

145 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.

Midcontinent Independent System Operator, Inc. Docket Nos. ER13-692-004
ER13-692-006
ER13-1631-000

ORDER ACCEPTING COMPLIANCE FILING AND
GRANTING REQUEST FOR LIMITED WAIVER

(Issued October 25, 2013)

1. In this order, the Commission accepts a compliance filing by Midcontinent Independent System Operator, Inc. (MISO) (Compliance Filing) made in response to the Commission's April 26, 2013 order,¹ as explained below. The compliance filing will restore certain provisions of MISO's Open Access Transmission, Energy and Operating Reserve Tariff (Tariff) to their pre-existing versions (i.e., prior to MISO's proposed changes in Docket No. ER12-692-000), as required by the April 26 Order.

2. Also in this order, the Commission grants MISO's request for limited waiver of those restored provisions of MISO's Tariff from April 15, 2013 until November 19, 2013, as explained below.

I. Background

3. On April 23, 2012, the Commission issued an order in Docket Nos. ER11-2923-000 and ER12-1175-000 granting MISO a limited, one-time waiver of certain Commission regulations and Tariff provisions.² In that proceeding, MISO requested

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,070 (2013) (April 26 Order). Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,062 (2012) (April 23, 2012 Order).

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

4. Pursuant to the aforementioned waivers granted by the Commission in the April 23, 2012 Order, 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.

5. In its filing of January 2, 2013, in Docket No. ER13-692-000, MISO stated that, pursuant to its commitment in Docket Nos. ER11-2923-000 and ER12-1175-000 above, it was in the process of replacing its OASIS and associated functionality. As a result, it had 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 maintained that its proposed Tariff revisions reflected the functionality and processes of its new OATi OASIS and webTrans platforms and also improved upon existing practices and, therefore, satisfied the “consistent with or superior to” standard that the Commission reaffirmed in Order No. 890.⁵

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

⁴ MISO January 2, 2013 Filing, Docket No. ER13-692-000, 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. The MISO Transmission Owners⁶ filed comments on January 23, 2013, opposing several of the proposed changes as inconsistent with Commission policy and precedent. Subsequent to the MISO Transmission Owners' January 23 protest, MISO engaged in direct discussions with the MISO Transmission Owners and submitted an amended filing, which the MISO Transmission Owners stated addressed many of their concerns. But, the MISO Transmission Owners continued to object to MISO's proposed revisions to sections concerning the assessment of unreserved use penalties, the determination of reservation priority for point-to-point (PTP) service and the revisions to the process for exercising a right of first refusal (ROFR).

7. The April 26 Order accepted MISO's proposed Tariff revisions in part to take effect April 15, 2013, as requested,⁷ and rejected them in part. Specifically, the Commission rejected MISO's proposed revisions relating to modifications to penalties for unreserved use, reservation priority for PTP service, and priority for exercising a

⁶ 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.

⁷ In a motion filed October 22, 2012, in Docket No. ER12-1175-000, MISO requested an extension of the April 23, 2012 Order's waiver of 18 C.F.R. § 38.2(a), Tariff sections 13.2, 14.2, 19.7, 27.A.7.7 and Attachment Q from December 31, 2012 until April 15, 2013. In an order being issued concurrently with this order, the Commission grants MISO's requested extension. *Midwest Indep. Transmission Sys. Operator, Inc.*, 145 FERC ¶ 61,071.

ROFR. The Commission directed MISO to submit a compliance filing removing the rejected Tariff revisions.⁸

II. Compliance Filing (Docket Nos. ER13-692-004 and ER13-692-006)

A. Background

8. On June 4, 2013 (Compliance Filing), as amended on August 8, 2013 (Compliance Amendment), MISO proposed tariff revisions to remove the rejected Tariff provisions as directed by the Commission in the April 26 Order and restore the applicable sections to their previously effective language. The affected Tariff provisions are sections 13.2, 13.7, 14.2, 14.5, 14.7, 27A.1.2, 27A.1.6, 27A.2.2, 27A.2.4, 27A.2.6, 30.4, and 37.2.⁹

B. Notice of Filings and Responsive Pleadings

9. Notice of the Compliance Filing was published in the *Federal Register*, 78 Fed. Reg. 35,016 (2013), with protests and interventions due on or before June 25, 2013. None were filed. Notice of the Compliance Amendment was published in the *Federal Register*, 78 Fed. Reg. 49,742 (2013), with protests and interventions due on or before August 29, 2013. None were filed.

C. Discussion

10. We find that the Compliance Filing, as amended by the Compliance Amendment, is consistent with the April 26 Order and restores the applicable Tariff sections to their previously effective language. Therefore, we accept MISO's proposed Tariff revisions, effective April 15, 2013.

⁸ April 26 Order, 143 FERC ¶ 61,070 at P 54.

⁹ The Compliance Amendment revises the Compliance Filing to propose an effective date of April 15, 2013 for the revised Tariff sheets submitted in the Compliance Filing. In addition, the Compliance Amendment includes certain revised Tariff sheets that were inadvertently omitted from the Compliance Filing. MISO Compliance Amendment at 2.

III. Request for Limited Waiver (Docket No. ER13-1631-000)

A. Background

11. On June 4, 2013, as amended on July 22, 2013,¹⁰ MISO filed a request for limited waivers of certain aspects of its Tariff provisions governing unreserved use, determinations of reservation priority for PTP transmission service, and the exercise of a ROFR for PTP transmission service (Request for Limited Waiver). MISO states that the requested waivers would allow MISO: (1) time to evaluate, develop, vet, test, and implement the process, software, and Tariff language revisions necessary to ensure a long-term, sustainable response to the April 26 Order; (2) to ensure that appropriate training and transition assistance is provided in the event that such would facilitate implementation of revisions; and (3) to ensure that any downstream process impacts are identified, understood, and accounted for.

12. As noted above, the April 26 Order rejected, and directed MISO to remove, proposed Tariff revisions on unreserved use, reservation priority for PTP service, and the exercise of a ROFR. MISO submitted the Compliance Filing to restore the rejected provisions to each provision's previously effective version. The Tariff provisions restored in the Compliance Filing are the subject of the instant Request for Limited Waiver.

13. According to MISO, the requested waivers are needed to address a concrete problem. MISO states that it requests the waivers because its OASIS software platform was developed and implemented to accommodate its specific market and transmission system mechanisms, the characteristics of which significantly complicate and/or conflict with the *pro forma* Tariff provisions at issue. MISO states that it requires the requested waivers to ensure that it can remain in compliance with applicable requirements while it works on developing the most appropriate and sustainable response to the April 26 Order.

14. MISO explains that its intent is that the effective date of the instant requested waivers be in sync with the proposed Tariff revisions in Docket No. ER13-692.¹¹ Accordingly, MISO requests that the waivers, discussed in further detail below, be effective from April 15, 2013 until 120 days from MISO's July 22, 2013 amendment, i.e., November 19, 2013.

¹⁰ MISO amended the requested effective period of its waiver request.

¹¹ MISO July 22, 2013 Amendment at 2.

1. Unreserved Use

15. Under Tariff sections 13.7, 14.5, 27A.1.6, 27A.2.4, 30.4, and 37.2, MISO tracks and imposes penalties on unreserved uses based on the duration of unreserved use. MISO states that its processes and systems associated with transmission service internal to the MISO transmission system are not designed or implemented to provide the data necessary to calculate unreserved use of transmission paths internal to the MISO transmission system. According to MISO, the reason for this stems from the fact that MISO uses a financial rights system, rather than a physical rights system, to allocate the benefits of transmission capacity on its transmission system. MISO further states that modifying its systems and processes to calculate unreserved uses on internal paths is a significant and complex undertaking that will likely impact both MISO and transmission customer processes, resources, and systems, and such modifications should be developed, vetted, and approved through MISO's stakeholder processes. Therefore, MISO requests waiver of Tariff sections 13.7, 14.5, 27A.1.6, 27A.2.4, 30.4, and 37.2 as they apply to unreserved uses in non-interchange transactions.

2. Reservation Priority

16. Under Tariff sections 13.2, 14.2, 27A.1.2, 27A.2.2, and 27A.2.6, requests for short-term firm PTP service or for non-firm PTP service that are otherwise equal in terms of duration and pre-confirmation status are prioritized, first by the price offered for the service followed by the time the request was received by MISO. MISO states that its PTP transmission rates vary by where a PTP transaction sinks and that competing PTP TSRs could sink at different points, and therefore have varying base transmission rates. To resolve such a competition using price as the primary factor, MISO states that its OASIS would need to have functionality that was able to evaluate competing requests with differing base transmission rates by determining the percentage difference between the incremental bids and the base transmission rate for the defending TSR's transmission path and selecting the highest "bid" based on the highest percentage difference.¹² MISO states that its current OASIS software platform does not contain such functionality at this time. Accordingly, such functionality could only be implemented through a customization requested from MISO's OASIS vendor.

17. MISO further states that certain aspects of the overall cost of transmission service are not known until after MISO's market settles. To the extent that these elements are required to be included in the transmission cost used to determine priority between competing PTP customers, that requirement would make the implementation of the appropriate OASIS functionality infeasible. Further, MISO's settlements system

¹² MISO Request for Limited Waiver at 9-10 (quotation marks in original).

currently requires manual intervention to incorporate price differentials into customer invoices and settlements. Thus, according to MISO, even if the MISO OASIS were able to prioritize based on bid price, it would have to evaluate and potentially implement revisions to its invoicing and settlements processes and systems to accommodate price “bidding” long-term.¹³ MISO states that such modifications would necessarily impact current Tariff language and would also likely impact MISO transmission customers.

18. Therefore, MISO requests waiver of the requirements of Tariff sections 13.2, 14.2, 27A.1.2, 27A.2.2, and 27A.2.6 that require bids for short-term firm PTP service or for non-firm PTP service that are otherwise equal in terms of duration and pre-confirmation status be prioritized first by the price offered for the service. MISO states that until it is able to develop, vet, and implement a solution in response to the April 26 Order, it will continue to administer competitions, prioritizing competing TSRs based on the time that the competing requests were received by MISO.

3. Right of First Refusal

19. Under Tariff sections 13.2 and 27A.1.2, the order by which multiple shorter duration reservations will be able to exercise the ROFR is determined first by duration, and second by price and last by time of response. MISO states that the MISO OASIS lacks the functionality to allow competing shorter-duration PTP reservations to exercise the ROFR to match a longer-term request based first on duration, and then on price, as currently required by Tariff sections 13.2 and 27A.1.2. As noted above, MISO states that it lacks the functionality to break ties based on price and that there are factors unique to MISO that complicate the use of price as a tie-breaking tool. Further, MISO states that its systems lack the functionality to break ties based on duration. Therefore, MISO requests waiver of the requirements of Tariff sections 13.2 and 27A.1.2 mandating that MISO prioritize competing reservations by duration and price. MISO states that until it is able to develop, vet, and implement a solution in response to the April 26 Order, it will continue to administer ROFRs, prioritizing the exercise of the ROFR by competing customers under Tariff sections 13.2 and 27A.1.2 by time of response to MISO.

B. Waiver Criteria

20. MISO states that the requested waivers will not have undesirable consequences. MISO states that calculation of unreserved use on its internal system is not necessary for the provision of non-discriminatory open access transmission, or for operational reasons. MISO further states that granting the waivers necessary to allow it to prioritize competing PTP TSRs, and to determine the order in which ROFR may be exercised, based solely on

¹³ *Id.* at 10 (quotation marks in original).

time of receipt is unlikely to have any adverse impact on any transmission customer. MISO also submits that use of time of receipt as a tiebreaker is not inconsistent with the Commission's open access policies, and the *pro forma* Open Access Transmission Tariff. Accordingly, MISO contends that waivers of the requirements to break ties based on price and duration will have no adverse consequences on third parties.

21. MISO also argues that the requested waivers are of limited scope. MISO notes that the requested waivers are one-time waivers, and apply only to very limited provisions in the Tariff. Further, MISO states that it commits to commence working on the resolution of the underlying issues immediately, with a goal of resolving those issues within 120 days of the date of its July 22 amendment, i.e., November 19, 2013. Further, MISO commits to submitting periodic progress reports on the status of its efforts. MISO states that these reports will outline MISO's efforts, as well as whether MISO will require additional time, beyond the 120-day deadline, to address the issues.

22. MISO further states that it has acted in good faith in seeking the requested waivers. MISO notes that it initially undertook the review of its OASIS capabilities, on its own initiative, to determine whether its practices were consistent with applicable requirements. MISO states that it then sought to make changes to its OASIS to bring it into conformance with Commission requirements and, in accordance with those OASIS changes, sought to amend its Tariff to reflect the practices that it had developed and vetted through its stakeholder process. MISO requests that the Commission grant the requested waivers while it continues to work on revisions to its processes and systems in response to the April 26 Order.

C. Notice of Filing and Responsive Pleadings

23. Notice of MISO's Request for Limited Waiver was published in the *Federal Register*, 78 Fed. Reg. 35,016 (2013), with protests and interventions due on or before June 25, 2013. Timely motions to intervene were filed by Exelon Corporation, Consumers Energy Company and Wisconsin Electric Power Company.

24. A timely motion to intervene and comments were filed by the MISO Transmission Owners (MISO TOs).¹⁴ MISO TOs state that they do not oppose the waiver request for

¹⁴ MISO TOs for purposes of this pleading consist of: 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; American Transmission Company LLC; 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.; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy

(continued...)

the requested period. However, MISO TOs state that they do oppose allowing MISO an open-ended period of time to bring its operations into compliance with its Tariff or to develop appropriate mechanisms to address issues related to unreserved uses of the transmission systems and the allocation of transmission capacity, and reserve the right to object to or protest any additional waiver requests or requests for additional time. They state that establishing a firm end-date can bring certainty to the MISO process for developing the appropriate Tariff mechanisms and will help facilitate that process.

25. Notice of MISO's July 22 amendment was published in the Federal Register, 78 Fed. Reg. 45,920 (2013), with protests and interventions due on or before August 12, 2013. None were filed.

D. Discussion

1. Procedural Matters

26. 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 who filed them parties to Docket No. ER13-1631-000.

2. Substantive Matters

27. In granting waivers of tariff provisions, the Commission has generally required that the requested waiver be of limited scope, address a concrete problem that needs to be remedied, and not have undesirable consequences, such as harming third parties. We agree that under the circumstance presented here, waiver of these provisions, for the limited period requested, satisfies the Commission's standard for tariff waivers. Specifically, we find that MISO's requested waivers are of limited scope, address a concrete problem that needs to be remedied, and will not have undesirable consequences,

Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a *ITCTransmission*; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; South Mississippi Electric Power Association; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

such as harming third parties.¹⁵ In its original filing, MISO stated that unreserved uses of the system have rarely, if ever, been an operational problem for MISO, and MISO is unaware of any instance in which a Transmission Customer was unable to procure needed capacity across one of the MISO interties because of unreserved use by another customer.¹⁶ In addition, we note that the MISO Transmission Owners do not oppose the Request for Limited Waiver, so undesirable consequences seem unlikely from granting waiver.

28. Accordingly, we will grant waiver of Tariff sections 13.2, 13.7, 14.2, 14.5, 27A.1.2, 27A.1.6, 27A.2.2, 27A.2.4, 27A.2.6, 30.4, and 37.2, until November 19, 2013, as requested.

The Commission orders:

(A) MISO's Compliance Filing, as revised by the Compliance Amendment, is hereby accepted, as discussed in the body of this order.

(B) MISO's Request for Limited Waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵ See, e.g., *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at PP 8-9 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at PP 9-10 (2010); *accord ISO New England Inc. — EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008). The Commission notes that there is also a fourth criterion sometimes used by the Commission in its analysis of waiver requests (i.e., where there was an underlying good faith error), which is not relevant here.

¹⁶ MISO January 2, 2013 Filing, Docket No. ER13-692-000, at 8.