

148 FERC ¶ 61,068
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 28, 2014

In Reply Refer To:
Midcontinent Independent System
Operator, Inc. and Southwest
Power Pool, Inc.
Docket Nos. ER14-2059-000
ER14-2062-000

Midcontinent Independent System
Operator, Inc.
P.O. Box 4202
Carmel, IN 46082-4202
Attention: Gregory A. Troxell

Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223
Attention: Matthew Harward

Dear Mr. Troxell and Mr. Harward:

1. On May 29, 2014, Midcontinent Independent System Operator, Inc. (MISO) and Southwest Power Pool, Inc. (SPP) filed proposed revisions to section 3.3 of Attachment 3 of the Joint Operating Agreement between MISO and SPP (MISO-SPP JOA) (Docket Nos. ER14-2059-000 and ER14-2062-000, respectively). Attachment 3 (Emergency Energy Transactions) provides the terms and conditions, including cost recovery, under which MISO and SPP provide emergency energy to each other. The proposed revisions provide that the transmission costs that one party can recover for providing emergency energy to the other party can include transmission costs incurred pursuant to another transmission provider's tariff and not just the delivering party's tariff.¹

¹ The charges collected under the proposed revisions to section 3.3. of Attachment 3 of the MISO-SPP JOA are referred to as the Emergency Energy Charges.

2. MISO and SPP maintain that the proposed revisions are necessary to allow MISO to recover charges assessed to MISO under an unexecuted, non-firm point-to-point transmission service agreement (Service Agreement) placed into effect by the Commission in an order issued in Docket No. ER14-1174, *et al.*, on March 28, 2014.² According to MISO and SPP, the proposed revisions address the circumstance when MISO provides emergency energy to SPP and exceeds its 1,000 MW contract path capacity between MISO Midwest and MISO South. In this order, the Commission accepts MISO's and SPP's proposed revisions to the MISO-SPP JOA, effective May 30, 2014, as requested.

3. The emergency energy assistance provisions set out in Attachment 3 were put in the MISO-SPP JOA to comply with Requirement R1 of the Emergency Operation Planning NERC Reliability Standard EOP-001-2.1b, which requires each balancing authority to have emergency energy assistance agreements with neighboring balancing authorities. On February 26, 2014, the Commission accepted MISO's and SPP's proposed Attachment 3 to the MISO-SPP JOA in Docket No. ER14-859-000 and Docket No. ER14-863-000, respectively.³

4. The Service Agreement was accepted in the MISO-SPP JOA Order, which addressed four proceedings involving a dispute between MISO and SPP over MISO's use of SPP facilities to flow power between MISO Midwest and MISO South: (1) an opinion of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacating and remanding Commission orders in Docket Nos. EL11-34-000 and EL11-34-001 in which the Commission found that section 5.2 of the MISO-SPP JOA allowed MISO to use SPP facilities to flow power between MISO Midwest and MISO South without compensation to SPP;⁴ (2) a complaint filed by SPP against MISO in Docket No. EL14-21-000 alleging that the MISO-SPP JOA requires MISO to compensate SPP for use of SPP facilities to flow power between MISO Midwest and MISO South above MISO's contract path capacity, or in the alternative, that the MISO-SPP JOA is no longer just and reasonable; (3) SPP's filing of the Service Agreement in Docket No. ER14-1174-000 as a mechanism to charge MISO for flowing power between MISO Midwest and MISO South above MISO's contract path capacity; and (4) a complaint filed by MISO

² *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,231 (2014) (MISO-SPP JOA Order). The charges SPP assesses MISO under the Service Agreement are referred to as the Service Agreement Charges.

³ *Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER14-859-000, -001 (Feb. 26, 2014) (delegated letter order); *Sw. Power Pool, Inc.*, Docket Nos. ER14-836-000, -001. (Feb. 26, 2014) (delegated letter order).

⁴ *Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013).

against SPP in Docket No. EL14-30-000 alleging SPP's violation of the terms of the MISO-SPP JOA. In the MISO-SPP JOA Order, the Commission accepted for filing the Service Agreement, suspended it for a nominal period, and made it effective January 29, 2014, subject to refund. In addition, the Commission consolidated the four proceedings and established hearing and settlement judge procedures.

5. In the instant filing, MISO and SPP propose to revise section 3.3 of Attachment 3 of the MISO-SPP JOA. Section 3.3, among other things, defines the recoverable emergency energy-related transmission charges for direct transactions between MISO and SPP and between MISO or SPP and third party suppliers. Specifically, MISO and SPP propose to revise section 3.3 to broaden the definition of recoverable charges by adding "or costs incurred pursuant to the transmission tariff of any transmission service provider, including the receiving party."⁵ MISO and SPP contend that the additional language will ensure that the provision is broad enough to include any charges SPP assesses to MISO under the Service Agreement if MISO exceeds its 1,000 MW contract path capacity during an emergency energy transaction to SPP.⁶

6. MISO and SPP request waiver of the Commission's prior notice requirements to permit the proposed revisions to section 3.3 to become effective May 30, 2014, one day after the date of filing. MISO and SPP state that the requested effective date is in the public interest. Additionally, MISO and SPP note that no emergency energy transactions have occurred since the Service Agreement was made effective, and state that in the interest of protecting customers, they wish to avoid any potential gap in making transmission providers whole if an emergency energy transaction were to occur before the 60-day notice period were complete. MISO and SPP also request that any charges assessed under the proposed revisions be subject to the refund protection granted for the Service Agreement in the MISO-SPP JOA Order. They request that the refund protection be applied to any charges MISO assesses against SPP as the receiving party as a result of the Service Agreement.⁷

7. SPP also proposes to correct the metadata in its eTariff system associated with Attachment 3 as originally accepted, so that section 5.1 of Attachment 3 will follow section 5.0 of Attachment 3. SPP notes that this change is ministerial and does not revise

⁵ MISO Transmittal at 3; SPP Transmittal at 3.

⁶ MISO notes that it is also proposing similar amendments for its other coordination agreements. MISO Transmittal at n.4. On June 11, 2014, in Docket No. ER14-2159-000, MISO filed similar amendments to its Joint Operating Agreement with PJM Interconnection, LLC.

⁷ MISO Transmittal at 3; SPP Transmittal at 4.

the MISO-SPP JOA in any manner. SPP requests that the correction to the metadata be made effective March 1, 2014, which was the effective date for Attachment 3 as originally accepted.⁸

8. Notice of MISO's filing was published in the *Federal Register*, 79 Fed. Reg. 32,930 (2014) with interventions and protests due on or before June 19, 2014. Notices of intervention were filed by the Council of the City of New Orleans, Louisiana and the Arkansas Public Service Commission. Motions to intervene were filed by Exelon Corporation (Exelon), SPP, NRG Companies,⁹ Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company (collectively KCP&L), and Xcel Energy Services (Xcel).¹⁰ Late-filed motions to intervene were filed by Wisconsin Electric Power Company (Wisconsin Electric), the Missouri Public Service Commission (Missouri Commission) and the Public Utility Commission of Texas (Texas Commission). A motion to intervene and comments were filed by Consumers Energy Company (Consumers Energy).

9. Notice of SPP's filing was published in the *Federal Register*, 79 Fed. Reg. 32,932 (2014) with interventions and protests due on or before June 19, 2014. Motions to intervene were filed by Exelon, MISO, Wisconsin Electric, Sunflower Electric Power Corporation, Mid-Kansas Electric Company, LLC, KCP&L, and Xcel. A late-filed motion to intervene was filed by the Missouri Commission.

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹² we will grant Wisconsin Electric's, the Texas Commission's, and the Missouri Commission's late-filed motions to intervene in the proceedings in which they were filed, given their interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

⁸ *Sw. Power Pool, Inc.*, Docket No. ER14-836-000, -001 (Feb. 26, 2014) (delegated letter order).

⁹ NRG Companies includes NRG Power Marketing LLC and GenOn Energy Management, LLC.

¹⁰ Xcel Energy Services is filing on behalf of its affiliates which include Southwestern Public Service, Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation.

¹¹ 18 C.F.R. § 385.214 (2013).

¹² 18 C.F.R. § 385.214(d) (2013).

11. Consumers Energy states that it does not oppose the proposed revisions to Attachment 3 of the MISO-SPP JOA and recognizes that if MISO must pay charges to SPP pursuant to the Service Agreement, it would be appropriate for MISO to seek to allocate those costs to market participants within MISO. However, Consumers Energy expresses its concern with the cost recovery mechanism that MISO proposed in Docket No. ER14-1736-000 for recovering costs for any charges it incurs under the Service Agreement.¹³ Accordingly, Consumers Energy states that its lack of opposition to the revisions to Attachment 3 of the MISO-SPP JOA should not be construed as acceptance of MISO's proposed cost recovery mechanism in that docket.

12. We agree with MISO and SPP that the current Attachment 3 does not provide a mechanism to ensure that any charges assessed by SPP under the Service Agreement are appropriately assessed to the entity requiring emergency energy. Accordingly, we accept MISO's and SPP's proposed revisions to Attachment 3 to the MISO-SPP JOA to be effective May 30, 2014. We note that MISO and SPP request that "any transmission charges assessed pursuant to these proposed terms be subject to the refund protection granted by the Commission in Docket No. ER14-1174-000."¹⁴ They explain that this "refund protection...[will]...be applied to any charges MISO assesses against SPP as the receiving party as a result of the [Service Agreement]."¹⁵ We interpret this to mean that MISO commits to refund to SPP the portion of the Emergency Energy Charges that MISO assesses SPP as a result of the Service Agreement (the Service Agreement Charge) based on the outcome of the hearing and settlement judge procedures in Docket No. ER14-1174-000. Accordingly, we accept MISO's commitment to refund the Service Agreement Charge portion of the Emergency Energy Charges that MISO assesses SPP, in the event that Service Agreement Charges are refunded to MISO.

¹³ The Commission recently accepted the proposed mechanism, suspended it, and established hearing and settlement judge procedures. *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,206 (2014).

¹⁴ MISO Transmittal at 3; SPP Transmittal at 4.

¹⁵ MISO Transmittal at 3; SPP Transmittal at 4.

13. We also accept SPP's correction to the metadata in its eTariff system associated with section 5.1 of Attachment 3 of the MISO-SPP JOA effective March 1, 2014, as requested.

By direction of the Commission.

Kimberly D. Bose,
Secretary.