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# *Fourth Annual* **Missouri Public Utility Law Symposium**

Sponsored by the  
**Missouri Public Service Commission**

**Friday, October 17, 2014**  
**8:30 a.m. – 4:00 p.m.**

**Saint Louis University**  
**School of Law**  
**St. Louis, Missouri**

**6.6 CLE hours**

*Free event*

**Continental Breakfast, Lunch and  
Refreshments provided**

# BIOGRAPHICAL INFORMATION



**Chairman Robert S. Kenney** was appointed to the Missouri Public Service Commission and appointed its Chairman by Governor Jay Nixon and unanimously confirmed by the Missouri State Senate.

Chairman Kenney is an active member of the National Association of Regulatory Utility Commissioners. He serves as Chair of the Committee on Energy Resources and the Environment. He also serves on the Consumer Affairs Committee, the Subcommittee on Utility Market Place Access, and the International Relations Committee. He served as President of the Organization of MISO States from 2011 to 2013.

As President of the Organization of MISO States, Chairman Kenney led efforts to enhance and strengthen the role of the state regulatory sector in the MISO market. His leadership resulted in enhanced authority for the OMS whereby the OMS has the ability to make certain filings pursuant to section 205 of the Federal Power Act. This major enhancement will provide state regulators increased ability to protect the consumers' interests.

Prior to his appointment to the PSC, Chairman Kenney served as Missouri Attorney General Chris Koster's Chief of Staff. Chairman Kenney also practiced commercial and business litigation as a shareholder at the St. Louis law firm Polsinelli Shalton Flanigan Suelthaus PC. Chairman Kenney also served as an Assistant Attorney General in the Missouri Attorney General's Office, practicing in the Consumer Protection Division. In that division, Chairman Kenney worked to enforce state and federal consumer protection laws, including initial implementation and enforcement of Missouri's Telemarketing No-Call List Law.

Chairman Kenney is actively involved in a host of civic and bar related activities. Chairman Kenney is a member of the Missouri Bar Board of Governors. He is Vice-Chair of the Missouri Bar's Twenty-Second Circuit Judicial Evaluation Committee and Vice-Chair of the Missouri Bar's Environmental and Energy Law Committee. Chairman Kenney is a past President of the Mound City Bar Association.

Chairman Kenney earned his undergraduate degree from Hampton University in Hampton, Virginia and his law degree from Saint Louis University School of Law, where he was an Articles Editor for the Saint Louis University Public Law Review, a member of the Moot Court Team and Board and the recipient of the Judge Robert Dowd and the William and Regina Kniep Awards for Outstanding Appellate Advocacy.



**Judge Michael A. Wolff** is the Dean of St. Louis University School of Law. Judge Wolff returned to SLU Law after serving 13 years on the Supreme Court of Missouri. Wolff was appointed to the Supreme Court of Missouri in August 1998 and served as chief justice for the term of July 1, 2005 through June 30, 2007. In addition to his judicial duties, he served as chair of the Missouri Sentencing Advisory Commission.

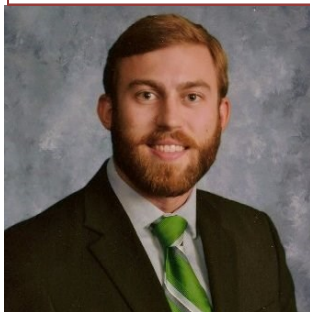
After graduating from Dartmouth College, Wolff received his J.D. cum laude from the University of Minnesota Law School. For 23 years prior to his appointment to the Court, he served as an assistant, associate and full professor at Saint Louis University School of Law, and has held faculty appointments in Saint Louis University's Department of Community Medicine, School of Medicine and the School of Public Health. He has also been a visiting professor at Sichuan University, Peoples Republic of China.

Wolff served as chief counsel to Governor Mel Carnahan from January 1993 to August 1994 and prior to that, as his transition director. He was special counsel to the governor from 1994-1998. Early in his career, he served as the director of the Black Hills Legal Services, Rapid City, SD, was an attorney for the Legal Aid Society of Metropolitan Denver, an attorney with Legal Assistance of Ramsey County, Minnesota, and a law clerk in the U.S. District Court in Minneapolis. He worked as a reporter for The Minneapolis Star (now the Star Tribune) during law school 1967-1970.

Missouri Lawyers' Weekly named Wolff "Lawyer of the Year" in 2007 and "Influential Lawyer" in 2013. He also received The Missouri Bar's Spurgeon Smithson Award (2013) and the Bar's Theodore McMillian Judicial Excellence Award (2007); the Honorable Donald P. Lay Merit Award from the National Employment Lawyers Association (2012); the Benjamin Cardozo Award from the Missouri Association of Criminal Defense Lawyers (2011); the James C. Kirkpatrick Award from the Northwest Missouri Press Association (2007); the Distinguished Non-Alumnus Award from the University of Missouri School of Law (2007); the Joseph E. Stevens "Aspire to Excellence" Award from the Kansas City Metropolitan Bar Association (2006); the President's Award from the Missouri Association of Probate and Associate Circuit Judges (2006), and the Clarence Darrow Award from Saint Louis University School of Law Public Interest Law Group (2004).



**Kevin Thompaon** is a native of Baltimore, Maryland. He received a B.A. from Connecticut College in Anthropology and Greek and a J.D. from the Law School of the University of Missouri-Columbia. After working at the Missouri Administrative Hearing Commission and Missouri Protection and Advocacy Services, he joined the PSC in 1999. He has been the Chief Staff Counsel since 2009



**Alex Antal** is an Assistant Staff Counsel at the Missouri Public Service Commission where he has worked since September of 2013. Alex is a December 2012 graduate of Saint Louis University School of Law. Alex is also the chair elect of the Mid-Missouri Young Lawyers Association and volunteer attorney at the Samaritan Center in Jefferson City.



**Joshua Harden** is the General Counsel of the Missouri Public Service Commission. His primary job is to defend the Missouri Commission's orders in external litigation.

Prior to becoming the general counsel in April of 2013, he was Chief of Staff and policy advisor to Chairman Robert S. Kenney of the Missouri Commission. Joshua was in private practice before coming to the Missouri Commission in 2009. He represented a variety of commercial and business interests throughout the Midwest. His law practice included securities and environmental compliance counseling, as well as, contract and employment issues. Joshua received his undergraduate degree from Washburn University in 1998 and received his law degree from the University of Missouri-Kansas City School of Law in 2005.

**Sam Loudenslager**, Principal Regulatory Analyst, Southwest Power Pool

Sam Loudenslager has served SPP in his current position since April 2012. Prior to that time he was the Director, Research and Policy Development with the Commissioners Staff of the Arkansas Public Service Commission. He left the Arkansas Commission in February 2012 after 28 years of service. When he was at the Arkansas Commission he held a number of positions on General Staff including Financial Analyst, Rate Analyst, and Manager of Telecommunications. He also served as Policy Analyst and Senior Policy Analyst on the Commissioners Staff.

While at the Arkansas Commission, Mr. Loudenslager served on or chaired a number of regulatory-related committees including: the Federal-State Joint Boards on Cost Separations and Universal Service; the NARUC Staff Subcommittee on Energy Resources and the Environment;



**Stephen G. Kozey** is Senior Vice President, General Counsel and Secretary for the Midcontinent Transmission System Operator, Inc., a position he has held since 2000.

Mr. Kozey's 38+-year career has focused on the electric industry -- rate and regulatory matters, Federal Energy Regulatory Commission jurisdictional matters, power and commodities trading functions, as well as industry mergers and acquisitions and antitrust litigation. During his career Mr. Kozey held various legal positions with electric utilities, (PSI Energy and its successor Cinergy, which he left as General Counsel of Cinergy's Energy Commodities Business Unit '92-'00), and Associate General Counsel at Potomac Electric Power Company '84-'87); private law firms in the District of Columbia (Skadden, Arps, Slate, Meagher & Flom, '88-'92; Reid & Priest '80-'84, and Dickstein, Shapiro & Morin '76-78), and a state regulatory agency (Public Staff of the North Carolina Utilities Commission '78-'80).

Mr. Kozey earned his J.D. degree in 1976 from the Law School of the University of Pennsylvania in Philadelphia. He graduated Magna Cum Laude from Haverford College in Haverford, Pa., where he was elected to Phi Beta Kappa and received a Bachelor of Arts Degree in religion and political science. He has been an Adjunct Professor at the Indiana University Law School - Indianapolis and has completed the Oxford University Strategic Leadership Programme. He is a member of the bar in the District of



**Denise Buffington**

Director, Energy Policy, and Corporate Counsel, KCP&L

Denise Buffington joined KCP&L in 2010 as Corporate Counsel-Regulatory, where she helped form a stand-alone transmission company and provides legal services related to power purchase agreements and interconnection arrangements, NERC compliance, and regulatory matters before state commissions and the Federal Energy Regulatory Commission.

In 2012, Ms. Buffington was appointed director of Energy Policy, where she directs KCP&L's efforts related to regional transmission organization activities, including energy markets, transmission expansion, and bulk electric system matters. Ms. Buffington also continues to provide legal counsel related to NERC compliance, energy markets, transmission rates, terms of service, system planning, power purchase agreements and interconnection arrangements.

Prior to working for KCP&L, Ms. Buffington served as an associate attorney, client specialist--litigation and legislative assistant, and legal assistant for Skadden, Arps, Slate, Meagher & Flom, LLP and a legal assistant for Steptoe & Johnson, in Washington, D.C. She has also served as a loaned associate to the Legal Aid Society of the District of Columbia.

Ms. Buffington has a Juris Doctor degree from American University's Washington College of Law in Washington, D.C. and a Bachelor of Science degree in political science, business law & law enforcement from Minnesota State University, Mankato.

She was a member of American University Law Review and a former board member of Arlington Street People's Assistance Network in Arlington, Virginia.

Ms. Buffington currently is the Investor Owned Utility representative on the SPP Corporate Governance Committee, the KCP&L representative on the SPP Markets and Operations Policy Committee, and Chair of the EEI working group supporting the SPP CEOs committee. She also participates in the EEI Transmission Policy Task Force and other SPP committees.



**Goldie Tompkins**

**Missouri Public Service Commission**

Goldie Tompkins is the Policy Advisor and Chief of Staff to Chairman Robert S. Kenney of the Missouri Public Service Commission. Prior to accepting her current position, she served as legal counsel for the Commission Staff where she worked on numerous cases and policy issues related to private investor owned electric, gas, water, and sewer utilities. Ms. Tompkins also served as an assistant prosecuting attorney for Cole County. She received her bachelor's degree from the University of Southern California and her J.D. from the University of Missouri-Columbia School of Law.



**Alexander Chen**

**Environmental Protection Agency**

Alex is currently the acting Air Branch Chief in EPA Region 7's Office of Regional Counsel. He received a B.S. in Civil and Environmental Engineering from Cornell University, a M.S. in Civil Engineering from the University of California at Berkeley, and a J.D. from the Northwestern School of Law of Lewis and Clark

College. He began his career with EPA in 1998 and has worked on Clean Air Act issues since 2007.



**Tom Grever**

**Shook, Hardy & Bacon LLP**

Tom is a partner in the Environmental Practice Group of Shook, Hardy & Bacon, LLC in Kansas City, MO. He counsels and litigates in all aspects of environmental law, including air, water, hazardous waste, Superfund, and natural resource damages. He assists clients in negotiating and obtaining environmental permits from state and federal environmental agencies and defending these permits from legal challenges. His practice includes significant focus on Clean Air Act permitting and enforcement, including new source review, Title V operating permits, and hazardous air pollutants. Tom works with clients in a broad range of industries, including utility, cement, agricultural products, mining, and chemical manufacturing. Tom began his career as an assistant attorney general in the Ohio Attorney General's environmental enforcement section. He is currently the Chair of the Environmental and Energy Law Committee of the Missouri Bar Association.

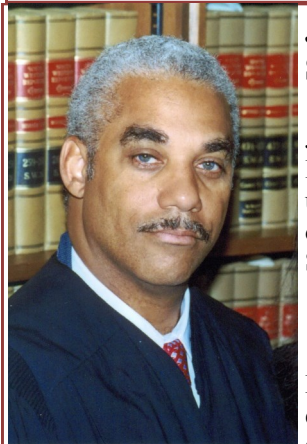
Tom received his J.D. from The Ohio State University, and his undergraduate



**Judge Robert M. Clayton III**

**Missouri Court of Appeals—Eastern District**

Judge Clayton is a sixth generation Missourian from Hannibal. He is a graduate of Hannibal Public Schools, Southern Methodist University and the University of Missouri—Kansas City School of Law. Prior to joining the bench, Judge Clayton was in private practice as a partner at Clayton & Curl, in Hannibal (1994-2003). He also served as State Representative (1994-2002), and was appointed to the Public Service Commission in 2003 (Chairman 2009-2011). He is active in a number of professional associations including the Missouri Bar, the 10<sup>th</sup> Circuit Bar (President 2012-2013), Mound City Bar, BAMSL, St. Louis County Bar, Lawyer’s Association of St. Louis, WLA and the American Bar Association’s Section on Public Utilities. He serves as a Trustee of The State Historical Society of Missouri, as Treasurer of Trinity Episcopal Church (Hannibal) and as President of the Board of Affordable Community Education, Inc., a higher education non-profit serving Northeast Missouri. He is a member of the Hannibal YMCA Men’s Club. He was appointed to the Bench in 2011 and retained for a twelve-year term in November 2012 (Chief Judge 2013-2014). He is married with two opinionated daughters.



**Judge George W. Draper III**  
**Supreme Court of Missouri**

Judge Draper was born August 5, 1953, in St. Louis. He attended Hamilton Elementary School and All Saints Episcopal Church in north St. Louis city until his family moved to Silver Spring, Md., in 1964. In 1977, he graduated from Morehouse College in Atlanta, Ga., with a bachelor’s degree in psychology. After earning his law degree in 1981 from Howard University School of Law in Washington, D.C., he served as a law clerk to Judge Shellie Bowers in the Superior Court of the District of Columbia.

Draper worked for the circuit attorney of the city of St. Louis as assistant prosecuting attorney from 1984 to 1994. There he was promoted to team leader and first assistant, and he handled numerous felony prosecutions.

In 1994, Draper was appointed associate circuit judge in St. Louis County. While serving on this court, Draper presided over 60 to 200 cases each week and was assigned specially to 12 jury trials. In 1998, he was elevated to circuit judge in St. Louis County. He presided over the civil, criminal, family court and juvenile division throughout his time as a trial judge.

When not on the bench, Draper counsels students interested in legal careers and has served as a mentor to attorneys deferred from practicing. He also has volunteered with the INROADS program, which prepares underserved youth for business and community leadership positions.

Draper is a member of the Mound City Bar Association, the Bar Association of Metropolitan St. Louis, the Lawyer’s Association of St. Louis, the National Bar Association and the Missouri Asian Bar Association. He is an inaugural member of the Gallery of St. Louis Legal Pioneers within the Bar Association of Metropolitan St. Louis. He is a member and vice president of the board of Covenant Community Church in north St. Louis County. He also is a member of the Prince Hall Free and Accepted Masons.

As an advocate for continuing legal education, Draper has organized and presented numerous programs. He also has served as a panelist on the Mound City Bar Association’s program “Mistakes to Avoid” and at the judicial forum hosted by the Missouri Association of Trial Attorneys. In addition to his service to the court, Draper has taught trial advocacy as an adjunct professor at Saint Louis University School of Law from 1996 to the present.

Draper’s wife, Judy Preddy Draper, is an associate circuit judge in St. Louis County and previously served as general counsel for the Missouri Department of Corrections. They have a daughter, Chelsea, who graduated from Amherst College in Amherst, Mass., and Washington University School of Law in St. Louis and is now a member of The Missouri Bar.



**Judge Mark Pfeiffer**

**Missouri Court of Appeals Western District**

Judge Pfeiffer’s judicial service began in May of 2009 when he was appointed to the Missouri court of Appeals. He graduated from David H. Hickman High School located in Columbia, Missouri in 1985. He then went to get a Bachelor of Arts Degree in accounting from Westminster College in 1989. In 1991 he received his Juris Doctor from the University of Missouri, Columbia. Judge Pfeiffer’s Employment history includes being an associate at Farrington & Curtis law Firm in Springfield, MO from 1992-1995. He has also been a shareholder at Bley & Pfeiffer, P.C. from 1995-2009.

Judge Pfeiffer is a member of several professional groups and has participated in many activities which include; The Missouri Bar, the Boone County Bar Association, Adjunct Faculty at Westminster College, 2012-present; the Kansas City Metropolitan Bar Association; and the National Board of Trial Advocacy—Judicial Fellow. His Civic and charitable activities are as follows: The Crossing Evangelical Presbyterian Church in Columbia, Mo; the Daniel Boone Little league Baseball in Columbia, MO, and a volunteer coach from 2002-2009 for the Columbia Youth Basketball Association in Columbia, MO.

He was born in Jacksonville, Illinois. He married Tracey Wright in 1989, and they have two sons, Wilson and Brady.



**Joseph P. Dandurand**

**Missouri Deputy Attorney General - March 2009 to present**

Dates of Service:

Elected in 1986, 1992, 1998 and 2004 as the 17<sup>th</sup> Judicial Circuit Judge for Cass and Johnson Counties; Presiding Judge from 1994 – 2007

Appointed November 2007 to Missouri Court of Appeals – Western District

Appointed Missouri Deputy Attorney General March 2009

Education:

Bachelor of Science, Business Administration 1977,

Central Missouri State University; Minor in Military Science – Distinguished Military Graduate

Juris Doctorate, 1980, University of Missouri, Kansas City

Professional Membership and Activities:

Former chair of Supreme Court Judicial Education Committee

Past president, Missouri Circuit Judge’s Association

Former member of Supreme Court Judicial Records Committee

Member of Missouri State Records Committee



**Karl Zobrist**

**Dentons US LLP**

Karl Zobrist is a partner in the Kansas City office of Dentons US LLP. Dentons is an international legal practice of over 2,600 lawyers and professionals with offices in more than 75 cities in 50 countries throughout North America, Europe, the Middle East, Asia and Africa. He is a member of the firm’s Energy Group, and represents electricity, natural gas and telecommunications companies before the Missouri Public Service Commission, the Kansas Corporation Commission, and in state and federal court. Mr. Zobrist is a former Chairman of the Missouri Public Service Commission (1996-97) and chaired the Missouri Energy Policy Task Force for Governor Bob Holden in 2001-02.

He served as interim President of the Midcontinent Independent System Operator, Inc. (MISO) when it was founded in 1998. With offices in Indiana, Minnesota and Arkansas, MISO oversees the reliable operation of the electricity grid from Manitoba to the Gulf of Mexico, as well as regional electricity markets. Mr. Zobrist currently serves as counsel to the MISO Board of Directors.

He was appointed to the Kansas City Board of Police Commissioners in 2000 by Governor Mel Carnahan, continuing until 2010. He was President of the Board for two terms. Under Missouri law the Board oversees the operations of the Kansas City Police Department. He was instrumental in the revision of policies related to the use of force, the pursuit of suspects in motor vehicles, and the Office of Community Complaints.

Before entering private practice, he was on active duty with the United States Navy in the Judge Advocate General’s Corps, representing clients in court-martial proceedings in New England and before the military appellate courts in Washington, D.C. He is a graduate of Augustana College in Rock Island, Illinois and the University of Iowa Law School. He can be reached at (816) 460-2545 and at [karl.zobrist@dentons.com](mailto:karl.zobrist@dentons.com).



## **Steve Rodgers**

**Director, Division of Electric Power Regulation-West  
Office of Energy Market Regulation  
Federal Energy Regulatory Commission (FERC)**

Master of Arts, Economics, University of Virginia – Charlottesville, Virginia  
Bachelor of Arts, *cum laude*, Economics, Washington & Lee University – Lexington, Virginia

Mr. Rodgers leads a Division of professional staff who are responsible for processing and addressing the technical aspects of all FERC-jurisdictional electric rate filings for the Western U.S. In addition, his Division is responsible for processing filings for all regions of the U.S. in the following programmatic areas: electric market-

based rate filings made under section 205 of the Federal Power Act (FPA);

corporate applications (including all mergers) of electric public utilities filed under section 203 of the FPA; electric public utility security issuance filings made under section 204 of the FPA; and interlocking directorate filings made under section 305 of the FPA.

Mr. Rodgers has worked at FERC for over 20 years, and has worked on both the advisory staff and the litigation staff. In the latter position he filed expert testimony in eight rate cases at FERC. He has extensive experience in the areas of corporate regulation (including mergers), market-based rates, qualifying facilities, and electric tariff and rate policy. In 1998 Mr. Rodgers received the FERC Chairman's Award, and in 2008 Mr. Rodgers received FERC's Exemplar of Public Service Award. Mr. Rodgers has given dozens of speeches at energy conferences in the US and in other countries over the past 10 years, and he has been on the adjunct faculty of the University of Illinois' Transmission Business School since 2011. Finally, Mr. Rodgers is a member of the Federal *government's Senior Executive Service*

# **PSC Basics -- A Primer for Those New to the Regulatory Arena**

Kevin A. Thompson and Alexander Antal

## ***Introduction—***

- **What is the PSC?**

- The PSC is an independent administrative agency charged with the regulation of investor-owned public utilities that sell electric, natural gas, telecommunications, water, and sewer services to the general public.
- The PSC also regulates manufactured housing and modular units.
- Created in 1913, the PSC formerly regulated transportation, including railroads, trucks and busses.
- Deregulation at the federal level has resulted in deregulation at the state level as well. The transportation industry is fully deregulated and the telecommunications industry is increasingly deregulated.

- **How is the PSC organized?**

- The PSC consists of five Commissioners, appointed by the Governor to six-year terms and confirmed by the Missouri Senate. Traditionally, three Commissioners are of the Governor's party and two are of the other party. One Commissioner serves as Chairman at the pleasure of the Governor.
- In addition to the five Commissioners, there are some 200 other employees. These are divided into three groups:
  - One group includes the Commissioners, their advisors and support staff, the Secretary and Regulatory Law Judges, the Data Center and support staff, and the General Counsel's Office, including the Federal Issues and Policy Analysis Section, and support staff.



- Another group consists of employees performing those administrative functions necessary to support the entire agency: budgeting and fiscal management; computer services; human resources; public information; and consumer services.
    - The third, and largest group, consists of the attorneys, technical experts and support personnel that make up the PSC Staff. The Staff includes, besides attorneys, accountants and auditors, economists, engineers, investigators, financial analysts, management analysts, statisticians, and other experts.
  - The PSC has stringent ethical rules that control the flow of information between these three groups. In brief, members of the first two groups may not discuss pending or soon-to-be pending contested cases with members of the third group (or anyone else).
- **What does the PSC do?**
  - The fundamental purpose of the PSC is to protect consumers from exploitation by monopoly public utilities.
  - The PSC exercises quasi-judicial and quasi-legislative authority in the regulation of public utilities. The PSC also exercises executive authority through investigation, analysis, reporting and information dissemination, and enforcement.
    - The PSC administers and enforces the Public Service Commission Law, primarily Chapters 386 and 393 of the Revised Statutes of Missouri.
    - The PSC also plays a role under certain federal statutes, e.g., arbitrations and other proceedings under the Telecommunications Act of 1996; the Universal Service Fund, etc.
    - The PSC adjudicates contested cases and non-contested cases arising within its jurisdiction.
    - The PSC determines the rates and fees that public utilities may charge for service and regulates the conditions of service.
    - The PSC makes rules that regulate the conduct of public utilities and provide guidance to the companies and their customers.
    - At the direction of the Commission, the PSC's General Counsel participates in litigation in state and federal courts and before federal agencies.

- The PSC, through its Staff, gathers and analyzes large amounts of often very technical information.
- The PSC, through its Staff, investigates customer complaints and other matters of interest and, where appropriate, initiates complaints against public utilities.
- The PSC conducts its official business at a formal business meeting called the “Agenda,” which is generally held each Wednesday at its offices in Jefferson City, Missouri. The meeting is a public, “open” meeting for purposes of the Missouri Sunshine Law, although the Commission sometimes holds closed sessions as permitted by law.
- Although not part of the PSC, the Office of the Public Counsel (“OPC”) is an independent agency within the Department of Economic Development with the statutory mission of protecting the interests of the public in PSC proceedings. OPC is thus a party to every PSC proceeding and has access to all PSC records.

### ***The Regulation of Public Utilities:***

- **What is a Public Utility?**
  - A public utility is:
    - A private business;
    - That provides an essential service to the public;
    - Where competition is impossible, imperfect or undesirable.
  - Public utilities are *natural monopolies*.
    - The technology of production, transmission, and distribution almost inevitably leads to complete or partial monopoly.
    - Due to large capital costs, the existence of competing utility systems would be inordinately expensive, wasteful, and inconvenient.
  - The “Regulatory Compact”:
    - In exchange for being permitted to operate as a monopoly within a designated service area,
    - The public utility agrees to serve all customers within the designated service area and to submit to pervasive governmental regulation.

- The utility is permitted to charge rates that not only recover the actual cost of providing service but also provide an opportunity to realize a reasonable profit. This model is referred to as “cost-of-service regulation.”
  - Public utilities are the rule in certain industries:
    - Electric;
    - Natural gas distribution;
    - Water;
    - Sewer.
  - Public utilities were formerly the rule in certain other industries:
    - Public transportation;
    - Telecommunications.
  - In every state, public utilities are regulated by a state agency referred to generically as a “Public Utility Commission” or “PUC.” The PSC is the PUC in Missouri.
  - Regulatory agencies also exist at the federal level:
    - Federal Energy Regulatory Commission (“FERC”) – electricity and natural gas.
    - Federal Communications Commission (“FCC”) – telecommunications.
    - Nuclear Regulatory Commission (“NRC”) – nuclear power plants.
    - Environmental Protection Agency (“EPA”) – water and sewer systems; power plant emissions.
- **The work of the PSC:**
  - Matters arise at the PSC in four ways:
    - Applications;
    - Complaints;
    - Tariffs; and
    - Matters initiated by the Commission *sua sponte*.

- Applications:
  - Because they are subject to pervasive regulation, a public utility must seek authority from the Commission to do many things that an unregulated business can do as a matter of course. To obtain the necessary authority, the utility must file an application with the Commission. Items that are the subject of such applications include:
    - Name change;
    - Waivers and variances from PSC rules;
    - Certificate of Convenience and Necessity (“CCN”);
    - Sale or transfer of assets;
    - Mergers, reorganizations and acquisitions;
    - Issue stocks and bonds.
- Complaints:
  - The Commission has authority to adjudicate complaints. Complaints fall into these categories:
    - Consumer complaints – brought by an unhappy customer against a utility;
    - Staff complaints – brought by the PSC Staff against a utility suspected of violating a statute, PSC rule or order, or its tariff;
    - Other complaints.
- Tariffs:
  - A tariff is a schedule of rates, fees or charges for service issued by a public utility and approved by the PSC. It also includes the terms and conditions of service.
    - An approved tariff has the force and effect of law. Under the “Filed Rate Doctrine,” an approved tariff is binding on the Commission, the utility, and on the utility’s customers.
    - Formerly, the PSC maintained a collection of all authorized tariffs that members of the public could inspect during business hours; the utilities were also required to allow

public inspection of their tariffs at their offices. Now, tariffs are available to the public on the Internet.

- A utility must obtain authorization from the PSC to change its rates or terms of service. To obtain this authorization, the utility files with the PSC draft tariffs showing the new rates desired and thereby initiates a general rate case.
- A tariff must display both a filing date and an effective date that is at least 30 days later than the filing date. If the PSC takes no action on the propose tariff, it will become effective on the designated effective date by operation of law.
- Matters initiated by the PSC *sua sponte*:
  - The PSC has broad authority to inquire into matters affecting public utilities, including the safety and adequacy of its facilities and operating methods; its plans for contingencies and future requirements; and its general conduct of its affairs.
  - Many of these things are the subject of regulations that mandate proceedings at regular intervals, including:
    - Renewable Energy Standards;
    - Fuel and Purchased Power Cost Recovery Mechanisms;
    - Integrated Resource Planning;
    - Demand Side Investment Mechanisms;
    - Infrastructure System Replacement Surcharges;
    - Vegetation Management;
    - Gas Price Hedging.
- The course of matters at the PSC:
  - Upon the filing of an application, complaint or other item initiating a matter; the assigned Regulatory Law Judge will direct notice of the filing, set a deadline for intervention applications and set a date for a prehearing conference (“PHC”).
  - Generally, the Staff is also directed to perform and file a report or recommendation.

- If no party opposes the application and if the applicant accepts any conditions recommended by Staff, the matter will generally be closed by Commission order without the necessity of a hearing.
- Such a matter may or may not go to the Agenda meeting. It may be resolved by an order issued on behalf of the Commission by the Regulatory Law Judge. Pursuant to statute, the Commission delegates authority to the Regulatory Law Judges to issue such orders.
- If a party opposes the application, or if the applicant refuses to accept some or all of the conditions recommended by Staff, and in the case of almost all complaints, the matter will follow trial-type, “contested case” procedures.
  - The Regulatory Law Judge will direct the parties to prepare a Joint Proposed Procedural Schedule, which will include:
    - dates for an evidentiary hearing;
    - dates for the filing of three rounds of prepared testimony (termed direct, rebuttal and surrebuttal);
    - a date for the filing of a joint list of the issues requiring Commission decision, including a list and order of witnesses; order of opening statements; and order of cross-examination;
    - and a date for the filing of a statement by each party of its position on each contested issue.
  - Generally, the procedural schedule also includes dates for two rounds of briefs.
- A matter that has gone to hearing is always brought to the Agenda for discussion and decision.

***Public Utility Rates:***

- **The General Rate Case:**
  - **How a rate case begins:**
    - A utility must obtain authorization from the PSC to change its rates or terms of service. To obtain this authorization, the utility files with the PSC draft tariffs showing the new rates desired, as well as certain other required items, and thereby initiates a general rate case.

- This method of commencing a general rate case is referred to as “file and suspend” because the Commission will suspend the tariffs filed by the utility before they become effective.
- The Commission is authorized to suspend the effective date of a tariff for 120 days plus six months; i.e., for ten months. The effective date of the tariffs is referred to as the “Operation of Law Date.”
  - Rate cases can also be initiated by complaint or by the Commission *sua sponte*. There is no Operation of Law Date for rate cases initiated by complaint or by the Commission on its own motion.
- **Cost-of-service ratemaking:**
  - A utility is permitted to charge rates that not only recover the actual cost of providing service but also provide an opportunity to realize a reasonable profit. This model is referred to as “cost-of-service regulation.”
  - The Commission’s statutory duty is to make “just and reasonable” rates. “Just and reasonable” rates are fair to both utility and its customers. Rates determined through traditional cost-of-service ratemaking are “just and reasonable” rates. The following formula describes cost-of-service ratemaking:

$$RR = C + (V - D) R$$

- where:
- RR = Revenue Requirement;
  - C = Prudent Operating Costs, including Depreciation Expense and Taxes;
  - V = Gross Value of Utility Plant in Service;
  - D = Accumulated Depreciation; and
  - R = Overall Rate of Return or Weighted Average Cost of Capital (“WACC”).

- **Determining the Revenue Requirement:**
  - “Cost-of-service” ratemaking focuses on the actual operating expenses incurred by the utility during a historic test year. These historic expenses are audited and adjusted to determine the amount of revenue that the utility must earn on an annual basis, going forward, in order to recover its

cost of providing service and to have a fair opportunity to earn a reasonable return on the shareholders' investment. This amount is termed the "Revenue Requirement."

○ **Operating Expenses:**

- The first component of the Revenue Requirement is the sum, on an annual basis, of projected operating, maintenance, administrative, and general costs or expenses of the utility, plus depreciation expense. This is term "C" in the cost-of-service formula.
  - Expenses are updated for known-and-measurable changes that are certain to occur in the future.
  - Expenses are *annualized*, that is, adjusted to reflect the expected annual value of intermittent or occasional costs.
  - Expenses are *normalized*, that is, adjusted to reflect the expected annual amount of the expense in a normal year by excluding outliers and anomalies.
  - Expenses are adjusted, or excluded entirely, that are unreasonable, unnecessary, of no benefit to ratepayers, or are imprudent.
    - Expenses are *unreasonable* if the cost is greater than the value of the benefit conferred.
    - Expenses are *unnecessary* if they relate to items that are not essential to the provision of service to ratepayers.
    - Expenses are *of no benefit to ratepayers* if their purpose was to benefit the shareholders.
    - Expenses are *imprudent* if a reasonable person would not have made the expenditure under the conditions prevailing at the time it was made.
- Staff's audit is greatly facilitated by the requirement that regulated entities maintain their books and records using the Uniform System of Accounts.
- In order to determine whether a revenue deficiency (or excess) exists, Staff determines the level of revenue that the Company would have collected on an annual, normal-weather basis, based on information "known and measurable" at the end of the test year. Staff does this using a fuel study, an hour-by-hour computer



simulation that maps a year of expenses and revenues using known generation fleet and dispatch order data, annualized and normalized load data, tariffed rates and charges, and forecast fuel prices. The test year load data is subject to weather normalization, a complex statistical process intended to adjust historical data to reflect an ideal year.

- Depreciation expense is the annual loss of value of the utility's assets caused by their use in providing utility service to the public. Ratepayers refund this amount
- **Return on Investment:**
  - The second component of the Revenue Requirement is the Return on Investment, calculated as  $(V - D) R$  in the cost-of-service formula. The three components of this term are the Rate of Return -- "R" -- and the Net Rate Base,  $(V - D)$ . The Return on Investment is the profit that is allowed, but not guaranteed, to the shareholders who have devoted their private property to the public service.
  - **Rate of Return:**
    - The Rate of Return is a number that is multiplied by the Net Rate Base to produce the Return on Investment. The Rate of Return is equal to the utility's Weighted Cost of Capital ("WACC"). The WACC is the sum of the average costs of each component of the capital structure, weighted to reflect the relative proportion of each component.
    - The capital structure describes the utility's capitalization in terms of debt and equity. Debt capital is raised by borrowing, generally via corporate bonds. Like all loans, the repayment obligation is specified in the underlying instruments. Equity capital is raised by selling shares of stock. The value of each share necessarily fluctuates as the market dictates.
    - While the cost of debt capital can be determined from the underlying instruments, the cost of equity capital must be estimated by appropriate experts. This exercise is invariably contentious and is often the single largest contested issue in a rate case. Expert financial analysts use various mathematical formulae, general market data, data drawn from a carefully-constructed group of proxy companies, and professional judgment to determine the utility's Cost of Equity.

- Based on its evaluation of the opinions of the experts and other relevant evidence, the Commission sets the utility's Return on Equity ("ROE"). The Commission is guided in this task by principles derived from decisions of the United States Supreme Court, ***Federal Power Commission v. Hope Natural Gas Company***, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1943); ***Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia***, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923):
    - An adequate return is commensurate to the return realized from investment in other businesses with similar risks.
    - An adequate return is sufficient to maintain the utility's credit and to enable it to attract capital.
    - An adequate return is sufficient to assure confidence in the financial integrity of the utility.
  - Once the ROE is determined, the WACC or Rate of Return can be calculated and multiplied by the Net Rate Base to produce the Return on Investment.
- **Net Rate Base:**
- The Rate Base consists of all of the utility's assets at original cost. Included are Plant in Service, Prepayments, Equipment, Supplies, Vehicles, Fuel Inventory, and the like. Rate Base also includes Cash Working Capital, which is the cash necessary for operations while the utility waits for its customers to pay their bills. Other items, such as Accumulated Deferred Income Tax ("ADIT"), Customer Advances and the aggregate value of the Customer Deposits held by the utility, are subtracted from Rate Base because they were provided by the customers, not by the shareholders. Also excluded from Rate Base are other items not paid for by the shareholders, such as contributed plant and infrastructure, and items that provide no benefit to the ratepayers, such as Plant Held for Future Use, Construction Work In Progress ("CWIP").
  - Once the Rate Base is determined, the Net Rate Base is calculated by subtracting from it Accumulated Depreciation, also called the Depreciation Reserve.

- **Rate Design:**
  - Rate Design is the second step of cost-of-service ratemaking. This is the development of rate schedules designed to produce the target revenue requirement. Rate Design objectives include fairness, simplicity, stability, avoidance of undue discrimination or preferences, efficiency, and conservation.
    - Fair rates match costs and cost causers so that similarly-situated customers will pay the same rate.
    - Simple rates are easy to understand and administer.
    - Stable rates generate revenues that track costs, so that as costs go up, revenues go up too.
    - Discrimination and preferences are the two sides of the subsidization coin. All utility rates involve some degree of subsidization because the cost of serving each customer is necessarily slightly different. A great deal of rate design effort goes in to keeping these subsidies as limited as possible.
    - Efficiency and conservation mean that prices are sufficient to safeguard society's scarce resources and to avoid waste.
  - The two steps of rate design are, first, determining the Revenue Requirement responsibility of each customer class and, second, adjusting or designing the class rate schedules – the tariffs -- to produce the necessary revenue requirement.
    - **Determining the Class Cost of Service:**
      - Utility customers are divided into classes based on usage and service characteristics in order to minimize inter-customer subsidization. Part of the concept of “just and reasonable” rates is that each customer pays the cost of his or her own service and only his or her own service. However, the costs of serving various customers may differ significantly and so customers are grouped in classes based on usage and service characteristics in order to match rates as closely as possible to the actual costs of service.
      - Typical classes are residential, large and small commercial, industrial, and government. The development of customer classes is not generally part of a rate case because that work has usually already been done.

- The Revenue Requirement responsibility of each customer class is determined by a statistical study called a Class Cost-of-Service Study (“CCOSS”). A CCOSS involves three successive steps – functionalization, classification and allocation.
  - *Functionalization* is the process of categorizing utility assets and operations by the role each plays in service delivery.
  - *Classification* is the process of subdividing functionalized costs into sub-categories that reflect cost-causation.
  - *Allocation* is the process of distributing functionalized and classified costs across the various rate classes based on the principle of cost responsibility.
  
- **Designing Tariffs:**
  - The final step of Rate Design is designing tariffs that will collect the appropriate revenue from each customer class.
    - Traditionally, utility rates include two elements, a fixed customer charge and a variable volumetric charge.
    - The customer charge applies regardless of whether or not any amount of service was actually used by the customer during the billing period. It reflects some or all of the fixed costs incurred by the utility in serving that customer.
    - The volumetric part of the rate varies in accordance with the customer’s usage of the utility service.
      - Usage is measured by a meter which is read manually, by itinerant meter readers, or by some more sophisticated means.
      - The meter, which belongs to the utility, is the point of demarcation – everything upstream of the meter belongs to the utility and is the utility’s responsibility; everything downstream of the meter belongs to the

customer and is the customer's responsibility.

- Rate design may be driven by other considerations than the recovery of the necessary revenue requirement in a fair and equitable manner. Economic development may be encouraged by artificially reducing industrial or commercial rates at the expense of residential ratepayers; or the affordability of basic services may be enhanced by artificially reducing the cost of a certain initial increment of service at the expense of high-volume users.

- **Compliance Tariffs:**

- The Commission's decision in a rate case is embodied in a *Report and Order*.
  - The *Report and Order* describes the Commission's decision on each contested issue.
  - The *Report and Order* has an effective date *prior* to the Operation of Law Date of the tariffs filed by the utility to initiate the rate case, assuming it is a "file-and-suspend" case.
  - The *Report and Order* rejects those tariffs and authorizes the utility to file new tariffs that comply with the *Report and Order*.
- Like all proposed tariffs, the compliance tariffs must be filed with a designated effective date 30 days later. However, the utility is generally in a hurry to get its new rates into effect and so will file an *Application for Expedited Treatment*.
- Opponents of the utility sometimes try to delay or prevent the compliance tariffs from becoming effective. These efforts are hindered by the fact that the proceeding on the compliance tariffs is a noncontested case, in which parties have fewer procedural rights.

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## Practical Skills:

# OBJECTIONS AT HEARING

4th Annual Public Utility Law Symposium  
Missouri Public Service Commission

October 17, 2014  
St. Louis University School of Law  
St. Louis, Missouri

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### PLANNING & PREPARATION BEFORE THE HEARING

- Motions to Strike
  - 4 CSR 240-2.080(4) - pleading seeking relief
  - Mo. R. Civ. P. 55.27(e) - "redundant, immaterial, impertinent, or scandalous matter"
  - Sutton v. Director of Revenue, 20 S.W.3d 918, 923 (Mo. App. S.D. 2000) (specific request).

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### PLANNING & PREPARATION BEFORE THE HEARING

- Motions to Limit the Scope of the Evidence
  - Great Plains Energy acquisition of Aquila, No. EM-2007-0374 (2008).
    - Commission excluded as "wholly irrelevant" evidence of (a) anonymous letters, (b) corporate gift & gratuity policy, (c) Regulatory Plan's "additional amortizations" that were removed from amended application, and (d) Inquiry into KCP&L Comprehensive Energy Plan
  - State ex rel. Praxair, Inc. v. PSC, 344 S.W.3d 178 (Mo. 2011).
    - Supreme Court found evidence of gift and gratuity policy should have been admitted by the Commission, but held its exclusion was not prejudicial
    - Offers of proof procedures (to be discussed later)

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**PLANNING & PREPARATION BEFORE THE HEARING**

- Motions in Limine
  - Objective: To exclude irrelevant, inadmissible or unduly prejudicial evidence
  - Rhodes v. Blair, 919 S.W.2d 561 (Mo. App. S.D. 1996)
- Preservation of ruling for appeal because interlocutory
  - Necessity to object, if denied
  - Offer of proof, if sustained
  - Litigate at trial, despite pretrial rulings
- Robbins v. Jewish Hospital, 663 S.W.2d 341, 348 (Mo. App. E.D. 1983)

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**PLANNING & PREPARATION BEFORE THE HEARING**

- Offers of Proof: Administrative agency practice may differ from trial practice
  - Administrative rule v. civil trial rules
    - Oral v. written offers of proof
    - Use of witness v. attorney statements
  - Administrative standard: "wholly irrelevant, repetitious, privileged or unduly long" may be excluded under § 536.070(7) and 4 CSR 240-2.130(3)
  - Evidence of public utility's gift & gratuity policies should have been admitted.
  - "... even though it may not move the dial very much, it presents a relevant consideration." State ex rel. Praxair, Inc. v. PSC, 344 S.W.3d 178, 188 (Mo. 2011)

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**PLANNING & PREPARATION BEFORE THE HEARING**

- Offers of Proof
  - *Written* offer of proof should have been allowed, even if evidence was "wholly irrelevant." State ex rel. Praxair, Inc. v. PSC, 344 S.W.3d 178, 188 (Mo. 2011).
  - In the absence of an offer at the PSC, the parties were ordered "to submit a written offer of proof and any response directly in this Court."
  - Ultimate finding: While the evidence of the gift policy "should have been admitted, its exclusion was not prejudicial as the gift policy could not have substantially impacted the weight of the evidence evaluated to approve the merger." 344 S.W.3d at 182.

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**AT THE HEARING**

- Making Objections
  - Must be Timely
    - Chism v. Steffens, 797 S.W.2d 553, 559 (Mo. App. W.D. 1990).
  - Must be Specific
    - Why is the evidence irrelevant or immaterial?
- Admissible in part and Inadmissible in part
  - If all evidence admitted, request limiting instruction.
    - State v. Ellis, 853 S.W.2d 440, 445 (Mo. App. E.D. 1993).
    - Johnson v. Minihan, 200 S.W.2d 334, 337 (Mo. 1947).
  - Administrative practice
    - Less change of undue prejudice
    - Rules of evidence less strictly applied

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**AT THE HEARING**

- Continuing Objections
  - Requesting and receiving a continuing objection avoids disruption and preserves issue for appeal
  - Some cases say not necessary if further evidence of the "same type" to which objection is overruled is offered again
    - State ex rel. Highway Comm'n v. Offutt, 488 S.W.2d 656, 661 (Mo. 1972).
  - Better practice: Renew objection or receive continuing objection

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**AT THE HEARING**

- Waiver of Objections
  - If not timely, waived
  - However, waiver does not occur until basis for objection becomes clear, such as on cross-examination
    - State v. Bedell, 890 S.W.2d 702, 705 (Mo. App. S.D. 1995).
    - State v. Cain, 37 S.W.2d 416 (Mo. 1931).
- Choice:
  - Wait until Cross-Examination
    - Is this too late?
  - Seek leave to voir dire the witness
    - Establish basis for objection on a timely basis and with clarity.

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**AT THE HEARING**

- Common Objections
  - Argumentative
  - Narrative Response
  - Speculation
  - Lack of Foundation
    - Lack of Expertise
    - Failure of Witness to Conduct Analysis
  - Hearsay
    - Is it offered for the truth of the matter asserted?
  - Legal Opinion or Legal Conclusion
    - Mixed questions of law and fact: Prudence

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**AT THE HEARING**

- Other Objections
  - Beyond the Scope of Prefiled Testimony
    - Beyond scope of cross-examination
  - Beyond the Scope of Commissioner question
  - Privileged Communication
    - Attorney-Client
    - Attorney Work Product
    - Accountant privilege - Sec. 326.322.2, Mo. Rev. Stat. (Cum. Supp. 2013)

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**AT THE HEARING**

- Responses
  - Would be helpful to the Commission
  - Rules of Evidence not strictly enforced
    - Section 386.410.1 - "All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission. And in all investigations, inquiries or hearings, the commission or commissioner shall not be bound by the technical rules of evidence."
    - However, rules are set forth elsewhere
    - Section 536.070 - Provisions on evidence, witnesses and objections
    - 4 CSR 240-2.130 ("Evidence") supplements Section 536.070

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**AT THE HEARING**

- Multiple Parties: Objection
  - Objection made by one party will not benefit parties who fail to object
  - Parties who fail to object or join in the objection have waived the objection
    - Issue not preserved for appeal
    - Thomas v. Bank of Springfield, 631 S.W.2d 346, 351 (Mo. App. S.D. 1982)

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**OBJECTIONS TO TARIFFS and REHEARING APPLICATIONS**

- Failure to seek rehearing on issues decided in Commission Report & Order bars objections to a Tariff Approval Order that implements decision
- Ag Processing Inc. v. PSC, 408 S.W.3d 175, 188-90 (Mo. App. W.D. 2013) (Mitchell, J.)
  - Failure to seek rehearing on the implementation of a phase-in of electric rates under Section 393.155.1 precluded any opportunity on appeal to challenge substantive decision made in the Report & Order
  - Failure to seek rehearing on the implementation of a phase-in of electric rates under Section 393.155.1 precluded any opportunity on appeal to challenge substantive decision made in the Report & Order

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**BURDEN OF PROOF: Complaint Cases**

- Complainant has burden of proof throughout case
  - Does not shift to respondent even if "prudence issues" raised regarding decisions by public utility that have cost implications or change rates
    - State ex rel. Ag Processing Inc. v. KCP&L Greater Mo. Operations Co., 385 S.W.3d 511, 515-16 (Mo. App. W.D. 2012) (Hardwick, J.)
  - Raises questions on order of witnesses and cross-examination in complaint cases
    - Rebuttal and Surrebuttal witnesses of Respondent
    - Does Respondent's lawyer get final opportunity to conduct re-direct?
    - Should this be an opportunity for final rebuttal by Complainant since it has burden of proof?

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**Post-Appeal: Remand Objections**

- Commission Orders on Remand: Interlocutory v. Appealable?
  - Where PSC Report & Order reversed on erroneous application of burden of proof, Order Regarding Remand vacated prior decision, reopened the record, and directed that refunds previously ordered be reversed
    - PSC invoked Section 386.520.2(3) to make temporary rate adjustment plus interest
    - If reversal erroneous, could be corrected later with interest
    - Consolidated initial complaint with subsequently filed complaint case

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**Post-Appeal: Remand Objections**

- Despite the reversal of refund and argument that refund effected "final and substantive rate changes," Court of Appeals found the order was "not a terminal and complete resolution" of the complaint cases, and dismissed the appeal
- Ag Processing, Inc. v. KCP&L Greater Mo. Operations Co., 432 S.W.3d 226, 227, 320 (Mo. App. W.D. 2014)
  - Court noted that the prior PSC finding of imprudent operation of hedging program that supported refund was erroneous and reversed by Court of Appeals in 2012
  - PSC decision "to return the refunds is subject to recall or reconsideration and is not a final administrative order." Id., at 231.

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## Developments on the FERC Energy Policy Front

Presentation by

**Steve Rodgers**  
Division Director, OEMR-West  
Federal Energy Regulatory Commission  
Washington, D.C.

at the  
**Missouri Public Service Commission's**  
**4<sup>th</sup> Annual Public Utility Law Symposium**  
**St. Louis, MO**  
October 17, 2014  
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### Disclaimer

**The views presented here are my own,  
and do not necessarily reflect the  
views of FERC or its  
Commissioners.**

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## Part I – Major FERC Electric Policy Initiatives of Recent Years

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### Order 1000: What's the Problem FERC Was Trying to Solve?

- For many years the growth of transmission was much slower than the growth of generation or load
- Many new gen. resources are wind and solar - they need long tx to serve load
- 3 big obstacles to building transmission: tx planning, cost allocation, siting
- Goal of Order 1000 was to help first two

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### Order 1000: Transmission Planning Requirements

- Mandatory development of regional transmission plans by public utilities
- Must consider trans. needs driven by local, state, and federal public policy requirements (e.g., RPS)
- Coordination between neighboring transmission planning regions to see if more efficient or cost-effective solutions available
- Stakeholders must have chance to participate

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### Order 1000: Cost Allocation

- Order 1000 set min. criteria that regional and inter-regional **cost allocation methods** must meet:
  - allocated costs must be "roughly commensurate" with estimated benefits
  - those who don't benefit from a transmission project don't have to pay for it
  - participant funding of new trans. is allowed, but can't be used as a regional or inter-regional cost allocation method

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### Order 1000: Cost Allocation Principles (con't)

- Cost allocation methods and ID of beneficiaries must be transparent
- Different allocation methods can apply to different types of transmission facilities
- No allocation of costs outside a region unless other region agrees

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### Order 1000: Non-incumbent Developer Requirements

- Rule promotes competition in regional transmission planning to support efficient and cost-effective trans. development
- Rule requires a not unduly discriminatory regional process for transmission project submission, evaluation and selection

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### Order 1000: Non-incumbent Developer Requirements (con't)

- Rule removes from all FERC tariffs a Federal right-of-first-refusal (ROFR) for new tx selected in a regional tx plan for purposes of cost allocation, EXCEPT:
  - Doesn't apply to local tx facilities
  - Doesn't apply to transmission upgrades
- Rule doesn't limit, preempt or affect state/local laws or regs. W/R/T tx construction, e.g., siting

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### Interplay between Order 1000 and State/Local Laws

- In PJM and MISO 2<sup>nd</sup> round orders, FERC granted reh'g to allow regions to recognize state/local laws and regs. when designating the developer for a tx project selected in the regional plan

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### Order 1000 and NJEs

In ColumbiaGrid (CG) and WestConnect (WC) orders in Sept. 2014 FERC said:

- Non-jurisdictional entities (NJE) may be planned for under a regional planning process if jurisdictional utilities agree;
- Cost allocation is binding on NJEs if they enroll in the region; if they don't enroll, they can decide whether to accept costs
- Approach accepted for NJEs in CG & WC

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### Order 1000: Inter-Regional Coordination

- Rule requires each pair of neighboring transmission planning regions to:
  - Share info on respective regional needs and potential solutions
  - Identify and jointly evaluate transmission facilities that may be more efficient or cost-effective solutions to regional needs
- No requirement to produce inter-regional plans

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### Status of Order No. 1000 Regional Compliance Filings

- Orders on first round issued in 2013
- Commission is now processing most second round compliance filings
- After second round compliance filing issues are resolved, interregional filings will be addressed

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### Interregional Filings; Court Appeals

- Interregional filings were submitted July 2013
- Currently under consideration at the Commission
- Also, a 3-judge panel of D.C. Circuit upheld most aspects of Order No. 1000 in August 2014; some seek *en banc* review

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### How Much New Transmission Has Been Built in U.S.?

Approximate:

- 1993-1997: 5,200 circuit miles
- 1998-2002: 5,000 circuit miles
- 2003-2007: 5,100 circuit miles
- 2008-2012: 13,000 circuit miles

Source: NERC 2012 Long-Term Reliability Assessment, November 2012, pg. 37

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### How To Balance Supply & Demand: Big Picture

- Build more generation
- Create/enhance energy efficiency and conservation
- Demand response (i.e., reduce demand (load), especially at peak periods)

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### Order 745: What's the Problem FERC Was Trying To Solve?

- Demand response resources (DRRs) were not being fairly compensated in organized markets
- Thus, there was an insufficient incentive to build DRRs.

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### Order No. 745: Demand Response Compensation

- Rule required that RTOs and ISOs pay DRRs participating in day-ahead and real-time energy markets the locational marginal price (LMP) when certain conditions are met.
- I.e., pay DR the same price as generators
- Order 745 became effective on 4/25/11

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**EPSA v. FERC: On 5/23/14 D.C. Circuit Vacated Order No. 745**

- Found Order No. 745 exceeded FERC's jurisdiction; court was unpersuaded that DR is a practice affecting wholesale rates
- DR regulation is a matter for the states
- Order No. 745 was arbitrary & capricious because it did not address dissent that LMP overcompensates DR
- Many alleging that remand may affect other cases of FERC-state juris. split

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**Balancing Supply & Demand: Moment-to-Moment**

- System operators constantly balance supply & demand, or else frequency goes beyond/below acceptable levels, potentially causing blackouts.
- Generation can be scheduled in advance to meet expected load, but this can't be done perfectly in advance

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**Balancing Supply & Demand: Moment to Moment (con't)**

- Frequency regulation is a tool used by system operators to manage moment-to-moment imbalances: can add more power when load > supply, or reduce power when load < supply
- Frequency regulation usually provided by generators at a certain point, then inc'ing or dec'ing their generation on demand

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### Frequency Regulation Basics

- Generators that provide frequency regulation have opportunity costs
- Opportunity costs are the monetary benefit a generator forgoes by not participating in the energy market at the time it provides regulation service.

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### Order 755: What's the Problem FERC Was Trying to Solve?

- Undue discrimination against some resources, b/c not paid for opportunity costs
- Inefficient market clearing: because market doesn't account for all costs in its initial clearing, it may not be minimizing costs
- Inefficient price signals for new entrants: if they don't get correct price signals, they can't make economically efficient decisions

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### Order 755: Frequency Regulation Compensation

- Legal basis: FERC found undue discrimination in how resources (supply or demand) providing frequency regulation service were being compensated
- Resources providing more service must get paid more
- Compensation must reflect how much service being provided, and how often resource being dispatched

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### Order No. 755 Requirements

- Uniform clearing price must be paid for capacity to provide freq. reg. (Capacity Payment) – to compensate for lost opportunity costs
- Uniform clearing price must be paid for providing real-time frequency regulation service (Performance Payment) actually rendered
- Market-based price for both based on bids
- Performance payment must account for accuracy, so superior perf. gets rewarded
- Flexibility for RTOs/ISOs to design market rules

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### Order 784: “Avista Reform Rule”

- What’s the problem? Ancillary services could not be sold at market-based rates in bilateral markets if the utility who wanted to sell the services could not show that there was a market for those services and that it did not have market power – because there was no market, there was no incentive to provide ancillary services, which were in short supply

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### Order No. 784

- If a utility has MBR authority for energy, it can sell (gen. or energy) imbalance services & operating reserves at MBR.
- FERC is still considering restrictions on:
  - Reactive Supply and Voltage Control service
  - Regulation and Frequency Response service
  - Tech conference held April 2014 to consider technical, economic, and market issues

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### Order No. 764: VERS Rule What's the Problem?

- Large growth in wind and other variable generation being driven by state and Federal policies (e.g., EPA rules, state RPS) and tax benefits (PTCs)
- Output of wind & solar generation is inherently variable and thus needs extra resources standing ready to backstop
- Trad'l practices & rate structures governing management of gen. variability are antiquated
- Led to inefficiency and undue discrimination

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States with Renewable Portfolio Standards (mandatory) or Goals (voluntary), January 2012

- Growth in wind and other variable generation is being driven by state and federal policies.
- FERC views the Federal Power Act as technology neutral, and ensures that wholesale rates and transmission practices support the efficient and effective integration of all resources, regardless of type.

Data Source: Interstate Renewable Energy Council, Database of State Incentives for Renewable & Efficient Energy, January 2012  
Map Source: U.S. Energy Information Administration  
Note: The map includes West Virginia as a Standard as Renewable Portfolio Standard, although the Interstate Renewable Energy Council categorizes it as a goal state rather than an RPS state.

Federal Energy Regulatory Commission

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### Order 764: Variable Energy Resources (VERs) Rule

- Intra-hour Scheduling: Requires trans. providers (TPs) to offer customers the option of scheduling trans. service at 15-minute intervals - but TPs can propose "consistent with or superior to" alternatives
- Power Production Forecasting: Requires VERs generators to provide TPs with weather and operational data to support power production forecasting

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### Order 764: Variable Energy Resources (VERs) Rule

- Benefits of VERs reform:
  - Will allow VERs to better manage exposure to energy imbalance penalties
  - Will give TPs better info on VERs, thus letting them carry fewer reserves and lower their reserve costs
- VERs Final Rule issued 6/22/12

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### Policy Statement on Merchant Transmission

- New Policy Statement issued 1/17/13 in Docket Nos. AD12-9 and AD11-11
- What's the problem FERC tried to address in the new policy?
  - FERC seeks new sources of investment and competition in building transmission, but investors reluctant to invest in merchant projects because of inability to negotiate rates for service and allocation of capacity with a core group of anchor customers

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### Policy Statement on Merchant Transmission

- New policy: Developers of new merchant tx projects and non-incumbent, cost-based participant funded tx projects can negotiate directly with a subset of customers (selected based on "not unduly discriminatory" criteria) on the key terms & conditions for obtaining transmission capacity

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### Policy Statement on Merchant Transmission (con't)

Conditions of new policy (in Docket AD12-9):

1. Developer must broadly solicit interest in the project from potential customers (e.g., through newspaper ads, web postings)
2. Developer must demonstrate to FERC that it has satisfied certain solicitation, selection and negotiation process criteria

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### Rulemaking on Open Access & Priority Rights on Gen Tie Facilities

- Issue: Should FERC revise its policy concerning priority rights and open access over gen tie-line interconnection facilities?
- Problem FERC seeks to solve: Generators won't build gen ties needed to access the grid w/o assurance they'll have access to their gen tie capacity when needed. Thus, generator itself may not get built; RPS goals not met, etc.

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### Rulemaking on Open Access & Priority Rights on Gen Tie Facilities

- A balancing of interests:  
Fair, non-discriminatory access to the grid for all (i.e., open access principles)
- VS.
- Right of developer, who takes initiative and assumes the risk, to retain capacity rights to its own facility when it needs it (property rights and reducing investment uncertainty)

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### NOPR on Open Access & Priority Right on Gen Tie Facilities

- Issued May 2014 in Docket No. RM14-11 (147 FERC ¶ 61,123 (2014))
- Waiver of OATT requirement if gen tie line owner qualifies (must sell electric energy)
- Owner subject to interconnection and tx requirements under FPA's 210/211 if a 3rd party seeks access to the gen tie line
- Presumption that it isn't in the public interest to direct interconnection and tx for the first 5 years after line is energized

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### Reforms for Small Generator Interconnections

- Final Rule (Order 792) issued November 2013 in Docket No. RM13-2 (145 FERC ¶ 61,159)
- Problem FERC sought to solve: Many small generators (esp. solar) claim its taking too long, and is costing too much, for them to get studied for interconnection by TP. Delays and costs jeopardize small gen. development, and meeting of RPS standards.

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### Final Rule For Small Generator Interconnections (Order 792)

1. Allow interconnection customers to request a pre-application report from TPs so they can better evaluate where to interconnect
2. Replace current 2 MW threshold for Fast Track process up to 5 MW for some resources
3. Revise supplemental review process
4. Allow customers to comment on upgrades proposed by TP in facilities study agreements

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## Part II: Recent Non-Rulemaking FERC Activities

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### A Western Energy Imbalance Market?

- Several initiatives to date
- Claims that a Western EIM could help with renewable integration by creating a market for "firming" products needed by renewables
- A key challenge for proponents is getting public power (e.g., munis, Federal PMAs) on board

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### Western EIM Proposals

- On 10/1/14, CAISO extended its EIM outside CA, with PacifiCorp as its 1<sup>st</sup> customer. Others may also join.
- NV Energy, acquired in 2013 by PacifiCorp's parent, has expressed interest in joining the CAISO EIM
- NW Power Pool (NWPP) is working on its own EIM (SCED) proposal. Stay tuned.

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### High Profile Market Manipulation Settlements at FERC

- Constellation Energy Commodities Group (2012): \$245 M in civil penalties and disgorgement; in ISO-NE and NYISO
- J.P. Morgan Ventures (2013): \$410 M in civil penalties and disgorgement; in CAISO and MISO
- Barclays Bank (2013): \$470 M in civil penalties and disgorgement; in Western markets

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### Proposed Reliability Standards

- Cyber Security: In Nov. 2013 FERC issued Final Rule (Order 791) on Critical Infrastructure Protection v. 5 (CIP 5), to protect cyber assets. (145 FERC ¶61,160)
- Physical Security: In March 2014, FERC directed NERC to develop physical security standards for critical facilities. In July, NOPR issued proposing to approve these.

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### Reliability Standards For Geomagnetic Disturbances (GMDs)

- In May 2013, FERC directed NERC (in Order 779) to develop new GMD standards in 2 stages:
  1. Within 6 months NERC required to file new standards requiring operational procedures to mitigate GMD effects. (FERC approved standards on 6/19/14, in Order 797); and
  2. By Jan. 2015, NERC must file standards identifying "benchmark GMD events", which define the severity of events to be assessed.

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### Gas-Electric Coordination

- What's the problem? In periods of high demand, natural gas is used by its gas customers and electric power plants; there can be a gas shortage leading to power outages – especially as new gas plants are built or power plants convert to gas
- Subject of multiple technical conferences
- Discussed at tech conf on polar vortex in April 2014

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### Gas-Electric Coordination: Action in Two Areas

1. Communication protocols – In Nov. 2013 Final Rule (Order 787) FERC permitted communication between RTOs and pipelines, providing for confidentiality of data from 3<sup>rd</sup> parties
2. Alignment of gas day and electric day – NOPR was issued Spring 2014; NAESB just filed consensus standards to modify the nat. gas scheduling practices; comments late Nov.

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### Liquefied Natural Gas Actions

- Before 2010, with natural gas shortages predicted for years, FERC was only asked to site LNG import facilities
- But with glut of cheap natural gas in recent years from fracking, FERC now asked to site LNG liquification & export facilities
- FERC approved Cove Point export facility in early Oct.; Other export facilities (all on Gulf coast) approved: Freeport, Cameron and Sabine Pass

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## Performance of Capacity Markets

- Concerns raised by market participants on functioning of Eastern capacity markets
- FERC held a technical conference in Sept. 2013 to find out more
  - 3 Eastern markets were compared/contrasted
  - Input from numerous stakeholders
- FERC issued questions – received >1000 pages of comments from 50 parties

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## Questions?

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**Missouri Public Service Commission  
Fourth Annual Public Utility Law Symposium**

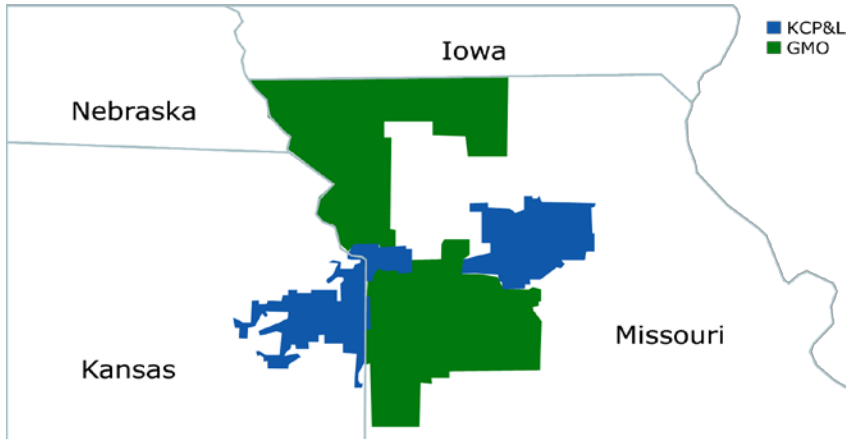
**“Transmission Grid Expansion & the Traditional  
Regulatory Model”**

**October 17, 2014  
St. Louis, MO**



# Vertically Integrated Midwest Utilities

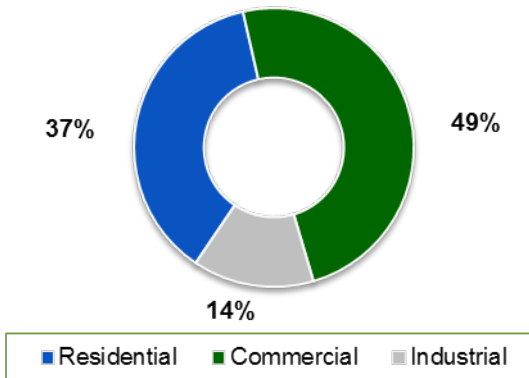
## Service Territories: KCP&L and GMO



## Business Highlights

- Solid Midwest fully regulated electric utility operating under the KCP&L brand
- Company attributes
  - Regulated operations in Kansas and Missouri
  - ~835,900 customers / ~3,000 employees
  - ~6,600 MW of primarily low-cost coal baseload generation
  - ~3,700 circuit miles of transmission lines; ~22,400 circuit miles of distribution lines
  - ~\$9.8 billion in assets at 2013YE
  - ~\$5.7 billion in rate base

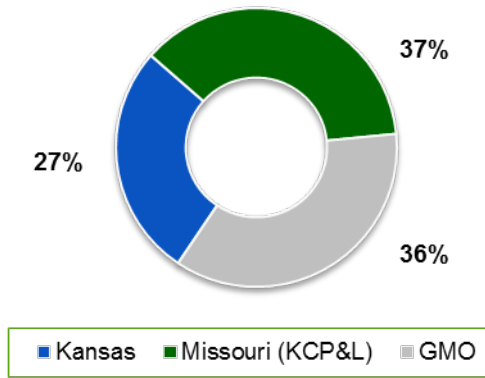
## 2013 Retail MWh Sold by Customer Type



Total: ~ 23,031 MWhs<sup>1</sup>

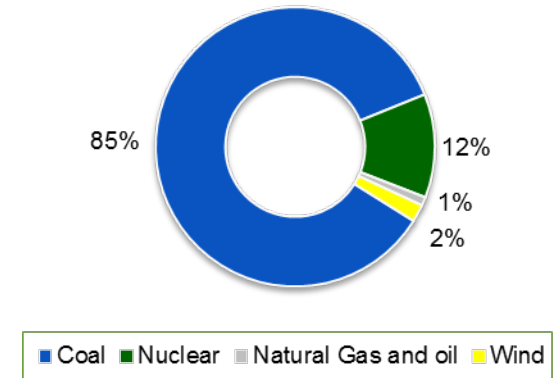
<sup>1</sup> In thousands

## 2013 Retail MWh Sales by Jurisdiction



Total: ~ 23,031 MWhs<sup>1</sup>

## 2013 MWh Generated by Fuel Type



Total: ~ 27,165 MWhs<sup>1</sup>

# Transmission Investment Drivers

- Upgrading the nation's electric transmission system will require a significant amount of future investment
  - Current estimates range from \$150 to \$300 billion over the next 20-years
- Primary drivers for investment in the electric transmission grid include:
  - Transition from using grid to serve local needs to multi-state robust energy markets
  - Aging and congested grid infrastructure requires expansion and upgrades
  - Integration of renewable energy resources driven by state RPS mandates
  - Generation retirements driven by environmental mandates (Carbon, Water, etc.)
  - Increase in gas generation resources driven by natural gas market fundamentals
  - RTOs such as SPP, MISO & others are developing broader, regional transmission solutions to effectively capture efficiencies and to enhance regional grid reliability

# Transmission Expansion & Development Challenges

- Communicating the Value of Transmission
  - Quantifying Transmission Benefits as well as Costs
  - Grid Expansion can facilitate robust energy markets, resulting in lower total energy costs to consumers
- Planning Coordination
  - The new normal is planning the transmission system to support robust energy markets and facilitates delivery of renewable resources from remote locations
  - Facilitating development of new infrastructure across utility boundaries as well as state boundaries
  - Clean Power Plan will likely change the way the system is planned and will take time
- Getting FERC 1000 Processes Right
  - First round of competition for transmission projects is still forthcoming in SPP & MISO
  - There will need to be adjustment based on experience
- States' role, authority and legacy statutes
  - State regulators need to recognize the regional benefits of grid expansion
  - State regulators need to extend their views beyond state boundaries
  - Not all regional projects will benefit every customer and/or every state





**Missouri Public Service Commission  
Fourth Annual Public Utility Law Symposium**

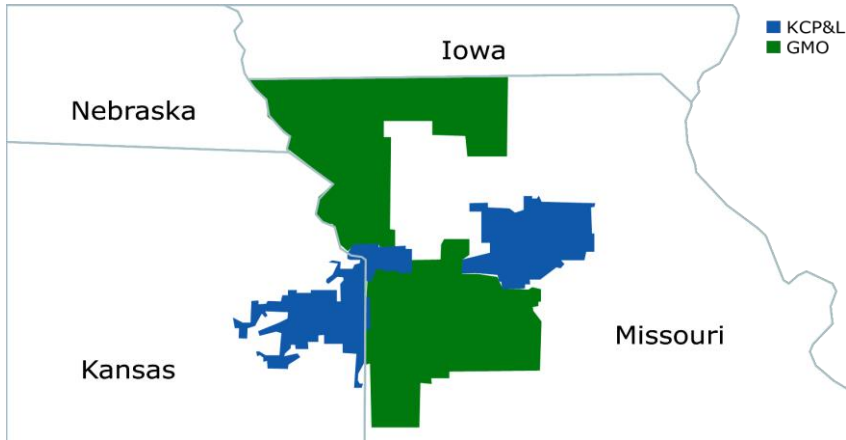
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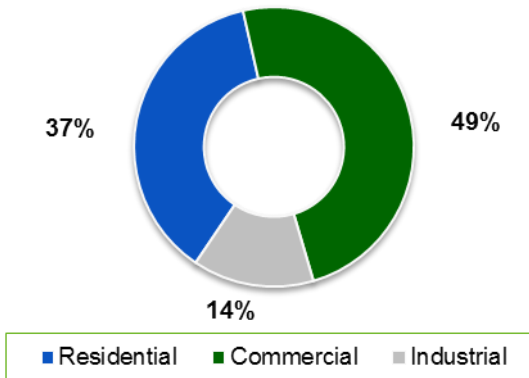
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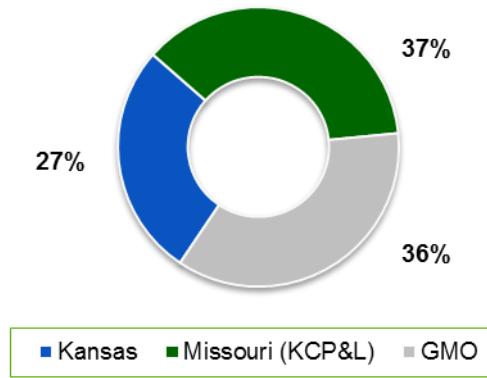
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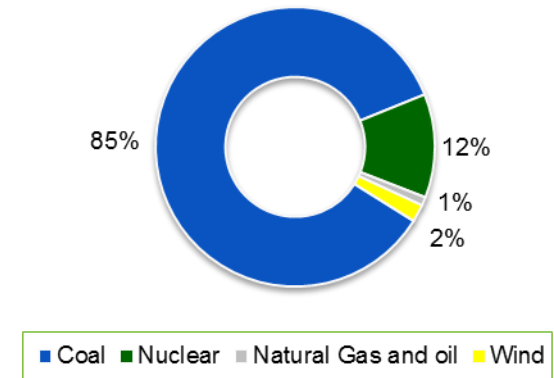
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A large, light gray, stylized sun graphic is positioned on the left side of the slide. It consists of a semi-circle at the top with rays extending downwards, and a larger, more complex shape below it that resembles a sunburst or a stylized sun with rays extending outwards.

# **Transmission Grid Expansion & the Traditional Regulatory Model**

**Missouri Public Service Commission—4<sup>th</sup> Annual Public  
Utility Law Seminar**

**October 17, 2014**

# Disclaimer

- What I'm about to say are my own views and not MISO's.

# Key Questions In the “Traditional” Federal/State Model

- Who regulates whom?
- Who regulates what and how?
- Why is someone or something regulated?

# Answers for States

## WHO

Who owns/operates  
Who builds  
Required authorizations  
Routing/siting  
Eminent domain  
Cost recovery/rates

## WHAT

Utility Initiates  
Utility builds  
State Commission or  
designated entity  
provides due process

## WHY

Utility has monopoly  
franchise and must  
provide safe, reliable  
service  
Utility rates are bundled  
T+D+G

- More to consider
- Economic benefits
  - Firm Service



# Due Process Considerations

- Proving the why
  - Opponents
  - Need
  - Cost
  - Alternatives
  - “Best” route

# Federal Change Impacts the Model

Order 888

- Build for strangers who will pay

RTOs

- Build for yourself, but build for the region, sometimes
- In addition to other places, another forum to ask the why question
- Transparent planning processes
- Points of origin and destination (not routing)

Order 1000

- Policy reasons
- Competitive developers
- Interregional planning
- Cost sharing!!

# FERC Decisions Under Review

Upheld

Reversed

**FERC jurisdiction over interstate commerce. -1**

**Retail is exclusively state jurisdictional.-3**

**Mandatory regional planning requirements upheld. -2**

**Poorly reasoned FERC cost allocation decisions reversed.-4**

# Fabulously Unsurprising Predictions!

- Complimentary and continuing State and Federal jurisdiction over grid expansion.
- Challenges to FERC granted ROE continue.
- State legislatures pick who may build/own/operate transmission facilities. An obligation to try to build will remain.
- Midcontinent will experience more regionalism.

# Tools on the Shelf

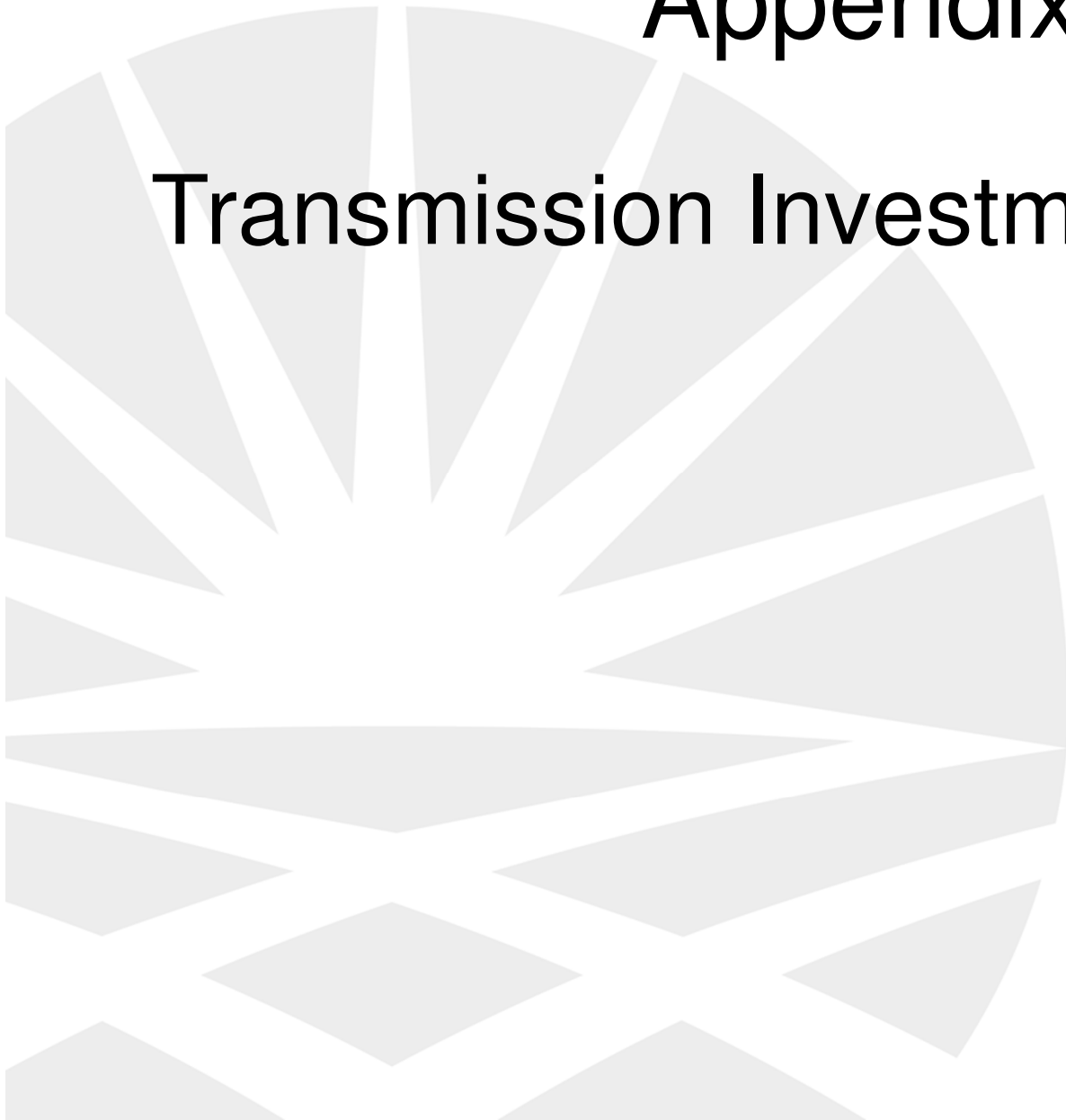
- Organization of MISO States' and the SPP Regional State Committee's potential roles in any future transmission cost allocation filings

# Case Reference Guide

1. Order No. 888 and New York v. FERC, 535 U.S. 1, 2, 122 S. Ct. 1012, 1015, 152 L. Ed. 2d 47.
2. South Carolina Public Service Authority v. FERC, No. 12-1232, et al. (D.C. Cir. Aug. 15, 2014).
3. EPSA v. FERC, 753 F.3d 216 (7th Cir. 2014).
4. Illinois Commerce Commission v. FERC, 576 F.3d 470 (7th Cir. 2009); but see Illinois Commerce Commission v. FERC, 756 F.3d 556 (7th Cir. 2014) affirming well-reasoned decisions.

# Appendix

## Transmission Investment in MISO



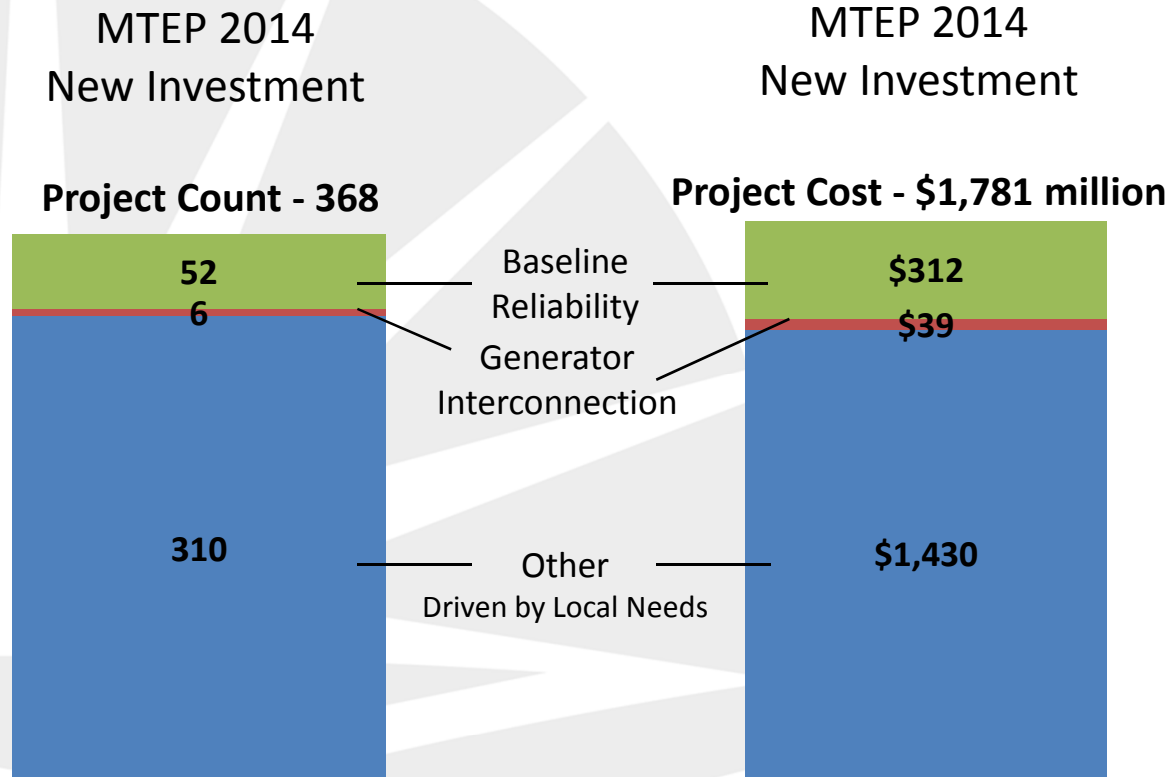
# MTEP 14 Approval

- In December, MISO staff will present recommended MTEP 2014 Appendix A projects, as well as the report, for Board of Director approval





# MTEP 2014 Appendix A



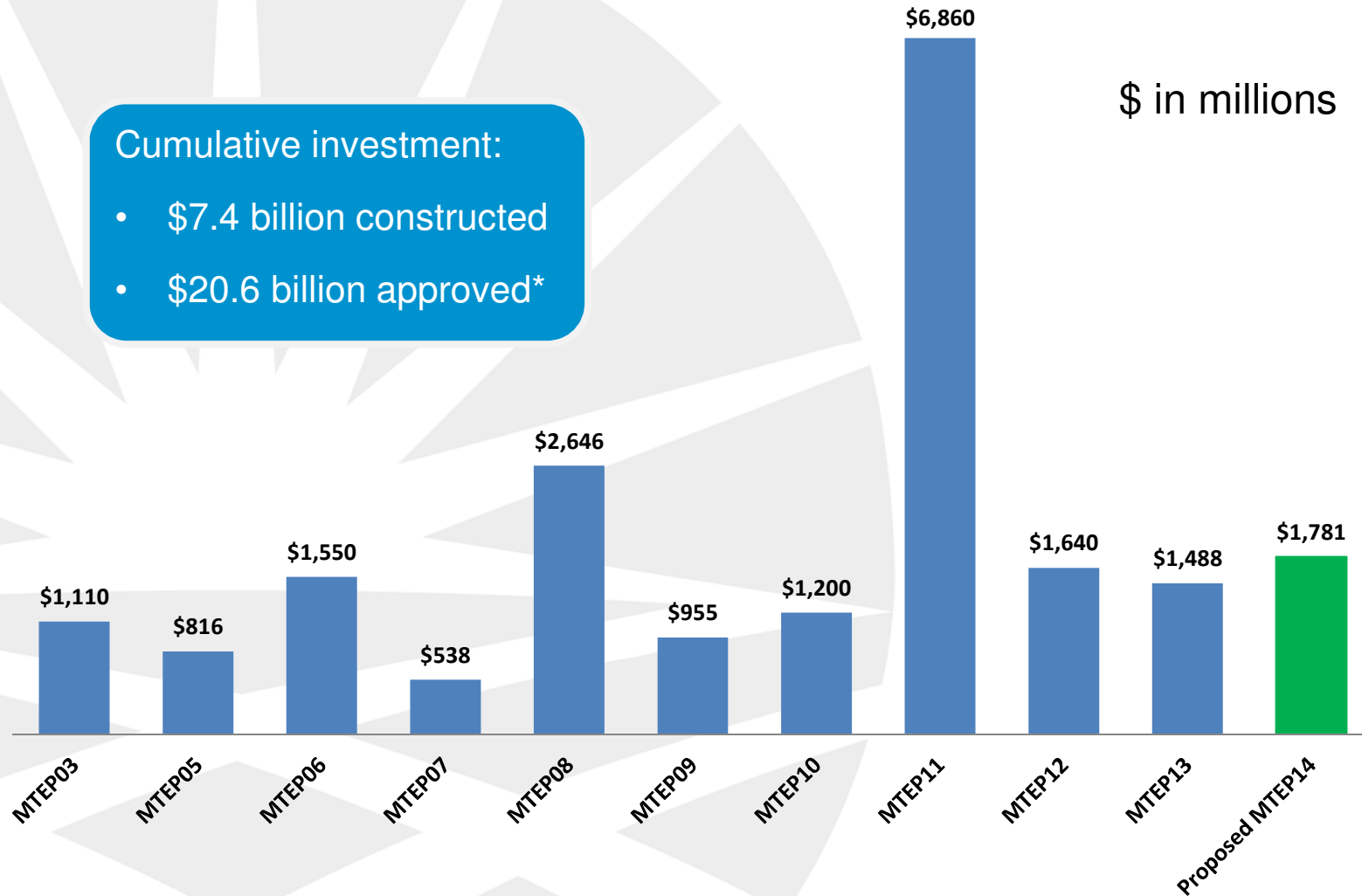
**Modest cost sharing in MTEP 2014 - Six Generator Interconnection Projects**

# Historical MTEP Investment Summary

Cumulative investment:

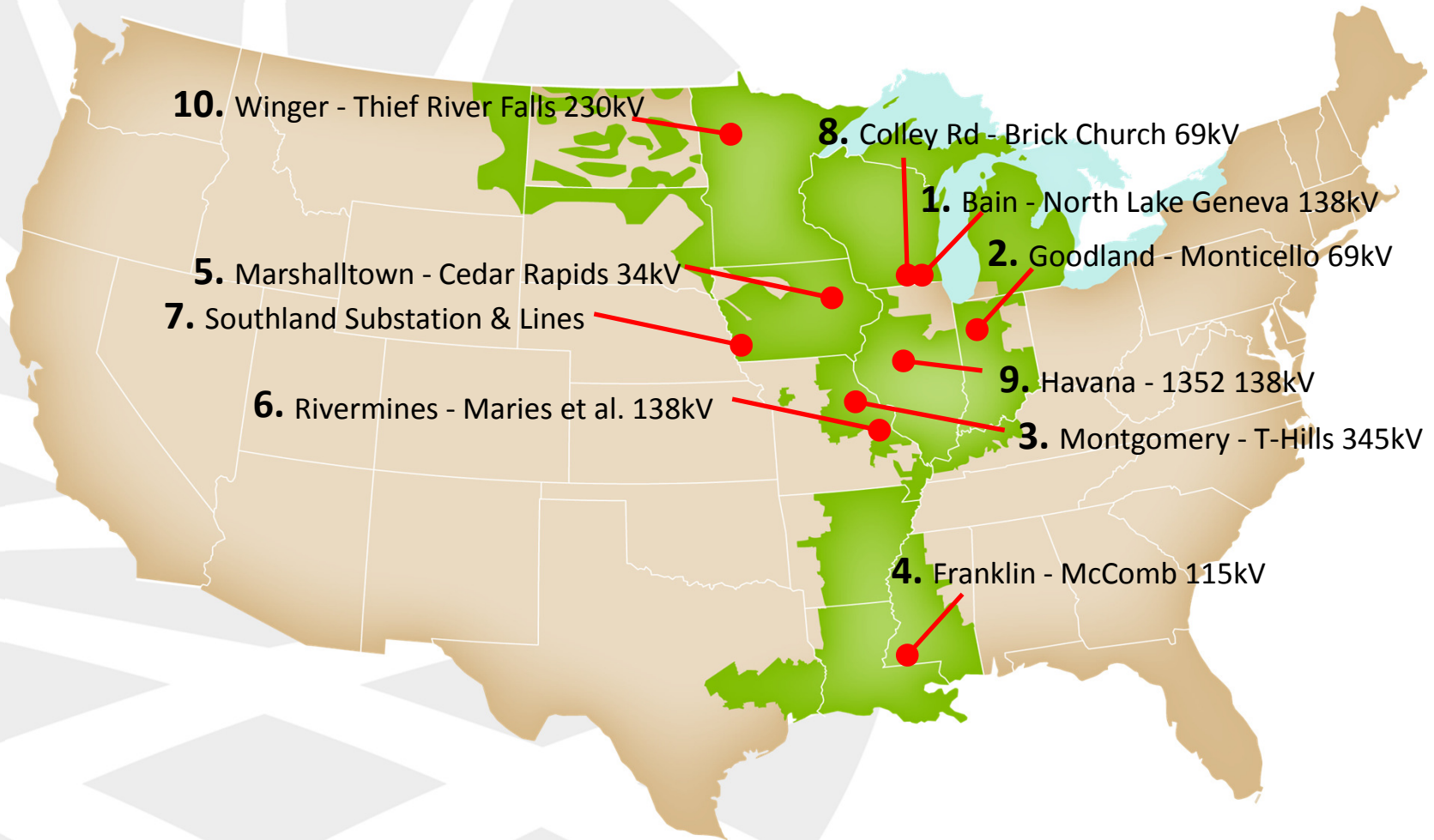
- \$7.4 billion constructed
- \$20.6 billion approved\*

\$ in millions



\* Includes proposed MTEP 2014

# MTEP 2014 Highest Cost Project Locations

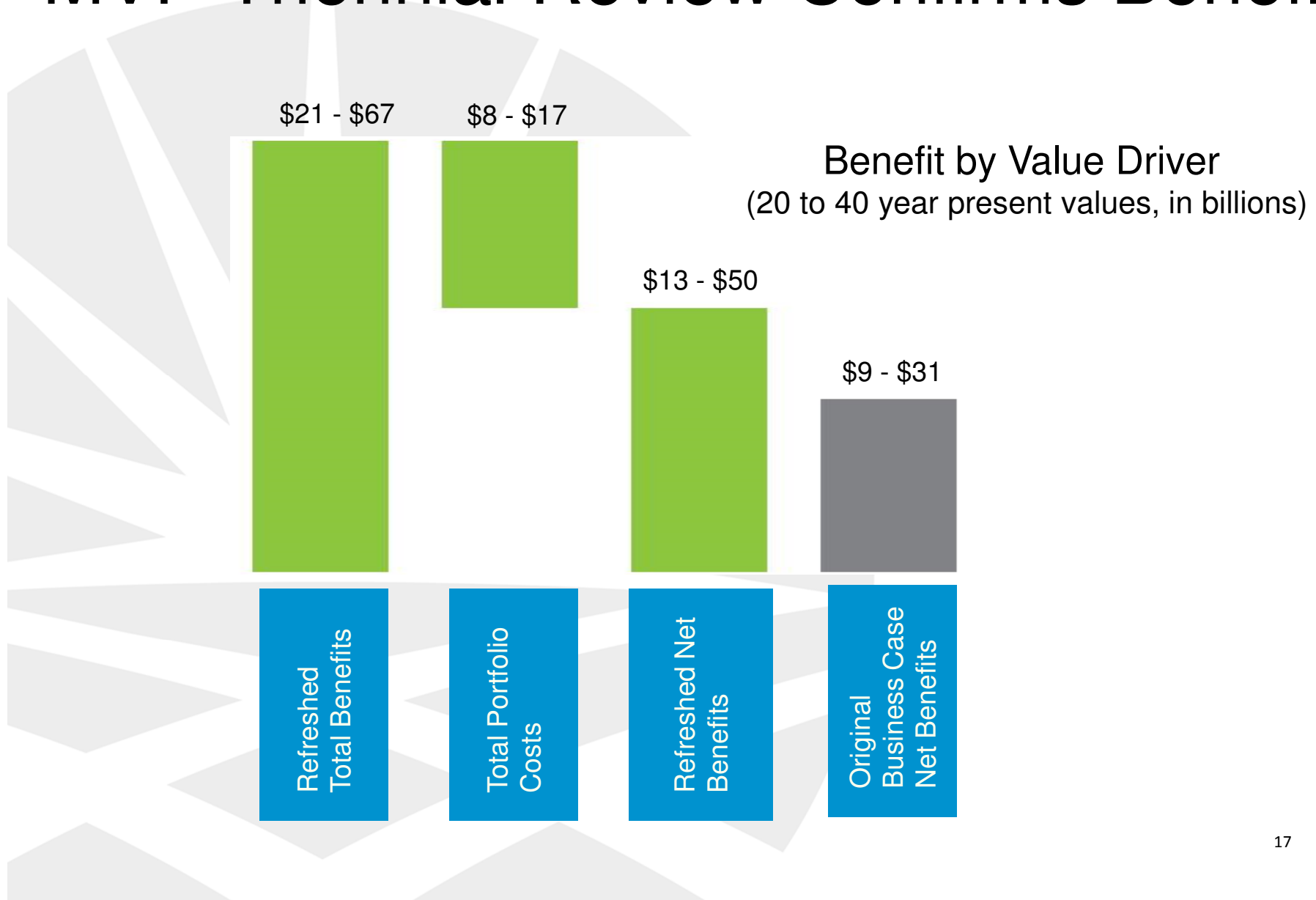


Map for illustrative purposes only

# Notable themes from MTEP 2014

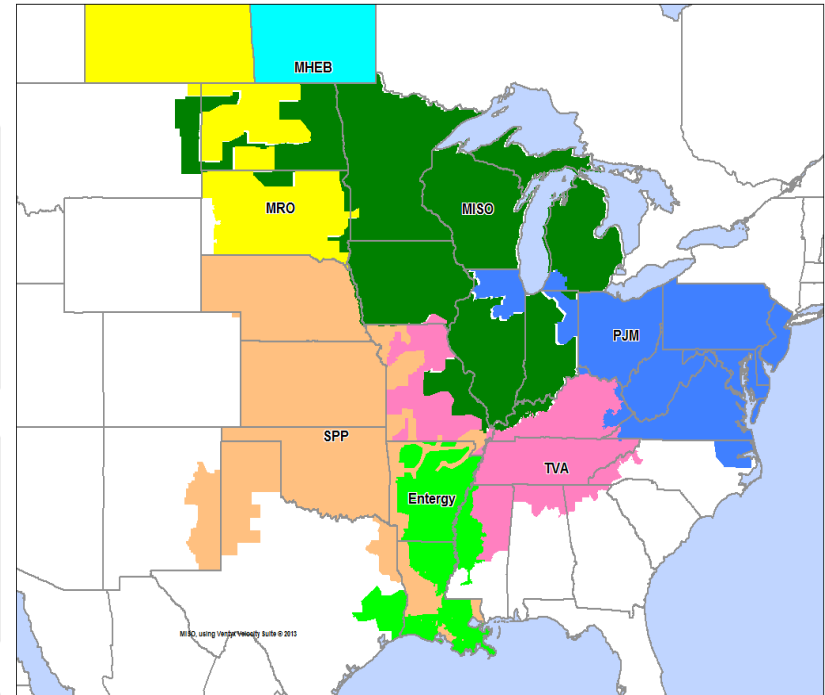
- First cycle to include full participation of South Region
- Reserve margin still projected to drop below the Planning Reserve Margin Requirement of 14.8% in 2016
- Increased emphasis on interregional planning
- Generator interconnection requests shifting from wind to gas/wind mix
- Development of the Transmission Developer Qualification and Selection process continues

# MVP Triennial Review Confirms Benefits



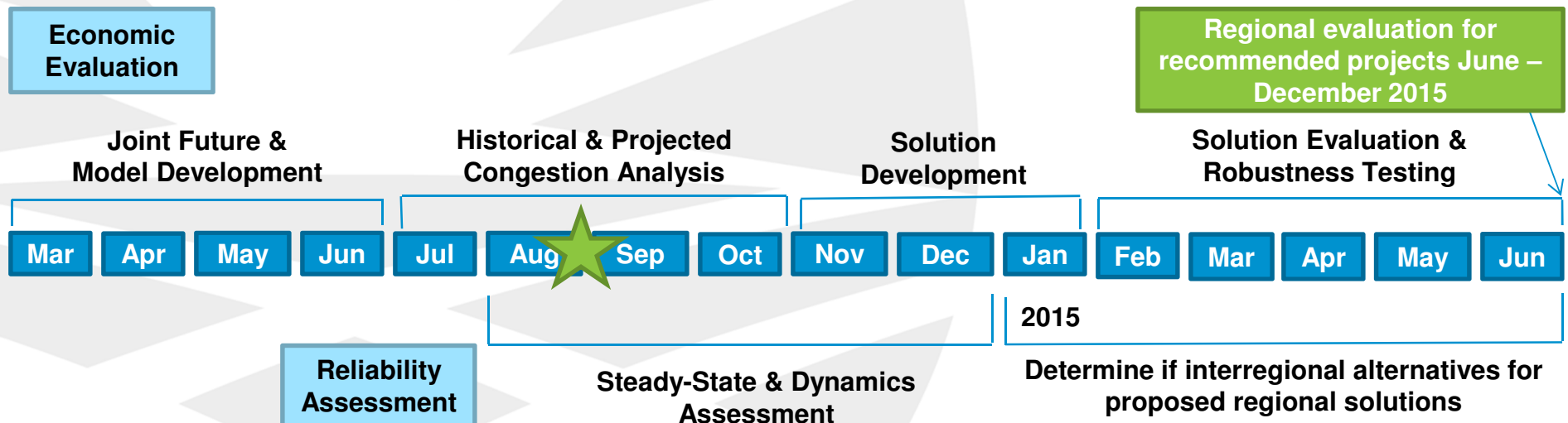
# MISO-PJM Joint Planning Study

- Analyzed 75+ proposed transmission solutions
  - Two projects met Cross Border Project benefit to cost thresholds, but neither meet MISO voltage criteria
- Going Forward
  - The study creates interregional planning framework
  - MISO and PJM will continue to address the lessons learned items with stakeholders

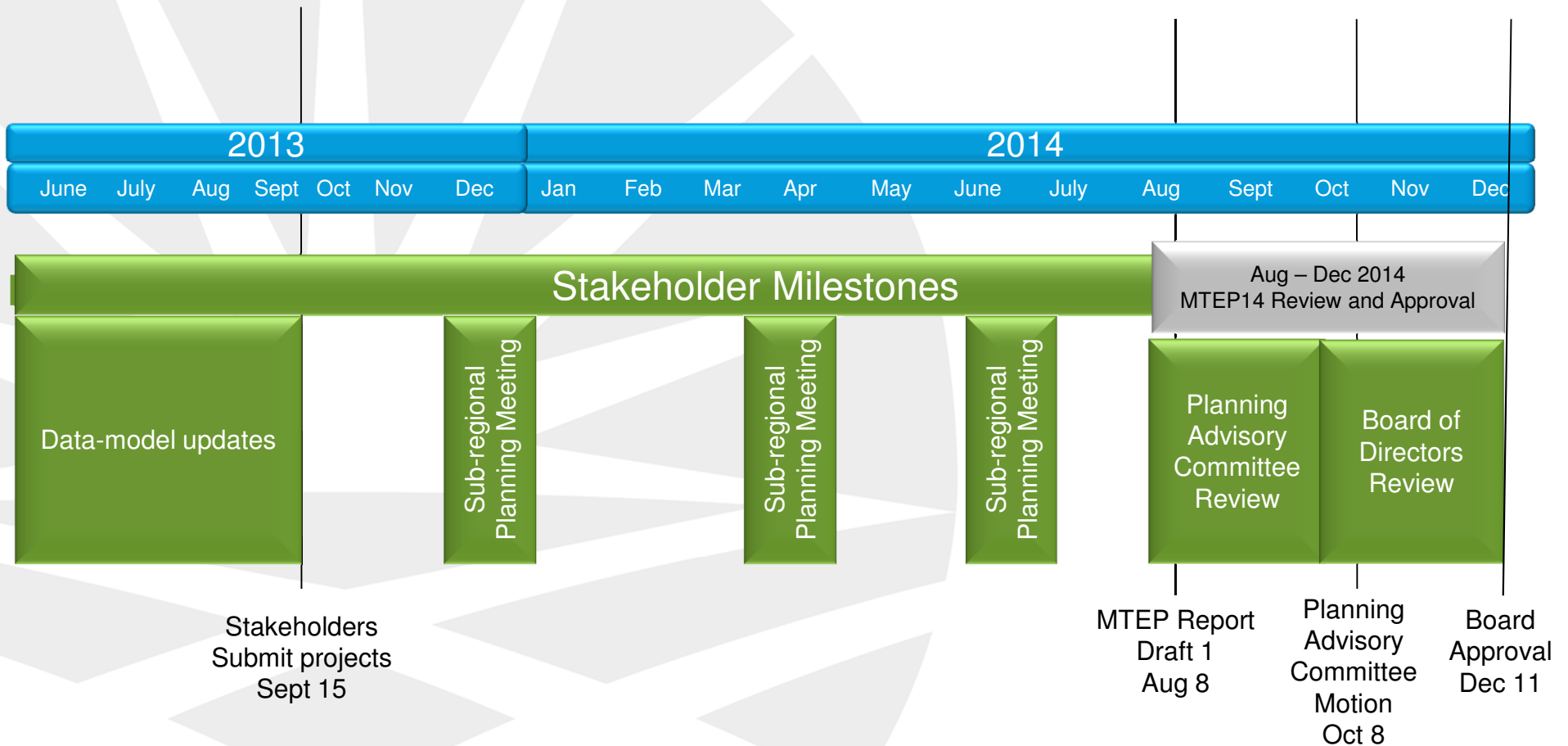


# MISO-SPP Joint Planning Study

- Purpose: Joint evaluation of cross-border transmission issues and identification of expansion opportunities on the MISO-SPP seam
- MISO and SPP stakeholders have developed study scope
- Next steps include gathering historical congestion data and projecting congestion using jointly developed economic models
- Potential projects recommended in MTEP 2015



# Stakeholder and regulator involvement in MTEP 2014 Process





# MTEP 2014 Project Highlights

The top 10 (3%) highest cost projects represent 30% of the total cost

Rank	Project Description	ID	Cost	Type	Driver
1	Bain - North Lake Geneva 138kV	3808	\$84M	Other	Reliability – Thermal and voltage issues
2	Goodland - Monticello 69kV	4812	\$69M	Other	Customer driven upgrade
3	Montgomery - T-Hills 345kV Increase Ground Clearance	2996	\$66M	Other	Condition – Age and condition of existing structures
4	Franklin - McComb 115kV	4614	\$60M	BaseRel	Addresses overload from N-1 contingencies
5	Marshalltown - Cedar Rapids 34kV Rebuild	4704	\$49M	Other	Condition – Unable to adequately serve new load
6	Rivermines - Maries et al. 138kV Rebuild	4495	\$47M	Other	Reliability – Condition of existing conductor, structures
7	Southland Substation & Lines	4736	\$42M	Other	Distribution – Serve load
8	Colley Rd - Brick Church 69kV	2031	\$35M	Other	Reliability - Addresses overloads and low voltage
9	Havana - 1352 138kV Rebuild	4493	\$29M	Other	Condition – Condition of existing conductor, structures
10	Winger - Thief River Falls 230kV	4232	\$28M	BaseRel	Support area load growth