145 FERC ¶ 61,032
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 No. ER13-2162-000

ORDER ACCEPTING OPERATIONS RELIABILITY COORDINATION AGREEMENT

(Issued October 10, 2013)

1. On August 15, 2013, pursuant to section 205 of the Federal Power Act (FPA),[1] and Part 35 of the regulations of the Federal Energy Regulatory Commission (FERC or Commission),[2] the Midcontinent Independent System Operator, Inc. (MISO) submitted for filing a proposed Operations Reliability Coordination Agreement (ORCA).[3] MISO states that it entered into the ORCA with several neighboring utilities and/or transmission providers, collectively referred to as the Joint Parties,[4] to support the reliable integration

[1] 16 U.S.C. § 824d (2006).

[2] 18 C.F.R. Pt. 35 (2013).

[3] Filing of Operations Reliability Coordination Agreement, Docket No. ER13-2162-000 (Aug. 15, 2013) (ORCA Filing). The ORCA is designated as MISO Rate Schedule No. 35.

[4] The Joint Parties are: Associated Electric Cooperative Inc. (AECI); Louisville Gas and Electric Company; Kentucky Utilities Company; PowerSouth Energy Cooperative; Alabama Power, Georgia Power Company, Gulf Power Company and Mississippi Power Company by and through their agent Southern Company Services, Inc.; Southwest Power Pool Inc. (SPP); and Tennessee Valley Authority (TVA). ORCA Filing, Transmittal Letter at n.1.

of the MISO South Region[5] into the MISO Balancing Authority Area (MISO BAA).[6] In this order, the Commission accepts the ORCA for filing.

I. Background

A. Integration of the Entergy Operating Companies into MISO

2. MISO states that in April 2011, the Entergy Operating Companies announced their decision to join MISO as Transmission Owners in December 2013. Subsequently, MISO and the Entergy Operating Companies made several filings at the Commission pursuant to FPA section 205 to initiate the integration process. While MISO was taking preparatory steps towards integrating the Entergy Operating Companies, Entergy and ITC Holdings Corp. (ITC) announced their intent to merge the transmission assets of the Entergy Operating Companies into ITC. In September 2012, Entergy and ITC submitted an application pursuant to FPA section 203[7] and other related filings to separate and merge the transmission businesses of the Entergy Operating Companies into ITC. In several concurrently issued orders, the Commission approved these filings, subject to certain conditions.[8] As a result, the Entergy Operating Companies, and certain other

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[5] The MISO South Region consists of the Balancing Authority Areas (BAAs) operated by: the Entergy Operating Companies (including, but not limited to, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy Louisiana, LLC, Entergy New Orleans, Inc., Entergy Texas, Inc., and Entergy Gulf States Louisiana, L.L.C. (collectively, Entergy)); Louisiana Energy and Power Authority; Lafayette Utilities System; the Southern Mississippi Electric Power Association; Cleco Corporation; and NRG/Louisiana Generating, LLC (including the Arkansas municipalities of West Memphis, North Little Rock, and Conway), which are in the process of being integrated into the MISO system. ORCA Filing, Transmittal Letter at n.2.

[6] MISO explains that after the integration is complete there will be only one MISO BAA, and that the ORCA refers to the Midwest and Southern portions of the MISO BAA as the MISO Midwest Region and the MISO South Region, respectively, for convenience only. ORCA Filing, Transmittal Letter at n.3.

[7] 16 U.S.C. § 824b (2006).

[8] *See, e.g., ITC Holdings Corp.*, 143 FERC ¶ 61,256 (2013); *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (Entergy-ITC Rates Order); *Midwest Indep. Sys. Transmission Operator, Inc.*, 143 FERC ¶ 61,258 (2013).

entities comprising the MISO South Region, are currently scheduled to integrate into MISO's Energy and Operating Reserve Markets[9] as of December 19, 2013.

3. MISO states that one of the elements of the integration of the MISO South Region is the requirement to obtain approval from the Operating Committee of the North American Electric Reliability Corporation (NERC) for MISO's Regional Transmission Organization Reliability Plan (Reliability Plan). In early 2013, MISO amended the Reliability Plan in order to identify the entities that would comprise the MISO South Region as additional Transmission Owners, and the Local Balancing Authorities over which MISO would assume responsibility as Reliability Coordinator (Revised Reliability Plan).[10] As required by NERC procedures, MISO submitted the Revised Reliability Plan for review by designated committees of the four Regional Entities with authority over MISO's combined footprint.[11] MISO states that all four Regional Entity committees approved the Revised Reliability Plan, and that it was then submitted to the Operating Committee's Operating Reliability Subcommittee. The Operating Reliability Subcommittee endorsed the Revised Reliability Plan for approval, but the plan failed to achieve the required two-thirds majority vote of the Operating Committee on March 22, 2013.[12]

4. MISO explains that following the March 22, 2013 vote, it engaged certain members of the Operating Committee that had voted against the Revised Reliability Plan in order to address their concerns and obtain Operating Committee approval of the plan. MISO states that the ORCA was the result of its extensive negotiations with these parties, and that the agreement was executed on June 19, 2013. On June 20, 2013, the Operating

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[9] MISO explains that, unless otherwise defined in the ORCA Filing, all capitalized terms are as set forth in the ORCA or MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff), as applicable. ORCA Filing, Transmittal Letter at n.5.

[10] MISO states that the proposed revisions were limited to adding the names of the MISO South Region entities to the listing of Transmission Owners within the MISO Reliability Coordination Area (Appendix A to the Reliability Plan) and the listing of Balancing Authorities within the MISO Reliability Coordination Area (Appendix B to the Reliability Plan). ORCA Filing, Transmittal Letter at n.6.

[11] The four Regional Entities are the Midwest Reliability Organization, Reliability*First* Corporation, the SPP Regional Entity, and SERC Reliability Corporation. ORCA Filing, Transmittal Letter at n.7.

[12] ORCA Filing, Transmittal Letter at 2.

Committee held another vote on the Revised Reliability Plan, and it was unanimously approved.[13]

5. MISO states that section 11 of the ORCA acknowledges MISO's conclusion that it must submit the ORCA to the Commission pursuant to FPA section 205, and that the ORCA Filing fulfills this requirement. MISO states that the limitations on MISO market flows during the Operations Transition Period, as defined in the ORCA and discussed in further detail below, may require MISO to constrain its dispatch under certain circumstances. MISO therefore parallels the ORCA to MISO's other jurisdictional seams agreements that are subject to the filing requirement of FPA section 205(c).[14]

B. The ORCA

1. Purpose and Benefits of the ORCA

6. MISO states that the ORCA "addresses certain loop flow concerns" raised by members of the Operating Committee in connection with their consideration of the Revised Reliability Plan.[15] To address these concerns, the ORCA establishes an Operations Transition Period during which MISO will limit its directional market flows between the MISO South Region and MISO's historical footprint. The ORCA also sets forth certain principles for the negotiation of long-term seams agreements to be placed in effect at the end of the Operations Transition Period.

7. MISO notes that in its order conditionally approving the integration of the MISO South Region, the Commission acknowledged the then-ongoing discussions regarding the adequacy of MISO's reliability plan in light of the integration of Entergy's transmission assets into MISO.[16] According to MISO, the execution of the ORCA resolved the Operating Committee discussions and will support the expansion of the MISO BAA while allowing the Joint Parties to gain familiarity and experience with operation of the expanded MISO BAA.

8. MISO observes that the Commission has consistently encouraged coordination arrangements between market and non-market areas. MISO notes that it has previously operated under market to non-market agreements, and that the ORCA is another step in

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[13] *Id.*

[14] *Id.* at 2-3, n.8.

[15] *Id.* at 3.

[16] *Id.* at n.9 (citing Entergy-ITC Rates Order, 143 FERC ¶ 61,257 at P 153).

that direction, in particular for the Joint Parties that currently do not have such arrangements in effect with MISO.[17] Although the ORCA is a transitional agreement, MISO states that it addresses, for the duration of the Operations Transition Period, certain loop flow concerns that have been raised by the Joint Parties in connection with integration of the MISO South Region. According to MISO, in the Entergy-ITC Rates Order, the Commission noted that TVA and AECI do not have agreements in place to address loop flows, but that they were in the process of negotiating new agreements with MISO to address their concerns. In that order, the Commission directed MISO to file an informational report detailing the status of negotiations. MISO asserts that the ORCA addresses this directive for the Operations Transition Period, pending negotiation of more permanent arrangements for the Post-Operations Transition Period.

2. Overview of Key Provisions of the ORCA

a. Operations Transition Period

9. Section 2 of the ORCA describes the Operations Transition Period, which consists of three different phases during which MISO will take certain actions to limit or control its dispatch based on agreed upon operating limits without reaching the System Operating Limits (SOL) on the transmission systems of any of the parties in real-time.

10. MISO explains that, in general, it will monitor and provide to the Joint Parties the actual, real-time intra-BAA generation-to-load net dispatch flow (Dispatch Flow) moving between the MISO Midwest Region and the MISO South Region, in the north-to-south and south-to-north directions. MISO will provide its forecasted annual, seasonal, and near-term dispatch flow levels to the Joint Parties and will operate its market dispatch, including firm and non-firm deliveries, at the Dispatch Flow limits described in the ORCA. After the conclusion of Phase One, the Dispatch Flow limits will be based on flow limits on Coordinated Flowgates identified using Congestion Management Process criteria, and other flowgates as agreed upon by the parties, using Available Flowgate Capability-type processes, translated into a net Dispatch Flow between the MISO Midwest Region and the MISO South Region.

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[17] MISO explains that it has a Commission-approved Joint Operating Agreement in effect with SPP (MISO-SPP JOA), and that, as noted in the Entergy-ITC Rates Order, MISO and SPP are currently renegotiating the agreement to address congestion across the seam between the two Regional Transmission Organizations (RTO). *See* Entergy-ITC Rates Order, 143 FERC ¶ 61,257 at P 150. The ORCA expressly provides that "MISO and SPP will continue to utilize their JOA for congestion management during [the Operations Transition Period] and [the Post-Operations Transition Period]." ORCA Filing, Tab A, ORCA at section 1(c).

11. MISO provides the specific elements of each phase of the Operations Transition Period as follows.

i. Phase One

12. Phase One will commence on December 19, 2013, the target date for integration of the MISO South Region into MISO, and will remain in place until the later of (1) April 19, 2014 or (2) completion of Phase Two testing and validation.

13. MISO states that it and the Joint Parties will "develop a mutually agreed upon mechanism to monitor the Dispatch Flow and provide it to the Joint Parties in real time."[18] The Dispatch Flow calculation will be based on the difference between generation and load in the MISO South Region with an adjustment for interchange transactions with the BAAs connected to the MISO South Region companies.

14. Under the ORCA, the Dispatch Flow limit for MISO's combined BAA operation (Total Dispatch Flow Limit) for Phase One will be 2,000 megawatts (MW). MISO's Dispatch Flow shall not exceed 2,000 MW unless the limit is increased using the Intra-Day Process to be developed by the parties (described below). If SOLs are reached or exceeded on Coordinated Flowgates and other flowgates as agreed upon by the parties and the Dispatch Flow is greater than 1,500 MW, MISO will make Dispatch Flow reductions to relieve those flowgates, as needed, down to 1,500 MW Dispatch Flow. If Dispatch Flow is 1,500 MW or less, each party will use its existing congestion management process, or, if available, the new process outlined in section 4 of the ORCA, to manage congestion on its system.[19] The parties will use good faith efforts to develop the Total Dispatch Flow Limit concept for subsequent use in Phases Two and Three, including, but not limited to, methods of coordination and calculations, information exchange, timing of communications, and common tools.[20]

15. MISO notes that the 2,000 MW limit during Phase One is more than twice the amount of firm service currently reserved between the existing MISO footprint and the

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[18] ORCA Filing, Transmittal Letter at 4.

[19] MISO notes that the Dispatch Flow will include both firm and non-firm deliveries. Thus, MISO would redispatch its market to reduce dispatch flow down to 1,500 MW, even if its firm flowgate entitlement exceeds that amount, before curtailment/redispatch obligations under the Congestion Management Process would begin to be shared *pro rata* among all parties to the Congestion Management Process based on firm and non-firm priorities and associated entitlements.

[20] ORCA Filing, Transmittal Letter at 5.

Entergy region, and is also twice that assumed by the Charles River Associates study evaluating the potential benefits of Entergy joining MISO.[21] As a result, MISO claims that the use of this temporary, negotiated limit will neither harm customers with existing firm reservations between the north and south areas of the MISO BAA, nor deprive Entergy of at least the initially projected benefits of MISO membership during the transition period. According to MISO, it is therefore just and reasonable and an equitable compromise to allow the Joint Parties sufficient time to gain familiarity and experience with the expanded MISO BAA operations. MISO also notes that the timely development of the Intra-Day Process will permit flows to exceed the 2,000 MW limit under specified conditions, thereby assuring customers that the transmission system is being efficiently utilized during the Operations Transition Period.

16. MISO states that the parties will endeavor to develop and implement as soon as reasonably possible the Intra-Day Process pursuant to which the parties will communicate and may increase the Total Dispatch Flow Limit during the operating day when actual flows are, or forecasted intra-day flows are projected to be, less than the SOL on Coordinated Flowgates and other flowgates as agreed upon by the parties. In other words, through the Intra-Day Process, the 2,000 MW limit on MISO's regional transfers may be increased if real-time system conditions, as identified through the Intra-Day Process, permit an increase. Prior to using the process during the Operations Transition Period, the parties must test, verify, and agree upon the Intra-Day Process.[22]

17. MISO explains that, prior to commencement of Phase Two, it and the Joint Parties will develop a two-day-ahead calculation of the Total Dispatch Flow Limit for use in the coordination processes during Phase Two. Pursuant to the ORCA, the Phase Two Dispatch Flow Limit calculation must be tested and validated for a minimum of sixty consecutive days. For this calculation, the Joint Parties will identify Coordinated Flowgates for modeling MISO Market Flow impacts. In addition, flowgates may be added that consider impacts of less than five percent in order to reliably manage operational issues consistent with the criteria in section 4 of the ORCA. The Total Dispatch Flow Limits would be determined based on the most limiting Available Flowgate Capability, using Available Flowgate Capability calculation methods.[23]

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[21] *Id.* (citing Evaluation Report Filed by Entergy Arkansas, Inc. pursuant to Order Nos. 20, 27, and 29, *In Re Entergy Arkansas, Inc.*, Arkansas Public Service Commission Docket No. 10-011-U (May 12, 2011)).

[22] *Id.*

[23] *Id.*

ii. Phase Two

18. Phase Two will commence upon the completion of Phase One and will remain in place until the later of (1) October 1, 2014 or (2) completion of Phase Three testing and validation.

19. Pursuant to the ORCA, the Total Dispatch Flow Limit developed for Phase Two will be calculated two days ahead and one value will be calculated for each operating day. As with Phase One, MISO will not exceed the Phase Two Total Dispatch Flow Limit for the applicable operating day unless the limit is increased using the Intra-Day Process. If the actual Dispatch Flow is at or below the Phase Two Total Dispatch Flow Limit for the applicable operating day, each party shall use its existing congestion management process, or the new process outlined in section 4 of the ORCA, to manage congestion on its system.

20. Prior to commencement of Phase Three, the parties will develop the one-day-ahead Total Dispatch Flow Limit calculation for Phase Three. The Phase Three Total Dispatch Flow Limit calculation must be tested and validated for a minimum of sixty consecutive days. For this calculation, the Joint Parties will identify Coordinated Flowgates for modeling MISO Market Flow impacts. In addition, flowgates may be added that consider impacts of less than five percent in order to reliably manage operational issues consistent with the criteria developed in section 4 of the ORCA. Using Available Flowgate Capability/Available Transfer Capability calculation methods, the Total Dispatch Flow Limits would be determined based on the most limiting Available Flowgate Capability.

iii. Phase Three

21. Phase Three will commence upon the completion of Phase Two and will remain in place until the Operation Transition Period ends on April 1, 2015. The Total Dispatch Flow Limit developed for Phase Three will be calculated one day ahead, and one value will be calculated for each operating day. MISO market flows will not exceed the Phase Three Total Dispatch Flow Limit for the applicable operating day, unless, as in Phases One and Two, the limit is increased using the Intra-Day Process. If Dispatch Flow is at or below the Phase Three Total Dispatch Flow Limit for the applicable operating day, each party shall use its existing congestion management process, or the new process outlined in section 4 of the ORCA, to manage congestion on its system.

22. According to MISO, as with the processes used in Phase One, the refinements in Phases Two and Three to use two- and one-day-ahead commitments, respectively, to derive the market flow limits will further reduce the impacts on MISO's market operations. MISO explains that as the features of each phase are developed on the timelines established in the ORCA, the potential impact on MISO's market dispatch will be minimized while giving the non-RTO operators a reasonable period of time to

familiarize themselves with any change in regional power flows. Therefore, MISO concludes that the ORCA, "its timelines and its limitations on market flows under specified circumstances is a just and reasonable rate, term, or condition of service."[24]

b. Post-Operations Transition Period

23. Section 1(b) of the ORCA states that the Joint Parties and MISO will, in good faith, "endeavor to develop an Operations Coordination Process" that will be used in new agreements between MISO and each of the Joint Parties, other than SPP, when the Operations Transition Period terminates.[25] The details of the Post-Operations Transition Period are set forth in section 3 of the ORCA, which states that the Operations Transition Period will end no later than April 1, 2015, and that the parties will, in good faith, attempt to develop the Operations Coordination Process or similar agreement on or before February 1, 2015. The Operations Coordination Process could include concepts from the Total Dispatch Flow Limit approach, and/or other processes/procedures developed by the parties based on the Congestion Management Process currently used in MISO's Joint Operating Agreements with PJM Interconnection LLC (PJM) and SPP. The Operations Coordination Process must be tested and validated for a minimum of sixty consecutive days, and agreed to by the parties, before implementation.

24. Section 3 of the ORCA also provides that nothing in the agreement prevents any of the parties from filing at any time with the Commission for appropriate relief, including if a party is not satisfied with the progress to develop the Operations Coordination Process or any other process. Section 3 of the ORCA also specifies the principles upon which the Operations Coordination Process will be established as follows:

- Limits are based on actual SOLs on Coordinated Flowgates and actual SOLs on other flowgates the parties agree to coordinate.
- Processes and calculations shall be transparent, understandable, and readily available.
- Processes are mutually agreeable.
- Processes are reciprocal to the extent possible.

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[24] *Id.* at 6.

[25] *Id.* at 7.

- Processes have treatment of like priorities (non-discriminatory and comparable) during real-time and day-ahead congestion management.
- Processes accurately reflect system flows and impacts.
- Proactive and efficient responses are used to minimize the use of congestion management processes while reliably and efficiently utilizing the transmission system.
- Processes will ensure continued reliable operation of the bulk power system.[26]

c. Additional Material Understandings of the Parties

25. Section 1 of the ORCA explains that the agreement is premised on a number of understandings between MISO and the Joint Parties. These include the requirement to engage in regional coordination on long-term transmission planning, the requirement to endeavor to develop the Operations Coordination Process, and the understanding that MISO and SPP will continue to utilize their Commission-approved JOA for congestion management during and after the Operations Transition Period.

26. With respect to MISO and SPP, MISO states that the ORCA notes "that SPP and MISO are engaged in litigation in various regulatory and judicial proceedings, and are engaged in various dispute resolution processes, concerning the interpretation of, and the rights and obligations of SPP and MISO, under the [MISO-SPP JOA] and MISO's planned usage of the SPP system to integrate the Entergy balancing authority into MISO."[27] The ORCA states that nothing in the agreement shall (1) be construed as diminishing or enhancing MISO's or SPP's rights to flow energy on the other's system pursuant to the MISO-SPP JOA; (2) be deemed to amend or otherwise modify the MISO-SPP JOA; or (3) be deemed a concession or admission by SPP or MISO regarding any issue concerning the MISO-SPP JOA.[28] The ORCA further provides that the ORCA shall not be used by MISO or SPP as evidence regarding, or to support or contest the validity of any issue pending in the D.C. Circuit Court of Appeals in Case No. 12-1158, any remand proceeding or other derivative FERC proceeding.

27. Section 4 of the ORCA addresses congestion management on Non-Coordinated Flowgates. Specifically, section 4 provides that MISO and the Joint Parties will endeavor

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[26] *Id.* *See also* section 3 of the ORCA.

[27] ORCA Filing, Transmittal Letter at n.13.

[28] *Id.* n.13. *See also* ORCA at section 1(c).

to develop and implement proactive, efficient, reciprocal processes and criteria to manage congestion on facilities that have a less than five percent response factor where MISO Market Flow or individual Joint Parties generation to load flow have a significant impact but that are not considered Coordinated Flowgates. All parties significantly impacting these less than five percent response factor flowgates will participate in the agreed to process for managing their respective impacts.[29]

28. Under the ORCA, the goal for managing congestion on Non-Coordinated Flowgates will be to use mutually agreeable localized mitigation (including redispatch as available) where possible. In the event localized mitigation is unavailable or deemed ineffective, MISO will use reduced Dispatch Flow limits, as set forth in each respective phase of the Operations Transition Period, to manage congestion on the Non-Coordinated Flowgates. In the event localized mitigation is unavailable or deemed to be ineffective in the Post-Operation Transition Period, MISO and the individual Joint Parties will employ this or similar solutions to manage congestion on the Non-Coordinated Flowgates. MISO notes that it and some of the Joint Parties have had discussions about this particular process for certain flowgates for some time, and that this approach is already used by MISO and PJM in their market to market coordination process.[30]

29. Finally, section 5 of the ORCA establishes certain additional obligations of the parties relating to data exchange, coordination, and reliability assessments, and also provides for certain legal protections for the parties in the event they become engaged in litigation in regulatory and/or judicial proceedings.

d. <u>Term, Termination, and Effective Date</u>

30. Pursuant to section 12 of the ORCA, the agreement will remain in effect for the duration of the Operations Transition Period. The Operations Transition Period will end as to each of the Joint Parties upon the earlier of (1) the effective date of a FERC-accepted agreement as to that party (such agreement having been agreed to by the parties prior to submission to the Commission), or (2) April 1, 2015. By mutual consent, MISO and one or more Joint Parties may agree in writing to extend the termination date beyond April 1, 2015 for a reasonable period of time in order to conclude the negotiation and execution of an agreement for those parties.[31]

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[29] ORCA Filing, Transmittal Letter at 8.

[30] *Id.*

[31] *Id.* at 9. MISO also notes that the ORCA includes miscellaneous, self-explanatory legal provisions in sections 6-11 and 13-15.

31. MISO and Joint Parties request that the ORCA be made effective, without modification or condition, one day after filing, and that the 60-day notice requirement of 18 C.F.R. § 35.11, and if applicable 18 C.F.R. § 35.3(a)(2), be waived for good cause. MISO notes that it scheduled stakeholder meetings in July, following the June execution of the ORCA, to answer any questions about the terms of the agreement. In addition, the parties have already begun to meet and to develop the processes contemplated by the ORCA in order to meet the December 19, 2013 integration date. MISO observes that no rate has or will be charged under the ORCA, and that the potential for the market flow limitations described in the ORCA to impact real-time dispatch will not occur prior to the December integration date.

II. Notice of Filing and Responsive Pleadings

32. Notice of the ORCA Filing was published in the *Federal Register*, 78 Fed. Reg. 52,171 (2013), with interventions and protests due on or before September 5, 2013.

33. The Arkansas Public Service Commission filed a notice of intervention. Motions to intervene were filed by the NRG Companies;[32] American Electric Power Service Corporation;[33] Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Omaha Public Power District; Exelon Corporation; The Empire District Electric Company; the City of Springfield, Missouri; Lincoln Electric System; Westar Energy, Inc.; Mid-Kansas Electric Company, LLC and Sunflower Electric Power Corporation; Xcel Energy Service, Inc.;[34] the Joint Parties; and Nebraska Public Power District.

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[32] For purposes of their filing in this proceeding, the NRG Companies are Louisiana Generating LLC; NRG Power Marketing LLC; GenOn Energy Management, LLC; Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; NRG Sterlington Power LLC; Cottonwood Energy Company LP; and NRG Wholesale Generation LP. Although the NRG Companies filed an Out-of-Time Motion to Intervene, their motion was, in fact, timely.

[33] American Electric Power Service Corporation moves to intervene in this proceeding on behalf of its affiliates, Public Service Company of Oklahoma and Southwestern Electric Power Company.

[34] Xcel Energy Services, Inc. moves to intervene in this proceeding on behalf of its utility operating company affiliates Northern States Power Company; Northern States Power; and Southwestern Public Service Company.

34. Entergy Services, Inc. (Entergy Services) filed a motion to intervene and supporting comments.[35] The SPP Transmission Owners[36] filed comments on, or in the alternative, a protest of, the ORCA Filing. On September 20, 2013, MISO filed a motion for leave to answer and answer to the SPP Transmission Owners.

35. On September 26, 2013, Ameren Services Company (Ameren) filed an out-of-time motion to intervene.

III. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[37] the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[38] we will grant the late-filed motion to intervene given Ameren's interest in this proceeding, the early stages of the proceeding, and the absence of undue prejudice or delay.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[39] prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority.

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[35] Entergy Services moves to intervene in this proceeding on behalf of the Entergy Operating Companies.

[36] The SPP Transmission Owners state that they are transmission owning members of SPP, and that, for purposes of their filing, the SPP Transmission Owners consist of: Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; American Electric Power Service Company, on behalf of Public Service Company of Oklahoma and Southwestern Electric Power; Lincoln Electric System; Omaha Public Power District; The Empire District Electric Company; Westar Energy, Inc.; City Utilities of Springfield, Missouri; Sunflower Electric Power Corporation; Mid-Kansas Electric Company, LLC; and Nebraska Public Power District. The SPP Transmission Owners state that each has individually intervened in this docket. Comments (or in the Alternative, Protest) of the Southwest Power Pool Transmission Owners at n.2, Docket No. ER13-2162 (Sept. 5, 2013) (SPP Transmission Owners Comments).

[37] 18 C.F.R. § 385.214 (2013).

[38] 18 C.F.R. § 385.214(d) (2013).

[39] 18 C.F.R. § 385.213(a)(2) (2013).

We will accept MISO's answer in this proceeding because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

38. As explained in further detail below, the Commission accepts the ORCA for filing.

1. Comments on the ORCA Filing

39. Entergy Services states that it supports the ORCA and respectfully requests that the Commission accept it effective as of August 16, 2013, without suspension or hearing, as requested by MISO. According to Entergy Services, the ORCA was "the product of extensive and difficult negotiations between MISO and the Joint Parties."[40] Entergy Services explains that the "delicate balance" between MISO and the Joint Parties that was struck by the ORCA could be upset or disrupted if the Commission modifies the agreement, or suspends it and sets it for hearing.[41] Entergy Services states that, in particular, the parties hold different views as to the reasons for why the transitional dispatch limits for flows between the MISO South and MISO North regions are appropriate. Entergy Services observes that whereas the Joint Parties may believe that such limits are appropriate on a long-term basis to limit loop flows, it believes that the traditional tools to manage loop flows used in seams agreements are adequate to maintain reliability.[42] Entergy Services supports the Commission's acceptance of the ORCA primarily as a transitional measure to allow the Joint Parties to gain familiarity and experience with MISO's expanded operations after the integration of the Entergy Operating Companies. Entergy Services states that the ORCA envisions that seams agreements will be in place to resolve these issues on a long-term basis, and that the post-Operations Transition Period arrangements will be discussed and negotiated by the parties in the future, pursuant to the ORCA.

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[40] Motion to Intervene and Supporting Comments of Entergy Services, Inc. at 4, Docket No. ER12-2162-000 (Sept. 5, 2013) (Entergy Services Comments).

[41] *Id.*

[42] Entergy Services refers to the sharing of accurate operations planning information to ensure reliability operations and the allocation of flowgate capacity pursuant to accepted protocols, such as the Congestion Management process, to govern redispatch and curtailment as examples. *Id.* at 5.

40. The SPP Transmission Owners explain that while they generally do not oppose the ORCA filing, they request that the Commission confirm their understanding regarding certain language in the ORCA.

41. First, the SPP Transmission Owners request that the Commission confirm that section 1(c) of the ORCA, which, among other things, provides that the ORCA shall not be used by MISO or SPP as evidence in any proceeding addressing issues related to the MISO-SPP JOA, does not apply to the SPP Transmission Owners. The SPP Transmission Owners state that in the transmittal letter of the ORCA Filing, MISO admits its intent to use the SPP system "beyond amounts that would be consistent with reserved transmission service between MISO North and MISO South."[43] The SPP Transmission Owners assert that MISO's admission that the 2,000 MW limit during Phase One is more than twice the amount of firm service currently reserved between the current MISO footprint and the Entergy region is evidence that MISO intends to use neighboring transmission systems, including SPP, to achieve integration of MISO South. The SPP Transmission Owners assert that since MISO has claimed in other dockets that resulting flows on the SPP system will be unintentional flows, this evidence is relevant evidence of intent, and impeachment evidence with respect to MISO's credibility on these issues.[44] The SPP Transmission Owners conclude that since the limitation on the use of this admission applies only to MISO and SPP, it does not apply to them.

42. In the alternative, the SPP Transmission Owners protest the ORCA Filing to the extent that it would limit their ability to use relevant evidence in related proceedings, or would otherwise seek to limit the SPP Transmission Owners' ability to seek compensation for intentional flows on the SPP transmission system in other related proceedings.

43. Second, the SPP Transmission Owners request that the Commission confirm that the ORCA does not confer any use rights to MISO. Specifically, the SPP Transmission Owners request that the Commission confirm that the ORCA "does not enhance (or

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[43] SPP Transmission Owners Comments at 4.

[44] The SPP Transmission Owners state that there is "a long-running dispute involving whether MISO or its customers should pay for intentional use of the SPP transmission system to accomplish the integration of the MISO South Region." SPP Transmission Owners Comments at 2. The SPP Transmission Owners state that the ORCA Filing endeavors to leave such issues for other proceedings, which approach they support so long as it is clear that the ORCA Filing does not prejudice their rights in those other proceedings. *Id.* at 3 (citing ORCA Filing, ORCA, section 1(c)).

interpret) MISO's rights (if any) to flow power on the SPP system."[45] In the alternative, the SPP Transmission Owners protest. They allege that it would not be just and reasonable to grant MISO rights to use the SPP system without compensation.

44. Third, the SPP Transmission Owners request clarification with respect to MISO's terminology in the ORCA Filing. The SPP Transmission Owners note that MISO explains that the ORCA is a "'transitional instrument'" addressing "'certain loop flow concerns that have been raised by the Joint Parties in connection with the MISO South Region's integration.'"[46] The SPP Transmission Owners request clarification that the ORCA Filing and the ORCA do not prejudice the outcome of proceedings that do involve compensation issues and use rights, consistent with the ORCA provisions that state that the ORCA does not resolve compensation issues or resolve use rights.

45. Finally, the SPP Transmission Owners request that the Commission require MISO to file with the Commission the methodology and/or mechanism developed by MISO and the Joint Parties to calculate and monitor MISO's Dispatch Flow, and that the Commission make acceptance of the ORCA conditional on filing of the methodology. The SPP Transmission Owners state that the Dispatch Flow monitoring mechanism will be critical to implementation of the ORCA's operating limits, is necessary to properly calculate MISO's Dispatch Flow, which may require MISO to constrain its dispatch, and is a material term of the ORCA. Accordingly, the SPP Transmission Owners conclude that the methodology should be filed with the Commission and subject to review under the FPA. In addition, the SPP Transmission Owners recommend that the Commission should only approve the ORCA conditionally, subject to the subsequent filing of the Dispatch Flow monitoring mechanism, because otherwise the Commission cannot be assured that the ORCA will be implemented in a manner that is just, reasonable and not unduly discriminatory.

2. MISO's Answer to the SPP Transmission Owners

46. MISO argues that the SPP Transmission Owners' comments raise extraneous issues and that their requests for clarification are collateral attacks designed to obtain procedural advantages in other dockets.[47] MISO reiterates the purpose of the ORCA, and notes that the SPP Transmission Owners generally do not oppose the ORCA Filing.

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[45] *Id.* at 4.

[46] *Id.* at 5 (quoting ORCA Filing, Transmittal Letter at 3).

[47] Motion for Leave to File Answer and Answer of the Midcontinent Independent System Operator, Inc. to Comments (or in the Alternative, Protest) of the Southwest Power Pool Transmission Owners at 2, Docket No. ER13-2162-000 (Sept. 20, 2013)

(continued…)

47. MISO addresses each of the SPP Transmission Owners' requests for clarification. First, with respect to the SPP Transmission Owners' request for confirmation that the ORCA does not prevent them from using the ORCA as evidence in compensation disputes, MISO again states that the ORCA speaks for itself: SPP is a party to the ORCA, while the SPP Transmission Owners are not. Accordingly, MISO characterizes the SPP Transmission Owners' request as a procedural ploy designed to lend support to arguments they have advanced in other proceedings. Second, MISO alleges that the SPP Transmission Owners' request that the Commission confirm that the ORCA does not enhance or interpret MISO's rights (if any) to flow power on the SPP transmission system is "pointless" as the ORCA "speaks for itself."[48] MISO nevertheless disputes the SPP Transmission Owners' arguments regarding compensation for loop flows beyond what may be provided under the MISO-SPP JOA, citing to arguments made by MISO and Entergy in other proceedings. Third, MISO urges the Commission to reject the SPP Transmission Owners' request for clarification that the ORCA does not prejudice the outcome of proceedings that involve compensation issues and use rights. MISO explains that the SPP Transmission Owners have filed rehearing requests and protests in other dockets, and that the issues raised in those pleadings will be addressed in those proceedings. MISO concludes that the ORCA neither deducts from nor adds to those arguments.

48. Finally, MISO opposes the SPP Transmission Owners' request that the Commission require MISO to file the methodology developed by the parties to the ORCA to calculate and monitor MISO's Dispatch Flow, and make acceptance of the ORCA conditional on such a filing. Citing to section 2(a)(ii) of the ORCA, which states that MISO and the Joint Parties will develop a monitoring mechanism and explains how Dispatch Flow will be calculated, MISO asserts that the monitoring mechanism does not need to be filed, and that the calculation methodology is already set out in the ORCA.[49]

(MISO Answer).

[48] *Id.* at 3.

[49] Section 2(a)(ii) of the ORCA states:

> MISO and the Joint Parties shall develop a mutually agreed upon mechanism or process that allows the Dispatch Flow to be monitored and provided to the Joint Parties in advance as appropriate and in real time. The Dispatch Flow calculation will be based on the difference between generation and load in the MISO South Region with an adjustment for interchange transactions with the balancing authority areas connected to the MISO South Region companies.

MISO requests, however, that if the Commission does require the filing requested by the SPP Transmission Owners, the Commission should also require the parties to the ORCA to provide the Intra-Day process to be developed under ORCA section 2(a)(vi), as the processes are complementary.[50]

3. Commission Determination

49. The Commission accepts the ORCA for filing and grants MISO's request for waiver so that the ORCA may be effective one day after filing.[51] As explained by MISO, the ORCA establishes a transitional mechanism that will enable MISO and the Joint Parties to gain familiarity and experience with the expanded MISO BAA operations. We recognize that the integration of MISO South into the MISO BAA is a significant undertaking, and the ORCA will support a reliable transition.

50. Although MISO claims that the ORCA Filing addresses the Commission's directive in the Entergy-ITC Rates Order that MISO file an informational report detailing the status of negotiations regarding revisions to existing JOAs or the development of new JOAs, we disagree. While the ORCA resolves certain issues regarding these negotiations and agreements, MISO must still file an informational report on or by November 1, 2013 detailing "the status of the negotiations regarding revisions to existing JOAs or the development of new JOAs to address the loop flow concerns, with SPP, TVA, and Associated Electric Cooperative."[52] MISO may refer to the ORCA as necessary in that informational filing.

51. With respect to the SPP Transmission Owners' request regarding use of the ORCA for evidentiary purposes in other proceedings, the Commission notes that section 1(c) of the ORCA only addresses MISO and SPP's use of the ORCA for evidentiary purposes.

52. We decline the SPP Transmission Owners' request that we "confirm" that the ORCA does not enhance or interpret MISO's rights to flow power over the SPP transmission system. Section 5(d) of the ORCA states that nothing in the agreement "shall be construed as enhancing or diminishing any parties' right to flow energy on

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[50] *Id.* at 5-6.

[51] *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,388 (1992) (stating that Commission will grant waiver of notice when the effective date is prescribed by an agreement on file with the Commission), *order on reh'g*, 61 FERC ¶ 61,089 (1992). *See also Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *clarified*, 65 FERC ¶ 61,081 (1993).

[52] Entergy-ITC Rates Order, 143 FERC ¶ 61,257 at P 152.

another party's system." Likewise, we decline the SPP Transmission Owners' request for clarification that, "consistent with the ORCA provision that says that the ORCA does not resolve compensation issues or change use rights," the ORCA and ORCA Filing do not prejudice the outcome of proceedings that do involve compensation issues and use rights. Any proceedings currently pending before the Commission will be resolved and addressed based on the relevant evidence provided in those dockets.

53. We decline to grant the SPP Transmission Owners' request that MISO file the Dispatch Flow mechanism that it and the Joint Parties will use to monitor and provide Dispatch Flow to the Joint Parties in real time. The ORCA provides sufficient detail regarding this process. Section 2 of the ORCA states that MISO will monitor and provide to the Joint Parties the actual real time intra-BAA generation-to-load net dispatch flow moving between the MISO Midwest Region and the MISO South Region, and its forecasted annual, seasonal, and near-term dispatch flow levels. The ORCA also explains that MISO will operate its market dispatch (including firm and non-firm deliveries) during the Operations Transition Process at the Dispatch Flow limits established in the ORCA. While the Dispatch Flow limit during Phase One is specified in the ORCA, after the conclusion of Phase One the Dispatch Flow limits will be based on flow limits on Coordinated Flowgates using the Congestion Management Process criteria and other flowgates as agreed upon by the parties, using Available Flowgate Capability-type processes, translated to a MISO Midwest Region to and from MISO South Region net Dispatch Flow. The agreement also notes that the priorities (firm and non-firm) for MISO's Dispatch Flow will be determined per current Transmission Load Relief/Congestion Management Processes on Coordinated Flowgates when congestion relief is needed. Accordingly, the Commission concludes that the filing requested by the SPP Transmission Owners is not necessary.

The Commission orders:

The ORCA is accepted for filing, to be effective August 16, 2013, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.