

Manual No. 028

Business Practices Manual
Transmission Determination
Process for Prospective or
Existing Unregulated
Transmission Owner's
Facilities

Application for Transmission Determination of
the FERC Seven Factor Test for Local
Distribution

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1. Introduction

The Midcontinent Independent System Operator, Inc. (MISO) Transmission Owners Agreement (TOA) requires MISO to make a transmission determination for a prospective or existing Transmission Owner where the Transmission Owner is not subject to regulation by a regulatory authority (i.e., FERC or a State Commission). TOA Appendix C, Part II, Section C, Paragraph 2 states:

“Each Owner shall file a request with the appropriate regulatory authority or authorities (unless a proceeding has already been initiated or completed) for a determination of which of its facilities are transmission facilities or which are distribution in accordance with the seven (7) factor test set forth in FERC Order No. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any applicable successor test. Each Owner shall use its best effort to cause these determinations to be made within twelve (12) months of approval of its application for membership by MISO's Board of Directors. *Owners that are not subject to regulation by a regulatory authority shall apply to MISO for such a determination.*” (Emphasis added.)

This BPM applies to the situation stated in italics above when a Transmission Owner is not subject to regulation by a regulatory authority, such as FERC or a State Commission, and such Transmission Owner applies to MISO for a determination under the FERC Seven Factor Test for Local Distribution. This BPM does not apply to existing regulated Transmission Owners, or when an unregulated Transmission Owner does not specifically request MISO to perform the FERC Seven Factor Determination Test on its own existing facilities. This BPM can also be utilized as part of disputes raised during the MISO Transmission Expansion Plan regarding the classification of perspective facilities proposed for inclusion, although in that instance, the procedures applicable to those disputes shall be followed rather than the procedures contained herein.

FERC Order 888, 61 Fed. Reg. 21,540 enumerated its Seven Factor Test for determining the demarcation between federal jurisdiction over transmission and state jurisdiction over local distribution:

1. Local distribution facilities are normally in close proximity to retail customers.
2. Local distribution facilities are primarily radial in character.
3. Power flows into local distribution systems; it rarely, if ever, flows out.
4. When power enters a local distribution system, it is not re-consigned or transported on to some other market.
5. Power entering a local distribution system is consumed in a comparatively restricted geographical area.
6. Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.
7. Local distribution systems will be of reduced voltage.

If required pursuant to the TOA and for a prospective or existing unregulated Transmission Owner requesting a determination, MISO will determine what facilities should be classified as transmission using the FERC Seven Factor Test. Notwithstanding MISO's transmission determination, FERC's or a State Commission's acceptance of a facility's eligibility for rate recovery under the MISO tariff will be final. Therefore, MISO has developed a process that describes the application of the FERC Seven Factor Test to determine a facility's classification.

1.1 Purpose of the MISO Business Practices Manuals

The BPMs developed by MISO provide background information, guidelines, business rules, and processes established by MISO for the operation and administration of the MISO markets, provisions of transmission reliability services, and compliance with the MISO settlements, billing, and accounting requirements. A complete list of MISO BPMs is available for reference through MISO's website. All definitions in this document are as provided in the MISO Tariff, the NERC Glossary of Terms Used in Reliability Standards, or are as defined by this document.

1.2 Purpose of this Business Practices Manual

This BPM describes how MISO will perform the transmission determination for facilities upon request by a prospective or existing unregulated Transmission Owner that owns the facilities, pursuant to TOA Appendix C, Part II, Section C, Paragraph 2. This document describes the MISO determination process that applies the FERC Seven Factor Test for local distribution. If there is a concern that an unregulated Transmission Owner member's proposed project facilities recommended for inclusion in the MISO Transmission Expansion Plan (MTEP) Appendix A may not be classified as transmission, the unregulated Transmission Owner shall request that MISO make a transmission determination of those proposed project facilities pursuant to this Business Practice Manual. This BPM does not apply to any facilities already determined by a regulatory authority to be transmission or distribution.

The transmission determination process outlined in this manual is intended to provide consistency and clarity to all stakeholders. MISO strives to apply the Seven Factor Test in a manner that is consistent and comparable to a test that would be performed by FERC, such that the resulting determination should be the same, regardless of whether an entity is regulated.

1.3 Scope

This document is intended to be used by:

- 1) MISO staff to perform the transmission determination for an existing or prospective unregulated Transmission Owner's facilities upon request by the entity and when required under the TOA.
- 2) MISO stakeholders who provide input into the transmission determination process performed by MISO.
- 3) Prospective Transmission Owner's to understand what facilities are expected to be classified as transmission through MISO's determination process, so they can submit



facilities to be reviewed by MISO.

- 4) An existing unregulated Transmission Owner seeking a determination regarding a project submitted during the annual MTEP planning process.

2. Responsibilities

Summary-level responsibilities are described below. Detailed responsibilities and instructions are provided in Section 4.

2.1 MISO

MISO will perform the transmission determination using data provided by the prospective or existing unregulated Transmission Owner, MISO modelling information, and other data that MISO deems relevant. If the prospective/existing unregulated Transmission Owner's facilities are embedded within the system of existing Transmission Owner(s), MISO will provide notice to such existing Transmission Owner(s) of the transmission determination process. MISO will review analyses and conclusions with stakeholders at Planning Subcommittee meetings and incorporate feedback into its transmission determination.

2.2 Unregulated Transmission Owners

Prospective and existing unregulated Transmission Owners will provide information, including but not limited to the items listed below, to enable MISO to perform its transmission determination. The existing or prospective unregulated Transmission Owner will make available a representative of the organization to work with MISO and clarify the information provided. The existing or prospective unregulated Transmission Owners are required to provide the following information:

1. A listing of potential transmission facilities to be reviewed in the format requested by MISO.
2. System switching diagrams, one-line diagrams, operating diagrams, or breaker diagrams in PDF format containing a significant portion of the existing or prospective Transmission Owner's system, showing multiple substations and connections between them. Diagrams that show system topology and connectivity between substations in PDF format. Diagrams must indicate circuit breaker and switch default status. Note the listed diagrams are not different diagrams, but different names for the same diagrams. Individual substations diagrams are acceptable, but not preferred, as they are inefficient to use.
3. Siemens PSS/E or compatible powerflow model containing prospective transmission facilities. Confirmation that prospective transmission facilities are included in existing MTEP models will satisfy this requirement.
4. Two years of historical real-time real power flow data for facilities under evaluation. Two years of historical information on facilities owned by the unregulated utility that impact or that are impacted by the facilities under evaluation is also required, along with two years of historical information on other impacting or impacted facilities to the extent possible. For facilities in service within the 2 years, life-time historical real-time real power flow data is required.
5. Evidence of prior transmission determination by regulatory authority, if applicable.

2.3 MISO Stakeholders

MISO stakeholders may review the TOA Appendix H and TOA Appendix G facility lists, as presented at Planning Subcommittee meetings, and provide written input to MISO. MISO's formal dispute resolution process under Attachment HH of the MISO Tariff may also be used by stakeholders to address facility designation issues not resolved through the determination process.

3. MISO Transmission Criteria

In FERC's Order No. 888, the Commission enumerated the Seven Factor Test for the demarcation between federal jurisdiction over transmission and state jurisdiction over local distribution, as described in Section 1 of this BPM.

The Seven Factor Test, as outlined by FERC, is intended to identify facilities that serve a local distribution function for purposes of unbundling services and rates as well as separation of state and federal regulatory jurisdiction. In the same manner as FERC, MISO will determine, on a case-by-case basis, whether a facility should be classified as transmission or distribution. Below, MISO describes how individual factors of the FERC Seven Factor Test are applied to determine what facilities should be classified as transmission facilities. In performing this analysis, MISO will normally consider how the facilities are actually utilized as opposed to how the facilities could hypothetically be utilized. The following description of each factor should be viewed as general guidance rather than being considered all-inclusive as it is FERC precedent that should ultimately be followed.

3.1 The FERC Seven Factor Test

1. Factor 1: Local distribution facilities are normally in close proximity to retail customers.

Proximity is interpreted in the context of the purposes and customers that the facilities serve. If the facilities are bounded by the facility owner's retail customers, they are deemed to be in close proximity to retail customers regardless of the size of the owner's service area.¹

2. Factor 2: Local distribution facilities are primarily radial in character.

Networked facilities would fail this factor. It must be shown that the facilities under determination, in their current system normal configuration, are a part of a contiguous path between existing transmission.

If a facility is kept radial from the Transmission System via a normally open element, a sufficient reason must be provided as to why and when the normally open element needs to be closed, and that facility must demonstrate that it can be reliably looped in, and that it provides a benefit to the broader Transmission System under scenarios where the facility would be closed in and thus fail this factor.

3. Factor 3: Power flows into local distribution systems; it rarely, if ever, flows out.

Historical power flows through the facilities under determination must be shown to flow more often than rarely from the existing transmission system and then back to the existing

¹ *Southwest Power Pool, Inc.*, 149 FERC P 61,051 (2014) at ¶ 174. Electrical proximity of the facilities to retail customers may be considered for additional functional-technical consideration of the purposes served by the facilities.

transmission system over the period examined, in order to fail this factor. Two years of historical flow through the facility under determination and the surrounding system should be used in order to understand if power is feeding a local system only or flowing back onto the transmission system as well. A real power flow analysis may be performed to demonstrate flow paths under intact and contingency conditions when the historical information is not available.

4. Factor 4: When power enters a local distribution system, it is not re-consigned or transported on to some other market.

Facilities under determination that form a path from existing transmission, through the proposed facility, and then back to existing transmission, that has permitted power transfer across the facilities to be re-consigned to other markets would fail this factor.

5. Factor 5: Power entering a local distribution system is consumed in a comparatively restricted geographical area.

When power flowing on the facilities under determination is consumed only by customers within close proximity to the facilities, they will pass this factor. Historical flow or power flow analysis may be used to demonstrate where the real power is consumed.

6. Factor 6: Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.

Facilities with meters at the transmission to local distribution interface are the meters used by the distribution provider to document loads at a distribution substation. These meters are typically unidirectional. The local distribution meters are not tie line meters used on the transmission system to determine interchange between Balancing Areas or Local Balancing Areas. If the metering in place for the facilities under determination are primarily to monitor flows to retail load from existing transmission, the facilities would pass this factor.

7. Factor 7: Local distribution systems will be of reduced voltage.

If the facilities under determination are lower voltage than the existing surrounding transmission, this would be considered reduced voltage, and would pass this factor.

4 MISO Transmission Determination Process

Using the FERC Seven Factor Test in its analysis, MISO shall evaluate facilities through the following process to determine which facilities should be classified as transmission facilities:

4.1 Application of MISO Transmission Criteria

- a) If the facilities have been determined by any jurisdictional federal or state regulatory authority as constituting distribution or transmission facilities, such a determination will be conclusive, subject to FERC's final authority to make transmission determinations and establish transmission service rates, and the remaining criteria need not be applied.

MISO determines if an entity's facilities are jurisdictional. Most investor-owned utilities will have FERC Form 1 data. MISO will confirm with the jurisdictional entity that facilities submitted are on their FERC Form 1 or other jurisdictional transmission rate. Non-jurisdictional entities will request that MISO perform transmission review if it has not been reviewed by the appropriate federal or state regulatory entity. Generally, municipalities and cooperatives are non-jurisdictional.

- b) MISO will apply the FERC Seven Factor Test as described in Section 3.

MISO staff will review relevant system data and determine whether facilities are distribution or Transmission based on the totality of the circumstances based on the FERC Seven Factor Test.²

4.2 Stakeholder Review Process

MISO will provide notice to existing Transmission Owner(s) that own the portions of the Transmission System that are directly impacted by the request. MISO will share the results of its transmission determination review at a regular Planning Subcommittee meeting. This may be after MISO has given a formal response to the prospective/existing unregulated Transmission Owner, depending on the integration schedule for the prospective Transmission Owner and when it must sign the TOA for timely membership approval by the MISO Board of Directors. Stakeholders may provide input at the Planning Subcommittee meeting or directly to MISO Staff by email. MISO will consider all input and will inform stakeholders of MISO's staff determination. Stakeholders may use MISO's dispute resolution process set forth in Attachment HH to challenge the MISO determination, as needed and applicable.

4.3 Provide Response to Unregulated Transmission Owner

MISO will document the determinations and any corresponding recommended changes to the Appendix H and G transmission facility list file. Appendix H and G listings will incorporate review comments from the review process, including those related to the FERC Seven Factor Test. The

² See, e.g., *Commonwealth Edison Co.*, 167 FERC ¶ 61,173 at P 26 (2019).



MISO response to the unregulated Transmission Owner will state if any submitted facilities are determined not to be transmission. Note that the Transmission Owners' Appendix H and G transmission facility lists are posted on MISO public web site as described in Section 6.

Notwithstanding the foregoing, nothing in this Public Manual BPM-028 shall affect a Transmission Owner's rights under the Federal Power Act.

5 Related Documents and Requirements

MISO's TOA requires MISO to make a transmission determination for a prospective or existing Transmission Owner where the entity is not subject to regulation by a regulatory authority (i.e., FERC or a State Commission). TOA Appendix C, Part II, Section C, Paragraph 2 says:

"Each Owner shall file a request with the appropriate regulatory authority or authorities (unless a proceeding has already been initiated or completed) for a determination of which of its facilities are transmission facilities or which are distribution in accordance with the seven (7) factor test set forth in FERC Order No. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any applicable successor test. Each Owner shall use its best effort to cause these determinations to be made within twelve (12) months of approval of its application for membership by MISO's Board of Directors. *Owners that are not subject to regulation by a regulatory authority shall apply to MISO for such a determination.*" (Emphasis added.)

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5. Power entering a local distribution system is consumed in a comparatively restricted geographical area.
6. Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.
7. Local distribution systems will be of reduced voltage.

6. Related Procedures

MISO Legal Department's posting of Transmission Owners' Appendix H and G transferred transmission facility lists to the MISO website.

The transferred transmission facilities lists are posted at <https://www.misoenergy.org/legal/transferred-transmission-facilities/>