

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

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

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER13-669-000

ORDER ON TARIFF REVISIONS

(Issued February 27, 2013)

1. On December 28, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) filed proposed modifications to its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) to clarify how Energy Efficiency Resources<sup>1</sup> interface with resource adequacy requirements under the Tariff. In this order, we accept MISO's proposed Tariff modifications to be effective February 28, 2013.

**I. Background**

2. To ensure resource adequacy in its region, MISO makes certain that Load Serving Entities (LSE) have sufficient planning resources to maintain system reliability as part of their resource adequacy requirements, pursuant to Modules E and E-1 in MISO's Tariff. MISO requires LSEs to submit accurate information regarding their individual Coincident Peak Demand forecasts, which are used for a variety of purposes, including calculating each LSE's planning reserve margin and evaluating whether an LSE is capacity deficient.

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<sup>1</sup> Section 1.190a in MISO's Tariff defines an Energy Efficiency Resource, or EE Resource, as a Planning Resource consisting of installed measures on retail customer facilities that achieves a permanent reduction in electric energy usage while maintaining a comparable quality of service. Section 1.507 in the Tariff defines a Planning Resource as a Capacity Resource, Energy Efficiency Resource, or Load Modifying Resource that can be used to satisfy a planning reserve margin requirement.

3. Since October 1, 2012,<sup>2</sup> LSEs in MISO have been able to meet planning reserve margin requirements, in part, through use of Energy Efficiency Resources.<sup>3</sup> MISO states that, on several occasions, it has discussed with stakeholders the mechanics of how Energy Efficiency Resources interface with resource adequacy requirements under its Tariff. However, MISO explains that, after discussions with LSEs, it found that amendments to its Tariff were necessary to clarify the appropriate method for using Energy Efficiency Resources as part of meeting resource adequacy requirements.<sup>4</sup>

## II. MISO Filing

4. MISO proposes five modifications to its Tariff. First, MISO proposes revising section 69A.1.1 of its Tariff to clarify how market participants must account for Energy Efficiency Resources in Coincident Peak Demand forecasts. Specifically, the proposed modification adds text that states “[s]uch Coincident Peak Demand forecasts shall include Demand that would have occurred but for the existence of Energy Efficiency Resources that have been in operation less than four (4) years.” MISO states that, to ensure consistent treatment for all energy efficiency resources from a qualification and approval process, these resources must be registered with and be evaluated by MISO as Energy Efficiency Resources. MISO also explains that “...the subsequent Demand reduction as a result of implementation of EE Resources must be included in the Coincident Peak Demand forecast of the LSE.” MISO further states that failure to properly register energy efficiency resources as Energy Efficiency Resources and include the reduced demand as part of the Coincident Peak Demand forecast would result in inconsistent

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<sup>2</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012) (MISO Resource Adequacy Order).

<sup>3</sup> Section 69A.3.2 in MISO’s Tariff currently provides the following details regarding Energy Efficiency Resources:

An Energy Efficiency Resource is a Planning Resource, in which the Market Participant possesses ownership or equivalent contractual rights, from an end-use customer project (including the installation of more efficient devices or equipment or implementation of more efficient processes or systems) that was implemented after July 20, 2011, exceeding then-current building codes, appliance standards, or other relevant standards, designed to achieve a continuous reduction in electric energy consumption during On Peak daylight hours that is not reflected in the LSE’s forecast Coincident Peak Demand for the Planning Year when the EE Resource is proposed, as further described in the BPM for Resource Adequacy.

<sup>4</sup> MISO Transmittal Letter at 2.

Coincident Peak Demand forecasts for LSEs. MISO also contends that lack of proper registration provides an opportunity for LSEs to bypass the approval process for certain energy efficiency resources, which MISO states may result in disparate treatment of these resources.<sup>5</sup>

5. Second, MISO proposes revising section 69A.1.2.1 of its Tariff to clarify how market participants should adjust calculations of the Prior Summer Retail Customer Coincident Peaks to account for Energy Efficiency Resources and Load Modifying Resources.<sup>6</sup> Specifically, the proposed modification clarifies that the Prior Summer Retail Customer Coincident Peak value should be adjusted upward to reflect any demand that was reduced during the Coincident Peak hour through the effect of a Load Modifying Resource or through the effect of an Energy Efficiency Resource during the first four full planning years of the Energy Efficiency Resource's existence. MISO explains that, in order to account for gross demand from a planning standpoint—and to eliminate the potential for double-counting the demand reductions associated with Energy Efficiency Resources and Load Modifying Resources—the Prior Summer Retail Customer Coincident Peak must include the associated demand reductions at the retail level resulting from Energy Efficiency Resources and Load Modifying Resources. MISO states that absent this inclusion, the value of submitted Energy Efficiency Resources and Load Modifying Resources would be counted in the market participant's Coincident Peak Demand, thus lowering the Coincident Peak Demand value and resulting in the Energy Efficiency Resource and Load Modifying Resource being counted again when registered. MISO asserts that such double-counting would impair its planning process and endanger system reliability.<sup>7</sup>

6. Third, MISO proposes revising section 69A.3.2 of its Tariff to remove potentially confusing language regarding how LSEs may reflect their use of Energy Efficiency Resources. Specifically, MISO proposes removing the phrase “that is not reflected in the LSE's forecast Coincident Peak Demand for the Planning Year when the Energy Efficiency Resource is proposed,”<sup>8</sup> since this phrase may improperly suggest that an LSE could include demand reductions from Energy Efficiency Resources in calculating Coincident Peak Demand in order to avoid Energy Efficiency Resource registration.

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<sup>5</sup> *Id.* at 3.

<sup>6</sup> Section 1.359 of MISO's Tariff defines a Load Modifying Resource as a Demand Resource or Behind the Meter Generation Resource. Section 1.140 of the Tariff defines a Demand Resource as Interruptible Load or Direct Control Load Management and other resources that can reduce demand during emergencies.

<sup>7</sup> MISO Transmittal Letter at 3-4.

<sup>8</sup> *See supra* text accompanying n.3.

MISO reiterates that it is essential that the reduction in demand resulting from Energy Efficiency Resources and Load Modifying Resources be included in the LSE's Coincident Peak Demand forecast in order to prevent the double-counting of this demand reduction value.<sup>9</sup>

7. Fourth, MISO proposes revising section 69A.3.3 of its Tariff to clarify that LSEs may net Energy Efficiency Resources against demand to meet planning reserve margins. Specifically, the proposed modification states that Energy Efficiency Resources can be netted against an LSE's Coincident Peak Demand forecast, similar to demand resources. MISO asserts it is acceptable to allow the netting of Energy Efficiency Resources against the LSE's Coincident Peak Demand in the same manner the Commission has previously approved the netting of demand resources.<sup>10</sup>

8. Finally, MISO proposes a new section 69A.5.c to its Tariff to clarify that market participants must input Energy Efficiency Resource and Load Modifying Resource information into the Module E Capacity Tracking tool at least seven business days prior to the Planning Resource Auction. MISO states this amendment will eliminate any confusion regarding the submission of data and allows time for MISO to process the information in advance of the Planning Resource Auction.<sup>11</sup>

9. MISO requests a February 28, 2013 effective date for its proposed Tariff revisions.

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

10. Notice of MISO's December 28, 2012 filing was published in the *Federal Register*, 78 Fed. Reg. 2387 (2013), with interventions and protests due on or before January 18, 2013. DTE Electric Company, Iowa Utilities Board, Wisconsin Electric Power Company, Consumers Energy Company, American Municipal Power, Inc., and Alliant Energy Corporate Services, Inc.<sup>12</sup> submitted timely motions to intervene. Madison Gas and Electric Company, Midwest Municipal Transmission Group, and WPPI Energy (collectively, Midwest TDUs) submitted a timely motion to intervene and request

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<sup>9</sup> MISO Transmittal Letter at 4-5.

<sup>10</sup> *Id.* at 5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,058 (2009)).

<sup>11</sup> *Id.*

<sup>12</sup> Alliant Energy Corporate Services, Inc. is a service company affiliate of Interstate Power and Light Company and Wisconsin Power and Light Company.

for clarification or, in the alternative, protest. Xcel Energy Services Inc.,<sup>13</sup> Ameren Services Company, Otter Tail Power Company, and Duke Energy Indiana, Inc. (collectively, Joint Protesters) submitted a timely motion to intervene and protest. Missouri River Energy Services submitted a motion to intervene out-of-time and to join Midwest TDUs' motion to intervene and request for clarification or, in the alternative, protest. MISO submitted an answer. Midwest TDUs submitted an answer to MISO's answer. Joint Protesters submitted an answer.

#### **IV. Discussion**

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

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant Missouri River Energy Services' 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.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept MISO, Midwest TDUs, and Joint Protesters' answers because they aided us in our decision-making.

##### **B. Substantive Matters**

14. Our review indicates that MISO's proposed revisions appear to be just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory, or preferential. Accordingly, we will accept them for filing to be effective February 28, 2013, as requested. We agree with MISO that the modifications help ensure that the demand reduction benefits of registered Energy Efficiency Resources are not counted in both load forecast and capacity reserve margin calculations. This is consistent with the Commission's finding in the MISO Resource Adequacy Order that designation of an energy efficiency project as an Energy Efficiency Resource meant that the energy efficiency project would function as a Planning Resource under the Tariff and would thus not be taken into account in load forecasts.<sup>14</sup> However, the pleadings in this proceeding

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<sup>13</sup> Xcel Energy Services Inc. is submitting on behalf of its utility operating company affiliates Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin Corporation.

<sup>14</sup> MISO Resource Adequacy Order, 139 FERC ¶ 61,199 at P 234.

indicate that there is confusion amongst stakeholders regarding the meaning and scope of the Energy Efficiency Resource provisions approved by the Commission in the MISO Resource Adequacy Order. This confusion appears to stem from conflicting information communicated by MISO in its transmittal letter, in its answer, and, apparently, elsewhere in discussions with stakeholders. We address parties' concerns below.

**1. Treatment of EE Resources under the Tariff**

**a. Clarification Requests and Protest**

15. Midwest TDUs state that they do not object to the Tariff revisions proposed by MISO. However, Midwest TDUs express concern over statements made by MISO in its transmittal letter that they assert suggest MISO may implement its proposal in a manner that undermines existing energy efficiency programs and requires changes in how LSEs forecast load.<sup>15</sup> Midwest TDUs assert that if MISO does not provide its requested clarifications, it protests MISO's filing and requests that the Commission clarify that MISO's Tariff—and not its transmittal letter—controls.<sup>16</sup>

16. Midwest TDUs take issue with MISO's statements in its transmittal letter that appear inconsistent with the Tariff language and that suggest that (1) LSEs must submit all energy efficiency projects to MISO for consideration as Energy Efficiency Resources and (2) all LSE load forecasts must be grossed-up to reflect the hypothetical load that would have existed in the absence of an energy efficiency project.<sup>17</sup> Midwest TDUs state that they have been unable to obtain clarification from MISO technical staff regarding which energy efficiency projects MISO believes must be registered. To the extent that MISO intends LSEs to submit all energy efficiency projects for consideration as registered Energy Efficiency Resources, Midwest TDUs assert that such a requirement is inconsistent with the language of the Tariff.<sup>18</sup> Midwest TDUs also contend that a requirement to estimate and register every energy efficiency-related reduction in load

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<sup>15</sup> Midwest TDUs Clarification Request or Protest at 3.

<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.* at 7. Specifically, the transmittal letter states:

In order to ensure consistent treatment for all energy efficiency resources from a qualification and approval process, these resources must be registered with and be evaluated by MISO as EE Resources, and then the subsequent Demand reduction as a result of the implementation of EE Resources must be included in the Coincident Peak Demand forecast of the LSE. MISO Transmittal Letter at 3.

<sup>18</sup> *Id.* at 7-8.

would be unworkable and would discourage investment in energy efficiency projects.<sup>19</sup> Midwest TDUs request that MISO, or the Commission, clarify that the Tariff does not require LSEs to initiate the Energy Efficiency Resource registration process where the LSE does not seek to treat its energy efficiency projects as Planning Resources in the capacity market.<sup>20</sup>

17. Moreover, Midwest TDUs request that MISO, or the Commission, clarify that where energy efficiency projects do not receive credit as Energy Efficiency Resources, their demand-reducing effects may continue to be reflected in an LSE's load forecast. Midwest TDUs assert that while it is improper for an LSE to include demand reductions from energy efficiency projects registered as Energy Efficiency Resources in its load forecast, it is valid to include these demand reductions for non-registered energy efficiency projects because they receive no credit for being Energy Efficiency Resources in the capacity market (i.e., no double-counting issues exist). Midwest TDUs maintain that this accounting for non-registered energy efficiency projects is consistent with the way LSEs have historically reflected energy efficiency projects in their load forecasts. Midwest TDUs also argue that this accounting is consistent with good utility practice and prevents LSEs from overstating their load forecasts, which could lead to inaccurate forecasts and planning which, in turn, may result in the over-procurement of capacity resources and the construction of unnecessary generating units to cover non-existent load.<sup>21</sup>

18. Joint Protesters agree with Midwest TDUs that the registration of energy efficiency projects should remain optional. Joint Protesters believe MISO is requiring Energy Efficiency Resource registration so it can subtract these resources from the load forecast prior to applying the planning reserve margin. However, Joint Protesters argue that the same result may be achieved if the LSE nets the demand reduction provided by its energy efficiency project against its load forecast prior to submitting the forecast to MISO. Joint Protesters assert that their energy efficiency programs are rigorously validated by their state regulatory authorities and that these programs need not be re-validated, in a potentially different manner, by MISO. Joint Protesters believe that separate registration of demand saved through Energy Efficiency Resources is only necessary where there is an Aggregator of Retail Customers whose business practices rely on selling the demand savings to the wholesale market and uplifting the costs to the local LSE through this market. Joint Protesters support MISO's involvement in the accreditation, measurement, and verification of Energy Efficiency Resources only when a

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<sup>19</sup> *Id.* at 9-10.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.* at 8-10.

state requests MISO's involvement, further suggesting that in these instances, load forecasts should only be augmented if the Energy Efficiency Resource is registered.<sup>22</sup>

19. Further, Joint Protesters believe the current Tariff is sufficient and does not require change. Joint Protesters object to the proposed removal of language in section 69A.3.2 of the Tariff that they believe makes clear an LSE should be able to include demand reductions from Energy Efficiency Resources in calculating its Coincident Peak Demand in order to avoid registration of such resources. Based on their interpretation of MISO's proposal, Joint Protesters believe the removal of this language will require an LSE to purchase replacement capacity for non-existent load if an energy efficiency project is not registered with MISO. Joint Protesters allege that this amounts to a federal energy efficiency mandate that preempts state programs, which Joint Protesters assert the Commission lacks authority to approve.<sup>23</sup>

20. Joint Protesters also request that if the Commission accepts MISO's proposal, the Commission should require clarification that energy efficiency programs in place prior to June 1, 2012 are not required to separately register and that those programs are allowed to be netted by the LSE against the LSE's load forecast, consistent with MISO's presentations to stakeholders in December 2012. Joint Protesters claim that, in December 2012, MISO stated that energy efficiency programs in place before June 1, 2012 did not require separate registration.<sup>24</sup>

**b. MISO Answer**

21. MISO states that, if a market participant intends for an energy efficiency program to be used as a Planning Resource under the Tariff, then such program must be registered as an Energy Efficiency Resource. In contrast, MISO also states that if a market participant has an energy efficiency program that does not qualify as an Energy Efficiency Resource, then such program cannot be used as a Planning Resource under the Tariff. Further, MISO clarifies that the revisions at issue in the instant proceeding only concern the treatment of the load reduction associated with an Energy Efficiency

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<sup>22</sup> Joint Protesters Protest at 9-10.

<sup>23</sup> *Id.* at 10-12.

<sup>24</sup> *Id.* at 16 (citing MISO, Supply Adequacy Working Group, Energy Efficiency Resources: Information (Dec. 6, 2012), *available at*: <https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/SAWG/2012/20121206/20121206%20SAWG%20Item%2008%20EE%20Resources%20in%20Forecast.pdf>).

Resource—specifically that Coincident Peak Demand forecasts must include the demand that would have occurred if not for the operations of the Energy Efficiency Resource.<sup>25</sup>

22. MISO asserts that an energy efficiency program that may otherwise qualify as an Energy Efficiency Resource, but that is not registered with MISO, cannot be an Energy Efficiency Resource under the Tariff and thus may not be used to reduce forecast demand. MISO states that Joint Protestors are not correct that load forecasts do not need to be grossed-up for energy efficiency programs that are registered as Energy Efficiency Resources. MISO notes that failing to modify a load forecast for an Energy Efficiency Resource may result in double counting.<sup>26</sup> Additionally, MISO states that it recognizes that the existing Tariff does not prohibit market participants from taking into account non-registered energy efficiency programs in load forecasts. MISO states that it is willing to clarify this prohibition in a compliance filing.<sup>27</sup>

**c. Midwest TDUs Answer**

23. Midwest TDUs reiterate their concerns regarding the registration process for Energy Efficiency Resources and whether LSEs may include the demand-reducing effects of non-registered energy efficiency projects in load forecasts.<sup>28</sup> Midwest TDUs highlight MISO's statement in its answer that it is willing to modify its Tariff to include a prohibition against LSEs accounting for non-registered energy efficiency projects in load forecasts. Midwest TDUs oppose such an amendment and believe it would require fundamental changes to established LSE load forecasting practices and undermine LSE and state-mandated energy efficiency programs.<sup>29</sup> Midwest TDUs also argue against a mandated Energy Efficiency Resource review process for all energy efficiency projects.<sup>30</sup> Midwest TDUs request that the Commission reject MISO's proposal as deficient and require it to re-file a coherent proposal, given MISO's contradictory answer.<sup>31</sup>

**d. Joint Protesters Answer**

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<sup>25</sup> MISO Answer at 3-4.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Id.* n.21.

<sup>28</sup> Midwest TDUs Answer at 3-5.

<sup>29</sup> *Id.* at 2, 4-6 (citing MISO Answer at n.21).

<sup>30</sup> *Id.* at 6-8.

<sup>31</sup> *Id.* at 5.

24. Joint Protesters state that MISO's filing and answer were confusing to many stakeholders and that MISO has since discussed its intent in stakeholder proceedings.<sup>32</sup> Joint Protesters state that, in these discussions, MISO has clarified that the registration of energy efficiency projects as Energy Efficiency Resources remains optional under the previous and current Tariff language.<sup>33</sup> Joint Protesters state that MISO confirmed that the impact of non-registered energy efficiency projects is a reduction in the submitted load forecast. Joint Protesters state that MISO communicated that it may review details associated with the volume of energy efficiency programs reported in load forecasts just as it reviews other aspects of the forecast. Joint Protesters assert that they agree with MISO that an LSE with an energy efficiency project registered as an Energy Efficiency Resource should increase its load forecast by the same megawatt volume as the registered Energy Efficiency Resource. Joint Protesters state that, with these clarifications, they are in agreement with MISO on the treatment of energy efficiency projects in the MISO region.<sup>34</sup>

**e. Commission Determination**

25. Midwest TDUs and Missouri River Energy Services do not object to MISO's proposed Tariff revisions but instead express concern that MISO's statements in this proceeding suggest it may implement its proposal in a way that requires changes in how LSEs forecast load. Additionally, Joint Protesters confirm in their answer that they share similar concerns to Midwest TDUs and Missouri River Energy Services regarding the registration of energy efficiency projects and the treatment of non-registered energy efficiency projects in load forecasts. Consistent with our historical practice, we find here that to the extent any language in MISO's pleadings conflict with its proposed Tariff language, the Tariff language controls.<sup>35</sup> We agree with Midwest TDUs and Missouri River Energy Services that the Tariff does not require market participants to initiate the Energy Efficiency Resource registration process where the LSE does not seek to treat an energy efficiency project as a Planning Resource in the capacity market. However, if an LSE has an energy efficiency project that meets the criteria for being an Energy

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<sup>32</sup> Joint Protesters reference a February 6, 2013 Demand Response Working Group meeting and a February 7, 2013 Supply Adequacy Working Group meeting.

<sup>33</sup> Joint Protesters Answer at 2 (citing MISO, Supply Adequacy Working Group meeting minutes (Feb. 7, 2013), *available at* <https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/SAWG/2013/20130307/20130307%20SAWG%20Item%2001b%20Minutes%2020130207.pdf>).

<sup>34</sup> *Id.* at 2-3.

<sup>35</sup> See *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,154, at P10 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,268, at n.8 (2009); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,095, at P 22 (2008).

Efficiency Resource, and if the LSE wants to use that energy efficiency project as a Planning Resource to help meet its resource adequacy obligations, the LSE must register its energy efficiency project with MISO as an Energy Efficiency Resource.

26. We believe that, in their protest, Joint Protesters misunderstand the meaning of the term Energy Efficiency Resources in the Tariff to include energy efficiency projects that LSEs do not use to meet resource adequacy obligations. For example, in objecting to the removal of language in section 69A.3.2, Joint Protesters assert that this removal would require non-registered energy efficiency resources to buy replacement capacity for non-existent load. However, the language in question refers only to Energy Efficiency Resources and, under the Tariff, Energy Efficiency Resources are Planning Resources that are registered with MISO. Thus, an Energy Efficiency Resource by definition cannot be a non-registered energy efficiency project under the Tariff. An LSE, though, may still reflect the demand-reducing effect of this non-registered energy efficiency project in its load forecasts, rendering Joint Protesters objection moot.

27. In their protest, Midwest TDUs note that, pursuant to Tariff revisions proposed in section 69A.1.1, MISO has limited the obligation of host LSEs to gross-up load forecasts to Energy Efficiency Resources. Thus, Midwest TDUs argue, the Tariff still permits LSEs to not register their energy efficiency projects and instead reflect the demand reduction effects of these projects in their load forecasts.<sup>36</sup> We agree. The implication of the proposed gross-up language is that a default position exists for energy efficiency projects, i.e., one where the LSE would include the demand-reducing effect of the energy efficiency project in its load forecast. However, if the LSE intends its energy efficiency project to be an Energy Efficiency Resource—and thus a Planning Resource—under the Tariff, the LSE must gross-up its load forecast as if the effect of this energy efficiency project did not exist, in order to avoid double-counting. We further note that non-registered energy efficiency projects are not netted in the same way as Energy Efficiency Resources when determining an LSE's resource adequacy obligations. While the demand-reducing effect of non-registered energy efficiency projects may be reflected in LSEs' demand forecasts, only an LSE with a registered Energy Efficiency Resource is ensured the full benefit of netting the load-reducing effect of its project to reduce its forecast demand when calculating the load that is subject to planning reserve margin requirements.<sup>37</sup>

28. There is no language in the Tariff requiring LSEs to submit all of their energy efficiency projects to MISO for review for Energy Efficiency Resource eligibility. Nor does MISO's Tariff prohibit LSEs from including the demand-reducing effects of energy efficiency projects that are not Energy Efficiency Resources in their load forecasts.

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<sup>36</sup> Midwest TDUs Clarification Request or Protest at 6.

<sup>37</sup> MISO Answer at 6.

Additionally, the pleadings in this proceeding suggest that stakeholders were not aware of potential changes to the treatment of non-registered energy efficiency projects in the MISO region before MISO submitted its filing. Such a change would be a significant departure from historical practice, so if MISO intends to include these features as part of its Tariff, it must propose these features in a separate filing under section 205 of the Federal Power Act<sup>38</sup> and support them as just, reasonable, and not unduly discriminatory or preferential.

## 2. Other Issues

### a. Protest

29. Joint Protesters allege that MISO is attempting to retroactively change the requirements of load forecasts that were due on November 1, 2012. Joint Protesters note that the requested effective date for MISO's proposed revisions is the day prior to the registration deadline for new resources and approximately four months after the deadline for submitting load forecasts for the 2013 planning year. Joint Protesters assert that the Commission should reject MISO's proposal for the 2013 planning year.<sup>39</sup>

30. Further, Joint Protesters argue that clarifications are needed in regard to MISO's Financial Transmission Rights process. Joint Protesters note that MISO uses the Module E load forecast for a variety of purposes, including the determination of Peak Usage, which, Joint Protesters assert, MISO uses to cap new resource source points, as well as to limit nominations and allocations of Auction Revenue Rights and Long Term Transmission Rights.<sup>40</sup> Joint Protesters request that the Commission require MISO to clarify that the peak load used in the Financial Transmission Rights process is equal to peak load minus energy efficiency programs.<sup>41</sup>

31. Finally, Joint Protesters express confusion over the phrase "less than four years."<sup>42</sup> Joint Protesters state that this language implies that Energy Efficiency Resources must be registered separately from load for four years and not less than four years. Joint Protesters request that the Commission allow an LSE the flexibility to roll the load associated with Energy Efficiency Resources into the forecast after the first year. Joint

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<sup>38</sup> 16 U.S.C. § 824e (2006).

<sup>39</sup> Joint Protesters Protest at 3, 13-15.

<sup>40</sup> *Id.* at 15-16 (citing MISO Tariff § 43.2.4).

<sup>41</sup> *Id.* at 16.

<sup>42</sup> *See supra* P 4.

Protesters also allege that there is a lack of clarity on the definition of a program and how natural growth in a specific program should be treated over the four years.<sup>43</sup>

**b. MISO Answer**

32. Regarding Joint Protesters' request that MISO clarify the meaning of Peak Usage as it is used in the Financial Transmission Rights process, MISO asserts that Financial Transmission Rights are beyond the scope of this proceeding. In addition, MISO states that Joint Protesters' concern about the use of the phrase "less than four years" and whether that language implies that an Energy Efficiency Resource must be registered separately from load for four years is also beyond the scope of this proceeding. Nonetheless, MISO states that it is reasonable for the load associated with an Energy Efficiency Resource's reductions to be included in the appropriate load forecast. MISO further states that, after four years, the load reductions attributable to specific actions would no longer qualify for treatment as an Energy Efficiency Resource, according to the terms of the Tariff.<sup>44</sup>

**c. Commission Determination**

33. In their protest, Joint Protesters raise timing concerns regarding the proposed Tariff revisions. We view the proposed modifications as largely clarifying existing practices and note that section 69A.1.1 of MISO's Tariff requires each LSE to submit a Coincident Peak Demand forecast by November 1 prior to the upcoming planning year. As such, we expect that each LSE's 2013-2014 year Coincident Peak Demand forecast includes the demand that would have occurred but for the Energy Efficiency Resource. Given MISO's requested effective date of February 28, 2013, the proposed Tariff modifications would apply to an LSE's next Coincident Peak Demand forecast—submitted by November 1, 2013—for the upcoming 2014 planning year. Thus, we accept MISO's requested effective date. Additionally, we agree with MISO that Joint Protesters' concerns regarding the Financial Transmission Rights process and the use of the phrase "less than four years" are beyond the scope of this proceeding. MISO's proposed Tariff revisions in the instant proceeding help clarify what MISO proposed and the Commission accepted in the MISO Resource Adequacy Order proceeding, which was the appropriate forum to raise issues regarding the Financial Transmission Rights process. Similarly, we note that the four-year period mentioned in the proposed revision to section 69A.1.1 is a reflection of language previously accepted by the Commission elsewhere in the Tariff.<sup>45</sup>

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<sup>43</sup> Joint Protesters Protest at 17.

<sup>44</sup> MISO Answer at 6-7.

<sup>45</sup> See MISO Tariff § 69A.3.2.

The Commission orders:

MISO's proposed Tariff revisions are hereby accepted for filing, effective February 28, 2013, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is concurring with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator,  
Inc.

Docket No. ER13-669-000

(Issued February 27, 2013)

WELLINGHOFF, Chairman, *concurring*:

Today the Commission accepts proposed modifications filed by Midwest Independent Transmission System Operator, Inc. (MISO) to its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) to clarify how Energy Efficiency Resources may be used by Load Serving Entities as planning resources to maintain system reliability as part of their resource adequacy requirements; an action that I support.

Under MISO's tariff, an Energy Efficiency Resource can qualify to receive zonal resource credits as planning resources for up to four planning years after initial qualification and implementation.<sup>1</sup> Today, we approve language that MISO states is needed to clarify that, after four years of operation, the load reductions attributable to specific actions would no longer qualify for treatment as an Energy Efficiency Resource. In effect this assumes a four-year "life" for all energy efficiency resources, although energy-efficient LED lighting and energy-efficient air conditioners, for example, are expected to operate reliably for 10 years or more. Nevertheless, such simplifying assumptions seem reasonable for administrative ease as energy efficiency resources begin to participate in capacity markets. Other RTOs, such as PJM, have a similar practice.

Innovations in energy efficient technologies have progressed rapidly, particularly in lighting and smart phone-controlled home energy management devices. Energy efficient appliances are now widely available in local stores and are increasingly cost-competitive with lower efficiency models. Techniques to measure and verify the energy reduction of energy efficiency resources have

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<sup>1</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199, at 228 (2012) (MISO Resource Adequacy Order).

become more sophisticated. RTOs have gained experience with energy efficient devices providing reliable, cost-effective capacity to maintain reliability. Transmission providers may consider energy efficiency resources as a tool in planning reliable transmission systems. With this experience, innovation and need for resources, I suggest that it is time to revisit these assumptions to properly recognize the capability of energy efficiency resources to provide reliable service for many years, including beyond four years.

Therefore, I write to encourage MISO and its stakeholders to discuss this matter as they consider future modifications to ensure resource adequacy and reliability of the transmission system in their region.

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Jon Wellingshoff  
Chairman