

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In the Matter of the Application of Ameren)
Transmission Company of Illinois for Other Relief,)
or, in the Alternative, a Certificate of Public) No. EA-2015-0146
Convenience and Necessity Authorizing it to)
Construct, Install, Own, Operate, Maintain and)
Otherwise Control and Manage a 345,000-volt)
Electric Transmission Line in from Palmyra,)
Missouri to the Iowa Border and Associated)
Substation near Kirksville, Missouri.)

**RESPONSE OF MIDCONTINENT INDEPENDENT
SYSTEM OPERATOR, INC. TO NEIGHBORS UNITED AGAINST AMEREN'S
POWER LINE'S MOTION TO COMPEL**

The Midcontinent Independent System Operator, Inc. (“MISO”) responds in this pleading to the Motion to Compel (“Motion”) filed by the Neighbors United Against Ameren’s Power Line (“Neighbors”) filed on January 7, 2016.

MISO has provided supplemental response to the three data requests that are the subject of the Motion. However, MISO herein states that its original objection to the discovery submitted by Neighbors (and provided to Neighbors) was valid and supported by the December 9, 2015 order issued by the Regulatory Law Judge. Counsel for Neighbors failed to meet the Commission’s requirements before filing the Motion. Neighbors should conform its actions to the orders and rules applicable to the above-captioned proceeding.

I. Background

The subject of the Motion is a set of data requests that deal with the MISO transmission planning process and MISO reports on that process. The MISO process and its transmission planning reports are extensively displayed on its publicly available web site, matters that are discussed in pre-filed testimony in this case. As an example, the direct testimony of ATXI’s expert witness Dennis Kramer, filed on May 29, 2015, deals substantially with the MVP study

process.¹ Among other matters, the Kramer testimony identifies the publicly available location of the MISO reports on its transmission planning process.

On October 21, 2015 Michael L. Stahlman and Shawn E. Lange, staff members with the Missouri Public Service Commission Staff, both filed rebuttal testimony that directly dealt with the MISO transmission planning process and corresponding reports.

On November 16, 2015, Neighbors' filed the Surrebuttal Testimony of Bill Power, P.E., in which Mr. Powers complains that "witnesses Beck, Lange, Stahlman, and Kliethermes largely repeat claims of economic benefit described in MTEP11 and the MTEP14 Triennial Review Report" ²

On December 9, 2015, the Administrative Law Judge issued an order that limited additional discovery to "*new* information contained in surrebuttal testimony only." ³

On December 18, 2015, the last day before submitting discovery requests according to the limitations stated in the December 9 Order, Neighbors promulgated fifteen data requests upon MISO that sought answers to questions and addressed issues concerning MISO's transmission planning process and its corresponding reports. ⁴ MISO timely responded to those

¹ See, e.g., Direct Testimony of Dennis D. Kramer on Behalf of Ameren Transmission Company if Illinois (May 2015) at 5-15. The "MISO Transmission Expansion Plan 2011" and the "MVP Triennial Review" that Neighbors inquired into as part of its data requests dated December 18, 2015 are cited on page 5 of the Kramer testimony, along with the MISO web site that contains those reports.

² Surrebuttal Testimony of Bill Power, P.E. on Behalf of Neighbors United Against Ameren's Power Line (November 16, 2015).

³ Order Regarding Motion for Reconsideration at 2 (December 9, 2015) (emphasis added) (hereinafter, "December 9 Order").

⁴ The data requests submitted on December 18, 2015 were technically the second set of discovery transmitted by Neighbors to MISO. The first discovery set contained a single request, asking MISO to provide a "higher resolution transmission map showing the same information as the MISO project area transmission map" from a PowerPoint presentation located on MISO's web page. On October 16, 2015, MISO objected stating that it is not obligated under the rules of discovery to develop exhibits for Neighbors' testimony. Nonetheless, MISO provided a revised map that partly satisfied Neighbors' request. MISO's

data requests on January 28, 2015 following the holiday weekend. MISO objected to the first eleven data requests as going beyond the scope of any new information contained in surrebuttal testimony (*i.e.* expanding the scope of discovery to the entire MISO transmission planning process) and responded substantively to the remaining data requests.

On January 7, 2015, the last day for submitting motions to compel according to the schedule contained in the December 9 Order, counsel for Neighbors transmitted an email at 11:24 a.m. to MISO's Missouri counsel, stating: "I left you a voice message. Please give me a call today when you have a chance. I would like to discuss whether MISO would reconsider its objection to 3 DRs [*i.e.* Data Requests] in Set 2, those being 2-8, 2-9, and 2-10." MISO counsel responded with a call to Neighbors' counsel stating that he would attempt to set up a call involving MISO's inside counsel to further discuss the matter.⁵ The short notice by Neighbors did not permit such a call, and Neighbors' Motion was submitted on the evening of January 7, 2015.

II. Neighbors' Motion Violated the December 9 Order on Discovery

Neighbors had substantial time to submit its data requests that involved the MISO transmission process and reports. The scope for additional discovery established by the December 9 Order does not permit discovery on issues that were the subject of testimony before that submitted on November 16, 2015. Data Requests 2-8, 2-9, and 2-10 all inquire into the benefit/cost ratios that are contained in the MISO reports.⁶ These reports were extensively referenced in ATXI witness Kramer's prefiled testimony on May 29, 2015. The reports were also the subject of earlier Staff testimony. In fact, even Neighbors' own witness complained in

response was attached to the Rebuttal Testimony of William E. Powers, P.E. on Behalf of Neighbors United, dated October 21, 2015, as Schedule PE 12.

⁵ See Motion at P 3.

⁶ See Motion at PP 7-11.

his testimony that was filed on November 16, 2015 about Staff’s reliance upon MISO’s reports.⁷ MISO was entitled, under this sequence of events, to object to Neighbors discovery that did not seek to discover “*new* information contained in surrebuttal testimony”⁸

III. Neighbors’ Motion Failed to Meet Rules Related to Such Motions

Neighbors’ Motion should not have been submitted. The rules regarding such a motion are provided in the Commission’s rules, 4 CASR 240-2.090(8):

Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion; and

(B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

In possession of MISO’s timely submitted responses to the data requests, counsel for Neighbors waited from December 28, 2015 until mid-day on January 7, 2016 (the deadline for submitting motions to compel) to contact MISO counsel. Such timing did not permit satisfaction of the Commission’s rule regarding motions to compel.

While the Motion states that Neighbors’ counsel attempted to contact MISO,⁹ the timing of the contact demonstrates that the effort to confer with MISO counsel was a only token and not intended “in good faith” to resolve the matter. The second prong of the Commission’s rule, a “telephone conference with the presiding officer,” was not undertaken by counsel for Neighbors

⁷ Surrebuttal Testimony of Bill Power, P.E. on Behalf of Neighbors United Against Ameren’s Power Line (November 16, 2015).

⁸ Order Regarding Motion for Reconsideration at 2 (December 9, 2015) (emphasis added) (hereinafter, “December 9 Order”).

⁹ Motion at P 3.

and was impracticable given the timing of the contact with MISO counsel. Neighbors Motion failed to meet the Commission's rules governing discovery disputes.

IV. Conclusion

Counsel for Neighbors failed to meet the Commission's requirements before filing the Motion. While MISO provided supplemented responses to Neighbors' discovery request on this day, Neighbors should conform its actions in the above-captioned proceeding to the orders and rules governing this proceeding. Furthermore, nothing in Neighbors' Motion should be accepted as cause for any delay in these proceedings or any other accommodation at hearing based on the timing of MISO's response to discovery. Neighbors impermissibly delayed its data requests and its contacts with MISO counsel, and has ignored both the December 9 Order and the Commission's rules.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was e-mailed on this 11th day of January 2016 to the persons on the Commission's service list in this case.

/s/ Joshua Harden
Attorney for Midcontinent Independent System
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