

139 FERC ¶ 61,113
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. ER12-1270-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(May 14, 2012)

1. On March 15, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), to amend and clarify provisions of the Tariff relating to station power service. In this order, the Commission conditionally accepts the proposed Tariff revisions to become effective May 15, 2012, subject to MISO submitting further revisions within 30 days of the date of this order, as discussed below.

I. Background

2. Station power is the electric energy that generation facilities consume as they operate, for such activities as lighting, heating, and air conditioning. MISO's treatment of station power is governed by Schedule 20 of the Tariff. MISO's existing Schedule 20 was accepted in a series of orders from 2003 to 2006.²

3. Recently, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision that reviewed Commission orders addressing the station power

¹ 16 U.S.C. § 824d (2006).

² See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,073 (2004), *order on reh'g and clarification*, 110 FERC ¶ 61,383 (2005), *order on reh'g and clarification*, 112 FERC ¶ 61,211 (2005).

protocols in the California Independent System Operator Corporation (CAISO) tariff.³ Based upon the D.C. Circuit's opinion, the Commission held on remand that states need not use the amount of station power that is transmitted in interstate commerce to determine the amount of station power that is sold at retail.⁴ The Commission also stated that, if CAISO or any stakeholder believes that the station power protocols in the CAISO tariff require modification, they should avail themselves of the stakeholder provisions in the CAISO tariff.⁵

II. MISO Filing

4. In its transmittal letter, MISO explains that the proposed revisions, which are described below, are intended to update the Tariff consistent with Commission precedent and as recommended by MISO stakeholders.⁶ MISO states that, following issuance of the Order on Remand, MISO reviewed the station power provisions in its Tariff and engaged in discussions with its stakeholders to determine whether the provisions require modification because of the D.C. Circuit's and the Commission's findings concerning the Commission's jurisdiction over station power.⁷ MISO states that revisions were called for and that the proposed revisions are consistent with the Remand Orders.⁸ MISO requests an effective date of May 15, 2012.⁹

5. Specifically, MISO states that it proposes to revise Schedule 20 of the Tariff as follows: Sections I and II would be modified to insert the defined term "Applicable Laws and Regulations" to indicate that there may be state-by-state variation regarding the state-jurisdictional retail aspects of station power. Section III would be modified to add provisions so that a generation owner that supplies its facility with station power pursuant

³ *Southern California Edison Co. v. FERC*, 603 F. 3d 996 (D.C. Cir. 2010) (*Edison*).

⁴ *Duke Energy Moss Landing LLC v. California Independent System Operator Corp.*, 132 FERC ¶ 61,183, at P 2 (2010) (Order on Remand), *order on reh'g*, 134 FERC ¶ 61,151 (2011) (Rehearing Order) (collectively, Remand Orders).

⁵ Order on Remand, 132 FERC ¶ 61,183 at n.21.

⁶ MISO March 15, 2012 Filing, Transmittal at 1.

⁷ *Id.* at 1, 3.

⁸ *Id.* at 1, 2.

⁹ *Id.* at 4.

to an applicable retail rate or tariff that includes charges for transmission service will not incur duplicative charges from MISO. Sections II and III would be modified to delete provisions addressing the netting period for retail transactions. Section IV would be modified to remove provisions addressing preemption. Sections III and V would be modified to clarify that MISO is responsible for determining what rates are applicable under the Tariff, as opposed to being responsible for determining any state jurisdictional retail rates.

6. Section III would also be modified to provide that ancillary service charges will continue not to be charged for Schedules 1 and 2 to generators that engage in remote self-supply pursuant to Schedule 20, but will be charged for Schedules 3 through 6.¹⁰ MISO explains that, in the proceedings establishing its existing station power provisions, MISO stated that ancillary service charges would not be assessed for Schedules 1 through 6 because any revenues associated with such charges would not be greater than the cost of collecting them, but MISO reserved the right to change the provisions if the situation changed.¹¹ MISO states that the Commission approved this approach, without requiring MISO to collect data or submit reports.¹² MISO states that the situation has changed following nearly eight years of growth of MISO's markets and footprint, such that it is now appropriate to collect ancillary service charges for Schedules 3 through 6 from generators that engage in remote self-supply.¹³

III. Notice and Responsive Pleadings

7. Notice of MISO's Filing was published in the *Federal Register*, 77 Fed. Reg. 16,827 (2012), with interventions and protests due on or before April 5, 2012. Xcel Energy Services Inc., American Municipal Power, Inc., Wisconsin Electric Power Company, and Exelon Corporation filed timely motions to intervene. Consumers Energy Company (Consumers Energy) filed a timely motion to intervene and comments in support of the filing. Detroit Edison Company (Detroit Edison) and Alliant Energy

¹⁰ *Id.* The relevant ancillary services are: Schedule 1 (Scheduling, System Control, and Dispatch); Schedule 2 (Reactive Supply and Voltage Control); Schedule 3 (Regulating Reserve); Schedule 4 (Energy Imbalance Service); Schedule 5 (Spinning Reserve); and Schedule 6 (Supplemental Reserve).

¹¹ *Id.*

¹² *Id.* (citing *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,383 (2005) (2005 MISO Order)).

¹³ *Id.*

Corporate Services, Inc. (Alliant Energy) filed timely motions to intervene and joint comments. Basin Electric Power Cooperative (Basin Electric) filed a timely motion to intervene, comments, and a conditional protest. Calpine Corporation (Calpine) and Dynegy Inc. (Dynegy) filed timely motions to intervene and a joint protest. MISO filed a motion for leave to answer and an answer.

IV. Discussion

A. Procedural Matters

8. 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.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Comments and Protests

10. Detroit Edison and Alliant Energy argue that the proposed revisions are unclear as to whether generators with a negative net output will have to pay the locational marginal price (LMP) at the bus in addition to paying their retail service provider/third party.¹⁴ They state that generators could be double-charged if the proposed revisions are not clarified to state that generators will not have to pay the LMP.¹⁵ In addition, Detroit Edison and Alliant Energy point out that the proposed revisions state that MISO will share meter data with generation owners, but they assert that Schedule 20 should be revised to state that MISO will also share meter data with the relevant retail service providers.¹⁶

¹⁴ Detroit Edison and Alliant Energy April 5, 2012 Comments at 2-3.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3-4. Detroit Edison and Alliant Energy propose the following edits (as underlined) to the last sentence of Schedule 20, section II, proposed Paragraph 3 (existing Paragraph 4):

11. Basin Electric asserts that the proposed revisions are unclear as to whether the netting period for station power is being changed from monthly to hourly.¹⁷ Basin Electric argues that, if the netting period is being changed to hourly, then the proposed revisions should be rejected.¹⁸

12. Calpine and Dynegy assert that the proposed revisions should be rejected without prejudice as premature, because the Remand Orders are the subject of a petition for review pending before the D.C. Circuit.¹⁹ Calpine and Dynegy state that it would be inefficient for the proposed revisions to be accepted before the D.C. Circuit issues a decision on the petition for review.²⁰

13. In addition, Calpine and Dynegy maintain that the proposed revisions should be rejected because they have not been shown to be just, reasonable, and not unduly discriminatory or preferential.²¹ Calpine and Dynegy assert that MISO's explanation that the proposed revisions comport with the Order on Remand is inadequate. Calpine and Dynegy argue that the Order on Remand did not require any changes to existing tariff provisions.²² Calpine and Dynegy also claim that the stakeholder process held by MISO was inadequate, because the stakeholders were denied an opportunity to vote or comment on the proposed revisions.²³ Calpine and Dynegy argue that *Edison* and the Remand Orders do not apply to MISO because CAISO, which was the subject of *Edison* and the Remand Orders, is a single-state entity, not a multi-state entity like MISO.²⁴ Calpine and

To the extent that a Transmission Owner or the Transmission Provider has primary access to relevant meter data, it must cooperate with Generation Owners and any entity providing Third-Party Supply regarding metering arrangements and verification of data to implement Schedule 20 and/or billing for such Third-Party Supply.

¹⁷ Basin Electric April 5, 2012 Comments and Conditional Protest at 3-5.

¹⁸ *Id.* at 5.

¹⁹ Calpine and Dynegy April 5, 2012 Protest at 7-11.

²⁰ *Id.* at 10.

²¹ *Id.* at 11-14.

²² *Id.* at 11-12.

²³ *Id.* at 12-13.

²⁴ *Id.* at 13.

Dynegy also note that the proposed revisions violate a separate decision of the D.C. Circuit, which stated that different compensation schemes in different MISO zones were unduly discriminatory because they made the playing field uneven for generators.²⁵ Calpine and Dynegy also assert that MISO failed to justify the proposed revisions' change to allow MISO to collect ancillary service charges for Schedules 3 through 6 from generators that remotely self-supply.²⁶

14. Consumers Energy supports MISO's proposed revisions to Schedule 20.²⁷

2. MISO Answer

15. Regarding Detroit Edison's and Alliant Energy's concern that the proposed revisions could result in double-charging, MISO answers that, based on the Remand Order, it cannot make the determination of when a retail transaction has occurred, and therefore it has proposed insertion of the phrase "in accordance with Applicable Laws and Regulations."²⁸ MISO explains that, in section II, the first sentence in revised paragraph (2) indicates that the determination of station power usage does not affect the energy sold or consumed at the bus. MISO states that Schedule 20 uses a monthly netting provision for determination of whether jurisdictional transmission charges apply, and that the addition of the phrase "in accordance with Applicable Laws and Regulations" was intended to allow parties flexibility to work out these issues amongst themselves.²⁹

16. Regarding Detroit Edison's and Alliant Energy's proposed edit that MISO will cooperate with retail station power service providers to provide necessary meter data,

²⁵ *Id.* at 13-14 (citing *Dynegy Midwest Generation, Inc. v. FERC*, 633 F.3d 1122, 1127 (D.C. Cir. 2011) (*Dynegy*)).

²⁶ *Id.* at 14.

²⁷ Consumers Energy April 5, 2012 Comments at 2.

²⁸ MISO April 20, 2012 Answer at 3-4.

²⁹ *Id.* at 4. MISO provides two examples of methods generation owners and load serving entities could pursue to address the issue: (1) a generation owner could report zeroes in its meter data for those hours when it is consuming, and then that volume can be added to a load serving entity's load in those hours, so the load serving entity would be paying wholesale and then charging a generation owner retail; or (2) a load serving entity could calculate the difference between the LMP and its retail rate and charge the generation owner only for the difference. *Id.*

MISO concurs with the proposed edit.³⁰ MISO also proposes further edits reflecting MISO's confidentiality obligations under Attachment Z and section 38.9 of the Tariff.³¹

17. Regarding Basin Electric's request that MISO clarify whether the proposed revisions change the netting period for station power from monthly to hourly, MISO states that the proposed revisions do not make that change, and that the calculation remains a monthly calculation.³² MISO adds that the Tariff's definition of Net Output expressly states that it is a monthly calculation. However, MISO states that, if the Commission believes Schedule 20 is not clear, then MISO will revise it to restore the reference to station power being calculated on a monthly basis.³³

18. Regarding Calpine and Dynegy's argument that the proposed revisions are premature because a petition for review of the Remand Orders is pending before the D.C. Circuit, MISO answers that the argument should be rejected, because the FPA provides that appellate review of a Commission order shall not operate as a stay of the order unless specifically ordered by the court.³⁴

19. Regarding Calpine and Dynegy's assertions that the proposed revisions are not just and reasonable because MISO did not adequately justify them, did not provide an adequate stakeholder process, and did not consider the ramifications of multiple state distinctions, MISO answers that these assertions should also be rejected. MISO points out that stakeholder processes do not need to produce unanimous agreement. MISO states that, while differences exist between CAISO and MISO, including that MISO is a

³⁰ *Id.* at 4-5.

³¹ *Id.* at 5. MISO proposes the following edits (in double strikeout and double underline) to Detroit Edison and Alliant Energy's proposed edits (in singled underline) to the last sentence of Schedule 20, section II, proposed Paragraph 3 (existing Paragraph 4):

To the extent that a Transmission Owner or the Transmission Provider has primary access to relevant meter data and to the extent permitted by any existing confidentiality obligations, it must cooperate with Generation Owners and any entity providing Third-Party Supply regarding metering arrangements and verification of data to implement Schedule 20 and/or billing, if necessary, for such Third-Party Supply.

³² *Id.* at 5-6.

³³ *Id.* at 6.

³⁴ *Id.* at 6-7 (citing FPA section 313(c), 16 U.S.C. § 825l(c) (2006)).

multi-state regional transmission organization (RTO) while CAISO is a single-state RTO, the Remand Orders indicated that station power provisions could be reconsidered.³⁵ MISO states that the proposed revisions permit state-by-state flexibility.³⁶ MISO notes that, as discussed in the Rehearing Order, the proposed revisions would not put generation facilities at a competitive disadvantage, because state rules related to station power would apply uniformly to generators within a given state. MISO argues that the Commission's statement in the Rehearing Order, that any increased costs to generators from the application of different federal and state netting periods are a result of that state's approach to estimating station power and are thus beyond the Commission's jurisdiction, would also apply to the application of different state netting periods within different state jurisdictions.³⁷

3. Commission Determination

20. In the Remand Orders, in response to the D.C. Circuit's determination in *Edison*, the Commission concluded that the Commission and the states could use different methodologies to determine, on the one hand, the amount of station power transmitted in interstate commerce, and, on the other hand, the amount of station power sold at retail.³⁸ We find that MISO's proposed revisions to Schedule 20, as modified, would similarly allow different methodologies to be used for transmission and retail sales. Therefore, the proposed revisions are consistent with the Remand Orders.

21. We reject Calpine and Dynegy's assertion that the proposed revisions are premature because review is pending of the Remand Orders at the D.C. Circuit. As MISO points out, section 313(c) of the FPA provides that a request for appellate review of a Commission order does not act as a stay of the order unless the court specifically directs it,³⁹ and the D.C. Circuit has not directed it.

³⁵ *Id.* at 7-8.

³⁶ *Id.* at 8 (citing Order on Remand, 132 FERC ¶ 61,183 at P 16).

³⁷ *Id.* at 8-9, quoting Rehearing Order, 134 FERC ¶ 61,151 at P 24:

Should generators face increased costs due to the application of different federal and state netting periods, any increased charges due from generators are a result of that state's approach to estimating station power and are, simply put, not within our jurisdictional purview under [*Edison*].

³⁸ Order on Remand, 132 FERC ¶ 61,183 at PP 1, 16.

³⁹ 16 U.S.C. § 8251(c) (2006).

22. We also reject Calpine and Dynegy's argument that MISO has not adequately explained the proposed revisions and did not conduct an adequate stakeholder process. MISO's explanation that the proposed revisions comport with the Remand Orders is accurate, and MISO presented the proposed revisions to stakeholders for discussion. Insofar as the proposed revisions are consistent with the Remand Orders, we find them just, reasonable and not unduly discriminatory or preferential.

23. With regard to Calpine and Dynegy's assertion that the Remand Orders do not apply to MISO, we disagree. In the Remand Orders, the Commission implemented the D.C. Circuit's jurisdictional holdings in *Edison*.⁴⁰ The jurisdictional holdings in *Edison* apply regardless of the identity of the transmission provider. MISO has the right under FPA section 205 to propose revisions to the Tariff. Therefore, it is reasonable for MISO to propose revisions to comport with *Edison* and the Remand Orders.

24. We also disagree with Calpine and Dynegy's argument that the Commission's findings in the Remand Orders do not apply to MISO because MISO is a multi-state RTO while CAISO is a single-state RTO. Whether a transmission provider is multi-state or single-state is irrelevant to the D.C. Circuit's jurisdictional holdings in *Edison*, as implemented in the Remand Orders. MISO has adapted the findings in the Remand Orders to its own situation, in that the proposed revisions recognize state-by-state differences.⁴¹ In the Rehearing Order, the Commission found that any increased costs to generators from the application of different federal and state netting periods are a result of that state's approach to estimating station power and are thus beyond the Commission's jurisdiction.⁴² This finding also holds in the context of the application of different state netting periods within different state jurisdictions. Therefore, we find MISO's proposed revisions to be reasonable.

25. Similarly, we reject Calpine and Dynegy's argument that the proposed revisions violate *Dynegy*. In *Dynegy*, the D.C. Circuit held that different reactive power compensation schemes in different MISO zones under the provisions of the MISO Tariff were unduly discriminatory because they made the playing field uneven for generators.⁴³ By contrast, any competitive advantages or disadvantages under MISO's proposed

⁴⁰ Order on Remand, 132 FERC ¶ 61,183 at P 16 n.21; Rehearing Order, 134 FERC ¶ 61,151 at P 30.

⁴¹ Order on Remand, 132 FERC ¶ 61,183 at P 16.

⁴² Rehearing Order, 134 FERC ¶ 61,151 at P 24.

⁴³ *Dynegy*, 633 F.3d at 1127-28.

revisions would be due to different state practices for measuring retail sales of station power, which, under *Edison*, are outside the Commission's jurisdiction.

26. We also reject Calpine and Dynegy's claim that MISO has not adequately justified its proposed revisions assessing ancillary service charges under Schedules 3 through 6 to generators that remotely self-supply. The Commission's acceptance of the existing provisions that do not assess charges for Schedules 1 through 6 was based on MISO's statement that the revenues collected would not be greater than the cost of collecting the revenues, and on Commission acceptance of similar tariff provisions for PJM Interconnection, LLC and New York Independent System Operator, Inc.⁴⁴ The Commission did not require MISO to provide revenue/cost data or submit future reports.⁴⁵ The Commission stated that, if the situation changed, then MISO should file to revise Schedule 20.⁴⁶ MISO states that the situation has changed since acceptance of the existing provisions, because of the increase in the size of the MISO markets and the MISO footprint over the last eight years. We find this explanation persuasive and therefore we find MISO's proposed revisions to be just and reasonable.

27. We reject Detroit Edison and Alliant Energy's request that the proposed revisions be revised to clarify that a generation owner will not incur LMP charges at the bus in addition to paying its retail service provider/third party. We agree with MISO that the proposed revisions reflect that MISO cannot make the determination of when a retail transaction has occurred, but ensure that MISO's settlement with the generation owner will be in accordance with Applicable Laws and Regulations, thus avoiding double-charging, while providing flexibility for parties to use alternative methods to implement this provision. However, we find Detroit Edison and Alliant Energy's proposed edits to Schedule 20, section II, proposed Paragraph 4 (existing Paragraph 3), as modified by MISO's further proposed edits,⁴⁷ to be just and reasonable, and we direct MISO to revise its proposal accordingly.

⁴⁴ 2005 MISO Order, 110 FERC ¶ 61,383 at P 74 (accepting proposed provision stating that ancillary service charges under Schedules 1 through 6 not apply for transmission service associated with remote self-supply (citing *PJM Interconnection, LLC*, 95 FERC ¶ 61,470, at 62,687 (2001), and *Keyspan Ravenswood, Inc. v. New York Independent System Operator, Inc.*, 101 FERC ¶ 61,230, at P 23 (2002)).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *See supra* note 31.

28. In light of our findings, we conditionally accept the proposed revisions to Schedule 20 of the Tariff, subject to MISO Filing the further revisions to which it has agreed, within 30 days of the date that this order issues.

The Commission orders:

(A) The proposed revisions to Schedule 20 of the Tariff are hereby accepted, to become effective May 15, 2012, subject to a further compliance filing, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing further revising Schedule 20, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.