139 FERC ¶ 61,038
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER12-1112-000

ORDER ON RECOVERY OF PENALTY ASSESSMENTS

(Issued April 16, 2012)

1. On February 16, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) requested, pursuant to section 205 of the Federal Power Act (FPA),[1] Part 35 of the Commission's regulations,[2] and Schedule 34 (Allocation of Costs Associated with Reliability Penalty Assessments) to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), Commission approval to recover $60,000 in penalty costs from Tariff Customers. These penalty costs result from a settlement agreement (Settlement Agreement) entered into by and between MISO and Reliability*First* that resolved all outstanding issues arising from a non-public investigation by the North American Electric Reliability Corporation (NERC).[3] MISO proposes to allocate the costs assessed under the Settlement Agreement on a *pro rata* basis to all Tariff Customers during the calendar month immediately following the month in which this filing is accepted or approved by the Commission.

2. For the reasons discussed below, we accept MISO's proposal, as modified in its Answer, to recover the penalty costs assessed in the Settlement Agreement from Tariff Customers. We also deny MISO's request for waiver of the Commission's 60-day prior notice requirement and establish an effective date of April 17, 2012.

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[1] 16 U.S.C. § 824d (2006).

[2] 18 C.F.R. Part 35 (2011).

[3] NERC filed with the Commission, the Abbreviated Notice of Penalty on December 22, 2010 in Docket No. NP11-59-000.

I. <u>Background</u>

3. The Commission issued an order providing guidance concerning cost recovery for penalties that may be assessed against Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) for non-compliance with NERC's Reliability Standards.[4] MISO submitted a FPA section 205 filing to the Commission proposing to add Schedule 34 to its Tariff. The Commission conditionally accepted MISO's Schedule 34, subject to a compliance filing. The Commission found that MISO complied with the Guidance Order and it provided a reasonable mechanism to recover NERC Reliability Standard violation monetary penalties assessed against MISO.[5] Under Schedule 34, MISO may seek to directly assign penalty costs to Tariff Customers or Members if, as the result of the Compliance Monitoring and Enforcement Process, NERC or a Regional Entity finds that such Tariff Customers or Members directly contributed to or were a root cause(s) of a confirmed violation. Where penalties cannot be directly assigned to a particular, identifiable Tariff Customer or Member or are the fault of MISO itself, MISO may seek Commission approval to recover penalty costs from Tariff Customers and/or Members pursuant to a Commission-approved allocation methodology.[6]

II. <u>MISO's Filing</u>

4. MISO seeks Commission approval to recover $60,000 in penalty costs assessed under a Settlement Agreement using the proposed method for allocating the penalty costs. The $60,000 in penalty costs at issue resulted from a Settlement Agreement resolving all outstanding issues arising from alleged violations of NERC Reliability

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[4] *See Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators*, 122 FERC ¶ 61,247 (2008) (Guidance Order).

[5] *See Midwest Independent Transmission System Operator, Inc.*, 128 FERC ¶ 61,229 (2009) (September 8 Order).

[6] *See* February 16, 2012 Filing at 3.

Standards CIP-004-1, Requirement 4;[7] BAL-005-1b, Requirement 9;[8] BAL-006-1.1, Requirement 4;[9] INT-003-2, Requirement 1;[10] and INT-006-2, Requirement 1.[11]

5. MISO proposes to allocate the penalty costs on a *pro rata* basis to Tariff Customers based upon the billing determinants under Schedule 10 (ISO Cost Recovery Adder) of the Tariff for the calendar month immediately following the month in which its filing is approved by the Commission. Each Tariff Customer's share of the penalty will be calculated by dividing its total Network Load for the month or its total Reserved Capacity for Point-to-Point Transmission Service for the month (whichever is applicable) by the sum of the total Network Load for all Network Integration Transmission Service for the month and total Reserved Capacity for all Point-to-Point Transmission Service for that month, as those terms are defined in the Tariff. MISO anticipates that the requested allocation will result in a charge of less than one one-thousandth of one cent per megawatt hour.[12]

6. Specifically, MISO states that the impact from the billing of a $60,000 penalty to its largest Tariff Customer for that month is anticipated to not exceed $4,758.15, which represents an additional charge of 0.49 percent of all amounts owed under Schedule 10.

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[7] Requirement 4 of CIP-004-1 requires a MISO to maintain a list of personnel with access to Critical Cyber Assets; Requirement 4.1 requires the quarterly review of this list. *See* February 16, 2012 Filing at 2, n.1.

[8] Requirement 9 of BAL-005-1b requires a Balancing Authority to include all Interchange Schedules with Adjacent Balancing Authorities in its calculation of Net Scheduled Interchange. *See* February 16, 2012 Filing at 2, n.2.

[9] Requirement 4 of BAL-006-1.1 requires Adjacent Balancing Authorities to operate to a common Net Interchange Schedule and Actual Net Interchange value and to record these hourly values. *Id.* at 2, n.3.

[10] Requirement 1 of INT-003-2 requires a Receiving Balancing Authority to confirm Interchange Schedules with the Sending Balancing Authority before implementing these schedules in its ACE equation. *Id.* at 2, n.4.

[11] Requirement 1 of INT-006-2 requires a Balancing Authority and Transmission Service Provider to respond to requests to transition an Arranged Interchange to a Confirmed Interchange within specified time periods. *Id.* at 2, n.5.

[12] February 16, 2012 Filing at 5.

MISO anticipates an additional charge of $0.05 to its smallest Tariff Customers for that month which represents 0.50 percent of all amounts owed under Tariff, Schedule 10.[13]

III. Notice, Interventions, and Responsive Pleadings

7. On, February 28, 2012 notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 11,526 (2012), with interventions or protests due on or before March 8, 2012. Timely motions to intervene were filed by Detroit Edison Company, American Municipal Power, Inc., Consumers Energy Company, and Wisconsin Electric Power Company. A timely motion to intervene with comments was filed by the MISO Transmission Owners.[14] Duke Energy Corporation (Duke Energy) on behalf of three of its franchised utility affiliates,[15] as well as Duke Energy Business Services, LLC and Duke Energy Commercial Asset Management, Inc. filed a motion to intervene out-of-time.

8. MISO filed an answer to the MISO Transmission Owners' Comments.

[13] *Id.* at 2.

[14] The MISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[15] Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Indiana, Inc.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant Duke Energy's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept MISO's answer because it provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Comments and Protests

12. MISO Transmission Owners generally support MISO's proposed recovery of the Settlement Agreement Costs. However, they assert that the Commission should direct MISO to revise its proposed recovery mechanism and allocate the penalty costs to all Tariff Customers.[16] They note that the proposed allocation method recovers the penalty costs only from MISO's Transmission Customers. MISO Transmission Owners point out that Schedule 10 billing determinants (on which the proposed allocation method is based) are determined by using MWhs of Point-To-Point and Network Integration Transmission Service. They state that Schedule 34 does not allow MISO to recover the costs solely from Transmission Customers when a monetary penalty has been assessed as a result of MISO's conduct. They argue that MISO cannot ignore the clear language of its Tariff and assert that: "To be consistent with Schedule 34 and its stated intention of 'billing and invoicing of MISO Tariff Customers,' [fn omitted] MISO should be required to allocate a portion of the Settlement Agreement Costs to Coordination Customers."[17]

2. Answer

13. In its answer, MISO states that it developed an allocation methodology that attempted to balance a broad allocation with the need for administrative efficiency.

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[16] MISO Transmission Owners Comments at 4.

[17] *Id.* at 5.

MISO goes on to say that Schedule 10 billing determinants are relatively straightforward to calculate, and that allows MISO to calculate penalty allocations with minimal additional administrative costs. With regard to MISO Transmission Owners' comments, MISO states that cost allocation decisions require a balancing of competing interests, including not only cost allocation considerations, but also administrative feasibility and efficiencies. However, MISO states that it has developed an alternative cost allocation methodology to address MISO Transmission Owners' comments. MISO states that the alternative cost allocation methodology will reach approximately 95 percent of its Tariff customers while still "balancing of competing interests, including not only cost allocation considerations, but also administrative feasibility and efficiencies"[18] In order to achieve this, MISO proposes in its answer to utilize billing determinants under Schedule 17 (Energy Market Support Administrative Service Cost Recovery Adder) of the Tariff. Under this alternate cost allocation methodology, Tariff Customers will be assessed the reliability penalty costs in proportion to their Schedule 17 billing determinants for the calendar month immediately following the month in which this filing is accepted or approved by the Commission.

14. MISO states that for the month in which Schedule 17 determinants are used to allocate the reliability penalty costs, MISO will sum, for each Tariff Customer, the applicable billing determinants under Schedule 17 which include: (1) all MWh injected into the Transmission System by all Market Participants including deliveries to the Transmission System from generation located both within the Transmission System and outside of the Transmission System; (2) all MWh extracted from the Transmission System by all Market Participants including MWh delivered to loads located both within the Transmission System and outside of the Transmission System (including all out and through transactions using the Transmission System); and (3) all Bids or Offers for Energy that settle in the Day-Ahead Energy and Operating Reserve Markets, but do not actually inject MWh into or extract MWh from the Transmission System in the Real-Time Energy and Operating Reserve Markets, expressed in MWh. MISO will then divide each Tariff Customer's billing determinants by the aggregate billing determinants of all Tariff Customers to arrive at the share of penalty costs to be borne by each Tariff Customer.[19]

3. <u>Commission Determination</u>

15. We accept MISO's proposal, as modified in its Answer, to recover penalty costs under Schedule 34 of its Tariff using Schedule 17 billing determinants. The Commission stated that Schedule 34 provides a reasonable mechanism for MISO to seek recovery of the costs of a monetary penalty assessed against MISO for a Reliability Standard

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[18] MISO Answer at 3.

[19] *Id.* at 4.

violation, either on a direct-assignment basis or to be allocated broadly to all Tariff Customers and Members.[20] The Commission stated that in its September 8 Order that Schedule 34 "provides flexibility in the cost allocation methodology to be proposed by Midwest ISO in a section 205 filing, as each situation may dictate a different cost allocation result."[21] We agree with MISO that using Schedule 17 billing determinants will strike a reasonable balance of competing interests, including not only cost allocation considerations, but also administrative feasibility and efficiencies. Accordingly, we accept MISO's alternate proposal to allocate penalty costs under Schedule 34 of its Tariff utilizing Schedule 17 billing determinants as proposed in its answer.

16. MISO requests waiver of the Commission's prior notice requirement. We deny MISO's request for waiver of the Commission's prior notice requirement. MISO states that it will allocate the costs assessed under the Settlement Agreement during the calendar month immediately following the month in which this filing is accepted or approved by the Commission. As such, we accept the filing effective April 17, 2012, sixty days after the filing date.

The Commission orders:

MISO's revised proposed allocation of NERC penalty costs is hereby accepted, effective April 17, 2012, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[20] *See* September 8 Order, 128 FERC ¶ 61,229 at P 35.

[21] *Id.* at P 41.