

148 FERC ¶ 61,058
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 No. ER14-1912-000

ORDER GRANTING WAIVER

(Issued July 22, 2014)

1. On May 7, 2014, as amended on June 4, 2014, Midcontinent Independent System Operator, Inc. (MISO) submitted a request for a limited, one-time waiver of certain requirements of Attachment FF (Transmission Expansion Planning Protocol) of MISO's Open Access Transmission Energy and Operating Reserve Markets Tariff (Tariff). This order grants MISO's requested waiver of certain requirements of Attachment FF to its Tariff, as discussed below.

I. Background

2. As part of the overall reforms in Order No. 1000,¹ the Commission required each public utility transmission provider to revise its tariff to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer.² In addition, there must be procedures in place to timely notify transmission developers of whether they satisfy the transmission planning region's

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

qualification criteria and to provide opportunities for a transmission developer to remedy any deficiencies.³

3. On March 22, 2013, the Commission issued an order accepting, subject to modifications, MISO's compliance filing made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.⁴ In the First Compliance Order, among other things, the Commission found that MISO's proposal to determine whether a transmission developer is qualified to submit a proposal to construct and own a competitively bid transmission project partially complied with the qualification criteria requirements of Order No. 1000. The Commission found that, except for the requirement to be a transmission owner or Non-owner Member,⁵ MISO did not explain, and the Tariff did not provide, what qualification criteria a transmission developer must meet to submit a bid. The Commission stated that, without knowing what the qualification criteria are, it could not determine whether the criteria are unduly discriminatory or preferential. Therefore, the Commission directed MISO to revise its Tariff to explicitly state what qualification requirements must be satisfied for a transmission developer to submit a bid.⁶

4. On July 22, 2013, MISO submitted a second compliance filing to comply with Order No. 1000 and the directives of the First Compliance Order. On May 15, 2014, the Commission issued an order accepting, subject to a further compliance filing, MISO's compliance filing.⁷ Among other things, the Commission accepted MISO's proposal to use a prequalification process to: (1) review the applications of all entities who desire to become a Qualified Transmission Developer;⁸ (2) review updated information contained

³ *Id.* P 324.

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 (2013) (First Compliance Order).

⁵ A Non-owner Member is defined as "a member which is not an owner." MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, Article 1, § I.N (Non-owner Member) (0.0.0).

⁶ First Compliance Order, 142 FERC ¶ 61,215 at P 271.

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 (2014) (Second Compliance Order).

⁸ The Tariff defines a Qualified Transmission Developer as "[a] new Transmission Owner, [independent transmission company], or Non-owner Member that submits a Transmission Developer Application and is subsequently found by [MISO] to meet the

in yearly renewal submissions from existing Qualified Transmission Developers to ensure that each continues to meet all the requirements to be a Qualified Transmission Developer; and (3) remove Qualified Transmission Developer status from entities no longer desiring to be Qualified Transmission Developers or no longer meeting the requirements.⁹ Under MISO's prequalification process, each spring, MISO will determine the Qualified Transmission Developers who will be authorized to submit proposals in the next solicitation for New Transmission Proposals (Transmission Proposal Request).¹⁰ MISO will post on its website in January of each year an invitation and application template for prospective transmission developers that are not already Qualified Transmission Developers to submit a Transmission Developer Application.¹¹ Each Qualified Transmission Developer Applicant¹² will have at least 30 days to submit its application.¹³

minimum requirements for a Qualified Transmission Developer as outlined in [s]ection VIII.B of Attachment FF of the Tariff.” MISO, FERC Electric Tariff, Module A, § 1.528a (Qualified Transmission Developer) (1.0.0).

⁹ Second Compliance Order, 147 FERC ¶ 61,127 at P 245 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.B.2 (15.0.0)).

¹⁰ The Tariff defines a New Transmission Proposal as a “proposal to construct, implement, own, operate, maintain, repair, and restore all New Transmission Facilities associated with an Open Transmission Project, in response to a Transmission Proposal Request.” MISO, FERC Electric Tariff, Module A, § 1.455c (New Transmission Proposal) (0.0.0). The Tariff defines a Transmission Proposal Request as “[a]n invitation, including associated requirements, posted by [MISO] on its website, to submit a New Transmission Proposal.” MISO, FERC Electric Tariff, Module A, § 1.671b (Transmission Proposal Request) (0.0.0).

¹¹ The Tariff defines a Transmission Developer Application as “[t]he application submitted by a Qualified Transmission Developer Applicant to [MISO] to become certified as a Qualified Transmission Developer by [MISO].” MISO, FERC Electric Tariff, Module A, § 1.667b (Transmission Developer Application) (0.0.0).

¹² The Tariff defines a Qualified Transmission Developer Applicant as “[a]n entity that submits a Transmission Developer Application.” MISO, FERC Electric Tariff, Module A, § 1.528b (Qualified Transmission Developer Applicant) (0.0.0).

¹³ Second Compliance Order, 147 FERC ¶ 61,127 at P 245 (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.B.2.a (15.0.0)).

5. The Commission also accepted MISO's proposed notification and cure period provisions.¹⁴ Under these provisions, to the extent MISO finds the qualification application deficient of data necessary to support all qualification requirements, it will notify the applicant by e-mail within 30 days of receipt, and the Qualified Transmission Developer Applicant will have 30 days from notification to submit the additional data required. Attachment FF also provides that no additional cure period will be allowed for the purpose of becoming qualified.¹⁵ MISO will certify those Qualified Transmission Developer Applicants that meet the requirements for qualification and will notify Qualified Transmission Developer Applicants of its decisions within 180 days of receipt of each Transmission Developer Application.¹⁶ If MISO does not certify a Qualified Transmission Developer Applicant, it will provide the Qualified Transmission Developer Applicant with a written explanation detailing its determination within 30 days after notification. MISO will also update on its website the list of Qualified Transmission Developers within thirty 30 days of providing notification to the Qualified Transmission Developer Applicants found to be qualified.¹⁷ Those Qualified Transmission Developer Applicants who have not submitted the required information or who MISO judges not to be Qualified Transmission Developers will not be authorized to submit a New Transmission Proposal in the current-year Midwest Transmission Expansion Plan. Qualified Transmission Developer Applicants who are not satisfied with the outcome of the qualification process may request alternative dispute resolution under the Tariff within 30 calendar days of receiving from MISO written explanation of its decision to deny the Transmission Developer Application.¹⁸

6. While the Commission accepted MISO's proposed prequalification process and notification and cure period provisions, it directed MISO to submit a further compliance filing to remove the provisions in its Tariff that exempted incumbent transmission owners from having to satisfy some or all of the qualification requirements.¹⁹

¹⁴ *Id.* P 252.

¹⁵ MISO, FERC Electric Tariff, Attachment FF, § VIII.B.2.a.2.

¹⁶ *Id.* § VIII.B.2.a.3. In the first year of such process, notification will be made within 270 days of receipt of each qualification application. *Id.*

¹⁷ *Id.* § VIII.B.2.a.4.

¹⁸ *Id.* § VIII.B.9.

¹⁹ Second Compliance Order, 147 FERC ¶ 61,127 at P 294.

II. Request for Waivers

7. On May 7, 2014, MISO submitted a limited, one-time waiver of the provision in Attachment FF of its Tariff that requires MISO to notify a Qualified Transmission Developer Applicant by e-mail within 30 days of receipt of a Transmission Developer Application if there are any deficiencies in the application and provides that the Qualified Transmission Developer Applicant will have 30 days from notification to submit the additional data required.²⁰ MISO requests a limited, one-time waiver to increase both periods to 60 days.²¹

8. MISO states that, after stakeholder discussion, it posted its prequalification Qualified Transmission Developer Application on its website on January 31, 2014 and received its first application on April 7, 2014. MISO states that it has received 30 applications.²² MISO states that during this first prequalification process, it has identified several areas that require further evaluation and consultation with applicants; because applicants are using the prequalification application for the first time, many applicants either have detailed questions about how to respond to the application, or have responded in ways unanticipated by MISO. MISO states that a significant number of the applications either lack certain requested information or present issues that would justify marking the application deficient and returning it to the applicant with instructions to cure the deficiencies within 30 days. However, MISO states that because this is the first year of the prequalification process, MISO desires to work with applicants in order to cure the deficiencies rather than simply returning the applications as deficient.²³ Therefore, MISO requests an extension of the review and cure periods to facilitate the application process. MISO states that it does not anticipate that the requested extensions will extend to subsequent periods or otherwise delay the bidding process. MISO argues that its requested waiver will ensure that each application receives thorough evaluation and will provide each applicant a sufficient period of time to cure identified deficiencies.²⁴

²⁰ MISO, Waiver Request, Docket No. ER14-1912-000, at 4 (filed May 7, 2014) (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.B.2.a.B) (MISO Waiver Request).

²¹ *Id.* at 5.

²² *Id.* at 3.

²³ *Id.* at 4.

²⁴ *Id.* at 5.

9. On June 4, 2014, MISO amended its waiver request in response to the Commission's directives in the Second Compliance Order that required MISO to revise certain of the qualification requirements and to remove the exemption for incumbent transmission owners from having to meet some or all of the qualification requirements.²⁵ MISO states that these directives have resulted in MISO needing to: (1) reopen the 2014 Qualified Transmission Developer application process for incumbent transmission owners; (2) revise various submission requirements and allow previous applicants an opportunity to comply with the new requirements; and (3) make corresponding changes to the Qualified Transmission Developer application process.²⁶

10. Therefore, MISO amends its May 7, 2014 request for a one-time waiver of the 30 day notice and cure periods in section VIII.B.2.a.B of Attachment FF.²⁷ In addition, MISO further requests a limited, one-time waiver of the provision in section VIII.B.2.a.A of Attachment FF that requires MISO to post on its website an invitation to submit Transmission Developer Applications in January of each year and that potential Qualified Transmission Developer Applicants must submit their application by the deadline specified in the invitation.²⁸

11. Specifically, MISO requests waiver of these Attachment FF provisions and seeks: (1) an 83-day limited, one-time extension of the initial 30-day review period for Qualified Transmission Developer applications so that MISO will have until July 29, 2014, to review applications submitted by the original April 11, 2014 deadline; (2) a 30-day extension of the 30-day deficiency cure period to allow applicants that submitted applications by the original April 11, 2014 deadline to cure application deficiencies identified by MISO within 60 days of notification; (3) an extension of the original

²⁵ MISO, Amended Waiver Request, Docket No. ER14-1912-000, at 1-2 (filed June 4, 2014) (citing Second Compliance Order, 147 FERC ¶ 61,127 at P 294) (MISO Amended Waiver Request). Also on June 4, 2014, in Docket No. ER13-187-006, MISO submitted proposed revisions to its Tariff that require incumbent transmission owners to participate in the Qualified Transmission Developer prequalification process and to remove Tariff language that automatically found that incumbent transmission owners satisfied certain requirements, in compliance with the Second Compliance Order. MISO's June 4, 2014 filing, in Docket No. ER13-187-006, is currently pending before the Commission.

²⁶ MISO Amended Waiver Request at 4-5.

²⁷ *Id.* at 6.

²⁸ *Id.* (citing MISO, FERC Electric Tariff, Attachment FF, § VIII.B.2.a.A).

April 11, 2014 qualification application deadline to August 4, 2014 so that incumbent transmission owners that the Second Compliance Order required to become Qualified Transmission Developers can submit applications; (4) a 15-day extension of MISO's initial 30-day review period, until September 18, 2014, to review applications received from incumbent transmission owners by the August 4, 2014 deadline; and (5) a 15-day extension of the 30 day deficiency cure period to allow incumbent transmission owners that submit applications by the August 4, 2014 deadline to cure application deficiencies identified by MISO within 45 days of notification.²⁹

12. MISO states that it has acted in good faith and makes this request for the benefit of entities that wish to submit qualification applications, as well as to meet the requirements of the Second Compliance Order. MISO states that the requested waiver is of a limited scope and narrowly tailored to the specifically applicable provisions of its Tariff. MISO states that it addresses the specific and concrete problem of implementing Commission-mandated changes to a 2014 prequalification process that was substantially advanced prior to the Commission's changes and that now must be partially restarted. It also allows incumbent transmission owners, who were exempt from prequalification at the time of the original April 11, 2014 qualification application deadline, a new deadline and opportunity to participate in the Qualified Transmission Developer prequalification process, as mandated by the Second Compliance Order. Finally, MISO states that the waiver will not have undesirable consequences; MISO does not believe that extending the periods as requested herein will require it to extend subsequent periods or otherwise delay the bidding process.³⁰

III. Notice of Filing

13. Notice of MISO's May 7, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 28,504 (2014), with interventions, comments, and protests due on or before May 28, 2014. Exelon Corporation; Consumers Energy Company; American Electric Power Service Corporation; Wisconsin Electric Power Company; and Great Lakes Utilities, Indiana Municipal Power Agency, Madison Gas and Electric Company, Missouri Joint Municipal Electric Utility Commission, Midwest Municipal Transmission Group, Missouri River Energy Services, and WPPI Energy (collectively, Midwest TDUs) filed timely motions to intervene.

²⁹ *Id.* at 6-7.

³⁰ *Id.* at 7-8.

14. Notice of MISO's June 4, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 33,744 (2014), with interventions, comments, and protests due on or before June 18, 2014. Public Service Enterprise Group Incorporated and MISO Transmission Owners³¹ filed timely motions to intervene.

IV. Discussion

A. Procedural Matters

15. 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

16. The Commission has previously granted limited waiver of tariff provisions where: (1) the applicant has been unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied by granting the requested waiver; and (4) the waiver does not have undesirable consequences, such as harming third parties.³²

³¹ MISO Transmission Owners for purposes of the filings addressed in this order are: Ameren Services Company, as agent for Union Electric Company, Ameren Missouri, Ameren Illinois and Ameren Transmission Company of Illinois; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; 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; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; and Southern Minnesota Municipal Power Agency.

³² See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

17. Applying these standards, we find that granting MISO's request for waiver of certain deadlines in sections VIII.B.2.a.A and VIII B.2.a.B of Attachment FF, as described above, is warranted because such waiver will allow MISO to facilitate its first Qualified Transmission Developer prequalification process and will allow MISO to implement certain of the Commission's directives in the Second Compliance Order. The requested waiver is limited in scope and applies only to the current transmission planning cycle. The requested waiver will also not cause any undesirable consequences because MISO states that the waiver will not cause MISO to have to extend subsequent periods or otherwise delay the bidding process. Under the circumstances presented, we grant MISO's request for waiver of certain provisions of Attachment FF and grant the requested extensions of time MISO requests in order to submit and process Qualified Transmission Developer Applications.

The Commission orders:

MISO's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.