

146 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Midcontinent Independent System
Operator, Inc.

Docket Nos. ER14-206-000
ER14-206-002

ORDER CONDITIONALLY ACCEPTING FILING

(Issued January 31, 2014)

1. In this order, we conditionally accept Midcontinent Independent System Operator, Inc.'s (MISO) proposed revisions to Appendix A (Standards of Conduct) of the Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc. (Transmission Owners Agreement),¹ to become effective December 28, 2013, subject to MISO's submission of a compliance filing.

I. Background

In Order No. 717,² the Commission amended the Standards of Conduct for Transmission Providers to eliminate the corporate separation approach in favor of the employee functional approach used in Order Nos. 497³ and 889.⁴

¹ MISO FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, APPENDIX A, STANDARDS OF CONDUCT, 31.0.0.

² 18 C.F.R. pt. 358 (2013); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297 (cross-referenced at 129 FERC ¶ 61,043), *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011) (collectively, Order No. 717).

³ *Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines*, Order No. 497, FERC Stats. & Regs. ¶ 30,820 (1988), Order

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2. On October 28, 2013, as amended on October 29, 2013 and December 3, 2013, pursuant to section 205 of the Federal Power Act (FPA),⁵ MISO filed proposed revisions to its Standards of Conduct in Appendix A to its Transmission Owners Agreement. MISO states that, although the Commission has determined that regional transmission organizations (RTOs) and independent system operators (ISOs) are not subject to the Standards of Conduct requirements,⁶ MISO has historically sought to conform its own Standards of Conduct to those applicable to other, non-ISO/RTO transmission providers to the extent feasible. MISO states that it has determined that its own Standards of Conduct should reflect certain aspects of the changes required by Order No. 717 and, thus, proposes changes to Appendix A of the Transmission Owners Agreement.⁷ MISO states that the proposed revisions make its Standards of Conduct clearer and will facilitate easier application of the Standards of Conduct by MISO, its directors, agents, officers, and employees, and its transmission owners.

3. Specifically, MISO proposes to add a new section II.B to Appendix A to incorporate the non-discrimination requirement set forth in Order No. 717 and the Commission's regulations,⁸ as follows:

No. 497-A, *order on reh'g*, FERC Stats. & Regs. ¶ 30,868 (1989), Order No. 497-B, *order extending sunset date*, FERC Stats. & Regs. ¶ 30,908 (1990), Order No. 497-C, *order extending sunset date*, FERC Stats. & Regs. ¶ 30,934 (1991), *reh'g denied*, 58 FERC ¶ 61,139 (1992), *aff'd in part and remanded in part sub nom. Tenneco Gas v. FERC*, 969 F.2d 1187 (D.C. Cir. 1992).

⁴ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

⁵ 16 U.S.C. § 824d (2012).

⁶ 18 C.F.R. § 358.1(c) (2013).

⁷ On October 29, 2013, MISO amended its October 28 Filing to include certain non-substantive changes that were inadvertently omitted in Appendix A.

⁸ 18 C.F.R. §§ 358.4(a)-(c).

MISO, its Directors,⁹ agents, Officers, and employees must strictly enforce all Tariff provisions relating to the sale or purchase of open access transmission service if the Tariff does not otherwise allow for the exercise of discretion, must apply all Tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner and shall not treat any Transmission Customers in an unduly discriminatory manner, and may not give undue preference to any person in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

4. MISO also proposes to add a new section II.H.1 to Appendix A that reflects the requirement to post a notice of the disclosures of critical energy infrastructure information (CEII), as reflected in the Commission's regulations,¹⁰ as follows:

The above requirement notwithstanding, if an employee of MISO discloses, in a manner contrary to the Standards of Conduct, non-public Transmission Customer information that is [CEII] as defined in 18 C.F.R. § 388.113(c)(1) or any successor provision, or any other information that the FERC by law has determined is to be subject to limited dissemination, MISO must immediately post notice of the disclosure on its [Open Access Same-Time Information System (OASIS)]. If the disclosure is made as part of a MISO filing with the FERC, MISO will correct such filing.

5. MISO also revises section II.I of Appendix A, which contemplates that MISO may be required, from time-to-time, to provide otherwise confidential information to its reliability regulators to establish compliance with the North American Electric Reliability Corporation (NERC) Reliability Standards. First, MISO proposes to add a reference to NERC in section II.I because, while the existing language expressly allows MISO to share information with its Regional Entities, it does not include NERC as an entity with which MISO may share such information. Second, MISO proposes to eliminate the requirement that NERC or Regional Entities execute a confidentiality agreement before MISO will share confidential information with those regulators. MISO states that both NERC and

⁹ Defined terms in this order, unless otherwise indicated, are defined as provided in MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).

¹⁰ 18 C.F.R. § 358.7(a)(2).

Regional Entities are under existing requirements to maintain the confidentiality of information that they receive from regulated entities, and therefore argues that the confidentiality agreement is redundant with existing regulatory requirements imposed upon NERC and the Regional Entities.

6. MISO proposes to revise section II.J of Appendix A, consistent with the Commission's regulations,¹¹ to require that any disclosures of transmission information not in compliance be posted immediately on MISO's OASIS. MISO proposes revisions, as follows:

MISO's Directors, agents, Officers, and employees shall not give preferential access to transmission information, or any other information, to any third party. MISO's Directors, agents, Officers, and employees shall be prohibited from providing to any entity engaged in wholesale or retail sales of electric energy, or to any employee, representative, or agent of any such entity (except T/R employees as provided in Section II, Paragraph F of this Appendix A), information regarding the Transmission System covered by the Tariff, unless that information is: (i) posted on MISO's OASIS; (ii) otherwise available to the general public without restriction; or (iii) is the type of information disclosed to any third party on a nonpreferential basis.

Any ~~disclosure~~ disclosures of transmission information not in compliance with this Paragraph ~~J~~ shall, once identified, be posted immediately on MISO's OASIS unless such disclosure: (1) occurs during emergency circumstances and is of information necessary to maintain or restore operation of the Transmission System or generating units; or (2) may affect the dispatch of generating units during an emergency or exigent circumstance. In such case, a record of the exchange must be made as soon as practicable after the fact. The record may consist of hand-written or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and must be retained for a period of five years. MISO shall make such record available to the FERC upon request.

1. Directors, Officers, agents, and employees of MISO may discuss with a marketing function employee of any User of the Transmission System a specific request for transmission service submitted by the User.

2. An Owner or Member may voluntarily consent, in writing, to allow an employee of MISO to disclose the Owner or Member's non-public

¹¹ *Id.* §§ 358.7(b)-(c), (g)(2), (h)(a)(2)(ii).

information to the Owner or Member's marketing function employees. If the Owner or Member authorizes the MISO employee to disclose its information to marketing function employees, MISO must post notice on its Internet Website of that consent.

7. In new section II.K, MISO also proposes to modify the second sentence to state that, in the event any Director, Officer, agent, or employee of MISO exercises his discretion to waive a Tariff provision, or is allowed by the Tariff to waive enforcement of a Tariff provision with respect to transactions or actions covered by the Tariff, then such waiver shall be exercised fairly and impartially, and such event shall be logged, available for FERC review upon request, and retained for a period of five years from the date of the waiver. Previously, this provision stated that, where a Director, Officer, agent, or employee of MISO could exercise discretion with respect to transactions or actions covered by the MISO Tariff, such discretion was required to be exercised fairly and impartially, and the event was to be logged and available for FERC audit. MISO states that this new language is intended to reflect the requirements regarding waiver of a Tariff provision set forth in section 358.7(i) of the Commission's regulations.

8. Finally, MISO proposes to remove section II.L of Appendix A, which requires MISO to post notice on its OASIS of any employee engaged in transmission and/or reliability functions who is terminated or leaves MISO's employment. MISO notes that there is no comparable requirement in the Commission's Standards of Conduct. Furthermore, MISO states that the requirement is not necessary to facilitate either non-discriminatory, open-access transmission service or grid reliability.

II. Notice and Responsive Pleadings

9. Notice of the October 28, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 67,134 (2013), with interventions, comments, and protests due on or before November 18, 2013. Notice of the October 29, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 67,136 (2013), with the deadline for interventions, comments, and protests extended to November 19, 2013. Notice of the December 3, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 75,555 (2013), with the deadline for interventions, comments, and protests further extended to December 24, 2013. Timely motions to intervene were filed by Wisconsin Electric Power Company, Consumers Energy Company, and MISO Transmission Owners.¹² Hoosier Energy Rural Electric Cooperative (Hoosier) filed a timely motion to intervene and protest.

¹² The MISO Transmission Owners for this proceeding 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

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A. Protest

10. Hoosier protests MISO's proposed new section II.J.2, which states:

An Owner or Member may voluntarily consent, in writing, to allow an employee of MISO to disclose the Owner or Member's non-public information to the Owner or Member's marketing function employees. If the Owner or Member authorizes the MISO employee to disclose its information to marketing function employees, MISO must post notice on its Internet Website of that consent.¹³

Hoosier argues that MISO is incorrect that the Tariff language it has proposed will have the same effect as section 358.7(c) of the Commission's regulations.¹⁴ Hoosier states

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 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, 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.; 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.

¹³ Hoosier Protest at 2 (citing Standards of Conduct § II.J.2).

¹⁴ 18 C.F.R. § 358.7(c) provides:

A transmission customer may voluntarily consent, in writing, to allow the transmission provider to disclose the transmission customer's non-public information to the transmission provider's marketing function employees. If the transmission customer authorizes the transmission provider to disclose its information to marketing function employees, the transmission provider must post notice on its [i]nternet [w]eb site of that consent along

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that, while the Standards of Conduct permit one entity, the transmission customer, to voluntarily decide to share its non-public information with the marketing function employees of a second entity, the transmission provider, MISO proposes to permit a single entity – an Owner or Member – to utilize MISO employees to transmit non-public information from an Owner or Member’s transmission function employees to its own marketing function employees. Hoosier argues that this would presumably be information the Owner or Member’s transmission employees are forbidden to share directly with the Owner or Member’s marketing function employees, as if they could share the information directly, they would have no need to utilize MISO as a conduit.¹⁵

11. In addition, Hoosier states that the notice would presumably indicate that non-public information had been shared, but not the substance of that non-public information. Thus, Hoosier argues that the Owner or Member’s marketing function employees would be allowed to possess and utilize non-public information about the Owner or Member’s transmission function that would be unavailable to competitors. Finally, Hoosier argues that MISO’s new section II.J would invite precisely the sort of discriminatory behavior the Standards of Conduct are designed to avoid.¹⁶

B. December 3, 2013 Filing

12. In response to Hoosier’s protest, MISO states that the disputed language is based on section 358.7(c) of the Commission’s regulations, but emphasizes that MISO did not intend for its proposed language to allow for the improper transfer of non-public transmission information to a transmission customer’s marketing function. MISO states that it intended only for the language to match the language in the Commission’s existing Standards of Conduct and to make clear that, in circumstances where the sharing of such information is appropriate, an Owner or Member may authorize MISO to share transmission information with its marketing function. MISO concludes that it does not object to the removal of the disputed language and indicates that it does not believe that its removal will cause any operational or reliability issues. MISO submits clean and redlined tariff sheets that revise section II.J.2 to remove the language and address Hoosier’s concerns. MISO requests that the Commission allow its December 3, 2013

with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

¹⁵ Hoosier Protest at 3.

¹⁶ *Id.* at 3-4.

filing to go into effect on December 28, 2013, i.e., the date proposed in MISO's original filing.¹⁷

III. Discussion

A. Procedural Matters

13. 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.

B. Substantive Matters

14. We find that MISO's proposed revisions to its Standards of Conduct, as amended by its October 29, 2013 and December 3, 2013 filings, are generally acceptable and consistent with comparable provisions of the Commission's Standards of Conduct reflected in section 358 of the Commission's rules and regulations. We find that MISO's removal of section II.J.2 resolves issues raised by Hoosier and we therefore find Hoosier's protest moot.

15. We are concerned, however, with MISO's proposed language in section II.J.1, which states:

Directors, Officers, agents, and employees of MISO may discuss with a marketing function employee of any User of the Transmission System a specific request for transmission service submitted by the User.

Because a "user" of the MISO transmission system could potentially be a MISO transmission owner requesting network transmission service, this language could allow MISO to discuss such a transmission service request with the transmission owner's marketing function, which would violate the prohibition on sharing of non-public information. However, we believe that MISO intended section II.J.1 to mirror section 358.7(b) of the Commission's regulations, which provides that:

A transmission provider's transmission function employee may discuss with its marketing function employee a specific request for transmission service submitted by the marketing function employee. The transmission provider is not required to contemporaneously disclose information

¹⁷ MISO December 3, 2013 Filing at 1-2.

otherwise covered by § 358.6 if the information relates solely to a marketing function employee's specific request for transmission service.^[18]

16. Therefore, we will conditionally accept MISO's proposed Tariff revisions effective December 28, 2013, subject to MISO submitting a compliance filing within 30 days of the date of this order either to remove section II.J.1 or, if it was MISO's intent to mirror section 358.7(b), to revise section II.J.1 to be consistent with the Commission's regulations and not violate the prohibition on sharing of non-public information.

The Commission orders:

(A) MISO's proposed tariff revisions are hereby conditionally accepted, effective December 28, 2013, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as described in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁸ 18 C.F.R. § 358.7(b) (2013).