

140 FERC ¶ 61,011  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket Nos. ER10-86-004  
ER11-3781-000

ORDER ON REHEARING AND COMPLIANCE

(Issued July 6, 2012)

1. On May 11, 2011, the Commission issued an order<sup>1</sup> conditionally accepting a compliance filing submitted on January 19, 2010, as amended on January 21, 2010, by Midwest Independent Transmission System Operator, Inc. (MISO) to clarify provisions of Module E (Resource Adequacy) of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). However, the May 11 Order also required MISO to file a compliance filing to further clarify its definition of “Intermittent Generation” as set forth in section 1.328 of the Tariff. On June 10, 2011, MISO filed a request for clarification or, in the alternative, a request for rehearing of the May 11 Order and separately filed its compliance filing to the same order. As discussed below, we grant MISO’s request for rehearing and, thus, will dismiss as moot the June 10, 2011 compliance filing.

**I. Background**

2. As part of a two-phased approach, MISO filed its proposed resource adequacy plan in Module E of its Tariff.<sup>2</sup> On October 20, 2009, MISO filed a proposal to

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<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,126 (2011) (May 11 Order).

<sup>2</sup> MISO filed Phase I of its resource adequacy plan, its proposed Ancillary Services Market, on February 15, 2007, and it was conditionally accepted on February 25, 2008. *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, *order on reh’g*, 123 FERC ¶ 61,297 (2008). Phase II of its plan was accepted

(continued...)

“facilitate and enhance the RAR [resource adequacy] process,” which included a revised definition of Intermittent Generation, as set forth in Module A of the Tariff.<sup>3</sup> MISO proposed to modify the definition of Intermittent Generation to include: “a Resource or an External Resource that cannot be scheduled and controlled to produce the anticipated Energy.” MISO asserted that this revision is necessary to include External Resources so that such resources can serve as Intermittent Generation.

3. In an order issued on December 18, 2009,<sup>4</sup> the Commission stated that while it agreed that the Intermittent Generation definition should be applied to all internal and external intermittent generators, the Commission found that MISO’s proposal caused confusion because the Tariff would end up having two definitions—Intermittent Generation and Intermittent Resources—that apply to the same resource, i.e., an internal intermittent generator.<sup>5</sup>

4. To clarify these ambiguities, the December 18 Order required MISO to propose one definition for intermittent resources, which would include both internal and external intermittent resources. The Commission also required that the proposed definition of intermittent resources not be classified as a subset of Generation Resources to avoid

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in two separate orders, both of which were issued on October 20, 2008, and subject to additional compliance filings. *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,060 (2008), *order on reh’g*, 127 FERC ¶ 61,054 (2009); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,062 (2008), *order on reh’g*, 126 FERC ¶ 61,144 (2009).

<sup>3</sup> MISO FERC Electric Tariff, Fourth Revised Vol. No. 1, Proposed First Revised Sheet No. 183, Section 1.328.

<sup>4</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,261 (2009) (December 18 Order).

<sup>5</sup> *Id.* P 41. We note that in the Final Rule in Integration of Variable Energy Resources the Commission adopted the term “Variable Energy Resource” as a more accurate description of the Intermittent Resources that are the subject of this proceeding. See Integration of Variable Energy Resources, 139 FERC ¶ 61,246 at P 200 and P 210 (2012). (The Commission defines a Variable Energy Resource as a device for the production of electricity that is characterized by an energy source that: (1) is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. The Commission believes this definition is consistent with NERC’s characterization of variable generation. [footnote omitted]).

confusion between the requirements set forth in Modules A and E of the Tariff. Finally, the Commission required that MISO propose a definition of Capacity Resources that explicitly includes intermittent resources.

5. In its compliance filing submitted on January 19, 2010, as amended January 21, 2010, MISO proposed to revise the definition of Intermittent Generation to read “[a] Resource or an External Resource that cannot be committed, de-committed, scheduled, or controlled to produce anticipated Energy or Ancillary Services.”

6. In its May 11 Order, the Commission once again raised concerns that MISO’s proposed definition of Intermittent Generation was unclear and ordered MISO to make specific changes to its definition of Resource, such that it be revised to include Intermittent Generation.<sup>6</sup> In particular, the May 11 Order required MISO to change its definition of Resource as follows:

Resource – Either a Generation Resource, a Demand Response Resource-Type I, a Demand Response Resource-Type II, Intermittent Generation, a Stored Energy Resource or an External Asynchronous Resource.

7. On June 10, 2011, MISO filed a request for clarification or, in the alternative, a request for rehearing of the May 11 Order. In its request for clarification, or in the alternative, request for rehearing, MISO explains that including the term Intermittent Generation as part of the Resource definition is inappropriate because Intermittent Generation includes External Resources that are not part of the Resource definition. In contrast, notes MISO, the definition of Intermittent Resource explicitly states that it is a Resource, and therefore Intermittent Resources should be part of the Resource definition.

8. However, MISO also recognizes that part of the confusion resulted from its inadvertent error to not include Intermittent Resources as part of its definition of Resource.<sup>7</sup> Accordingly, MISO proposes to include the term “Intermittent Resources” as part of its definition of Resource. MISO asserts that this minor modification will help to alleviate the original confusion.

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<sup>6</sup> May 11 Order, 135 FERC ¶ 61,126 at P 8.

<sup>7</sup> MISO Rehearing Request at 3.

9. On June 10, 2011, MISO also submitted a compliance filing and modified its Tariff as directed in the May 11 Order.<sup>8</sup>

## **II. Notice of Filing and Responsive Pleadings**

10. Notice of MISO's compliance filing was published in the *Federal Register*, 76 Fed. Reg. 35,879 (2011), with interventions and protests due on or before July 1, 2011.

11. American Municipal Power, Inc. filed a timely motion to intervene and Wisconsin Electric Power Company filed an out-of-time motion to intervene. No substantive comments were filed by either party.

## **III. Discussion**

### **A. Procedural Matters**

12. 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.

13. 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 Wisconsin Electric Power Company's late-filed motion to intervene in Docket No. ER11-3781-000 given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

### **B. Request for Rehearing and/or Clarification**

14. Based on MISO's explanation that Resources do not include External Resources, we agree with MISO that Intermittent Generation should not be part of the Resource definition because Intermittent Generation can also be an External Resource. As MISO explains, External Resources are not capable of following and responding to MISO's dispatch instructions in the energy and operating reserve markets and therefore they do not meet the definition of a Resource.<sup>9</sup> Therefore, we agree that replacing "Intermittent Generation" with "Intermittent Resources" in the definition of Resource is appropriate and helps to alleviate the confusion caused in the previous filings. We will require that

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<sup>8</sup> The compliance filing was re-docketed in Docket No. ER11-3781-000 per the requirements of Order No. 714.

<sup>9</sup> MISO Rehearing Request at 3.

this substitution be made in a filing to be submitted within 30 days of the date of this order.

**C. Compliance Filing**

15. Given our decision to grant rehearing, as discussed above, we will dismiss as moot the MISO's compliance filing in Docket No. ER11-3781-000.

The Commission orders:

(A) The request for rehearing is hereby granted.

(B) MISO is hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) MISO's June 10, 2011 compliance filing is dismissed as moot, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.