UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning Reliability Standards	**)**	**Docket Nos. RM12-1-000**
	)	**RM13-9-000**

COMMENTS OF THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with the Commission's May 16, 2013 Supplemental Notice of Proposed Rulemaking ("NOPR") in the above-captioned proceeding, the Midcontinent Independent System Operator, Inc. ("MISO")[1] respectfully submits comments concerning proposed Reliability Standard TPL-001-4. MISO does not support the use of non-consequential load loss in the planning horizon, and, therefore, supports proposed Reliability Standard TPL-001-4 as an improvement over previous versions of the TPL Reliability Standards. Nonetheless, MISO has concerns regarding Attachment 1 to Footnote 12. In particular, MISO comments on two aspects of Attachment 1 to proposed Reliability Standard TPL-001-4 – the need to ensure that "applicable regulatory authorities or governing bodies responsible for retail electric service issues do not object to the use of Non-Consequential Load Loss under footnote 12" set forth in Section III and the need to include, in any assessments of Non-Consequential Load Loss, assessments of "potential overlapping uses" of footnote 12 set forth in Section II at number 8. As discussed in more detail below, relative to the need to include, in any assessments of Non-Consequential Load Loss, assessments of "potential overlapping uses," it is not clear in these what type of an assessment is intended or sufficient to comply with the

[1] Effective April 26, 2013, MISO has amended its Certificate of Incorporation on file with the State of Delaware to reflect a change in its legal entity name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc." No other changes to the MISO business resulted from this change. MISO intends to submit a comprehensive Tariff clean-up filing to the Commission in a timely manner to reflect this change.

requirement. Regarding the need to ensure that "applicable regulatory authorities or governing bodies responsible for retail electric service issues do not object to the use of Non-Consequential Load Loss under footnote 12," MISO respectfully asserts that this requirement is unclear relative to what actions or activities are sufficient for compliance, will significantly lengthen the transmission planning process, and will not ensure that use of Footnote 12 protects "against inconsistent results and arbitrary determinations" as set forth by NERC in its petition. Accordingly, MISO respectfully requests that the Commission clarify what type of assessment is sufficient for compliance with the "potential overlapping uses" requirement, and remand Section III of Attachment 1 to Footnote 12 in proposed Reliability Standard TPL-001-4 and direct NERC to eliminate or clarify the requirement to obtain retail regulator approval.

I. Communications

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II. Background

TPL-001-4 is the latest iteration of the proposal by NERC to address the Commission's concerns expressed in Order No. 693 regarding footnote b to Table 1 of Reliability Standard TPL-002-0. Footnote b provides, in relevant part, that "[p]lanned or controlled interruption of electric supply to radial customers or some local Network customers, connected to or supplied by the Faulted element or by the affected area, may occur in certain areas without impacting the overall reliability of the interconnected transmission systems," and that to "prepare for the next contingency, system adjustments are permitted, including curtailments of contracted Firm (non-recallable reserved) electric power Transfers." In Order No. 693, the Commission expressed concern that footnote b allows for the inclusion of the interruption of firm service in transmission planning processes, and ordered NERC to clarify the meaning of the footnote.[2]

NERC's initial attempt to clarify the meaning of footnote b was proposed Reliability Standard TPL-002-1, which revised footnote b to provide that Non-Consequential Load Loss is permitted in the planning process in limited circumstances when adequately documented and subject to a stakeholder process. The Commission

[2] *See Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 1840, 1845, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

rejected this proposal on the ground that the procedural and substantive limits on the use of such load loss were too undefined.[3]

While proposed TPL-002-1 was pending at the Commission, NERC submitted a revised proposal to consolidate the TPL standards into a single standard – TPL-001-2 – and to implement the necessary modifications in a new footnote 12 to Table 1 of that standard. The Commission proposed to reject footnote 12 based on the same concerns that it expressed in rejecting proposed Reliability Standard TPL-002-1. In particular, the Commission cited three concerns with proposed footnote 12:

> First, proposed footnote 12 lacks adequate parameters. Second, the NERC proposal leaves undefined the circumstances in which it is allowable to plan for Non-Consequential Load Loss to be utilized. The Commission believes that footnote 12 could function as a means to override the reliability objective and system performance requirements of the TPL Reliability Standard without any technical or other criteria specified to determine when planning to use Non-Consequential Load Loss to meet single contingency performance requirements would be allowable. While NERC expects that such determinations will be made in a stakeholder process, this provides no assurance that such a process will use technically sound means of approving or denying exceptions. Third, while the Commission recognizes that some variation among regions or entities is reasonable given varying grid topography and other considerations, there are no technical criteria to determine whether varied results are arbitrary or based on meaningful distinctions.[4]

In response to the proposed rejection of proposed Reliability Standard TPL-001-2, NERC submitted proposed Reliability Standard TPL-001-4 in February 2013. Like TPL-001-2, proposed Reliability Standard TPL-001-4 would combine the existing four TPL standards into a single standard. TPL-001-4 contains a revised footnote 12 to Table 1 that defines the circumstances under which Non-Consequential Load Loss may be used in the planning process:

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[3] *See Transmission Planning Reliability Standards*, Order No. 762, 139 FERC ¶ 61,060 at P 20 (2012).
[4] *See* Notice of Proposed Rulemaking, *Transmission Planning Reliability Standards*, 139 FERC ¶ 61,059 at P 14 (2012).

> An objective of the planning process is to minimize the likelihood and magnitude of Non-Consequential Load Loss following planning events. In limited circumstances, Non-Consequential Load Loss may be needed throughout the planning horizon to ensure that BES performance requirements are met. However, when Non-Consequential Load Loss is utilized under footnote 12 within the Near-Term Transmission Planning Horizon to address BES performance requirements, such interruption is limited to circumstances where the Non-Consequential Load Loss meets the conditions shown in Attachment 1. In no case can the planned Non Consequential Load Loss under footnote 12 exceed 75 MW for US registered entities. The amount of planned Non- Consequential Load Loss for a non-US Registered Entity should be implemented in a manner that is consistent with, or under the direction of, the applicable governmental authority or its agency in the non-US jurisdiction.

Attachment 1 to proposed TPL-001-4 provides the procedural requirements applicable to the inclusion of Non-Consequential Load Loss in the Near-Term Transmission Planning Horizon. Among other things, it provides for an open stakeholder process with advance notice to all stakeholders of all planned uses of Non-Consequential Load Loss under footnote 12. For certain Non-Consequential Load Loss between 25 MW and 75 MW, or with a voltage level above 300 kV, Attachment 1 requires that "the Transmission Planner or Planning Coordinator . . . ensure that the applicable regulatory authorities or governing bodies responsible for retail electric service issues do not object to the use of Non-Consequential Load Loss under footnote 12 . . . ." In the documentation of the planned uses of Non-Consequential Load Loss, the Planning Coordinator or Transmission Planner must notify stakeholders of, among other things, an "[a]ssessment of potential overlapping uses of footnote 12 including overlaps with adjacent Transmission Planners and Planning Coordinators." It is these two aspects of Attachment 1 – the requirement to ensure that "applicable regulatory authorities or governing bodies . . . do not object to the use of Non-Consequential Load Loss under footnote 12" and the requirement to notify stakeholders of "potential overlapping uses of

footnote 12" – on which MISO has concerns, and on which MISO provides comments below.

III. Comments

A. The Commission should direct the elimination or, in the alternative, clarification of the requirement to ensure that "applicable regulatory authorities or governing bodies . . . do not object" to Non-Consequential Load Loss

In its remand of proposed Reliability Standard TPL-001-2 to NERC, the Commission explicitly stated, as its reason for rejecting proposed Reliability Standard TPL-001-2, that NERC's proposed Footnote 12 "lacks safeguards to ensure against inconsistent results and arbitrary determinations to allow for the planned interruption of load shed."[5] Although the Commission mentioned stakeholder processes regarding determinations regarding planned non-consequential load loss, it did not appear to mandate or otherwise direct that such a process was the appropriate method through which to address its concerns regarding Footnote 12 of proposed Reliability Standard TPL-001-2. MISO would agree that a stakeholder process is not an appropriate method through which to address the Commission's concerns regarding Footnote 12 of proposed Reliability Standard TPL-001-2. Further, MISO respectfully submits that adding a requirement that mandates interaction with and approval by an entity not subject to the NERC reliability standards or model, *e.g.*, applicable regulatory authorities or governing bodies responsible for retail electric service issues, adds an additional layer of complexity and administrative burden to compliance with proposed Reliability Standard TPL-001-4 without any attendant benefit and – in particular – without the benefits intended to

[5] April 19, 2012 NOPR at P. 14

address Commission concerns with the use of non-consequential load loss in the planning horizon.

More specifically, on its face, the requirement that a Planning Coordinator or Transmission Planner ensure that "applicable regulatory authorities or governing bodies responsible for retail electric service issues do not object" to the use of Non-Consequential Load Loss within the parameters defined by Section III of Attachment 1 appears to be a well-intentioned effort to respond to the Commission's concerns that the use of Non-Consequential Load Loss in the planning process be safeguarded against inconsistent results and arbitrary determinations. However, MISO is concerned that the inclusion of and lack of clarity in this requirement will make it very difficult for Planning Coordinators and Transmission Planners to comply with proposed reliability standard TPL-001-4.

As an initial matter, it is not clear what is meant by "applicable regulatory authorities or governing bodies" as those terms are used in Attachment 1. Presumably, these terms encompass a state's public service commission or public utility commission. At the same time, they are broad enough to potentially include other state bodies or agencies such as consumer advocacy and protection bodies, state legislatures, and city or municipal bodies. For example, a state legislature has ultimate legislative authority over retail electric service within the state's borders. A further example is the City of New Orleans City Council, which has authority over retail electric service within its jurisdiction. Are state legislatures and city or municipal bodies "governing bodies responsible for retail electric issues" under the meaning of Section III of Attachment 1?

Similarly, while public utility commissions and public service commissions have primary authority over retail electric service in most states, they often share responsibility with other state agencies with respect to certain aspects of electric service, particularly those involving siting of new facilities. For example, the Iowa Utilities Board has primary jurisdiction over retail electric service in Iowa, but the Iowa Department of Natural Resources also has some authority with respect to the siting of new electric generation and transmission facilities. Are these other state agencies "governing bodies responsible for retail electric service issues" under Attachment 1?

If these other entities would be considered "governing bodies responsible for retail electric issues" under the meaning of Section III of Attachment 1, a Transmission Planner and/or Planning Authority/Planning Coordinator would need to seek and receive assurances from each of these bodies and, then, NERC prior to finalization of its transmission expansion plan each year. Further, it is possible that a Planning Coordinator or Transmission Planner seeking to rely on Non-Consequential Load Loss in its plans could obtain the assent of the applicable public utility commission, and yet have its transmission plans subsequently upended, or (more problematically) face sanctions for violating TPL-001-4, because it did not obtain additional assent from a different state agency that has some involvement in retail electric matters. As well, the proposed TPL-001-4 Reliability Standard provides no process or exception where "governing bodies responsible for retail electric issues" disagree. Finally, in terms of compliance monitoring and enforcement, NERC and its Regional Entities would be required to maintain awareness of all "governing bodies responsible for retail electric issues". This

would impose a significant burden on already constrained NERC and Regional Entity resources.

Another equally thorny issue under Section III of Attachment 1 is figuring out what it means to ensure that an applicable regulatory authority or governing body "does not object" to the inclusion of Non-Consequential Load Loss in the planning process. As the Commission is well aware, authority at most agencies exists at multiple levels. Most agencies have one or more commissioners who are politically appointed. Any official action by the agency usually requires that they vote on that action as part of a transparent process, and usually after a formal petition or application that has been filed with the agency (or, in some cases, initiated by the agency staff). At the same time, most agencies have full-time professional staff that provide advice and counsel to the commissioners. While the views of the staff on regulatory issues are often the same as those held by the commissioners, it is not unheard of for the views of the staff and the views of the commissioners to diverge.

This basic agency structure gives rise to a number of questions in the context of the requirement to ensure that an applicable regulatory authority or governing body "does not object" to the use of Non-Consequential Load Loss in the planning process. First, may a Planning Coordinator or Transmission Planner rely on the input of agency staff in ensuring that there is no objection, or is the Planning Coordinator or Transmission Planner instead required to obtain a more formal decision that is voted on by the agency's commissioners? If the latter is required, obtaining such a determination could be a very cumbersome and expensive proposition for most Planning Coordinators and Transmission Planners, and could interfere with the completion and timeliness of the

planning process. Furthermore, even if a Planning Coordinator or Transmission Planner is able to rely on the determination of an agency's staff, is it sufficient to obtain the informal consent of agency staff in ensuring that there is no objection, or is a more formalized staff determination (for example, a General Counsel opinion letter or no-action letter) required? If it is sufficient to obtain informal guidance from agency staff, what should a Planning Coordinator or Transmission Planner do if the staff provides conflicting or unclear guidance regarding whether it objects to the inclusion of Non-Consequential Load Loss? In this instance, it presumably would be possible to seek a more formalized decision from the agency, but – as noted above – obtaining such formalized declarations can be time-consuming and expensive, resulting in unnecessary interference with the planning process.

Finally, MISO respectfully notes that many State Commissions and Municipal bodies are not subject to the NERC Reliability Standards and are not, therefore, required to participate in associated processes or facilitate the satisfaction of requirements for Transmission Planners and/or Planning Coordinators. In fact, such bodies may not have a process through which they can issue or provide the "assurance" that Section III in Attachment 1 to Footnote 12 appears to require. Further, there is not a process or criteria to mediate disputes amongst such entities in the event that "conflicting" results are received.

For these reasons, MISO respectfully submits that it would be best to eliminate the requirement in Attachment 1 to ensure that applicable regulatory authorities or governing bodies "do not object" to the inclusion of Non-Consequential Load Loss in transmission plans. Such a requirement, although well-intentioned, is likely to be very

difficult or possibly impossible for Transmission Planners and/or Planning Coordinators to implement. Furthermore, as outlined above in the discussion of the background to the TPL-001-4 proposal, the inclusion of such a requirement was not directed, or even suggested, by the Commission. Thus, the requirement goes beyond what the Commission required in its earlier orders on footnotes b and 12. Finally, MISO respectfully submits that the requirement is superfluous. The mandate to use an open stakeholder process that allows for robust input by any interested parties will ensure that all interested state agencies will have a say in the process, and that any objections of such agencies to the inclusion of Non-Consequential Load Loss will be incorporated into the relevant planning decisions. Accordingly, MISO respectfully requests that the Commission direct NERC to eliminate this requirement from Attachment 1.

In the alternative, MISO requests that the Commission clarify (or direct NERC to clarify) the "do not object" language in Attachment 1. In particular, MISO requests that the "do not object" language in Attachment 1 be clarified to mean that: (1) the phrase "applicable regulatory authorities or governing bodies" means only the public utility commission or public service commission in the affected states, and does not refer to any other state entity; and (2) comments or other input submitted by the affected state public service commission or public utility commission in the Attachment 1 stakeholder process indicating that that agency "does not object" to the inclusion of Non-Consequential Load Loss in the planning process are sufficient to satisfy the "does not object" requirement in Section III of Attachment 1, and no other, more formalized order of the commission is required. Such clarifications are fully consistent with the intent of the requirement in

Section III of Attachment 1, and are necessary to ensure that the requirement is practicable for Planning Coordinators and Transmission Providers.

B. The Commission should clarify (or direct the clarification of) the requirement to inform stakeholders of assessments of "potential overlapping uses of footnote 12"

MISO also respectfully requests that the Commission clarify (or direct the clarification of) the language in Section II of Attachment 1 that requires that Planning Coordinators and Transmission Providers provide to stakeholders all assessments of "potential overlapping uses of footnote 12 including overlaps with adjacent Transmission Planners and Planning Coordinators." As with the "does not object" language, MISO's ultimate concern with this language is ensuring that it is able to comply with the requirement to notify stakeholders of "potential overlapping uses" of Non-Consequential Load Loss.

Presumably this requirement is intended to refer to reliance by more than one Planning Coordinator or Transmission Provider on the same Non-Consequential Load Loss in their planning studies. However, this reading of the requirement is undercut by the concluding phrase "including overlaps with adjacent Transmission Planners and Planning Coordinators." The inclusion of this phrase suggests that there are other "potential overlapping uses" that are encompassed by the requirement. It is not clear to MISO what these other overlapping uses might be, or how they might be incorporated into the planning process.

For purposes of facilitating compliance with this requirement, MISO respectfully requests that the Commission clarify what "overlapping uses of footnote 12" are encompassed by Section III.8 of Attachment 1. Specifically, the Commission should

clarify that this provision refers only to instances in which multiple Planning Coordinators or Transmission Planners might be relying on the same Non-Consequential Load Loss in their planning studies.

IV. Conclusion

MISO respectfully requests that the Commission issue a Final Rule in this proceeding consistent with the comments set forth above.

Respectfully submitted,

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Dated: June 24, 2013

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 the above-captioned proceedings.

Dated at Washington, D.C., this 24th day of June, 2013.

/s/ Brian M. Zimmet

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