a region is more likely to provide adequate incentives to construct new infrastructure than one that does not."[119] The corollary is true here. As mentioned above, since the proposal is not broadly supported at the regional level (but instead was primarily crafted to address the interests of a few sectors of stakeholders), it is not a surprise that it would serve as a barrier to new transmission development and would not provide adequate incentives to construct new infrastructure. Thus, an analysis of the Filing Parties' Proposal under these three factors set forth in Order No. 890 supports the conclusion that the Commission should reject this proposal.

B. The Commission Should, in the Alternative, Set the Matter for Hearing and Settlement Conference Procedures

[116] Order No. 890, at P 559.
[117] *Id.*
[118] *Id.*.
[119] *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 P 24 (2007).

If the Commission is not inclined to reject the filing, AWEA and WOW request that the Commission suspend the Proposal for the maximum period of five months[120] and set it for hearing and settlement judge procedures. Assuming the Commission decides to set this matter for a trial-type evidentiary hearing, it should encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To that end, the Commission should hold the hearing in abeyance and direct that a settlement judge be appointed.

To assist those procedures, if the Commission orders hearing and settlement procedures, it should enumerate certain principles upon which a just and reasonable cost allocation method should be based. Specifically, the allocation methodology should be consistent with the following principles: (1) not unduly discriminatory to any type of market participant; (2) not unduly preferential to any type of market participant; (3) consistent with state, regional, and national objectives, promote development of renewable energy and transmission that accesses it; (4) allocate costs across a region in a manner that is consistent with benefits; and (5) consistent with the *CAISO* and *SPP* holdings, promote and not hinder the development of location-constrained resources.

C. If the Commission Implements an Interim Solution, the Commission Should Narrowly Tailor It to Address the Situation at Hand

[120] *West Texas Utilities Co.*, 18 FERC ¶ 61,189 at 61,373 (1982).

If the Commission decides it must grant interim relief to Otter Tail and MDU to reduce their incentive to leave the Midwest ISO, the Commission should, on an interim basis, adopt a more narrowly tailored solution that addresses the specific situation presented by these two transmission owners. To that end, if the Commission is inclined to provide for an interim mechanism that gives cost protection to Otter Tail and MDU pending formation and approval of a long-term cost allocation solution, the Commission could adopt an interim proposal based on the one set forth in the RES Protest.[121] AWEA and WOW believe that the interim approach proposed therein would provide the relief sought by Otter Tail and MDU without significantly harming the development of renewable generation in the Upper Midwest. However, any interim relief ordered by the Commission should not discriminate against generators by forcing them to bear the costs that the transmission owners wish to avoid.

D. If the Commission Implements the Proposal, It Should Require That a More Equitable Proposal be Filed by a Date Certain

If the Commission approves the Proposal, in whole or in part, AWEA and WOW request that the Commission require that the Midwest ISO make another

[121] AWEA and WOW understand that the RES Protest will propose that the Commission reject the Filing Parties' Proposal outright. However, should the Commission determine that an interim measure is needed, the RES Protest urges the Commission to adopt one that is tailored to the narrow problem identified by the Filing Parties—Otter Tail and MDU. Specifically, the RES Protest proposes that the Midwest ISO should be directed to maintain the current 50 percent refund to the interconnecting generator on an interim basis, and, with respect to new generators locating in the Otter Tail and MDU service territories, to assign the portion of cost responsibility for such refund formerly allocated using the LODF to the zone of the load being served by that generator. In addition, under that proposal, the remaining zones would continue using the current allocation method.

cost allocation filing that will replace the Filing Parties' Proposal by July 15, 2010. The Commission should also require that if such a filing is not made by that date, the Midwest ISO's pre-Proposal status quo for cost allocation for generator interconnection projects will revert back into place. This would ensure that there is sufficient incentive for transmission owners, as well as other stakeholders, to develop an appropriate and reasonable cost allocation approach. To ensure that such a subsequent filing produces a just and reasonable cost allocation methodology, the Commission should require that the filing be consistent with the cost allocation principles discussed in the previous section.

E. The Commission Should Convene a Technical Conference with the Region's Governors to Facilitate a Long-Term Cost Allocation Methodology

The record indicates that a true regional consensus emerging with respect to a long-term solution for cost allocation within the Midwest ISO in the near future will be hard to come by. Chief among the impediments to constructing a viable cost allocation method in the Midwest ISO is the competing interests of its stakeholders. Time and again, the Midwest ISO has tried to foster ways to shape a methodology that would work. The RECB Task Force I and II, CARP, and UMTDI, either solely or partially, have been focused on finding a long-term answer to the cost allocation question. However, none of these forums have yet produced an equitable solution with respect to cost allocation. It appears that competing and entrenched interests will likely continue to stall progress in this respect.

For these reasons, AWEA and WOW respectfully assert that it is incumbent upon the Commission and the Governors in the Midwest ISO's footprint to step into this breach and facilitate the development of a proposal that will be an effective, equitable cost allocation solution for the long-term. AWEA and WOW therefore request that the Commission convene a technical conference with the Governors in the region that could serve as a necessary first step to open a dialogue and create a platform for exploring a number of ideas and concepts that could result in the adoption of a long-term cost allocation methodology that is both just and reasonable and acceptable to an even larger proportion of the Midwest ISO's stakeholders.

V. CONCLUSION

WHEREFORE, for the reasons described herein, AWEA and WOW respectfully request that the Commission reject the filing since the Filing Parties have not overcome their burden to show that the Proposal is just and reasonable. In the alternative, we request that the Commission set the matter for hearing and settlement judge procedures. In addition, we respectfully request that the Commission convene a technical conference with Governors in the region to discuss long-term solutions to cost allocation issues in the Midwest ISO.

Respectfully submitted,

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Dated: August 13, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this August 13, 2009.

________/s/ Gene Grace_______

Gene Grace