

144 FERC ¶ 61,177  
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.

Midcontinent Independent System  
Operator, Inc.

Docket Nos. ER13-1895-000  
ER13-1895-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued September 3, 2013)

1. On July 3, 2013, as amended on July 5, 2013,<sup>1</sup> Midcontinent Independent System Operator, Inc. (MISO) filed revisions to its Open Access Transmission, Energy and Operating Reserves Markets Tariff (Tariff).<sup>2</sup> The proposed revisions incorporate changes to MISO's Tariff designed to allow it and its market participants to qualify for an exemption of specified market transactions from the provisions of the Commodities Exchange Act (CEA)<sup>3</sup> and Commodity Futures Trading Commission (CFTC) regulations. This order accepts MISO's proposed revisions, effective September 2, 2013, as requested.

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<sup>1</sup> The July 5 amendment was for the purpose of supplying one of the tariff sections that had been inadvertently omitted.

<sup>2</sup> Midcontinent Independent System Operator, Inc., FERC FPA Electric Tariff, FERC Electric Tariff; 1.226, Financial Schedule; 1.0.0; 1.378, Market Activities; 2.0.0; 6A, Legal Capacity, 1.0.0; 7.8, Market Participant Default and Past Due Amounts; 1.0.0; 7.10, Uplift of Uncollectible Past Due Amounts, 3.0.0; 39.1.3, Rules for Financial Schedules, 2.0.0; 39.3.3, Payments and Charges for Financial and Interchange Schedules, 2.0.0; 40.2.8A, Rules for Financial Schedules, 2.0.0; 40.4.2, Financial Schedule Settlements, 2.0.0; ATTACHMENT L, Credit Policy, 11.0.0; 38.9.3, Disclosure to the Commission or CFTC, 1.0.0.

<sup>3</sup> 7 U.S.C. § 1 *et seq.* (2006), as amended by Pub. L. No. 111-203, 124 Stat. 1376 (2010).

## I. MISO's Proposed Tariff Revisions

2. MISO states that, on March 28, 2013, the CFTC issued an order<sup>4</sup> granting certain independent system operators (ISO) and regional transmission organizations (RTO) exemptive relief from CFTC regulation under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>5</sup> MISO explains that the CFTC Final Order contains certain conditions that the ISOs/RTOs must meet in order to be eligible for the exemption, including that: (1) their tariffs authorize the sharing of market data and information with the CFTC without notice to market participants; and (2) the transactions be entered into by (i) "appropriate persons," as defined in the CEA,<sup>6</sup> (ii) "eligible contract participants," as defined in the CEA,<sup>7</sup> or (iii) persons who are in the business of either generating, transmitting, or distributing electric energy, or providing electric energy services that are necessary to support the reliable operation of the transmission system.<sup>8</sup>

3. To satisfy these conditions, MISO proposes to amend section 38.9.3 of its Tariff to provide the same treatment to information requests from the CFTC or its staff as is currently provided to requests from the Commission.<sup>9</sup> MISO explains that this revision will allow it to respond to CFTC data requests without notifying market participants. Under this section, MISO would not notify the provider of the information unless MISO receives a request for disclosure of the confidential information from FERC. MISO proposes to revise this section to include the same notice restriction for confidential information provided to the CFTC.

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<sup>4</sup> See Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,880 (April 2, 2013) (CFTC Final Order).

<sup>5</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>6</sup> 7 U.S.C. § 6(c)(3) (2006).

<sup>7</sup> 7 U.S.C. § 1a(18). See also Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant," 77 Fed. Reg. 30,596 (May 23, 2012).

<sup>8</sup> CFTC Final Order, 78 Fed. Reg. 19,880 at 19,897.

<sup>9</sup> MISO Transmittal at 5 (citing *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,069 (2013) (CAISO)).

4. MISO also proposes revisions to the minimum criteria for participation in MISO Markets,<sup>10</sup> found in its Credit Policy, Attachment L, to require all applicants and tariff customers to certify that they meet the “appropriate person” criteria. The proposed certification, which would be added to the Annual Certification form of Attachment L, would require each officer of each tariff customer to execute a new annual certification on or before April 30<sup>th</sup> of each year in which they certify that they meet the “appropriate person” criteria. Tariff customers must also notify MISO immediately and stop transacting in MISO Markets should they no longer meet the “appropriate person” criteria.

5. Additionally, MISO proposes, in section III.B of Attachment L, to be authorized at any time to request an applicant or tariff customer to demonstrate that it is an “appropriate person” by submitting evidence of such along with an Appropriate Person Verification in the form of Exhibit VII to Attachment L. If the tariff customer does not clearly demonstrate its compliance with the “appropriate person” criteria within seven calendar days, the tariff customer will be subject to default. MISO states that it plans to use its current information to determine which applicants and tariff customers have already exhibited “appropriate person” status. For those entities that cannot be verified, MISO states that it plans on requiring receipt of the proposed Appropriate Person Verification form and supporting evidence by September 15, 2013, and receipt of the revised “appropriate person” Annual Certification prior to September 30, 2013.

6. MISO proposes that an applicant or tariff customer can demonstrate that they meet the definition of an “appropriate person” in the CEA by doing any of the following: (1) submitting financial statements that show they have a net worth exceeding \$1 million or total assets exceeding \$5 million; (2) posting a cash deposit greater than \$5 million; (3) providing a corporate guaranty from an “appropriate person” for an unlimited amount or in an amount sufficient to cover the Total Potential Exposure (sum of positive values of Financial Transmission Right (FTR) and Non-FTR Potential Exposure) of the Applicant or Tariff Customer (if multiple applicants are being covered by the same guarantor, the guarantor has at least \$1 million of total net worth or \$5 million of total assets for each participant being covered by the corporate guaranty); or (4) by having its obligations supported by an Irrevocable Letter of Credit from an “appropriate person.” MISO believes these proposed revisions provide an additional layer of protection to the MISO Markets and furthers the purpose of Commission Order No. 741.<sup>11</sup> Finally, MISO proposes tariff revisions intended to clarify that Financial Schedules are bilateral transactions and MISO is not the counterparty to these schedules.

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<sup>10</sup> See 18 C.F.R. § 35.47(f) (2013).

<sup>11</sup> *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh’g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *reh’g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

## **II. Notice of Filing and Responsive Pleadings**

7. Notices of MISO's filing and amendment were published in the *Federal Register*, 78 Fed. Reg. 42,061 (2013), with interventions and protests due on or before July 24, 2013, and July 26, 2013, respectively. Motions to intervene were filed by Ameren Services Company (Ameren), Wisconsin Electric Power Company and DTE Electric Company. A motion to intervene and comments in support was filed by American Municipal Power, Inc. No adverse comments or protests were filed.

## **III. Discussion**

### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.<sup>12</sup>

### **B. Commission Determination**

9. We find MISO's proposed tariff revisions to be just and reasonable and not unduly discriminatory. Accordingly, we accept MISO's proposed tariff revisions to become effective September 2, 2013, as requested.

10. In Order No. 741, the Commission gave each ISO and RTO discretion to develop minimum participation criteria through their individual stakeholder processes.<sup>13</sup> Upon further consideration, the Commission finds that the minimum criteria for participation in the organized wholesale electric markets set forth in the CFTC Final Order are appropriate. The proposed tariff revisions are designed to address the requirements of the CFTC Final Order and strengthen the minimum criteria for participation in the MISO market. Therefore, the proposed tariff revisions are consistent with the requirements of Order No. 741. The proposed tariff revisions regarding information requests provide similar treatment to information requests by the CFTC and its staff as is already provided to the Commission and its staff.<sup>14</sup> With regard to Financial Schedules, in particular, we note that MISO explains that Financial Schedules are bilateral transactions and MISO is not the counterparty to these schedules. Rather, as bilateral transactions, the risk of default is borne by the parties to the transactions.

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<sup>12</sup> Although Ameren characterized its intervention as out-of-time, it was timely as it was filed within the comment period for the amendment.

<sup>13</sup> Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 132.

<sup>14</sup> The Commission accepted a similar filing in *CAISO*, 142 FERC ¶ 61,069 (2013).

The Commission orders:

MISO's proposed tariff revisions are hereby accepted, effective September 2, 2013, as requested, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.