

149 FERC ¶ 61,254  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Midcontinent Independent  
System Operator, Inc.

Docket No. ER14-2022-000

ORDER GRANTING WAIVER

(Issued December 18, 2014)

1. On May 22, 2014, Midcontinent Independent System Operator, Inc. (MISO) filed a request for waiver (Initial Waiver Request) of certain provisions of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), and of certain North American Energy Standards Board (NAESB) standards relating to the processing of certain long-term firm Transmission Service Requests (TSR). On October 1, 2014, MISO filed a supplement to its waiver request (Supplemental Waiver Request) to provide additional information. In this order, we grant the requested waiver, effective May 22, 2014 through April 1, 2015.

**I. Background**

2. MISO states that in 2011, the Commission accepted a MISO proposal to revise section 19 of the Tariff to facilitate the export of generation located within MISO to load located outside of the MISO region by allowing the pre-certification of transmission paths that can be used for TSRs involving exports.<sup>1</sup> MISO states that in the Pre-Certification Order, the Commission stressed the need to avoid overselling transmission capacity through the “accurate assessment of the amount of capacity available on pre-certified paths.”<sup>2</sup> MISO states that after the integration of the Entergy Corporation Operating Companies and adjacent entities into MISO to form MISO South, MISO pre-

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<sup>1</sup> Initial Waiver Request at 3 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,119 (Pre-Certification Order), *order on compliance*, 136 FERC ¶ 61,148 (2011)).

<sup>2</sup> *Id.* (citing Pre-Certification Order, 134 FERC ¶ 61,119 at P 38).

certified approximately 1,500 MW of TSRs for export from MISO South to PJM Interconnection, L.L.C. (PJM), most of which have been sold.<sup>3</sup>

3. In addition, MISO states there are limitations on its ability to move power between MISO North and MISO South. In August 2013, MISO filed the Operations Reliability Coordination Agreement (ORCA), a seams agreement with the Southwest Power Pool, Inc. (SPP) and other entities designed to facilitate the integration of MISO South into the MISO Balancing Authority Area.<sup>4</sup> MISO explains that the ORCA allows MISO to use certain “Coordinated Flowgates” to move power between MISO North and MISO South, but also establishes an “Operations Transition Period” during which MISO will limit its directional market flows between MISO South and MISO North. That limit was set initially at 2,000 MW, with the expectation that the parties would negotiate one or more long-term seams agreements to go into effect at the end of the Operations Transition Period, currently set for April 1, 2015.<sup>5</sup>

4. MISO explains that since the filing of the ORCA, it has had to further limit its flows between MISO North and MISO South to 1,000 MW because of ongoing disputes between MISO and SPP. MISO states that although the ORCA contemplates that MISO would be able to use multiple flowgates to move power between MISO North and MISO South, MISO itself controls facilities that comprise approximately 1,000 MW of the available transmission capacity. On June 10, 2014, the Commission conditionally accepted revisions that MISO made to its Tariff that are necessary to manage flows between MISO North and MISO South within that 1,000 MW limitation.<sup>6</sup>

5. MISO states that it began using this target 1,000 MW limit in response to uncertainties concerning the interpretation and application of provisions in a Joint Operating Agreement (JOA) between MISO and SPP. In particular, the parties dispute the interpretation of provisions concerning MISO’s ability to use SPP’s transmission system for flows of generation between MISO South and MISO North that exceed 1,000 MW. MISO states the Commission had previously accepted MISO’s interpretation of the JOA to allow flows exceeding 1,000 MW, but the United States Court of Appeals for the

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<sup>3</sup> Supplemental Waiver Request at 4.

<sup>4</sup> *Id.* at 2-3 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,032, at P 1 (2013)).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,194, at P 46 (2014) (Power Balance Order)).

District of Columbia Circuit remanded the case for further explanation and consideration of the evidence pertaining to alternative interpretations of the JOA.<sup>7</sup>

6. MISO explains that after the remand of the JOA Order, SPP filed a complaint and an unexecuted service agreement, claiming that MISO should pay SPP transmission charges for flows above the 1,000 MW capacity limit between MISO South and MISO North. In response, MISO filed a complaint to prevent SPP from charging MISO for such flows. MISO states that the Commission accepted, subject to refund and a nominal suspension period, the unexecuted service agreement SPP had filed, and consolidated the remand and other proceedings for a hearing, finding that issues of material fact had been raised that could not be resolved on the record.<sup>8</sup>

7. MISO states that on April 22, 2014, one market participant in MISO South submitted a TSR based on pre-certified transmission paths to enable it to participate in PJM's capacity market.<sup>9</sup> MISO states that there are currently ten pending long-term firm TSRs from a single customer with an aggregate capacity of 2,831 MW that fit within the category that is subject to its waiver request.<sup>10</sup>

## II. Waiver Request

### A. Provisions to be Waived

8. MISO states that as a result of its 1,000 MW capacity limit for flows between MISO South and MISO North, MISO needs to request waiver of certain Tariff provisions and NAESB standards in order to manage the processing of long-term firm TSRs for generation flows between MISO South and MISO North, including flows for exports from MISO South to PJM.<sup>11</sup> As more fully explained below, MISO seeks waiver of Attachment Q of the Tariff and section 38.1(a)(2)<sup>12</sup> of the Commission's regulations, as

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<sup>7</sup> Initial Waiver at 4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,010 (2011) (JOA Order), *order on reh'g*, 138 FERC ¶ 61,055 (2012), *remanded by Southwest Power Pool, Inc., v. FERC*, 736 F.3d 994 (D.C. Cir. 2013)).

<sup>8</sup> *Id.* at 4-5 (citing *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,231 (2014) (Service Agreement Order)).

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Supplemental Waiver Request at 7.

<sup>11</sup> Initial Waiver Request at 5.

<sup>12</sup> MISO incorrectly references section 38.2(a)(2) of the Commission's regulations. (continued ...)

well as sections 17.2, 17.6, 17.7 and 19, and Attachment J of the Tariff, which require MISO to take certain actions in response to long-term service requests within specified times.

9. MISO states that it incorporates applicable NAESB requirements into Attachment Q of the Tariff, and complies with the applicable NAESB requirements that are referenced in section 38.1 of the Commission's regulations. MISO notes that NAESB standards at sections 001-4.7.2 and 001-4.13 require MISO to take certain actions within a specified time when responding to long-term firm TSRs. Given the current uncertainty occasioned by the contract interpretation dispute, MISO states that it needs to take the 1,000 MW flow management limit into account when processing long-term firm TSRs, particularly those that are pending in the queue, and those that may be submitted in the future.<sup>13</sup>

10. MISO states that sections 17.2, 17.6, 17.7 and 19 and Attachment J of MISO's Tariff require MISO to evaluate and respond to firm TSRs pursuant to specified timing and response requirements. MISO states that these requirements include (1) the time periods for MISO's response to a submitted TSR, set forth in section 17.2, section 19 and Attachment J and (2) the need for a system impact study and notification to the tariff customers requesting transmission service pursuant to sections 17.6 and 17.7.

11. MISO states that by suspending action on long-term firm TSRs in the queue, MISO will preserve the queue status of the TSRs until April 1, 2015, the end date of the Operations Transition Period under the ORCA.<sup>14</sup>

12. Specifically, with regard to long-term firm TSRs involving generation flows between MISO South and MISO North, MISO states that: (1) where current TSRs have already been approved, MISO will implement the TSRs; (2) where current TSRs are accepted by MISO but have not yet been confirmed by the requestor, the requestor may withdraw the TSRs or confirm the TSRs subject to redirects; and (3) where future TSRs are queued, MISO will suspend any action on them (including any study) during the waiver period.<sup>15</sup>

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We assume MISO intended to reference section 38.1(a)(2). 18 C.F.R. § 38.1(a)(2) (2014).

<sup>13</sup> Initial Waiver Request at 6.

<sup>14</sup> Supplemental Waiver Request at 1.

<sup>15</sup> Initial Waiver Request at 6.

13. MISO requested in its Initial Waiver Request a waiver from May 22, 2014 through the date that the MISO-SPP dispute is either settled or resolved or MISO is able to revise its TSR process in a manner that adequately addresses the uncertainty resulting from the dispute. In its Supplemental Waiver Request, MISO revised the waiver period to last from May 22, 2014 through April 1, 2015, the end of the Operations Transition Period under the ORCA.

**B. Rationale for Waiver**

14. MISO states that its request meets the Commission's four criteria for waiver: (1) the entity seeking waiver acted in good faith; (2) the waiver is of a limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.<sup>16</sup>

15. MISO contends its request is made in good faith. MISO states that it has endeavored to minimize any adverse impacts from the need to keep the flows between MISO North and MISO South within the 1,000 MW limit described and recognized by the Commission in the Power Balance Order. MISO states that it originally anticipated that the primary restrictions on the use of flows between MISO North and MISO South would be set under the ORCA, and that there would be additional time to negotiate seams agreements to govern flows between the two MISO regions. MISO states that the need to establish a 1,000 MW limit on flows between MISO North and MISO South was a sudden and unexpected development, and has caused MISO to have to adopt certain practices to minimize the overall impact of that limit on its market participants.<sup>17</sup>

16. MISO asserts that the waiver request is of limited scope, both in terms of time and transactions impacted.<sup>18</sup> MISO seeks to implement the waiver through April 1, 2015, the end of the Operations Transition Period under the ORCA. MISO hopes to have alternative seams agreements in place by then that will address, at least in part, the issues raised by the uncertainty over the appropriate MW limit between MISO North and MISO South. MISO further asserts that the waiver request covers only a limited subset of transactions – those pending and future long-term firm TSRs that involve flows between MISO North and MISO South. MISO states that there are only ten pending long-term firm TSRs from a single customer (with an aggregate capacity of 2,831 MW) that fit

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<sup>16</sup> *Id.* at 8 (citing *ISO New England, Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

<sup>17</sup> Supplemental Waiver Request at 8-9.

<sup>18</sup> *Id.* at 9-10.

within this category, and MISO expects that the number of similar TSRs that may be submitted before April 1, 2015 will be small.<sup>19</sup>

17. MISO states that the 1,000 MW limit on flows poses concrete problems. The first problem is that the existing available transmission capacity has largely been reserved by pre-certified TSRs. A second problem is caused by the potentially temporary nature of the capacity limit, and that transmission customers will likely be unwilling to fund the construction of new upgrades in order to obtain transmission service over the north-south interface. At the same time, they do not want to lose their queue priority for transmission service over that interface if and when additional existing capacity opens up for use, a result that would occur if MISO were required to process their requests in accordance with the Tariff. Accordingly, customers with pending long-term firm TSRs would be faced with the dilemma of either funding new construction that might prove to be unnecessary, or losing their queue positions. A third problem identified by MISO is that MISO uses a flow-based methodology to analyze new TSRs, and the introduction into that methodology of a 1,000 MW limit on the MISO North-MISO South interface would adversely affect TSRs on other parts of the MISO system and significantly complicate its compliance with applicable reliability standards.<sup>20</sup>

18. Finally, MISO asserts that the waiver will not have any adverse consequences for any entity. MISO notes that there is only one entity that has requested long-term service over the MISO North-MISO South interface, and states that it is likely that few parties will submit long-term firm TSRs involving that interface because of the ongoing uncertainties regarding the amount of capacity that can be used to move power between MISO North and MISO South. Further, MISO asserts that such entities will be better situated should the requested waiver be granted because, without a waiver, they are faced with the difficult choice of consenting to build new capacity that may later be unnecessary, or losing their queue priority if they decline the construction of such capacity. MISO claims that, far from harming these entities, the requested waiver helps them by allowing MISO to hold their long-term firm TSRs in abeyance, and preserve their priority to existing capacity over the MISO North-MISO South interface if it becomes available in the future.<sup>21</sup>

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<sup>19</sup> *Id.* at 7.

<sup>20</sup> *Id.* at 10-11.

<sup>21</sup> *Id.* at 11-12.

### **III. Notice and Responsive Pleadings**

19. Notice of the Initial Waiver Request was published in the *Federal Register*, 79 Fed. Reg. 32,267 (2014), with interventions and protests due on or before June 6, 2014. Notice of the Supplemental Waiver Request was published in the *Federal Register*, 79 Fed. Reg. 61,073 (2014), with interventions and protests due on or before October 22, 2014. Exelon Corporation, PJM, SPP, NRG Companies,<sup>22</sup> Consumers Energy Company and American Municipal Power, Inc. filed motions to intervene. Missouri Public Service Commission, Council of the City of the New Orleans, Louisiana, and Arkansas Public Service Commission filed notices of intervention. Madison Gas & Electric Company (MGE) and WPPI Energy (WPPI) filed a motion to intervene out of time.

20. Associated Electric Cooperative Inc., Louisville Gas and Electric Company, Kentucky Utilities Company, PowerSouth Energy Cooperative, Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company by and through their agent Southern Company Services, Inc., and the Tennessee Valley Authority (collectively referred to as “Joint Parties”) filed a motion to intervene and protest. MISO filed an answer to the Joint Parties’ protest.

21. Joint Parties note that the Commission precedent relied on by MISO for the requested Tariff waiver involves waivers granted on a one-time basis “to alleviate the effects of errors by ISOs or other entities.” Joint Parties assert that there is no error underlying MISO’s request because the request arises from the issues being considered in the pending proceedings involving the integration of MISO North and MISO South.

22. Joint Parties state that there is no good cause for granting the waiver and that it will have undesirable consequences. Joint Parties note that, in the Supplemental Waiver Request, MISO revised its Initial Waiver Request to request waiver until April 1, 2015, which is the end of the Operations Transition Period under the ORCA. Joint Parties state that MISO is mistaken to assume the Operations Transition Period of the ORCA will not be extended beyond April 1, 2015, noting that the Joint Parties recently made a request to MISO to extend the Operations Transition Period to the earlier of the resolution of the proceedings regarding the integration of MISO North and MISO South or a revised ORCA. Joint Parties add that they requested an extension because the reliability goals of the ORCA have not yet been achieved, MISO has consistently operated above the 2,000 MW level and the parties to the ORCA have not been able to reach agreement on key principles necessary to assess MISO’s dispatch flow activity and its effect on the Joint Parties’ systems. Joint Parties contend that granting the waiver will foreclose an extension of the ORCA and its Operations Transition Period, frustrating efforts of the

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<sup>22</sup> The NRG Companies are composed of NRG Power Marketing, LLC and GenOn Energy Management, LLC.

Joint Parties to obtain much-needed reliability information on MISO's planned flow activity.

23. Moreover, the Joint Parties express concern that MISO revised the rationale for the waiver from the pending cases involving the integration of MISO North and MISO South to a "specific MW limit between MISO North and MISO South." Joint Parties state that whether MISO can use a flow-based methodology for transfers between the MISO North and MISO South regions will be determined in the pending proceedings concerning the integration of the regions. Joint Parties argue that MISO cannot use the waiver request proceeding to circumvent those proceedings.

24. Joint Parties suggest that an equitable outcome in this proceeding would be for the Commission to authorize what MISO originally proposed in its Initial Waiver Request. Specifically, the Joint Parties do not oppose a waiver of MISO's Tariff and the applicable regulations that would extend through the resolution of the pending proceedings involving the integration of MISO North and MISO South. However, the Joint Parties do oppose any waiver request that is tied to the April 1, 2015 expiration of the ORCA Operations Transition Period or that in any way suggests that MISO need not respect contract path limits if the Commission determines otherwise.

25. In its answer, MISO states that the issues raised by the Joint Parties fall outside the scope of the MISO waiver request and are unfounded bases for denying the waiver. MISO asserts that the waiver request is solely focused on managing transmission service requests and would not, as alleged by Joint Parties, jeopardize reliability or impliedly endorse MISO's use of third-party systems to facilitate dispatch between MISO North and MISO South. MISO adds that granting the waiver will not result in foreclosing, effectively or actually, an extension of the ORCA or providing the Joint Parties with the data they seek. Further, MISO contends that that waiver request is not in any way substantively tied to the ORCA arrangements and MISO believes another termination date of either March 1, 2015 or May 1, 2015 would be equally acceptable. MISO states that it has not requested or suggested that the Commission make any substantive finding on any underlying issues related to the request for waiver.

#### **IV. Discussion**

##### **A. Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), we grant MGE's and WPPI's late-filed motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and

Procedure prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority.<sup>23</sup> We accept the answer filed by MISO because it has provided information that assisted us in our decision-making process.

**B. Substantive Matters**

27. The Commission has previously granted requests for waiver from tariff requirements in situations where (1) the applicant has been unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>24</sup> We find that MISO's requested waiver satisfies these conditions.

28. We find that MISO has acted in good faith with respect to the Tariff provisions for which waiver is sought. The circumstances that effectively placed a 1,000 MW limit on MISO's ability to grant additional long-term TSRs over the MISO North-MISO South interface arose relatively suddenly as a result of the Service Agreement Order issued in March 2014.<sup>25</sup> MISO acted with appropriate diligence in filing its waiver request to deal with its long-term firm TSRs. Contrary to Joint Parties' assertion, the grant of waivers is not limited to situations where necessary to alleviate the effects of errors.<sup>26</sup>

29. We also find that the waiver is limited in scope. It is limited in time to a period ending April 1, 2015. Also, it is limited to the narrow category of long-term firm TSRs over the MISO North-MISO South interface, which appropriately applies only to the processing of TSRs affected by the 1,000 MW capacity limitation. The waiver would not apply to the processing of long-term TSRs that source and sink solely within MISO North or source and sink solely within MISO South and does not apply to the processing of any short-term TSRs.

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<sup>23</sup> 18 C.F.R. § 385.213(a)(2) (2014).

<sup>24</sup> *Illinois Municipal Electric Agency*, 147 FERC ¶ 61,090, at P 15 (2014).

<sup>25</sup> In the Power Balance Order, the Commission found that MISO's methodology to manage the 1,000 MW limit was "a just and reasonable and not unduly discriminatory or preferential proposal for mitigating the effects of the integration of the Entergy Operating Companies into MISO and the ongoing dispute between MISO and SPP over the MISO-SPP JOA and seams issues." Power Balance Order, 147 FERC ¶ 61,194 at P 46.

<sup>26</sup> *Calif. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,132, at P 15 (2014).

30. MISO has adequately explained the concrete problems that the 1,000 MW limitation creates with respect to its ability to process long-term firm TSRs. Further, according to MISO, the result of processing a long-term firm TSR over the MISO North-MISO South interface would be that MISO could grant it only if the customer agreed to finance transmission facility upgrades. If MISO offered service requiring a transmission facility upgrade, the customer would lose its queue position if it refused to accept that offer. Thus, the waiver request resolves the concrete problem presented in MISO's filing.

31. Finally, it does not appear that the waiver will have undesirable consequences for third parties. There is no protest in this proceeding by any potential transmission customer alleging harm because their request for service over the interface between MISO South and MISO North will be delayed under MISO's waiver request. Nor is there any protest from any other transmission customer alleging harm caused by a waiver of the Tariff provisions governing MISO's transmission service request processing.

32. Joint Parties do not object to granting the waiver, but do object to MISO's proposed end date for the waiver to coincide with the April 1, 2015 end of the Operations Transition Period under the ORCA. Joint Parties state that they have requested an extension of the ORCA and its Operations Transition Period, and they contend that granting the waiver will foreclose an extension. Joint Parties also argue that MISO cannot use the waiver request proceeding to circumvent pending proceedings related to flows between MISO North and MISO South. Joint Parties would prefer that the end date of the waiver be as MISO stated in its Initial Waiver Request, which was when the Commission resolved or the parties settled the uncertainty regarding the proper interpretation of the MISO-SPP JOA.

33. The waiver we grant here concerns only the timing requirements for processing certain TSRs submitted to MISO. This waiver does not impact or prejudice any request for an extension of the Operations Transition Period under the ORCA. Further, this waiver does not circumvent any pending proceedings and has no effect on the timing or substance of the underlying agreements or proceedings. Therefore, our granting a waiver that terminates on the same date as the current end date of the Operations Transition Period will not preclude an extension of the Operations Transition Period or impact any pending proceedings.

The Commission orders:

MISO's request for waiver of Attachments J and Q, and sections 17.2, 17.6, 17.7 and 19 of the Tariff, and 18 C.F.R. § 38.1(a)(2), is hereby granted effective May 22, 2014 through April 1, 2015, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.