150 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Midcontinent Independent System Operator, Inc. — Docket No. ER15-691-000

ORDER GRANTING WAIVER

(Issued February 9 , 2015)

1. On December 19, 2014, Midcontinent Independent System Operator, Inc. (MISO) requested a limited waiver of sections 39.2.5 and 40.2.5 of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), which establishes a $1,000/MWh Energy Offer Price Cap (offer cap) in MISO's day-ahead and real-time energy markets. MISO also requested waiver of section 64.1.4, which describes the process MISO's Independent Market Monitor (IMM) uses to establish reference levels for generation resources in MISO. In response to spikes in natural gas costs caused by extreme cold weather during the winter of 2013/2014, MISO requests that the Commission waive the subject Tariff requirements from December 20, 2014 through April 30, 2015 to allow resources with actual, verifiable incremental energy costs in excess of the $1,000/MWh offer cap to recover these costs by increasing the No Load portion of their offer after consultation with the IMM and that such resources be eligible for make whole payments to recover such costs. We find good cause to grant waiver of MISO's Tariff to the extent necessary to allow resources with incremental energy costs over the $1,000/MWh offer cap to include those excess costs in the No Load component of their offers from December 20, 2014 through April 30, 2015, as discussed below.

I. **<u>Background</u>**

2. MISO states that in its region, higher fuel costs driven by natural gas price spikes caused some resources to experience constraints relating to the $1,000/MWh offer cap on January 28, March 1, March 3 and March 4, 2014.[1] In addition, MISO states that on

[1] MISO Transmittal at 3.

March 2 and 3, 2014, approximately 900 MW of generation in the MISO footprint were offered at the $1,000/MWh offer cap in both the day-ahead and real-time markets, indicating the offers may have been constrained by the offer cap, though these resources were not ultimately committed to serve load.[2] MISO asserts that its analysis indicates that less than 1,000 MW of gas fired generation could be impacted by the $1,000/MWh offer cap when the natural gas prices spike to $67/MMBtu, but if the price spikes above that level, as spot prices did at some points last winter, additional gas fired generation could be impacted by the offer cap.[3]

3. MISO asserts that similar price spikes could occur during the 2014-2015 winter months, and that the offer cap can become uneconomic for resources where the offer cap would proscribe these resources from offering output at their true incremental cost. MISO notes that under the Tariff, "must offer" requirements can require Capacity Resources to offer output, while at the same time the offer cap could restrict them from offering that output at its true incremental cost when that cost exceeds the cap. MISO also notes that the Commission has addressed this issue in other regions and has granted waiver due to reliability concerns arising from extreme weather conditions.[4]

4. MISO also states that it evaluated the option of raising the offer cap to permit resources to submit offers in excess of $1,000/MWh but determined that MISO's market systems had not been sufficiently tested. As such, MISO asserts that raising the cap could result in system errors at some stage of the market clearing or settlement process.[5] Accordingly, MISO requests a limited waiver of sections 39.2.5, 40.2.5, and 64.1.4 of its Tariff from December 20, 2014 to April 30, 2015 to employ a new offer submission process that promotes reliability and certainty in MISO markets during extreme weather conditions. MISO acknowledges that the waiver represents a short-term solution for this season while it works with stakeholders to consider longer-term solutions. MISO states that, in developing a long-term solution, MISO will consider the Commission's efforts to examine issues in price formation in Regional Transmission Organizations (RTO), offer caps, and gas-electric coordination.

[2] *Id.*

[3] *Id.*

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

[5] *Id.* at 9-10.

II. <u>Notice and Responsive Pleadings</u>

5. Notice of MISO's filing was published in the *Federal Register*, 79 Fed. Reg 78,848 (2014), with interventions and protests due on or before January 9, 2015. PSEG Companies,[6] Midcontinent MCN, LLC, NRG Companies,[7] Calpine Corporation, Exelon Corporation, Dynegy Marketing and Trade, LLC, Illinois Power Marketing Company, Wisconsin Electric Power Company, Duke Energy Corporation (Duke Energy),[8] Ameren Services Company, LLC (Ameren Companies),[9] Consumers Energy Company, MidAmerican Energy Company, American Municipal Power, Inc., Midwest Municipal Transmission Group, Direct Energy Business Marketing, LLC (Direct Energy),[10] and Midwest TDUs[11] filed timely motions to intervene. Council of the City of New Orleans, Louisiana, Michigan Public Service Commission, Organization of MISO States, and Arkansas Public Service Commission filed notices of intervention. Illinois Commerce Commission and Missouri Public Service Commission filed out-of-time motions to intervene.

6. America's Natural Gas Alliance (ANGA), Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), and Electric Power Supply Association (EPSA) filed timely motions to intervene and comments. On January 26, 2015, MISO filed an answer to Hoosier's comments.

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[6] PSEG Companies include PSEG Power, LLC and PSEG Energy Resources & Trade LLC.

[7] NRG Companies include NRG Power Marketing LLC and GenOn Energy Management, LLC.

[8] Duke Energy includes Duke Energy Business Services, LLC, Duke Energy Indiana, Inc., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Carolinas, LLC, and Duke Energy Progress, Inc. and Duke Energy Commercial Asset Management, Inc.

[9] Ameren Companies include Ameren Services Company, Ameren Illinois Company, and Union Electric Company d/b/a Ameren Missouri.

[10] Direct Energy includes Energy Business Marketing, LLC and Direct Energy Business, LLC.

[11] Midwest TDUs includes Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, Municipal Energy Agency of Nebraska, and WPPI Energy.

7. EPSA submitted comments supporting the intent behind MISO's waiver request, which is to ensure that generators and capacity suppliers can recover their incremental costs above the offer cap. EPSA states that the MISO request is a critical first step to ensuring that resources are not forced to provide service at a loss based on an outdated offer cap.[12] However, EPSA argues that the MISO proposal has the potential to produce flawed market results, producing inaccurate price signals reflecting resources' incremental costs for providing power, because the proposal does not let cost-based offers over the $1,000/MWh set the market clearing price, and thus that it is not just and reasonable.[13] EPSA urges the Commission to grant MISO's request with the condition that MISO allow offers above the offer cap to set the market clearing price for this winter, and to work with market participants to develop a long -term solution that either removes the offer cap or raises the offer cap sufficiently to allow for resources' incremental costs during all reasonable conditions.[14] Furthermore, EPSA suggests that the Commission, in a separate proceeding, issue specific guidance to all Independent System Operators (ISO)/RTOs to develop a long-term solution by next winter.[15] In its comments, EPSA cites Order No. 719 and a previous Commission ruling in the California Independent System Operator Corporation market to support its argument that it is harmful if market clearing prices do not reflect the cost of the marginal cost unit.[16] EPSA continues that market clearing prices will be artificially suppressed when grid operators call on resources through uplift payment and argues that proposing an uplift payment for offers above the offer cap goes against longstanding Commission precedent.[17] Further, EPSA argues that uplift payments will significantly dampen price signals on which investment decisions are based, which will in turn result in muted investment.[18]

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[12] EPSA Comments at 7.

[13] *Id.* at 6-7.

[14] *Id.* at 9.

[15] *Id.* at 3.

[16] *Id.* at 7 (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 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g,* Order No. 719-B, 129 FERC ¶ 61,252 (2009); *Cal. Indep. Sys. Operator, Corp.*, 141 FERC ¶ 61,069, at P 44 (2012)).

[17] *Id.* at 7-8 (citing *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at PP 40-41 (2014)).

[18] *Id.* at 8.

8. ANGA agrees with the principle that suppliers should be able to offer and recover their actual costs in excess of $1,000/MWh offer cap, and believes that, given that it is already winter, MISO's proposal provides a short-term solution that would allow resources to recoup their actual costs during peak periods. However, ANGA states that this short-term solution is not a perfect solution and does not adhere to market fundamentals but highlights the need for a long-term solution. ANGA argues that offer caps can interfere with the ability of suppliers to develop offers based on market fundamentals. ANGA agrees with MISO that the optimal solution would be to reflect the excess incremental energy costs in the market clearing price. ANGA also recognizes that there are short-term limitations on MISO's ability to make the optimal market changes. Therefore, ANGA commends MISO's short-term proposal to allow resources to recover their actual costs above $1,000/MWh. It urges MISO to work with stakeholders, including those in the natural gas community, to find a long-term solution that will adhere to market fundamentals and principles and provide information necessary for market participants to make informed business decisions, including hedging risk.[19]

9. Hoosier agrees that market participants should be permitted to recover their costs when a market participant's costs exceed the offer cap. However, Hoosier is concerned that MISO's language is ambiguous in describing the costs that may be recoverable if the waiver is granted: MISO states that "recovery of costs in excess of the offer cap will be limited to actual, verified fuel costs," but also refers to "actual, verifiable costs" without a specific reference to fuel costs. Hoosier further points to MISO's reference to the recovery of "incremental energy costs" in excess of $1,000/MWh. Hoosier asks that the Commission require MISO to specify whether the waiver is limited to fuel costs, or, if not, to specify the additional categories of costs that may be included in energy offers that exceed the offer cap.[20]

10. In response to Hoosier's comments, MISO filed an answer clarifying that MISO requests the waiver to apply to "fuel costs, variable operations and maintenance costs, and any other actual, verifiable costs." While acknowledging this is a broad categorization of costs, MISO notes that these costs are subject to IMM review.[21]

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[19] ANGA Comments at 3-4.

[20] Hoosier Comments at 2-3 (citing MISO Transmittal at 2, 4, 7, 8).

[21] MISO Answer at 4.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant Illinois Commerce Commission's and Missouri Public Service Commission's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

14. The Commission has previously granted waiver of tariffs in situations where, as relevant here: (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver did not have undesirable consequences, such as harming third parties.[22]

15. We find that MISO's requested waiver satisfies the aforementioned conditions. The requested waiver is limited in scope in that it is limited in duration to the period from December 20, 2014 to April 30, 2015, and it also limits the resources that can bid above the offer cap to those with verifiable incremental energy costs that exceed the $1,000/MWh offer cap and how those resources can bid. The waiver addresses a concrete problem that resources might be required to provide service to support reliability without being able to recoup the incremental energy costs that they incur, which would discourage resources from offering service at a time when they are needed. Finally, we

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[22] *See, e.g.*, *PJM Interconnection L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014); *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012). *See also, e.g.*, *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); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *accord ISO New England Inc. - EnerNOC*, 122 FERC ¶ 61,297 (2008); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

find potential harm to third parties is mitigated by the IMM review as described below, and that it is appropriate to waive MISO's offer cap requirement and allow market participants, after consultation with the IMM, to include costs above the offer cap in the No Load component of their offer such that they can recover their costs.

16. As further discussed below, we (1) grant waiver of MISO's Tariff to the extent necessary to allow resources with incremental energy costs over the $1,000/MWh offer cap to include those excess costs in the No Load component of their offers from December 20, 2014 through April 30, 2015; (2) clarify that the waiver will apply to any actual, verifiable incremental costs of providing energy, rather than limiting the waiver to fuel costs alone and that market participants with incremental energy costs in excess of $1,000/MWh may not submit No Load offers that exceed their newly devised No Load offer reference levels; (3) require MISO to institute a true-up mechanism within its settlements process, such that make whole payment credits for a resource associated with incremental energy costs in excess of $1,000/MWh result only in the recovery of actual and verifiable costs; and (4) require the IMM to develop and document the procedure or protocol used to determine the assumed dispatch level used to calculate the total amount of incremental energy costs that are to be included in a market participant's No Load offer reference level. Additionally, we require the IMM to submit an informational filing within 30 days of the expiration of the waiver, as described below.

17. As demonstrated during the winter of 2013/2014, fuel costs during winter periods may increase to the point that MISO's current $1,000/MWh offer cap can constrain resources from submitting energy offers that adequately reflect their costs. If similar weather and natural gas supply conditions materialize this winter, some resources could face the untenable position of being forced to offer electricity at levels below their actual cost, or choose not to offer into the market during an especially high-cost period. Accordingly, we grant waiver, subject to the conditions described herein, to ensure resources recover their costs should cost increases of a similar magnitude arise this winter.

18. With respect to parties' arguments that the Commission should order MISO to allow resources that clear and have costs in excess of the offer cap to set market clearing prices, we decline to do so at this time because MISO has indicated that raising the offer cap above $1,000/MWh could introduce software issues and potentially interfere with MISO's market clearing or settlements process. MISO makes clear, and we agree, that MISO's proposed solution is less desirable than an accurate inclusion of costs in the market clearing prices. However, we find that, given technical limitations and lack of time available to test and mitigate the risks involved in modifying the software and related systems, raising the cap would place the MISO system at undue risk. Accordingly, we grant waiver, as conditioned herein.

19. In response to EPSA and ANGA's requests to direct MISO to develop a long-term offer cap solution, the Commission is in the process of considering the broader issue of offer caps and other price formation matters in jurisdictional markets.[23] We find that further discussion regarding changes to the offer cap beyond the winter of 2014/2015 is more appropriately addressed in the Docket No. AD14-14-000 proceeding.

20. Hoosier raised the concern that MISO's waiver request is inconsistent in describing the categories of recoverable costs above the offer cap, creating ambiguity as to whether the waiver only applies to fuel costs, or any type of cost causing a resource's incremental energy costs to exceed the offer cap. MISO clarified in its Answer that the waiver will include all incremental energy costs, including fuel, variable operations and maintenance costs, and any other actual verifiable costs. Although we acknowledge that fuel costs would be the most likely element to cause a unit's incremental costs to exceed the offer cap, the aim of MISO's proposal is to allow resources to recover their actual, verifiable incremental energy costs if they exceed the existing $1,000/MWh offer cap. We find it reasonable to include all categories of currently allowable incremental energy costs that fall above the offer cap to be included in No Load costs.

21. Accordingly, we accept MISO's clarification that the waiver permits resources to recover, through the No Load portion of their offers, any actual, verifiable incremental costs of providing energy, rather than limiting the waiver to fuel costs alone. We further clarify that, in accepting MISO's proposal, we are not allowing market participants with incremental energy costs in excess of $1,000/MWh to submit No Load offers that exceed their newly devised No Load offer reference levels (which will include only the resource's regular No Load costs plus the incremental energy costs in excess of the $1,000/MWh energy offer cap).

22. We are concerned that there may be circumstances where the proposal could allow market participants to recover more than their incurred cost. MISO has proposed that a market participant, in consultation with the IMM, will establish a reference level for the No Load portion of its offer which reflects expected costs in excess of the $1,000/MWh offer cap. Our concern stems from the fact that the total amount that will need to be recovered will depend on the unit's actual dispatch quantity, which is not known with certainty at the time that the No Load offer is submitted. The No Load offer is a fixed amount that does not vary with output, while incremental energy costs, such as fuel costs, vary with output. Accordingly, if the assumed dispatch level incorporated into the No

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[23] FERC, *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, Notice Inviting Post-Technical Workshop Comments, Docket No. AD14-14-000 (January 16, 2015).

Load reference level costs is higher than the actual dispatch, then the resource could receive make whole payments which may exceed the costs it actually incurs.

23. Consequently, we find that MISO must institute a true-up mechanism within its settlements process, such that make whole payment credits associated with incremental energy costs in excess of $1,000/MWh result only in the recovery of actual and verifiable costs. The purpose is to limit a resource's additional revenues recovered through the No Load offer, as related to incremental energy costs above the offer cap, to costs that are actually incurred. Accordingly, we will require such an after-the-fact true-up within the settlement process for the specific resources to ensure such costs are not over-collected.

24. As discussed above, the proposal would require a market participant and the IMM to jointly make assumptions about a resource's expected dispatch in the consultation on adjusting the market participant's No Load reference level to reflect incremental energy costs above $1,000/MWh. We find that in order for the IMM's consultative process to be implemented consistently, assumptions with respect to anticipated dispatch must be developed in a non-discriminatory manner for all resources. For example, during peak periods, it could be appropriate to make the assumption that dispatch will be at resources' individual economic maximum levels. However, there are circumstances where that assumption may not be true. Accordingly, we will require the IMM to develop and document the procedure or protocol used to determine the assumed dispatch level used to calculate the total amount of incremental energy costs that are to be included in a market participant's No Load offer reference level.

25. Finally, given the unique nature of MISO's request, we direct the IMM to submit an informational filing within 30 days of the expiration of this waiver that identifies for the period of the waiver: (1) the total MWh of energy with incremental energy costs in excess of $1,000/MWh that cleared in each of the day-ahead and real-time markets; (2) the total dollar value of incremental energy costs that were included in No Load offers (due to being in excess of the $1,000/MWh energy offer cap); (3) the total dollar value of make whole payment credits that were granted to resources associated with the increase No Load costs in part (2) above; and (4) a list of the intervals, including time stamps, during which resources that cleared in MISO's day-ahead and real-time markets had incremental costs in excess of $1,000/MWh.

<u>The Commission orders</u>:

(A) Waiver of MISO's Tariff is hereby granted to the extent necessary to allow resources with incremental energy costs over the $1,000/MWh offer cap to include those excess costs in the No Load component of their offers from December 20, 2014 through April 30, 2015, as discussed in the body of this order.

(B) The IMM is required to make an informational filing within 30 days of the expiration of MISO’s waiver, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.