

145 FERC ¶ 61,131
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. ER13-2385-000

ORDER ACCEPTING REVISIONS TO
TRANSMISSION OWNERS AGREEMENT

(Issued November 15, 2013)

1. On September 16, 2013, the Midcontinent Independent System Operator, Inc. (MISO) proposed, pursuant to section 205 of the Federal Power Act,¹ to revise the Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc. (Transmission Owners Agreement) concerning membership of the MISO Advisory Committee (Advisory Committee) (September 16 Filing). For the reasons discussed below, we will accept these revisions and make them effective as requested.

I. Background

2. In May 2011, the Entergy Operating Companies² announced their intention to integrate into MISO.³ To facilitate integration, the Entergy Operating Companies

¹ 16 U.S.C. § 824d (2012).

² The Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy Texas, Inc., and Entergy New Orleans, Inc.

³ On February 15, 2013, in Docket No. ER13-948-000, Entergy Services, Inc. (Entergy Services) filed company-specific Attachment O formula rate templates to the MISO Tariff for each of the Entergy Operating Companies. The Commission addressed this filing in a June 20, 2013 order, *ITC Holdings Corp., Entergy Corp., and Midwest Independent Transmission Sys. Operator Inc.*, 143 FERC ¶ 61,257 (2013), that also
(continued...)

initiated change of control proceedings with the appropriate jurisdictional retail regulatory authorities (Southern Retail Authorities)⁴ to permit functional control of the Entergy Operating Companies' transmission assets to be transferred to MISO. MISO states that each Southern Retail Authority has issued an order conditionally finding that Entergy's proposed integration into MISO is in the public interest.⁵

3. During the state retail regulatory proceedings, MISO committed to propose to this Commission a revision to the Transmission Owners Agreement that would expand the Advisory Committee membership from 23 to 24, with the additional member being a representative of the State Regulatory Authorities sector, and would assign the added seat to one of the Southern Retail Authorities. MISO states that the Advisory Committee serves as a forum for MISO members to keep apprised of MISO's activities and to provide information and advice to MISO's Board of Directors on policy matters of concern. MISO states further that, although the Advisory Committee does not exercise control over MISO or the MISO Board of Directors, these latter two bodies nevertheless consider the Advisory Committee a key part of MISO's decision-making process.⁶

4. MISO uses nine sectors for representational and voting purposes of Advisory Committee meetings. These sectors, with the current number of their voting seats on the Advisory Committee are: Transmission Owners – 3 seats; Independent Power Producers and Exempt Wholesale Generators (Independent Power Producers) – 3 seats; Power Marketers and Brokers (Power Marketers) – 3 seats; Municipals, Cooperatives, and Transmission Dependent Utilities (Municipals) – 3 seats; Eligible End-Use Customers (End-Use Customers) – 3 seats; Coordinating Members – 1 seat; State Regulatory

addressed Entergy Services' proposal to transfer the jurisdictional transmission assets of the Entergy Operating Companies into a newly-created subsidiary of ITC Holdings Corp. The order conditionally accepted the proposed tariff provisions, suspended them, and established hearing and settlement judge procedures.

⁴ These jurisdictional retail regulatory authorities, which also participate in the Entergy Regional State Committee (Entergy State Committee), are the Arkansas Public Service Commission (Arkansas Commission); the Louisiana Public Service Commission (Louisiana Commission); the Mississippi Public Service Commission (Mississippi Commission); the Public Utilities Commission of Texas (Texas Commission); and the City of New Orleans (New Orleans).

⁵ September 16 Filing, Transmittal at 2.

⁶ *Id.*

Authorities – 3 seats; Public Consumer Advocates – 2 seats; and Environmental/Other Stakeholder Organizations (Environmental Organization) – 2 seats.⁷

5. In the September 16 Filing, MISO proposes to amend the Transmission Owners Agreement by increasing the Advisory Committee from 23 to 24 representatives. The additional representative will be a representative of the State Regulatory Authority sector, thus enlarging that stakeholder group's positions from three to four, and will be chosen from among the Southern Retail Authorities. The representative will be a full member of the Advisory Council with no limitation on voting rights or participation. MISO proposes also to revise the Transmission Owners Agreement's description of the manner in which representatives of the State Regulatory Authorities on the Advisory Committee are chosen by replacing the term "state public service commissions" with the term "entities" to reflect that in certain jurisdictions, such as New Orleans, the MISO Transmission Owner is regulated by an entity that is not a state regulatory commission.

6. MISO states that this commitment to expand the Advisory Committee was stipulated in the agreements establishing the basis of the Texas Commission's and New Orleans' public interest determinations, and that the proposed expansion would maintain regional diversity in MISO's governance structure.⁸ MISO states also that, in June 2013, the Entergy State Committee recommended expansion of the Advisory Committee to include a member from the regulatory sector from MISO's new southern region (MISO South). MISO presented this recommendation to the Advisory Committee in July 2013 and requested comments for the August 21, 2013 Advisory Committee meeting (August Meeting). After reviewing the written comments and considering the discussion at that meeting, the MISO Board of Directors directed MISO to propose the expansion to this Commission.

7. MISO supports the September 16 Filing by stating that it ensures regional diversity on the Advisory Committee in light of MISO's significant geographic expansion with the integration of MISO South. It provides continuity of state regulatory authority oversight by ensuring that a Southern Retail Authority representative will participate directly in the MISO stakeholder process as a member of the Advisory Committee. MISO points out that the additional representative does not significantly

⁷ The first six sectors comprise MISO Members. The remaining three sectors comprise entities that are not MISO Members; they do not pay MISO membership fees or other annual dues, and do not vote on matters pertaining to MISO's Board of Directors. See MISO Transmission Owners Agreement, Article VI, Section 6.1 Advisory Committee, *in* September 16 Filing, Attachment; "MISO Members," <https://www.misoenergy.org/StakeholderCenter/Members/Pages/Members.aspx>.

⁸ September 16 Filing, Transmittal at 2-3.

change the existing voting percentages of the Advisory Committee. The State Regulatory Authority sector's voting percentage will increase from approximately 13 percent to approximately 16 percent.

8. MISO states that its Board of Directors will continue to evaluate the composition and voting structure of the Advisory Committee, and will file any necessary revisions with this Commission. MISO also commits to conduct an evaluation of the Advisory Committee's operations with the proposed additional representative, and of the Board of Directors' effectiveness one year from the integration of all the Entergy Operating Companies.

9. MISO requests that the September 16 Filing be made effective only upon the integration of all the Entergy Operating Companies into MISO, which MISO anticipates will be December 18, 2013.⁹ However, it asks that the Commission issue an order accepting the filing no later than November 16, 2013, in order to provide regulatory certainty to all parties involved in the Entergy integration. It also requests waiver of the requirements of section 35.13 of the Commission's regulations, 18 C.F.R. § 35.13 (2013), as may be necessary to implement the September 16 Filing.

II. Notice and Responsive Filings

10. Notice of the September 16 Filing was published in the Federal Register, 78 Fed. Reg. 58,531 (2013), with interventions and protests due on or before October 7, 2013. Notices of intervention were filed by the Arkansas Commission and Louisiana Commission. Motions to intervene were filed by: American Municipal Power, Inc.; American Wind Energy Association and Wind on the Wires (American Wind); Consumers Energy Co.; DTE Electric Co.; Entergy Services and the Entergy Operating Companies; Entergy State Committee; Iberdrola Renewables, LLC; NRG Companies; the Organization of MISO States, Inc. (OMS); the MISO Transmission Owners¹⁰ and Wisconsin Electric Power Company.

⁹ MISO notes in its transmittal letter that the Entergy Operating Companies will integrate their transmission assets into MISO on December 18, 2013. In previous filings before the Commission, MISO has stated that the Entergy Operating Companies are integrating into MISO on December 19, 2013.

¹⁰ The MISO Transmission Owners for this filing 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.;
(continued...)

11. Comments in support of the September 16 Filing were filed by OMS; Entergy Services and the Entergy Operating Companies; Entergy State Committee; and the Texas Commission. American Wind filed a protest (American Wind Protest). On October 22, 2013, the MISO Transmission Owners filed an answer to the American Wind Protest (MISO Transmission Owners Answer).

III. Discussion

A. Procedural Matters

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

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385(a)(2) (2013) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the MISO Transmission Owners Answer because it has provided information that has assisted us in our decision-making process.

B. American Wind Protest

14. American Wind asks the Commission to deny MISO's request for an additional vote on the Advisory Committee for the State Regulatory Authorities. American Wind states that, as a result of the integration of MISO South, all sectors will be affected as new members join MISO. It protests increasing the State Regulatory Authorities sector's number of votes while maintaining the current number of votes of all the other sectors because this decreases the other sectors' voting strength percentages.¹¹

Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; 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, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, 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 (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

¹¹ American Wind Protest at 5.

15. American Wind wants MISO to reform the MISO governance process to result in a more robust Advisory Committee construct. Until reforms are implemented, American Wind objects to increasing the voting power of one sector relative to other sectors. It states that many stakeholders perceive that several sectors, including the State Regulatory Sector, are given more weight in the decision-making process.¹²

16. American Wind states that the current imbalance of power and representation in MISO's governance structure is exemplified by the lack of stakeholder process surrounding the September 16 Filing. American Wind explains that only MISO, the Transmission Owners, OMS, and the Southern Retail Authorities were involved in the decision-making process that led to the September 16 Filing. It states that MISO's senior management had made the commitment to include the addition of a fourth seat as part of the regulatory proceedings that took place nearly a year prior to the August Meeting. American Wind states that concern with the State Regulatory Sector receiving a fourth vote while other sectors were not allowed to increase their representation or voting rights was expressed by Environmental Organizations, Independent Power Producers, Power Marketers, End-Use Customers, and also by the Transmission Dependent Utilities, a group within Municipals.¹³

C. MISO Transmission Owners Answer

17. The MISO Transmission Owners state that American Wind's characterization of the MISO Transmission Owners' involvement in the stakeholder process is factually inaccurate and misstates the extent of their involvement in the stakeholder process. The MISO Transmission Owners state that, at the August Meeting, the majority of them took no position on whether the State Regulatory Authorities should get an additional seat and vote on the Advisory Committee.¹⁴

¹² *Id.*

¹³ *Id.* at 6.

¹⁴ Answer at 3-4, citing draft minutes for the August Meeting, *available at* <https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/AC/2013/20130925/20130925%20AC%20Item%2001c%20Minutes%2020130821.pdf>. The draft minutes state, "Transmission Owners . . . provided verbal remarks, indicating that the majority of [MISO Transmission Owners] take no position on whether the regulatory sector should get an additional seat and vote on the [Advisory Committee]. A minority position with Entergy and ITC supported the additional seat. The other minority position opposed the additional seat. The [MISO Transmission Owners] feel that the [Board of Directors] has a responsibility to make sure the representation, voices and opinions are accurately reflective of the membership." *Id.*

D. Commission Determination

18. We find that MISO's proposal to expand representation and voting on MISO's Advisory Committee by adding one seat and vote to the State Regulatory Authorities sector and to dedicate that seat and vote to a representative from MISO South is just and reasonable, and we accept the September 16 Filing to be effective upon integration of all the Entergy Operating Companies into MISO. The addition of a Southern Retail Authority to the Advisory Committee will ensure regional diversity within the governance structure of an expanding regional transmission organization.

19. We note that MISO has stated that the MISO Board of Directors will continue to evaluate the composition of the Advisory Committee and voting structure, and has asked for further discussion of this matter at the Advisory Committee's October 2013 meeting. If the Board of Directors determines that additional changes to the composition of the Advisory Committee are necessary, MISO will file any necessary revisions to the Transmission Owners Agreement. MISO also states that it commits to support the Advisory Committee and the Board of Directors in conducting an evaluation of the Advisory Committee's operations with the proposed additional representative and the Board of Directors' effectiveness one year from the integration of all Entergy Operating Companies.¹⁵

20. We will waive section 35.13 of our regulations as necessary to accept the September 16 Filing, to be effective upon the integration of all Entergy Operating Companies into MISO, as discussed above.

¹⁵ September 16 Filing, Transmittal at 2-3. The Commission has also stated that the Advisory Committee uses a weighted sector voting structure that prevents any single stakeholder or stakeholder category from dictating the outcome of a vote in its order finding that MISO complies with Order No. 719's governance requirements of responsiveness to customers and other stakeholders. *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,068, at PP 44, 52, 56 (2010), *clarification denied*, 135 FERC ¶ 61,057 (2011), *order on reh'g*, 140 FERC ¶ 61,060 (2012), *order on reh'g and compliance*, 143 FERC ¶ 61,145, *reh'g granted*, 144 FERC ¶ 61,012 (2013) (citing *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (July 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009)).

The Commission orders:

MISO's September 16 Filing is hereby accepted, effective upon integration of all Entergy Operating Companies into MISO.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.