148 FERC ¶ 61,050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.	Docket Nos. ER14-1174-000
Midwest Independent Transmission System Operator, Inc.	EL11-34-002
Southwest Power Pool, Inc.	EL14-21-000
v.	
Midcontinent Independent System Operator, Inc.	
Midcontinent Independent System Operator, Inc.	EL14-30-000 (consolidated)
v.	
Southwest Power Pool, Inc.	

ORDER DENYING MOTION TO STAY

(Issued July 21, 2014)

1. On April 28, 2014, certain transmission owners in Midcontinent Independent System Operator, Inc. (MISO) (MISO Transmission Owners)[1] filed, pursuant to Rule 212

[1] The MISO Transmission Owners 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); Cleco Power, LLC; 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

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of the Commission's Rules of Practice and Procedure,[2] a Motion to Stay Effectiveness of Service Agreement Pending Decision on Rehearing (Motion to Stay). In the Motion to Stay, the MISO Transmission Owners request that the Commission stay the effectiveness of the Southwest Power Pool, Inc. (SPP) unexecuted, non-firm point-to-point transmission service agreement (Service Agreement) between MISO and SPP. The Service Agreement was accepted for filing, suspended for a nominal period, and placed into effect on January 29, 2014, subject to refund, in an order issued March 28, 2014,[3] in Docket No. ER14-1174-000, *et al*.[4] For the reasons discussed below, we deny the MISO Transmission Owners' Motion to Stay.

I. Background

2. The March 28 Order addressed four proceedings involving the dispute between MISO and SPP over terms of the Joint Operating Agreement between MISO and SPP (MISO-SPP JOA): (1) a recent opinion of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacating and remanding orders of the Commission in Docket Nos. EL11-34-000 and EL11-34-001 that interpreted section 5.2 of the MISO-SPP JOA;[5] (2) a complaint filed by SPP against MISO under sections 206 and 306 of the Federal Power Act (FPA)[6] alleging various violations by MISO of the

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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.; 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.

[2] 18 C.F.R. § 385.212 (2013).

[3] *Southwest Power Pool, Inc*., 146 FERC ¶ 61,231 (2014) (March 28 Order).

[4] The MISO Transmission Owners and others filed requests for rehearing of the March 28 Order. The Commission will address the requests for rehearing in a future order.

[5] *Southwest Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013) (MISO-SPP JOA Remand).

[6] 16 U.S.C. §§ 824e, 825e (2012).

terms of the MISO-SPP JOA, or in the alternative, that the MISO-SPP JOA is no longer just and reasonable (SPP Complaint);[7] (3) a complaint filed by MISO against SPP under sections 206 and 306 of the FPA alleging SPP's violation of the terms of the MISO-SPP JOA (MISO Complaint);[8] and (4) SPP's filing under section 205 of the FPA[9] of the Service Agreement.[10]

3. SPP filed the Service Agreement on January 28, 2014, so that it could assess charges for MISO's use of the SPP transmission system as a result of MISO's real-time energy transfers between the MISO Midwest and MISO South regions, after the Entergy Operating Companies' integration into MISO on December 19, 2013. SPP requested that the Commission accept the Service Agreement, effective January 29, 2014, subject to refund and the outcome of the SPP Complaint and MISO-SPP JOA Remand proceedings.[11] SPP explained that acceptance of the Service Agreement effective January 29, 2014, would enable MISO to take authorized transmission service in accordance with the SPP Open Access Transmission Tariff pursuant to the Service Agreement, avoid paying penalties for taking unreserved service, and properly compensate SPP while the SPP Complaint and MISO-SPP JOA Remand proceedings were pending Commission action. According to SPP, accepting the Service Agreement on the date requested by SPP will provide protection to all parties for MISO's use of SPP's system if the Commission so directs in the orders addressing the MISO-SPP JOA Remand proceedings.[12]

4. In the March 28 Order, the Commission accepted the Service Agreement for filing, suspended it for a nominal period, and made it effective January 29, 2014, subject to refund. In addition, the Commission consolidated Docket No. ER14-1174-000 with

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[7] Southwestern Power Pool, Inc., Complaint and Request for Fast Track Processing and Motion to Consolidate, Docket No. EL14-21-000 (filed Jan. 28, 2014).

[8] Midcontinent Independent System Operator, Inc., Complaint and Motion to Consolidate, Docket No. EL14-30-000 (filed Feb. 18, 2014).

[9] 16 U.S.C. § 824d (2012).

[10] Southwest Power Pool, Inc., Submission of Unexecuted Non-Firm Point-to-Point Transmission Service Agreement, Docket No. ER14-1174-000 (filed Jan. 28, 2014).

[11] *Id.* at 5.

[12] *Id.* at 4-5.

the MISO-SPP JOA Remand proceeding in Docket No. EL11-34-002, the SPP Complaint in Docket No. EL14-21-000, and the MISO Complaint in Docket No. EL14-30-000, and established hearing and settlement judge procedures.

II. Motion to Stay

5. The MISO Transmission Owners request that the Commission stay the effectiveness of the Service Agreement until the Commission acts on MISO's and the MISO Transmission Owners' requests for rehearing of the March 28 Order.[13]

6. The MISO Transmission Owners argue that the Service Agreement imposes operational inefficiencies on the MISO market that would not be cured by refunds. They assert that any amounts paid by MISO will be collected from market participants, including the MISO Transmission Owners, which in turn will be passed on to ultimate customers. The MISO Transmission Owners explain that, due to natural customer turnover and attrition over time, any refunds paid at a later date necessarily will not flow through to the same set of consumers, leaving many of the current customers to subsidize SPP's charges with no possibility of being made whole.[14]

7. Additionally, the MISO Transmission Owners argue that imposing penalty charges harms MISO markets by subjecting MISO market flows to curtailment in favor of SPP market flows, both firm and non-firm. They assert that MISO cannot operate a Balancing Authority efficiently using non-firm service, and thus MISO will restrict flows between MISO Midwest and MISO South to the 1,000 MW allotted to MISO under the Service Agreement. The MISO Transmission Owners also claim that the Service Agreement may force MISO to impose inefficient scheduling rules on its market dispatch or build new transmission capacity to avoid a 200 percent penalty for unreserved use rather than to relieve congestion.[15] The MISO Transmission Owners note that the MISO Independent Market Monitor estimated the costs of MISO imposing dispatch limits at $18 million in the first six weeks.[16]

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[13] MISO Transmission Owners April 28, 2014 Motion to Stay at 2, 4, 8.

[14] *Id.* at 4.

[15] *Id*. (citing MISO April 11, 2014 Request for Rehearing at 4).

[16] *Id*. at 6 (citing MISO Independent Market Monitor March 7, 2014 Comments, Docket No. EL14-21-000, *et al.*, at 2).

III. Responsive Pleadings

8. The Organization of MISO States[17] and the Coalition of MISO Transmission Customers[18] support the Motion to Stay. The Organization of MISO States notes that the March 28 Order distorts market operations in MISO and coordinated market regions.[19] It claims that in response to the March 28 Order, MISO made a filing to limit flows over SPP in order to avoid charges under the Service Agreement; the Organization of MISO States argues that MISO's proposal will result in lost economic benefits to MISO customers.[20] The Coalition of MISO Transmission Customers argue that MISO's

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[17] The Organization of MISO States' members supporting the filing are: Illinois Commerce Commission, Iowa Utilities Board, Louisiana Public Service Commission, Michigan Public Service Commission, Minnesota Public Utilities Commission, Montana Public Service Commission, City of New Orleans, North Dakota Public Service Commission, South Dakota Public Utilities Commission, and Wisconsin Public Service Commission. It filed a motion to intervene out-of-time, a rehearing request, and comments in general support of the Motion to Stay. In this order, we address only the comments in support of the Motion to Stay. The motion to intervene out-of-time was for late intervention in Docket No. ER14-1713-000 and was accepted in the Commission's order in that docket. *Midcontinent Independent System Operator, Inc.*, 147 FERC ¶ 61,194 (2014). The request for rehearing will be addressed in the future order addressing requests for rehearing of the March 28 Order.

[18] The Coalition of MISO Transmission Customers do not list the specific members; their Motion to Intervene in the dockets describes them as "an ad hoc association of large industrial end-users of electricity that operate one or more manufacturing facilities in the Midwest and purchase electric delivery service or bundled electric service" from at least one MISO transmission owner.

[19] The Organization of MISO States May 16, 2014 Comments in Support of Motion to Stay at 1.

[20] *Id*. at 1-2. On April 11, 2014, MISO filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) to include Sub-Regional Power Balance Constraint and Sub-Regional Power Balance Constraint Demand Curve, as well as other related modifications. The Sub-Regional Power Balance Constraint is a net energy injection and withdrawal constraint established to manage intra-regional flows in accordance with applicable seam agreements, coordination agreements, transmission service agreements, or operating procedures. The Sub-Regional Power Balance Constraint Demand Curve is the demand curve used to price Sub-Regional Power Balance Constraints. Midcontinent Independent System Operator,

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reduction to 1,000 MW of flows over SPP's system in order to avoid charges under the Service Agreement has caused MISO to project a greater probability that during the coming summer MISO will rely on Load Modifying Resources to meet peak demand rather than flowing power between MISO South and MISO Midwest.[21] They state that deploying Load Modifying Resources will result in interrupting operations at manufacturing facilities in MISO.[22] They claim that such interruptions cannot be "uninterrupted," which means that losses from stopping or reducing manufacturing operations may not be remedied by refunds the Commission may order.[23]

9. The Organization of MISO States recommends that the Commission issue a stay to maintain the status quo prior to the March 28 Order and restore economic operations.[24] It alternatively argues that the Commission could modify the March 28 Order's suspension of the Service Agreement for a nominal period, and instead suspend it for the statutory maximum five-month period. The Organization of MISO States asserts that the five-month suspension would follow the Commission's usual suspension practices and would maintain the status quo in the MISO market for the five-month period, and it would provide an incentive for the parties to settle.[25]

10. SPP, the SPP Transmission Owners,[26] and Joint Parties[27] oppose the Motion to Stay. SPP and SPP Transmission Owners contend that by requesting a stay of the

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Inc., Filing of Revisions to MISO Tariff to Include Sub-Regional Power Balance Constraints, Docket No. ER14-1713-000 (filed Apr. 11, 2014). The Commission accepted this filing on June 10, 2014. *Midcontinent Independent System Operator, Inc.*, 147 FERC ¶ 61,194 (2014).

[21] The Coalition of MISO Transmission Customers May 13, 2014 Answer at 1-2.

[22] *Id*. at 2.

[23] *Id*. at 2-3.

[24] The Organization of MISO States May 16, 2014 Comments in Support of Motion to Stay at 2.

[25] *Id*. at 3.

[26] 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 Company; Lincoln Electric System; Omaha Public Power District; The Empire District Electric Company; Westar Energy, Inc.; Sunflower Electric Power

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effectiveness of the Service Agreement until the Commission rules on MISO's and the MISO Transmission Owners' requests for rehearing, the MISO Transmission Owners are requesting a suspension potentially longer than the maximum five-month suspension allowed under FPA section 205. SPP asserts that the Commission has no authority to reject a filing that is not patently deficient, and the Commission can only prevent a non-patently-deficient filing from going into effect by suspending it for a maximum of five months.[28] SPP, the SPP Transmission Owners and Joint Parties argue that the MISO Transmission Owners will not suffer irreparable harm without the stay; rather, SPP, the SPP Transmission Owners and Joint Parties will suffer substantial harm if the stay is granted. Joint Parties argue that granting the Motion to Stay would remove a powerful incentive for MISO to work quickly with the other parties to resolve reliability concerns and to address the issue of fair compensation.[29]

11. The MISO Transmission Owners filed an answer to the answers opposing the Motion to Stay.

IV. Discussion

A. Procedural Matters

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the MISO Transmission Owners' answer; therefore, we will reject it.

B. Substantive Matters

13. We deny the Motion to Stay because it effectively requests that the Commission change the effective date of the Service Agreement from January 29, 2014 to an

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Corporation; Mid-Kansas Electric Company, LLC; Nebraska Public Power District; and Oklahoma Gas & Electric Company.

[27] For purposes of the answer to the Motion to Stay, Joint Parties consists of: Associated Electric Cooperative Inc., Louisville Gas & Electric Company, Kentucky Utilities Company and the Tennessee Valley Authority.

[28] Joint Parties Answer at 1-2 (citing *Amaranth Advisors L.L.C.*, 121 FERC ¶ 61,238, at P 5 (2007)).

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

unspecified date in the future (when the Commission issues an order on rehearing on the March 28 Order). The Commission does not typically alter its determinations as to the time period for suspensions of rates, including service agreements.[30] Moreover, section 2.4(a) of the Commission's regulations provides that the Commission may not suspend a rate schedule after its effective date, even on rehearing.[31] Accordingly, we will deny the Motion to Stay.

The Commission orders:

The Motion to Stay is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[30] *See, e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc*., 111 FERC ¶ 61,142, at P 17 (2005).

[31] 18 C.F.R. § 2.4(a) (2013) ("The Commission cannot suspend a rate schedule after its effective date."); *see e.g.*, *Cooperative Power Assoc. v. FERC*, 733 F.2d 577, 580, *reh'g denied*, 739 F.2d 390 (8th Cir. 1984) (approving Commission's interpretation of the FPA as not allowing the suspension of effective rates subject to a rehearing).