

150 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent
System Operator, Inc.

Docket No. ER15-730-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued February 20, 2015)

1. On December 23, 2014, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Midcontinent Independent System Operator, Inc. (MISO) filed proposed revisions to Attachment L (Credit Policy) of the MISO Open Access, Transmission, Energy and Operating Reserve Markets Tariff (Tariff) (December 23 Filing). As explained below, we conditionally accept MISO's filing, effective February 22, 2015, subject to a compliance filing.

I. Background

2. On June 30, 2014, the Commission issued an order conditionally accepting a filing submitted by MISO on May 15, 2014, to revise the rules restricting investments by MISO directors, officers, employees, and agents in the Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc. (Transmission Owners' Agreement), effective July 1, 2014.³ Among other things, MISO added two defined terms to the Transmission Owners' Agreement, "Prohibited Securities" and "Affiliate," and narrowed the requirements in Article Two, Section III.A.2 (Qualifications) and Appendices A (Standards of Conduct) and F (Bylaws) regarding ownership of securities of an

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35, *et seq.* (2014).

³ *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,265 (2014) (June 2014 Order).

owner, member, or user of the MISO transmission system by any MISO director, officer, employee, or agent to require such persons to divest or place in a blind trust all Prohibited Securities. MISO states it has been reviewing ways to improve the processes and documentation created to ensure compliance with the Prohibited Securities requirements.⁴

II. December 23 Filing

3. In the December 23 Filing, MISO proposes revisions to Attachment L (Credit Policy) of its Tariff to: (1) require an Annual Disclosure form⁵ from all Tariff Customers⁶ and Applicants⁷ on which they disclose any Affiliates that are Tariff Customers or MISO Members; (2) request information about the issuance of securities by Tariff Customers, Applicants and their Affiliates; and (3) remove the notary requirement from the Annual Certification form.

4. MISO states that, during its review seeking improvements for complying with the Prohibited Securities requirements, MISO determined that New York Independent System Operator, Inc. and PJM Interconnection, L.L.C. have affiliate disclosure forms in which they ask for information from their members and market participants with regard to securities that are issued by those entities and their affiliates.⁸ MISO states that it views the use of such disclosure forms as a reasonable approach to assist in managing these requirements. Thus, MISO proposes to add Section III.E to Attachment L to provide that: (1) Applicants must provide an executed Annual Disclosure form prior to certification that they meet MISO's minimum participation requirements set forth in Exhibit VI of Attachment L,⁹ and (2) Tariff Customers must submit an executed Annual

⁴ December 23 Filing, Transmittal Letter at 2.

⁵ See December 23 Filing, Exh. VIII (MISO Minimum Participation Criteria – Annual Disclosure).

⁶ Attachment L describes a Tariff Customer as a Transmission Customer, Market Participant or Coordination Customer.

⁷ Under Attachment L, an Applicant is an entity seeking to take any service under the Tariff, hold any firm transmission rights, or become a Transmission Customer or Market Participant.

⁸ See December 23 Filing, Transmittal Letter at 2.

⁹ *Id.* at 2-3.

Disclosure form by April 30 of each year, or be subject to default.¹⁰ In addition, proposed Section III.E provides that Applicants or Tariff Customers must submit information or documentation, upon request, to confirm compliance with the Tariff.

5. MISO explains that the addition of the Annual Disclosure form in Exhibit VIII of Attachment L will allow MISO to have an efficient and standardized method of obtaining needed information from Applicants and Tariff Customers about their Affiliates that are MISO Members or Market Participants. While MISO states that it currently requests such information from Applicants and tries to keep it up to date through its normal credit monitoring processes, it does not have a formal submission requirement in place, and requiring such information on a periodic basis will create efficiencies and improve documentation.¹¹

6. In general, the Annual Disclosure form consists of two parts or tables which must be filled out. The first table requires that an Applicant or Tariff Customer provide the legal names of the Tariff Customer or Applicant and of any Affiliated Tariff Customer or Member in compliance with Attachment L. The second table requires disclosure from an Applicant or Tariff Customer of the issuance of securities by the Ultimate Corporate Parent of Tariff Customers or Applicant and by Other Affiliates. According to MISO, this information will allow MISO's directors, officers and staff to preserve their independence in accordance with MISO's Standards of Conduct.¹²

7. MISO contends that information about the securities issued by Applicants, Tariff Customers, and their Affiliates will create efficiencies and improve documentation of MISO's compliance with its credit policies and Prohibited Securities rules. In this regard, MISO states that knowledge about the capital structure and funding sources for Tariff Customers is an important consideration when performing credit evaluations, noting that cash flows between Tariff Customers and their parents or Affiliates have ramifications on the creditworthiness of those entities and the potential risks posed to the MISO

¹⁰ MISO explains that at the October meeting of the Credit Practices Working Group, MISO proposed consolidating the request for Affiliate and securities information into the existing Annual Certification form in Exhibit VI; however, based on stakeholder feedback, a separate form was created, which is attached in Exhibit VIII of Attachment L. *Id.* at 2.

¹¹ *Id.* at 3.

¹² *See* December 23 Filing, at Tab B, Exhibit VIII.

markets. MISO asserts that obtaining such information will help MISO to protect its ratepayers and ensure liquidity in the MISO markets. Further, MISO states that the Annual Disclosure forms will provide MISO with the information needed to maintain the list of Prohibited Securities required by the Transmission Owners' Agreement which, in turn, helps MISO directors, officers, employees, and agents to avoid conflicts of interest and helps ensure the independence of MISO decision makers.¹³

8. Finally, MISO proposes to remove from the existing Annual Certification form in Exhibit VI of Attachment L the requirement for a notary to sign the form. MISO states that the notary requirement places a burden on Tariff Customers and Applicants who do not have ready access to a notary and is of limited value in protecting the MISO markets and thus can be eliminated.¹⁴

III. Notice of Filing and Responsive Pleadings

9. Notice of MISO's December 23 Filing was published in the *Federal Register*, 80 Fed. Reg. 214 (2015), with interventions and protests due on or before January 13, 2015. A timely motion to intervene and protest was filed by MidAmerican Energy Company (MidAmerican). Timely motions to intervene, raising no substantive issues, were filed by: Wisconsin Electric Power Company; the NRG Companies;¹⁵ American Municipal Power, Inc.; DTE Electric Company; and Consumers Energy Company. On January 28, 2015, MISO filed a motion for leave to answer and answer. On January 30, 2015, MidAmerican filed a motion for leave to answer and answer.

10. In its protest, MidAmerican states that it does not oppose, in concept, the collection of relevant information on Affiliates. However, it is concerned that the new Annual Disclosure form would seek information extending far beyond the data required to monitor creditworthiness and ensure independence; would impose an excessive burden on both MISO and respondents; and would in some cases require information that is not readily available to respondents. MidAmerican suggests modifications to Exhibit VIII that it avers would accomplish MISO's goals without requiring unnecessary data.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

11. Specifically, MidAmerican explains that the second table of MISO's proposed Exhibit VIII requests information that is too broad because it seeks a list of all Affiliates, regardless of any relationship to MISO. MidAmerican notes that its concerns derive from the proposed definition of "Affiliate" in Exhibit VIII.¹⁶ MidAmerican maintains that many MISO Members and Tariff Customers are associated with broadly diversified companies, and such a request would be unduly burdensome. As an example, MidAmerican estimates that almost 4,500 separate entities would meet the definition of a MidAmerican Affiliate, most of which are uninvolved with MISO and operate independently of MidAmerican; therefore, no purpose would be served by providing this extensive list. MidAmerican states that such information is largely irrelevant to MISO purposes because (1) there is no potential for cash flow between MidAmerican and the great majority of its Affiliates, who would also not impact MidAmerican's creditworthiness; and (2) a complete list of Affiliates would not help preserve independence since MISO's directors and employees would not affect the financial performance of such Affiliates.¹⁷ Furthermore, MidAmerican explains that it has no direct access to certain information about those entities, such as stock symbols or their issuance of debt securities, which are requested on the form.

12. MidAmerican instead proposes that Exhibit VIII should collect information only on that subset of Affiliates that could affect the creditworthiness of Tariff Customers or that involve potentially Prohibited Securities, as defined in the Transmission Owners' Agreement. Specifically, MidAmerican asks the Commission to order MISO to modify the second table of Exhibit VIII, requesting information on securities of entities only if: (1) they have an industry code within the "Electric Power Generation, Transmission, and Distribution" industry group under the North American Industry Classification System (NAICS) or is otherwise determined by MISO to be in the electric, power, generation, transmission or

¹⁶ MidAmerican Protest at 4. As proposed, an Affiliate is any individual, corporation, partnership, firm, joint venture, association, joint stock company, trust or unincorporated organization, directly or indirectly controlling, controlled by, or under common control with the Tariff Customer or Applicant. The term "control" means the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more creates a rebuttable presumption of control.

¹⁷ MidAmerican Protest at 4-6.

distribution business; (2) they have been determined by MISO to be a Qualified Transmission Developer (QTD); or (3) they have engaged in activities or transactions under the MISO Tariff or any associated rate schedule in the prior calendar year.¹⁸

13. MidAmerican further requests that the Commission expand the list of entities that are required to submit the Annual Disclosure form. As proposed, Exhibit VIII would be submitted “upon application to become a Market Participant of [MISO] and annually thereafter.” MidAmerican notes that this requirement would apparently not apply to a Tariff Customer that has not applied to become a Market Participant, such as a Tariff Customer that uses MISO transmission service or coordination service only. MidAmerican also notes that independent transmission companies and QTDs who are not Tariff Customers would be exempt from the requirement. MidAmerican requests that the language be revised so that the Annual Disclosure form requirement applies to the following: Transmission Owners, Members, Users, and QTDs.¹⁹

14. Finally, MidAmerican suggests a minor editorial change to the preamble of Exhibit VIII to correct a reference, i.e., the reference should be to Section II.C rather than Section II.B.4).C of Attachment L.

15. In its answer, MISO asserts that the definition of Prohibited Securities as defined in the Transmission Owners’ Agreement covers securities of not just Market Participants and Members, as MidAmerican suggests, but also of securities of certain Affiliates of those Market Participants and Members, including Affiliates that (1) are not otherwise designated within the “Electric Power Generation, Transmission, and Distribution” industry group designation under the NAICS, (2) are not otherwise QTDs, and (3) do not otherwise participate in the MISO markets.²⁰ MISO states that with regard to the Prohibited Securities language that was conditionally accepted in the June 2014 Order, MISO’s intent was to preclude ownership of a broader set of securities that pose concrete conflict-of-interest concerns, and MISO has administered the Transmission Owners’ Agreement based on this intent since the June 2014 Order. MISO states, however, that MidAmerican’s reading of the definition of Prohibited Securities is an understandable one given the language of that definition. MISO acknowledges that that language can be read to prohibit ownership only of securities of entities

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 7-8.

²⁰ MISO Answer at 5.

with an “Electric Power Generation, Transmission, and Distribution” industry group designation under the NAICS and securities of entities that actually participate in the MISO markets.²¹ MISO commits to make a filing in the near future to adjust the Prohibited Securities definition of the Transmission Owners’ Agreement to better reflect MISO’s intended, i.e., broader, scope of that definition.²²

16. However, MISO also responds that it does not wish to impose excessive or unnecessary burdens on its Market Participants when they file their Annual Disclosure forms.²³ As a “reasonable compromise” between the approach suggested by MISO in the December 23 Filing and the approach suggested by MidAmerican, MISO proposes to restrict its request for information by Market Participants to any Affiliate that issues marketable securities for purchase at retail by the general public and: (1) is a MISO member, Market Participant, Tariff Customer, or Applicant; (2) is a QTD under the Tariff; (3) has an industry code within the “Electric Power Generation, Transmission, and Distribution” industry group under the NAICS;²⁴ (4) owns or operates facilities subject to the jurisdiction of the Commission under Part II of the FPA;²⁵ or (5) is a parent company of the reporting Market Participant. MISO maintains that this compromise proposal will address MidAmerican’s concerns regarding the reporting burden, but also will allow MISO to identify Affiliates necessary for appropriate administration of its Prohibited Securities rules. MISO agrees to revise the Annual Disclosure form to reflect this new language if so ordered on compliance.²⁶ In addressing MidAmerican’s request to expand the list of entities that are required to submit the Annual Disclosure form, MISO clarifies that its proposal is only applicable to MISO entities that are subject to the credit policies in Attachment L. MISO

²¹ *Id.* at 5, n. 6.

²² *Id.*

²³ *Id.* at 1.

²⁴ MISO recognizes that not all Market Participants will have access to information regarding the NAICS classifications of their Affiliates; therefore, Market Participants without access to such information will be permitted to submit a broader list of Affiliates, and MISO will perform this function for them. *Id.* n.7.

²⁵ MISO states that this criterion will capture power marketers that otherwise do not own generation, transmission, or distribution assets. *Id.* n.8.

²⁶ *Id.* at 6-7.

explains that its proposal here is only one part of a multi-pronged effort by MISO to collect the necessary Affiliate information from all entities subject to the Prohibited Securities rules. MISO explains that it uses other resources and information requests to obtain the necessary information from entities not otherwise subject to MISO's credit policies in order to identify Prohibited Securities.²⁷

17. In its answer, MidAmerican responds that MISO's alternative proposal in its answer will fully accomplish MISO's goals while reasonably reducing the administrative burden of MISO and its stakeholders.²⁸ With regard to MISO's commitment to make a future filing to revise the definition of Prohibited Securities, MidAmerican states that the Commission need not make that a compliance requirement in this proceeding since MISO's current practice already meets or exceeds the current requirements of the Standards of Conduct.²⁹ With regard to MISO's statement that it uses multiple means to identify Prohibited Securities and did not intend for Exhibit VIII to create an exhaustive list of entities that issue them, MidAmerican concurs that MISO need not require an Exhibit VIII submission from the full spectrum of entities issuing Prohibited Securities.³⁰ Accordingly, MidAmerican asserts that the alternative offered by MISO is reasonable and should be adopted by the Commission.³¹

IV. Procedural Matters

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

19. 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 or answer unless otherwise ordered by the decisional authority. We will accept MISO's and MidAmerican's answers because they provided information that assisted us in our decision-making process.

²⁷ *Id.* at n.3.

²⁸ MidAmerican Answer at 4-5.

²⁹ *Id.* at 5.

³⁰ *Id.*

³¹ *Id.* at 2.

V. Commission Determination

20. We conditionally accept the proposed revisions, effective February 22, 2015, as requested, subject to a compliance filing.

21. We find that MISO's proposal, including its Annual Disclosure form found in Exhibit VIII of Attachment L, as modified by its answer, represents an improvement over the *status quo* in that Tariff Customers and Applicants will provide additional information to MISO to assist MISO in identifying Affiliates necessary for appropriate administration of MISO's credit policies and Prohibited Securities rules. Additionally, as revised in MISO's answer, the Annual Disclosure form satisfies the concerns of the only protester in this proceeding, MidAmerican. Accordingly, we direct MISO to submit a compliance filing within 30 days of the date of this order, to revise Exhibit VIII to reflect the modified reporting requirements addressed in its answer. Regarding MISO's statement that it intends to make a future filing to adjust the definition of Prohibited Securities to better reflect MISO's intended scope of that definition, we will consider such a proposal at such time as it is filed.

22. Additionally, in its compliance filing, we direct MISO to address the following concerns. Section III.E prescribes that "Applicants" and "Tariff Customers" are required to submit the Annual Disclosure form to MISO. To ensure consistency between Section III.E and Exhibit VIII, we direct MISO to submit conforming edits to the Annual Disclosure form to indicate that the information is being reported by "Applicants and Tariff Customers." Additionally, it appears that the second table fails to ask for securities issued by the Tariff Customer or Applicant itself; this should be corrected in MISO's compliance filing.

23. Finally, we agree that Attachment L does not contain a section labelled "II.B.4)C." We agree with MidAmerican that Section II.C (and not "II.B.4).C.")_ is likely the section of Attachment L that MISO intended to reference and therefore direct MISO to revise Exhibit VIII to reflect the correct reference as part of its compliance filing.

The Commission orders:

(A) The proposed revisions to Attachment L of MISO's Tariff are hereby conditionally accepted, effective February 22, 2015, as requested, 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 discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.