

143 FERC ¶ 61,097
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. and PJM Interconnection, L.L.C. Docket No. ER13-1052-000

ORDER ON TARIFF REVISIONS

(Issued May 6, 2013)

1. On March 7, 2013, Midwest Independent Transmission System Operator, Inc. (MISO) and PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to section 4.1 of Attachment 2 – Congestion Management Process (CMP) to their Joint Operating Agreement (JOA).¹ The proposed revisions modify the calculation of Market Flows to use the same methodology currently used to calculate Firm Flow Entitlements for the purpose of Market-to-Market settlements. MISO and PJM request an effective date of March 8, 2013. As discussed below, we conditionally accept the proposed tariff revisions, subject to a compliance filing, to be effective March 8, 2013.

I. Background

2. MISO and PJM state that under the Market-to-Market process,² the Regional Transmission Organizations (RTOs) coordinate the use of each other's generation assets to determine the lowest cost option to reduce congestion on certain transmission facilities (Market-to-Market flowgates). The RTOs each operate a set of Market-to-Market flowgates and compensate each other for the cost of redispatching resources to reduce

¹ As the designated filing party, PJM is submitting the proposed changes to the JOA along with a MISO certificate of concurrence.

² Since April 1, 2005, PJM and MISO have operated under a market-to-market process set forth in Attachment 3 – Interregional Coordination Process of the CMP.

congestion on the other RTO's flowgate to the extent that it is more economic than redispatching resources in their own market.

3. According to MISO and PJM, compensation is based, in part, on a comparison between an RTO's Market Flows to its Firm Flow Entitlements on any given Market-to-Market flowgate. Market Flows are an RTO's calculated real-time energy flows on a Market-to-Market flowgate resulting from dispatch of generating resources serving load within each RTO's market. An RTO's Firm Flow Entitlements for a Market-to-Market flowgate are its energy flows based on the historic configuration of the RTO's control areas. The difference between the Firm Flow Entitlements and the Market Flows for any hour provides the megawatt quantity used in Market-to-Market settlements.

4. MISO and PJM note that, on January 4, 2011, they filed a Settlement Agreement which, among other things, amended their JOA by limiting the calculation of Market Flows resulting from jointly-owned units³ not modeled as pseudo-ties to a Slice of System methodology previously employed only by MISO.⁴ On June 16, 2011, the Commission issued an order approving the Settlement Agreement effective the same date.⁵ However, the Slice of System methodology approved as part of the Settlement Agreement differed from the Per Generator methodology⁶ the RTOs used to calculate Firm Flow Entitlements on Market-to-Market flowgates.

³ A jointly-owned unit is a generating unit that has multiple owners who belong to different RTOs. For example, a JOU could be a generating plant physically located in MISO but owned by two entities, one operating in MISO's wholesale market and the other operating in PJM's wholesale market.

⁴ The Slice of System methodology is defined as the accounting of exports in the Market Flow calculations by scaling down proportionately all generation in a given RTO. *See* Transmittal Letter at 3.

⁵ *Midwest Indep. Transmission Sys. Operator, Inc. v. PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,243 (2011).

⁶ Per Generator methodology calculates the impact that a non-pseudo-tied jointly-owned unit has on each RTO's Market Flows. It specifically models the ownership percentage of a jointly-owned unit as a separate unit per the percentage of ownership that contributes to the Market Flows of the RTO where the owning entity is located. *See* Transmittal Letter at 3.

II. Instant Filing

5. In this filing, PJM and MISO propose to amend section 4.1 of the CMP to require both RTOs to calculate Market Flows using the same Per Generator methodology currently used to calculate the Firm Flow Entitlements. Specifically, the proposal requires both RTOs to calculate Market Flows reflecting the impacts of a jointly-owned unit's transaction tags on a unit-specific basis. These revisions, according to PJM and MISO, will ensure that their Firm Flow Entitlement calculations more closely correspond to their Market Flow calculations, thereby reducing inaccurate Market-to-Market settlements resulting from disparities between the two calculations.

6. MISO and PJM request a proposed effective date of March 8, 2013. They state that waiver of the Commission's 60-day prior notice requirement is appropriate given the inaccurate compensation being provided under the differing calculation methods. They assert that these inaccurate payments are good cause to grant the waiver. They also note that the proposed agreement was filed prior to the proposed effective date, consistent with the Commission's requirement in *Central Hudson Gas & Elec. Co.*⁷

III. Notice of Filing and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 16,492 (2013), with interventions and protests due on or before March 28, 2013. Timely motions to intervene were filed by the Ameren Services Company, Wisconsin Electric Power Company, Duke Energy Corporation, Southwest Power Pool, Inc., Consumers Energy Company, NRG Companies, Northern Indiana Public Service Company, and North Carolina Electric Membership Corporation.

8. On March 27, 2013, the Indiana Utility Regulatory Commission (Indiana Commission) filed a notice of intervention and protest. On March 28, 2013, MidAmerican Energy Company (MidAmerican) filed a motion to intervene and comments.

9. Untimely motions to intervene were filed by Exelon Corporation and American Municipal Power, Inc.

10. On April 12, 2013 MISO and PJM filed a motion for leave to file answer and an answer to the Indiana Commission's protest and MidAmerican's comments. On April 15, 2013, MISO and PJM filed a corrected version of its answer.

⁷ 60 FERC ¶ 61,106, *reh'g denied* 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

A. Protest and Comments

11. The Indiana Commission states that MISO and PJM have not provided sufficient information to show that the proposed revisions are just and reasonable.⁸ According to the Indiana Commission, MISO and PJM failed to provide the necessary analysis and information regarding expected financial and operational impacts of their proposed revisions, and such information is important for the Indiana Commission to assess how the revisions may affect Indiana utilities, ratepayers, and the multi-regional area of the RTOs.⁹

12. The Indiana Commission contends that MISO and PJM have failed to engage in an open and transparent stakeholder process.¹⁰ Specifically, the Indiana Commission notes that these proposed revisions were not presented at the bi-monthly PJM-MISO Joint and Common Market Initiative meetings or at the Interregional Planning Stakeholder Advisory Committee.¹¹ The Indiana Commission states that MISO and PJM have indicated that they do not need to work through stakeholder processes for these revisions to the JOA since the JOA is a contract between MISO and PJM.¹² While the Indiana Commission acknowledges that amendments to the JOA can only be made by agreement in writing between MISO and PJM, it points out that because the revisions affect the RTOs' members and the underlying utility systems, these revisions should be presented to the RTOs' stakeholders.¹³ The Indiana Commission also notes that such a presentation would comply with the Commission's policies on open and transparent processes.¹⁴ Although MISO provided a brief presentation in its Seams Management Working Group on December 3, 2012 and PJM was scheduled to make a similar presentation at a meeting of its Members Committee, the Indiana Commission states that these are inadequate and argues that MISO and PJM should be required, to the extent reasonably possible, to provide such information and analysis.¹⁵

⁸ Indiana Commission Protest at 2.

⁹ *Id.* at 4-5

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.*

13. In its comments, MidAmerican expresses concern that the following statements in the revised version of section 4.1 of the CMP are confusing or even potentially conflictive:

- (1) “Units outside of the market area will not be considered when those units will have tags associated with their transfers.”
- (2) The “...amount of generator output not participating in the market [is] treated as a slice of system export tagged transaction ... implemented by assuming that all the generating resources in the RTO contribute proportionally to the interchange (e.g., the export is not assigned to a specific generator).”
- (3) “[T]he Market Flow calculation will be aligned with that in the Historic Firm Flow calculation.”
- (4) The export is “treated as a unit specific export tagged transaction.”¹⁶

MidAmerican argues that, while statements (1) and (2) are in the existing JOA, both statements seem inconsistent with the stated purpose of the instant filing and/or the transmittal letter. MidAmerican acknowledges that statement (3) and (4) accurately reflect the description in the transmittal letter and that it may be possible to harmonize all four statements into a consistent calculation of Market Flows under various conditions. However, MidAmerican states that it is currently unable to do so. Therefore, MidAmerican argues that the Commission should require the RTOs to clarify the statements and, if necessary, require that any inconsistencies be resolved through revised language in the JOA.

B. Answer

14. In its answer, MISO and PJM note that, although a stakeholder process is not required for the proposed revisions, they have presented the proposed revisions discussed here in advance of the initial filings.¹⁷ MISO and PJM state that PJM informed stakeholders at the January 11, 2013 Market Implementation Committee meeting and at the January 26, 2013 Markets and Reliability Committee meeting that the RTOs have engaged in discussions regarding the proposed revisions. Moreover, the RTOs state that PJM presented an overview of the proposed revisions at PJM’s December 12, 2012

¹⁶ MidAmerican Comments at 5.

¹⁷ PJM and MISO Answer at 5.

Market Implementation Committee meeting. In addition, MISO and PJM note that MISO provided detailed discussions of the proposed revisions and MISO's Market Flow Calculation Process within MISO's Seams Management Working Group on August 8, 2012 and September 5, 2012, respectively.¹⁸

15. Contrary to the Indiana Commission's claims, MISO and PJM assert that the Interregional Planning Stakeholder Advisory Committee and the Joint and Common Market Initiative are not the proper stakeholder forum to review these revisions. However, MISO and PJM note that they provided an overview of the proposed revisions at the MISO-PJM Joint Stakeholder Meeting on January 29, 2013. They also express their willingness to continue discussing these proposed revisions, as well as the impact of these revisions, at future Joint and Common Market Initiative stakeholder meetings.¹⁹

16. In response to the Indiana Commission's assertion that the RTO's submission is deficient because it does not provide the expected impacts of the proposed revisions, MISO and PJM argue that the Indiana Commission does not show that the filing fails to meet the statutory requirements under Section 205 of the Federal Power Act (16 U.S.C. § 824d (2006)) and Part 35 of the Commissions Regulations. MISO and PJM assert that the initial filing discussed the background and need for the proposed revisions. Moreover, MISO and PJM state that the proposed revisions do not represent a proposal for a new methodology, or a proposal to allocate costs in a different manner.²⁰

17. In response to MidAmerican's comments concerning specific statements identified above, MISO and PJM assert that existing statements (1) and (2) reflect the current market flow calculation practice and are distinguishable by the location of the generator either inside or outside of the market area. Specifically, MISO and PJM state that statement (1) refers to the general case where generators are located outside the market area where a pseudo-tie does not exist and statement (2) refers to a special situation where a jointly-owned unit is located within the market area where a pseudo-tie does not exist. MISO and PJM also state that statements (3) and (4) should be read together and, in doing so, those statements represent an exception to statement (2). MISO and PJM state that when one of the joint owners is in the other market and where a pseudo-tie does not exist, the special treatment described in statements (3) and (4) will apply.

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Id.* at 7.

IV. Discussion

A. Procedural Matters

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

19. 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 the late-filed motions to intervene submitted by Exelon Corporation and American Municipal Power, Inc. given their interest in the proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

20. 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 unless otherwise ordered by the decisional authority. We will accept MISO's and PJM's answer because it provided information that assisted us in our decision-making process.

B. Substantive Matters

21. We find the proposed revisions to the JOA to be just and reasonable and accept the revisions, subject to the compliance filing described below. As noted in the MISO and PJM filing, the revisions required by the Settlement Agreement approved on June 16, 2011, created a disparity which resulted in the RTOs using one methodology (the Per Generator methodology) to calculate Firm Flow Entitlements and a different methodology (Slice of System methodology) to calculate Market Flows. That difference meant that the firm entitlement rights to Market-to-Market Flowgates were systematically predisposed to being lower than the calculated Market Flows. By aligning the calculation of Market Flows to use the same methodology currently used to calculate Firm Flow Entitlements, these revisions will help correct a mismatch in calculation methodologies that result in inaccurate Market-to-Market settlements.

22. We are not persuaded by the Indiana Commission that additional information is needed to determine the justness and reasonableness of the proposed revisions. PJM and MISO have identified an inaccuracy in the calculation of Market Flows and propose to resolve this inaccuracy through refinements that will improve the existing JOA processes and will ensure consistency in the calculation of Market Flows. These changes will improve accuracy of financial settlements and operations on both systems. The Indiana Commission has not identified any specific problems that may arise as a result of the proposed revisions. We also recognize that, although a stakeholder process is not required for the proposed revisions, PJM and MISO have provided detailed discussions of the proposed revisions at various meetings held in advance of the initial filings. To the extent that problems do arise, PJM and MISO have committed to provide opportunities to

discuss these proposed revisions at future Joint and Common Market Initiative stakeholder meetings, if requested, and state that they are more than willing to review the impact of these changes in more detail with stakeholders.²¹

23. However, we agree with MidAmerican that it is difficult to reconcile the existing language (statements 1 and 2 identified earlier) in the JOA with the proposed changes (statements 3 and 4 identified earlier). While MISO and PJM's answer provides useful information to determine when new statements (3) and (4) provide an exception to statement (2), the JOA does not include language that is consistent with the explanation in MISO and PJM's answer. We therefore direct MISO and PJM to submit a compliance filing, within 30 days of the date of this order, to explain clearly in the JOA the exception to statement (2) that was described in their answer.

24. Finally, we find that MISO and PJM have provided good cause to waive the Commission's 60-day notice requirement and meet the requirements set forth in *Central Hudson*.

The Commission orders:

(A) MISO's and PJM's proposed revisions to section 4.1 of the CMP are hereby conditionally accepted, to be effective March 8, 2013, as discussed in the body of this order.

(B) MISO and PJM are hereby required 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.

²¹ PJM and MISO Answer at 7.