

143 FERC ¶ 61,070
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 Nos. ER13-692-000
ER13-692-001
ER13-692-002
ER13-692-003

ORDER ACCEPTING IN PART AND
REJECTING IN PART TARIFF REVISIONS

(Issued April 26, 2013)

1. On January 2, 2013, as amended on February 1, 2013, February 8, 2013, and February 27, 2013, the Midwest Independent Transmission System Operator, Inc. (MISO) filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).¹ In this order, the Commission accepts in part and rejects in part the proposed Tariff revisions, effective April 15, 2013, as requested, as discussed below.

I. Background

2. On April 23, 2012, the Commission issued an order in Docket No. ER11-2923-000 granting MISO a limited, one-time waiver of certain Commission regulations and Tariff provisions.² MISO requested waiver in order to allow it to upgrade its Open Access Same-Time Information Systems (OASIS) to comply with Order No. 676-E,³ which set forth revised standards adopted by the Wholesale Electric Quadrant of the

¹ MISO's amended filings on February 1, 2013 and February 27, 2013 were erratas to correct errors that occurred during the filing process.

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,062 (2012).

³ *Standards for Business Practices and Communication Protocol for Public Utilities*, Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 (2009).

North American Energy Standards Board and directed public utilities to either incorporate them into their jurisdictional tariffs or seek a waiver from the Commission.

3. Pursuant to the waiver, MISO committed to replacing its OASIS by December 31, 2012, in order to perform preemption activities for firm and non-firm transmission service requests (TSR) and extend partial service offers when firm TSRs cannot be accommodated in full. MISO stated that it then reviewed its Tariff to identify provisions in need of update to reflect its OASIS replacement, associated software upgrades, and associated business process and practices that are necessary for its transition to webTrans software developed by Open Access Technology International, Inc. (OATI) for the calculation of Available Flowgate Capability (AFC) values and the evaluation of transmission service availability.⁴ MISO maintains that its proposed Tariff revisions reflect the functionality and processes of its new OATI OASIS and webTrans platforms and also improve upon existing practices and, therefore, satisfy the “consistent with or superior to” standard that the Commission reaffirmed in Order No. 890.⁵

II. Description of the Filings

A. Five Minute Simultaneous Submission Window

4. MISO proposes to revise Module B of its Tariff to reflect its transition to a five-minute Simultaneous Submission Window (SSW) for firm TSRs in Attachment J, as approved by the Commission in MISO’s Order No. 890 compliance filing.⁶ MISO states that there are some inconsistencies regarding the duration of its SSW in Module B in its currently effective Tariff.

5. MISO proposes to delete the inconsistent language from Section 14.6 (concerning Non-Firm Point-to-Point Service) and Section 27A.2.5 (concerning firm service on high

⁴ MISO January 2 Filing at 1.

⁵ *Id.* at 2 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 109, *order on reh’g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 74 Fed. Reg. 12,540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 Fed. Reg. 61,511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009)).

⁶ *Id.* at 4.

voltage direct current (HVDC) lines) of Module B and to insert the following language into Section 17.2 (concerning Firm Point-to-Point Service⁷):

Requests for Firm Point-to-Point Service that are subject to no earlier than submission timelines and that are submitted during the first five minutes after the time when Firm Point-to-Point Service can first be requested on the OASIS in accordance with Attachment J, will be considered as if they were submitted simultaneously during such window as set forth in Section 17.6 of this Tariff.

6. MISO further proposes to insert the following language into Section 27A.5.2:

Requests for Firm HVDC Service that are subject to no earlier than submission timelines and that are submitted during the first five minutes after the time when Firm HVDC Service can first be requested on the OASIS in accordance with Attachment J, will be considered as if they were submitted at the same time as provided for in Section 17.6 of this Tariff.

B. Lottery System Transmission Capacity Allocation

7. MISO proposes to modify its methodology for allocating transmission capacity when similar TSRs are received during the SSW, but insufficient transmission capacity exists to satisfy all such TSRs within that time period.⁸ Specifically, MISO proposes to amend Section 17.6 of Module B of the Tariff to replace its *pro rata* allocation system with a lottery system, under which ties between Transmission Customers will be dealt with by randomly selecting a customer's bid from the set of tied requests until all requests are processed or until AFC is eliminated. MISO states that this will ensure all customers whose bids were submitted within the five-minute window have an equal opportunity to obtain capacity.

8. MISO states a lottery system is appropriate for its transmission system because MISO evaluates transfer capability using an AFC methodology where each TSR affects multiple paths. This makes separating transmission capacity into discrete shares for multiple customers difficult.⁹ MISO explains that its proposal is similar to the lottery system approved by the Commission in *Mid-Continent Area Power Pool*.¹⁰ MISO notes

⁷ Any capitalized terms not otherwise defined herein have the same meanings given to them in the MISO Tariff.

⁸ MISO January 2 Filing at 6.

⁹ *Id.*

¹⁰ *Id.* (citing *Mid-Continent Area Power Pool*, 123 FERC ¶ 61,177 (2008)).

that, in that case, the Commission accepted a similar lottery system proposal where the transmission provider (like MISO) used an AFC-based methodology for evaluating available flowgate capability.¹¹ MISO further proposes to add language to Section 17.6 to clarify that all available AFC will be allocated during the conduct of each lottery.¹²

C. Revisions to Attachment C

9. MISO proposes to amend the language throughout Attachment C of the Tariff to reflect several changes to its AFC calculation functionality.¹³ First, MISO proposes to amend all language within Attachment C to reflect the transition from PowerGEM ATC/AFC Calculator to OATI webTrans software. MISO further proposes to amend language in Attachment C to clarify how TSRs are evaluated against the applicable set of flowgates and to clarify that AFC is decremented when TSRs are submitted or their status is modified such that their impact upon AFC must be removed or recalculated. MISO also proposes to amend Section 2 of Attachment C to provide that the model used for calculating AFC will be the seasonal model utilized by the North American Reliability Corporation Interchange Distribution Calculator, and that reservations obtained from the MISO OASIS will be used to develop control area net scheduled interchange values beyond the scheduling horizon and to cross-reference the MISO Available Transfer Capability Implementation Document.

10. Finally, MISO proposes to amend the language in Section 6 of Attachment C to clarify that Existing Transmission Commitments are calculated in the Planning and Study Horizons by utilizing reservations impacting those horizons and to clarify the manner in which MISO uses schedules expected to flow (in place of reservations) to calculate net interchange for the remainder of the current day and the next day in the operating horizon.

D. Assessment of Unreserved Use Penalties

11. In the January 2 Filing, MISO proposed to amend Sections 13.7, 14.5, 27A.1.6, 27A.2.4, 30.4, and 37.2 of its Tariff in order to give it discretion to impose a 200 percent multiplier to penalties for unreserved use of MISO's transmission system. Currently, the assessment of the 200 percent multiplier to unreserved use penalties is automatic, which

¹¹ *Id.*

¹² MISO February 8 Amended Filing at 5 (February 8 Amended Filing).

¹³ MISO January 2 Filing at 7.

MISO contends is unwarranted and overly harsh.¹⁴ MISO explains that its transmission system is based mostly on the use and allocation of financial transmission rights rather than physical transmission rights. Because MISO uses physical rights only on a subset of its interties with other Balancing Authority Areas, MISO maintains that the potential for unreserved use of its transmission system is present only on that limited set of interties. Thus, MISO proposes to amend the Tariff to give MISO the discretion to impose the 200 percent multiplier for unreserved use in those cases in which circumstances indicate the need to curb system abuse.¹⁵ MISO states that having the right, but not the obligation, to impose a 200 percent multiplier penalty would encourage Transmission Customers to reserve transmission capacity that they intend to use. In the February 8 Amended Filing, MISO modified its proposed changes to Sections 13.7, 14.5, 27A.1.6, 27A.2.4, 30.4, and 37.2 of the Tariff to restore the penalty provisions as they apply to Interchange Transactions and to add language to clarify that the unreserved use penalty provisions, including the 200 percent multiplier, will only be imposed where it has received an Interchange Schedule.¹⁶

E. Deferral of Transmission Service

12. MISO proposes to amend its Tariff to impose a deadline for Transmission Customers to defer reserved transmission service.¹⁷ MISO states the lack of a deadline is problematic for MISO because it hinders its ability to re-sell transmission capacity, especially if the transmission customer elects to defer transmission service close to the date on which such service is supposed to commence. Accordingly, MISO proposes to amend Sections 17.8, 27A5.8, and 31.5 to require that a transmission customer postpone transmission service no later than 31 days prior to the date that such service is scheduled to start. Further, MISO states that the use of a 31-day deadline allows MISO: (1) to maximize its ability to resell the transmission capacity under a monthly or weekly firm agreement; and (2) to maximize the revenues for the use of the transmission capacity.

¹⁴ MISO states that time and operational experiences have demonstrated that unreserved uses of the system have rarely, if ever, been an operational problem for MISO. *Id.* at 8.

¹⁵ *Id.*

¹⁶ February 8 Amended Filing at 3.

¹⁷ MISO January 2 Filing at 9.

F. Determination of Reservation Priority for Point-To-Point Service

13. MISO proposes to amend its Tariff to change the provisions that prioritize competing requests for Short-Term Firm Point-to-Point (PTP) service and for Non-Firm PTP service.¹⁸ MISO indicates that, currently, requests that are equal in terms of duration and pre-confirmation status are prioritized by price offered and then by the time the request is received, which MISO states unfairly disadvantages customers with fewer financial resources. Accordingly, MISO proposes to amend Sections 13.2, 14.2, 14.7, 27.A.1.2, 27A.2.2, and 27A.2.6 to change the provisions so that competing requests are no longer prioritized based on price. MISO states that use of time of receipt as the deciding factor is consistent with the approach adopted in the *pro forma* Open Access Transmission Tariff (OATT).

G. Scheduling Timeframes for Interchange Transactions

14. In the January 2 Filing, MISO proposed to amend Sections 13.8, 14.6, 27A.1.7 and 27A.2.5 of its Tariff to expressly incorporate a series of timing requirements for interchange transmission schedules contained in its Physical Scheduling Business Practice Manual, and to delete the corresponding scheduling timeframes set forth in Attachment J.¹⁹ However, as discussed below, in its February 8 Amended Filing, MISO withdrew these proposed Tariff changes and amended the TSR Submission Timing Requirements for Firm and Non Firm daily service in Attachment J.²⁰

H. Provisions Governing Rollover Rights

15. In the January 2 Filing, MISO proposed to remove language from Section 2.2 of its Tariff governing the provision of contact information to MISO by rollover rights customers, the process for notification of such customers when there is a competing request and the process by which rollover rights customers and competing customers will compete for transmission rights.²¹ MISO proposed to place the removed language in its Business Practice Manuals. Subsequently, in its February 8 Amended Filing, MISO proposed to retain a modified version of Section 2.2 in the Tariff but move from Section 2.2 into its Business Practice Manuals certain language that is either duplicative of the language retained in Section 2.2 or provides detailed instructions on process

¹⁸ *Id.* at 10. MISO proposes to revise Section 13.2 to clarify that competing requests are those that impact the same flowgate. *Id.*

¹⁹ *Id.*

²⁰ February 8 Amended Filing at 3, 6.

²¹ MISO January 2 Filing at 11.

administration steps that need to be taken once a Rollover Request has been initiated.²² MISO states that these portions of Section 2.2 set forth the details behind MISO's process for administration of Rollover Requests.²³ Therefore, MISO submits that the removal of this language into the appropriate Business Practice Manuals is justified and consistent with Commission precedent which permits Business Practice Manuals to include implementation details and information on how MISO conducts its operations under various provisions of its Tariff.²⁴

I. Conditional Firm Service on HVDC Facilities

16. MISO proposes to remove language in Section 27A of its Tariff which requires it to study and offer conditional firm service.²⁵ MISO states that its only conditional firm service is over HVDC facilities, which are fully subscribed until 2026. MISO further states that it reserves the right to reinstate the language in the future should such facilities become available or other HVDC facilities are incorporated into MISO's transmission system. MISO explains that the existence of the conditional firm service language causes unnecessary confusion by indicating to Transmission Customers that conditional firm service may be available.

J. Posting of Security for System Upgrades

17. In the January 2 Filing, MISO proposed to amend sections 19.4, 27A.4 and 32.4 of its Tariff, which govern the study and implementation of system expansions in order to accommodate a request for service. According to MISO, these provisions currently require a transmission customer to provide a letter of credit or other form of security equivalent to the costs of the facilities proposed to be constructed. MISO proposes to amend these provisions to give it the needed flexibility to request a letter of credit or other form of security on a case-by-case basis instead of making it mandatory.²⁶ In the February 8 Amended Filing, MISO submitted revised Tariff language to clarify that a letter of credit or other security will be required in instances where: (1) the Transmission Customer does not already have a letter of credit or other security on file with MISO; and (2) the Transmission Customer already has a letter of credit or other security on file with MISO, but such existing collateral is insufficient to cover the Transmission Customer's

²² February 8 Amended Filing at 3-4.

²³ *Id.*

²⁴ *Id.*

²⁵ MISO January 2 Filing at 12.

²⁶ *Id.* at 13.

existing and proposed obligations. MISO also clarifies that it may decline to request additional letters of credit or other security if the Transmission Customer already has sufficient collateral on file to meet its existing and proposed obligations.²⁷

K. Revisions to Attachment U

18. MISO proposes to amend Attachment U of its Tariff to streamline and clarify its provisions concerning the designation of off-system Network Resources and the resolution of competing requests for service among Network Customers and between Network Customers and Firm PTP Customers.²⁸ Specifically, MISO proposes to delete a reference to the timing requirement of Attachment J for designation of Network Resources. MISO also seeks to add language to clarify that Attachment U addresses resolution of competing requests between Network Customers and Customers of Long-Term Firm PTP Service and resolution of competing requests for Short-Term Firm PTP Service.

L. Revisions to Process for Exercising Right of First Refusal

19. MISO proposes to amend Sections 13.2 and 27.A.1.2 of its Tariff to revise the manner of prioritization of the exercise of the right of first refusal (ROFR) by certain reservations.²⁹ MISO explains that, currently, shorter duration reservations have simultaneous opportunities to exercise a ROFR when a longer duration request preempts multiple shorter reservations. MISO prioritizes these shorter duration reservations first by duration, then by price and lastly by time of response.

20. MISO proposes to amend the language to provide that the order in which shorter duration reservations can exercise a ROFR will be determined solely by the time that their matching offers are confirmed. MISO maintains that this provision is more straightforward than the current provision and is consistent with its proposal to remove price as a determinant of priority for PTP service.

M. Resales of Transmission Capacity over HVDC Facilities

21. MISO proposes to remove language in Section 27A of its Tariff imposing a price cap on resales of capacity over HVDC facilities.³⁰ MISO states this amendment will

²⁷ February 8 Amended Filing at 5.

²⁸ MISO January 2 Filing at 3.

²⁹ *Id.*

³⁰ *Id.* at 14.

bring Section 27A into conformance with the rest of Module B and with Order No. 739,³¹ which lifted the cap on capacity reassignments beyond the October 1, 2010 termination established in Order No. 890-A.³²

N. Changes to Network Integration Transmission Service

22. MISO proposes to modify section 4 of its Network Integration Transmission Service Agreement (Attachment G to the Tariff) to remove the requirement that a committee comprised of MISO and its Network Customers will meet annually.³³ MISO further proposes to amend the section to add language that the meetings occur on an “as needed” basis.

III. Notice of Filing and Responsive Pleadings

23. Notice of MISO’s January 2, 2013 filing was published in the *Federal Register*,³⁴ with interventions or protests due on or before January 23, 2013.

24. Notice of MISO’s February 1, 2013 amended filing³⁵ was published in the *Federal Register*,³⁶ with interventions or protests due on or before February 25, 2013.

25. Notice of MISO’s February 8, 2013 second amended filing was published in the *Federal Register*,³⁷ with interventions or protests due on or before February 25, 2013.

³¹ See *Promoting a Competitive Market for Capacity Reassignment*, Order No. 739, 132 FERC ¶ 61,238, at P 26 (2010), *reh’g denied*, Order No. 739-A, 135 FERC ¶ 61,137, at PP 15-16 (2011).

³² See Order No. 890-A, FERC Stats. & Regs. ¶ 31,241 at P 390.

³³ MISO January 2 Filing at 14.

³⁴ 78 Fed. Reg. 2,386 (2013).

³⁵ MISO submitted this filing as an errata to the January 2 Filing.

³⁶ 78 Fed. Reg. 9,683 (2013).

³⁷ 78 Fed. Reg. 11,636 (2013).

26. Notice of MISO's February 27, 2013 third amended filing³⁸ was published in the *Federal Register*,³⁹ with interventions or protests due on or before March 20, 2013.

27. Timely motions to intervene were filed by Ameren Services Company; Wisconsin Electric Power Company; and American Municipal Power, Inc. A timely motion to intervene and protest (January 23 Protest) was filed by the MISO Transmission Owners.⁴⁰ An out-of-time motion to intervene was filed by Consumers Energy Company. MISO filed a motion for leave to answer and answer on February 7, 2013 (February 7 Answer). On March 1, 2013, the MISO Transmission Owners filed additional comments (March 1 Comments). On March 18, 2013, MISO filed a second motion for leave to answer and answer (March 18 Answer).

A. Protest and Comment

28. In their January 23 Protest, the MISO Transmission Owners oppose certain of MISO's proposed Tariff revisions as inconsistent with Commission policy and precedent.⁴¹ Subsequent to the MISO Transmission Owners' January 23 Protest, MISO engaged in direct discussions with the MISO Transmission Owners and submitted the

³⁸ MISO submitted this filing as an errata to the February 8 Amended Filing.

³⁹ 78 Fed. Reg. 14,530 (2013).

⁴⁰ For purposes of this filing, the MISO Transmission Owners are: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

⁴¹ January 23 Protest at 1-2.

February 8 Amended Filing, which the MISO Transmission Owners state in their March 1 Comments addresses many of the concerns raised in their prior protest.⁴²

1. Assessment of Unreserved Use Penalties

29. The MISO Transmission Owners still object to MISO's proposal to modify Sections 13.7, 14.5, 27A.1.6, 27A.2.4, 30.4, and 37.2 of its Tariff to remove the automatic assessment of a 200 percent multiplier as a penalty for the unreserved transmission system use by a transmission customer, and to add language giving MISO discretion as to whether to assess the penalty.⁴³

30. The MISO Transmission Owners argue that MISO's proposal to modify its Tariff to remove the 200 percent multiplier penalty is inconsistent with Order Nos. 890 and 890-A.⁴⁴ According to the MISO Transmission Owners, Order No. 890 directed transmission providers to amend their OATTs to assess unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and specifically stated the Commission's "decision to clarify the application of unreserved use penalties will eliminate a potential source of discretion in the implementation of the *pro forma* OATT and will assist the Commission in its enforcement of the OATT obligations."⁴⁵

31. The MISO Transmission Owners underscore that all unreserved uses of the transmission system are subject to the penalty, regardless of whether they are intentional or unintentional.⁴⁶ That is why, according to the MISO Transmission Owners, the Commission added in Order No. 890-A that simply charging the transmission customer for the unreserved transmission service will not provide a sufficient incentive for customers to reserve adequate transmission service, and that a penalty discourages disorderly use of transmission service.

32. The MISO Transmission Owners further point out that the Commission declined to limit the penalty to instances where the unreserved use jeopardizes reliability.⁴⁷ The

⁴² March 1 Comments at 2-3.

⁴³ *Id.* at 3; *see also* January 23 Protest at 4-7.

⁴⁴ January 23 Protest at 4.

⁴⁵ *Id.*

⁴⁶ *Id.* at 5.

⁴⁷ *Id.*

MISO Transmission Owners explain that the Commission found in Order No. 890 that the 200 percent multiplier is not excessively punitive and is entitled to a rebuttable presumption that it is just and reasonable, and rejected the argument that the penalty should only apply when the transmission customer repeatedly uses transmission service it has not reserved.⁴⁸ The MISO Transmission Owners remark that the Commission has recognized the importance of its unreserved use penalty provisions in other orders since Order Nos. 890 and 890-A.⁴⁹

33. The MISO Transmission Owners go on to note that in the February 8 Amended Filing as well as in the February 7 Answer, MISO stated that use of its transmission system is based primarily on the use and allocation of financial transmission rights as opposed to physical transmission rights.⁵⁰ According to the MISO Transmission Owners, only transactions associated with an Interchange Schedule have a reservation and a physical Interchange Schedule, both of which are necessary to determine if there has been unreserved transmission system use.⁵¹

34. The MISO Transmission Owners point out that MISO agreed to restore the penalty provisions as they apply to Interchange Transactions, and remove the provisions that provided it with discretion to determine when to assess a penalty. According to the MISO Transmission Owners, the result of this is that Interchange Transactions can be subject to the penalty, but internal, non-Interchange Transactions will not.⁵²

35. The MISO Transmission Owners state that MISO's proposed revisions in the February 8 Amended Filing address the issues raised in their January 23 Protest in part by restoring the unreserved use penalty for Interchange Transactions and removing the provisions that provided MISO with discretion as to when to assess a penalty.⁵³ However, the MISO Transmission Owners state that they remain concerned about MISO's lack of an ability to identify unreserved usages associated with internal, non-

⁴⁸ *Id.* at 6 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241, at PP 847-48, *order on reh'g*; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 461; *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,154, at P 34 (2008)).

⁴⁹ *Id.*

⁵⁰ March 1 Comments at 3.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 3-4.

Interchange Transactions.⁵⁴ According to the MISO Transmission Owners, the Commission found in Order No. 890, identifying unreserved usages and assessing an appropriate penalty can help to ensure that Transmission Customers reserve and pay an appropriate level of transmission service, protect reliability, and assist the Commission in its enforcement of OATT obligations.⁵⁵

2. Determination of Reservation Priority for Point-to-Point Service

36. The MISO Transmission Owners object to MISO's proposal regarding reservation priority for PTP Service. The MISO Transmission Owners state in their January 23 Protest that, under the current Tariff, requests for Short-Term Firm and Non-Firm PTP Transmission Services (equal in terms of duration and pre-confirmation status) are prioritized first by the price offered for the service, and second by the time that the competing requests were received.⁵⁶

37. The MISO Transmission Owners object to MISO's proposal to change these provisions to eliminate the prioritization of competing requests based on price, so that TSR prioritization is based solely on time of receipt.⁵⁷ The MISO Transmission Owners dispute MISO's claim that this change is necessary because it will provide all customers with an equal opportunity to obtain capacity regardless of financial resources. The MISO Transmission Owners argue that MISO's proposal is inconsistent with the Commission's *pro forma* OATT, with the Commission's policy in favor of allocating transmission capacity to those who value it the most, and with MISO's efforts to develop market mechanisms for the efficient allocation of resources.⁵⁸ Further, the MISO Transmission Owners argue that MISO has not shown why its proposed changes are necessary to provide Transmission Customers with an equal opportunity to obtain capacity regardless of financial resources.⁵⁹

38. The MISO Transmission Owners conclude that the use of the SSW addresses the Commission's concerns in Order Nos. 890 and 890-A regarding the disadvantages

⁵⁴ *Id.* at 4.

⁵⁵ *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 835, 838).

⁵⁶ January 23 Protest at 7-8.

⁵⁷ *Id.* at 8.

⁵⁸ *Id.*

⁵⁹ *Id.* at 8-9.

Transmission Customers with fewer financial resources might experience if a first-come, first-served reservation priority system was used.⁶⁰

3. Revisions to Process for Exercising Right of First Refusal

39. The MISO Transmission Owners state that under existing Sections 13.2 and 27A.1.2, when a longer duration request preempts multiple shorter duration reservations, the shorter duration reservations will have simultaneous opportunities to exercise a ROFR.⁶¹ The MISO Transmission Owners further explain that currently the order in which the multiple shorter duration reservations will be able to exercise a ROFR is determined first by duration, second by price, and third by time of response.⁶² The MISO Transmission Owners object to MISO's proposal to delete these first two criteria.⁶³ The MISO Transmission Owners assert that elimination of these criteria is unwarranted for the same reason that elimination of price as a criterion for determining reservation priority for PTP Service; specifically, the proposed changes are contrary to the Commission's *pro forma* OATT and MISO has not shown that the proposed changes are superior to the *pro forma* OATT.⁶⁴

B. Answers

1. Assessment of Unreserved Use Penalties

40. In its March 18 Answer, MISO states that its February 8 Amended Filing clarified that penalties for unreserved use currently apply only to transactions that have both a reservation and a physical Interchange Schedule.⁶⁵ In the February 8 Amended Filing, MISO agreed to retain the provisions in its Tariff that apply a 200 percent multiplier to unreserved use penalties as applied to transactions that have both a reservation and a physical Interchange Schedule.⁶⁶ In response, MISO notes that the MISO Transmission Owners stated that the MISO proposal regarding unreserved use penalties largely

⁶⁰ *Id.* at 9.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 9-10.

⁶⁴ *Id.*

⁶⁵ March 18 Answer at 2.

⁶⁶ *Id.*

addresses their concerns.⁶⁷ However, MISO also notes that the MISO Transmission Owners stated that they “remain concerned about MISO’s lack of an ability to identify unreserved usages associated with internal, non-Interchange Transactions.”⁶⁸

41. In its February 7 Answer, MISO reiterates that the potential for unreserved use on its system is very limited given that it is based mostly on the use and allocation of financial transmission rights as opposed to physical transmission rights.⁶⁹ MISO indicates that it uses physical transmission rights on its interties with other BAAs.⁷⁰ As such, MISO explains that it only requires submission of physical Interchange Schedules for transactions that occur over those interties.⁷¹ More specifically, MISO states that it only requires that Interchange Schedules, which are defined in MISO’s Tariff as Import, Export, and/or Through Schedules, be submitted when a transaction’s Points of Receipt or Delivery involve BAAs outside of the MISO BAA.⁷²

42. MISO explains that, in accordance with MISO’s Tariff as approved, unreserved use penalties shall be applied “[i]n the event that a Transmission Customer’s schedules... exceed its firm reserved capacity at any Point of Receipt or Point of Delivery.”⁷³ MISO states that because of its market design and implementation, the potential for unreserved use on the system is limited to transactions associated with an Interchange Schedule, because only these transactions have a reservation and a physical Interchange Schedule—both of which are necessary to determine and prove that unreserved use has occurred.⁷⁴

43. MISO proposes that the unreserved use penalty provisions, including the 200 percent multiplier, shall be imposed whenever a reservation is associated with an Interchange Schedule and that Interchange Schedule exceeds the reserved capacity documented in the reservation.⁷⁵ MISO submits that its revised language more

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ February 7 Answer at 3.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 3-4.

⁷⁵ *Id.* at 4.

accurately reflects its market design and implementation and provides consistency with other provisions of its Tariff.⁷⁶

2. Determination of Reservation Priority for Point-to-Point Service

44. MISO explains that because it operates its Ancillary Services and Energy Markets, it uses a locational marginal pricing model, which is reliant on data that are specific to and gathered on the date that transmission service is actually taken to calculate its transmission charges.⁷⁷ Accordingly, MISO states that while base transmission rates are determined for service in accordance with Attachment O of the Tariff, the total transmission charges are always calculated after the fact.⁷⁸ MISO further states that, although the total transmission charges are not calculated until after the market is run, MISO's Tariff imposes strict advance timing requirements for the submission of TSRs that accommodate the timing requirements for the submission of Interchange Schedules and are at least one day prior to the start of transmission service.⁷⁹ MISO states that these timing requirements are automatically enforced by its OASIS, resulting in all TSRs submitted and evaluated in advance of the actual transmission service date and the calculation of transmission service rates and charges. For these reasons, MISO states it has never processed TSRs based upon price.⁸⁰

45. To ensure that all stakeholder concerns with regard to reservation priority under the new functionality were addressed, MISO explains that it engaged its Markets Subcommittee when it began designing its new OASIS platform.⁸¹ The Market Subcommittee then designated a targeted User Group to work with it in vetting issues associated with the implementation of its new OASIS platform. Working through this group, MISO explains it vetted its existing policies and their translation into the new OASIS platform, including the proposed functionality for implementing reservation priority under Sections 13.2, 14.2, 14.7, 27A.1.2, 27A.2.2, and 27A.2.6 of the Tariff.

46. MISO indicates that no issues were raised through the User Group when MISO presented its proposed functionality for determining reservation priority. MISO states

⁷⁶ *Id.*

⁷⁷ *Id.* at 5.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 6.

that when revising its Tariff to address the new OASIS platform's reservation priority functionality, it included revisions that would most accurately reflect the vetted, proposed functionality, ensuring Transmission Customers are aware of how reservation priority will be implemented on the new OASIS.⁸²

47. MISO summarizes that the impetus for removing price from the reservation priority consideration is the fact that its market and rate design is not conducive to bidding price at the time a TSR is submitted.⁸³ Further, according to MISO, there are other objective, valuable TSR characteristics that can be utilized for the purpose of prioritizing competing PTP and HVDC service requests at the time of reservation. MISO states that because it prioritizes competing PTP and HVDC service requests based on the time of receipt, the use of this functionality and the use of existing, known TSR characteristics will only further facilitate transmission customer opportunities for receiving transmission service.

48. MISO submits that it worked with stakeholders in the design aspect of its new OASIS platform and received no comments on either its presentation of the design specifications of the functionality or its proposed Tariff filing when circulated to the User Group for comment prior to filing on January 2, 2013.⁸⁴

3. Revisions to Process for Exercising Right of First Refusal

49. MISO states that the reason for removing price from the determination of the order of priority in which a ROFR may be exercised stems from the fact that its market and rate design is not conducive to bidding price at the time a TSR is submitted.⁸⁵ Moreover, to better ensure consistency with the first-come, first-serve nature of transmission service under the *pro forma* OATT, MISO states it proposed to eliminate duration from use in determining the order of priority in which a ROFR may be exercised, making time the definitive factor. Specifically, MISO states that ROFR for shorter duration reservations will be prioritized based on the time that their matching offers are confirmed. MISO maintains that prioritizing the exercise of a ROFR solely on the time of match confirmation will better ensure an efficient, effective, and timely administration of its TSR queue.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 6-7.

⁸⁵ *Id.* at 8.

50. In particular, MISO explains that Transmission Customers have 24 hours to exercise their ROFR if their reservation is challenged.⁸⁶ This time period slows the overall processing of MISO's TSR queue as such processing is "on hold" while MISO awaits responses from each defending reservation. More specifically, MISO explains that if two 50 MW reservations were challenged to match a 100 MW reservation during competition, to determine the priority in which a ROFR could be exercised using duration, MISO would be required to wait until both defenders responded or the twenty-four hour response period was exhausted to complete the competition.⁸⁷ MISO states that this is especially challenging because, if a defender had no interest in exercising its ROFR, it is not required to respond to the matching request and MISO would have to wait the entire response time period before finalizing the competition, thus delaying overall queue processing and depriving the challenging TSR.⁸⁸

51. However, MISO states that by using time of match confirmation to determine the priority in which a ROFR can be exercised, if either defending TSR wants to match, it would have to do so as soon as possible and the competition would quickly end, ensuring an efficient and timely resolution to instances of competing requests.⁸⁹ MISO explains that this functionality is intended to comport both with the Commission's first-come, first-served principles, and the principle that capacity should be allocated to those who value it most because, where a defending TSR intends to match, such match is encouraged to occur quickly with the timeliness of response conveying the value of the capacity.⁹⁰

IV. Discussion

A. Procedural Matters

52. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹¹ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 8-9.

⁸⁹ *Id.* at 9.

⁹⁰ *Id.*

⁹¹ 18 C.F.R. § 385.214 (2012).

Procedure,⁹² we will also grant Consumers Energy Company's out-of-time motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

53. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁹³ prohibits an answer to a protest or an answer, unless otherwise ordered by the decisional authority. However, we will accept MISO's answers because they provided information that assisted us in our decision-making process.

B. Commission Determination

54. We accept in part and reject in part MISO's proposed Tariff revisions. Specifically, we reject MISO's proposed revisions relating to modifications to the unreserved penalty provision, reservation priority for PTP service and priority for exercising a ROFR, as discussed below.⁹⁴ We therefore direct MISO to submit a compliance filing removing these rejected Tariff revisions, within 30 days of the date of this order. With these exceptions, the Tariff revisions proposed by MISO are just and reasonable and not unduly discriminatory or preferential.

1. Assessment of Unreserved Use Penalties

55. We reject MISO's proposal to amend its Tariff to impose the 200 percent multiplier as a penalty for the unreserved transmission system use by a transmission customer for only Interchange Schedules.⁹⁵ We agree with the MISO Transmission Owners that MISO's proposal only addresses how unreserved use penalties would be imposed on Interchange Schedules but does not address how unreserved use penalties will be imposed on non-Interchange Schedules. In Order No. 890 the Commission sought to clarify the application of unreserved use penalties to eliminate a potential source of discretion in the implementation of the *pro forma* OATT and assist the Commission in its enforcement of the OATT obligations.⁹⁶ The Commission mandates

⁹² *Id.* § 385.214(d).

⁹³ *Id.* § 385.213(a)(2).

⁹⁴ Our rejection is without prejudice to MISO submitting a new FPA section 205 filing that fully addresses the concerns identified herein.

⁹⁵ We note that MISO states that it commits to working with the MISO Transmission Owners and other stakeholders to develop a mutually agreeable solution to this issue. March 18 Answer at 3.

⁹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 835.

the use of the unreserved usage penalty in a mechanical manner to provide a “low administrative burden and still provide a clear signal to Transmission Customers regarding the cost of noncompliance.”⁹⁷ The presence of an automatic penalty in all instances of unreserved use for both Interchange and internal, non-Interchange Schedules provides a clear signal to Transmission Customers that give them increased incentive to reserve transmission service in advance and to otherwise avoid hindering the transmission system.

56. We are not persuaded by MISO’s argument that the automatic assessment of a 200 percent multiplier to penalties for unreserved use is unwarranted and overly harsh.⁹⁸ Although MISO states that this change would ensure the use of interties in the manner reserved by Transmission Customers, MISO acknowledges that unreserved uses of the system have rarely been an operational problem. Furthermore, the Commission expressly stated in Order No. 890 that penalties of this level are just and reasonable.⁹⁹

2. **Determination of Reservation Priority for Point-to-Point Service and Revisions to Process for Exercising a Right of First Refusal**

57. We reject MISO’s proposal to eliminate price of a request as a criterion for determining priority of competing requests for Short-Term Firm PTP service and for Non-Firm PTP service. We also reject MISO’s proposal to eliminate duration and price of a reservation as a criterion for determining the order by which shorter duration reservations will be able to exercise a ROFR. MISO has failed to demonstrate that these changes are consistent with or superior to the *pro forma* OATT.¹⁰⁰

58. Moreover, we are not persuaded that these changes will give all customers an equal opportunity to obtain transmission capacity, regardless of financial resources, and that the changes are consistent with the first-come, first-served approach adopted in the *pro forma* OATT.¹⁰¹ We agree with the MISO Transmission Owners that MISO has not shown that the existence of price as a criterion disadvantages customers with different

⁹⁷ *Id.*

⁹⁸ MISO January 2 Filing at 8.

⁹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 848.

¹⁰⁰ *Id.* P 160.

¹⁰¹ MISO January 2 Filing at 10.

financial resources. Furthermore, the Commission expressly stated in Order No. 890 that the implementation of the SSW adequately addresses this concern.¹⁰²

The Commission orders:

(A) MISO's proposed Tariff revisions are accepted in part, and rejected in part, as discussed in the body of this order, effective April 15, 2013, as requested.

(B) MISO is hereby directed to submit a compliance filing, 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.

¹⁰² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1419.