151 FERC ¶ 61,277
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. Docket Nos. ER15-1571-000
ER15-1571-001

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued June 30, 2015)

1. On April 28, 2015, as amended on May 18, 2015,[1] pursuant to section 205 of the Federal Power Act (FPA)[2] and Part 35 of the Commission's regulations,[3] the Midcontinent Independent System Operator, Inc. (MISO) filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to modify the approach and thresholds for mitigating Revenue Sufficiency Guarantee (RSG) credits resulting from economic withholding in Narrow Constrained Areas and Broad Constrained Areas. As discussed below, we conditionally accept MISO's RSG Mitigation Filings, effective June 30, 2015, as requested, subject to further compliance.

I. Background

2. Under the Tariff, a resource receives day-ahead RSG credits if MISO commits the resource in the day-ahead energy and operating reserve markets and if the resource then receives insufficient day-ahead energy and operating reserve revenues to cover its as-offered production and operating reserve costs.[4] To fund the RSG credits, pursuant to

[1] MISO, April 28, 2015 Filing, Docket No. ER15-1571-000 (April 28 Filing); MISO, May 18, 2015 Filing, Docket No. ER15-1571-001 (Amended Filing) (together, RSG Mitigation Filings).

[2] 16 U.S.C. § 824d (2012).

[3] 18 C.F.R. pt. 35 (2014).

[4] Tariff, section 39.3.2B.

section 39.3.1A of the Tariff, MISO assesses market participants a day-ahead RSG charge based, among other things, upon their cleared demand bids, virtual bids, and export schedules.

3. Under the Tariff,[5] a resource receives real-time RSG credits if MISO commits it through the Reliability Assessment Commitment process after the close of the day-ahead energy and operating reserve markets and if the resource then receives insufficient real-time energy and operating reserve revenues to cover its as-offered production costs.

4. Currently, Module D of the Tariff provides for mitigation of RSG credits to market participants in Narrow Constrained Areas and Broad Constrained Areas[6] when there is a binding transmission constraint or binding reserve constraint, and when one or more of the market participant's offer parameters fails both conduct and impact tests that are performed on each offer parameter *individually*.[7] MISO's conduct test determines whether each individual offer parameter exceeds its corresponding unit-specific reference level value,[8] while the impact test examines the effect on market prices and settlements. If a particular offer parameter fails the conduct test and the offer parameter fails the impact test by resulting in an increase in the market participant's RSG credit of at least

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[5] Tariff, section 40.2.19.

[6] Tariff section 63.4.1 defines a Narrow Constrained Area as an electrical area identified by the Independent Market Monitor (IMM) that is defined by one or more binding transmission constraints or binding reserve zone constraints that are expected to be binding for at least 500 hours during a given 12-month period and within which one or more suppliers are pivotal. Tariff section 63.4.2 defines a Broad Constrained Area as an electrical area in which sufficient competition usually exists even when there are one or more binding transmission constraints or binding reserve zone constraints, or into which the binding transmission constraints or binding reserve zone constraints bind infrequently, but within which a transmission or reserve constraint can result in substantial locational market power under certain market or operating conditions.

[7] Offer parameters include the various components of production cost (such as start-up cost), the types of products (energy/generation, contingency reserve or operating reserve), and unit limitations (such as start-up time, minimum run time, minimum down time; ramp rates and maximum shutdown limits) relating to Narrow Constrained Areas, and Broad Constrained Areas, respectively. April 28 Filing, Transmittal Letter at 2.

[8] A unit's reference level is a price estimate that is "intended to reflect a Generation Resource's or Stored Energy Resource's marginal costs, including legitimate risk and opportunity costs or justifiable technical characteristics for physical Offer parameters." Tariff, section 64.1.4; *see also* Tariff, section 1.R.

$50/MWh over the resource's commitment period, then the market participant's credit is mitigated by replacing the parameter failing the conduct test with its corresponding reference level for the purpose of calculating the market participant's RSG credit.[9]

5. In contrast, Module D of the Tariff provides for mitigation of RSG credits to a market participant associated with Voltage and Local Reliability Commitments[10] based on a conduct test performed on the *aggregate* as-offered production cost of its resource, thereby recognizing the joint as-offered production cost and on time-based and other non-time and non-dollar based offer parameters.[11] This conduct test is performed on each market participant resource committed for a Voltage and Local Reliability constraint to determine whether its total as-offered production costs exceed its total production costs based on its reference offer parameters. According to the MISO IMM, although there is no explicit impact test[12], the production cost-based conduct test effectively serves as an impact test because every dollar of increased unit production cost will produce an additional dollar of RSG credits for the resource receiving RSG credits.[13]

II. <u>April 28 Filing</u>

6. According to MISO, the IMM has found that the mitigation approach for Voltage and Local Reliability Commitments more effectively addresses the potential exercise of locational market power on a unit's RSG credits than the current mitigation approach used for Narrow Constrained Areas and Broad Constrained Areas. MISO states that, according to the IMM's analysis, the current mitigation approach for Narrow Constrained Areas and Broad Constrained Areas, which involves assessing the conduct and impact with respect to individual offer parameters, enables market participants to modify

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[9] April 28 Filing, Transmittal Letter at 2; Testimony of David B. Patton P 16 (Patton Test.).

[10] Voltage and Local Reliability Commitments are MISO-issued resource commitments in addition to, or in lieu of, commitments resulting from the Security Constrained Unit Commitment in the day-ahead energy and operating reserve market or any reliability assessment commitment, in order to mitigate issues with transmission system voltage or other local reliability concerns. Tariff, section 1.V.

[11] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171 (2012) (conditionally accepting Voltage and Local Reliability Commitment mitigation measures) (VLR Order).

[12] The proposed impact test, also used for VLR mitigation, is an impact test of $0.

[13] April 28 Filing, Patton Test. P 17.

multiple offer parameters that individually do not trigger the Tariff's mitigation measures, but collectively have the effect of substantially increasing RSG credits. MISO states that the combined impact of the changes to the offer parameters would be to inflate such parameters, thereby increasing the total offer cost that would then be guaranteed to the resource through RSG credits. Specifically, MISO observes that the IMM's analysis of real-time RSG credits in 2013 through the first quarter of 2014 indicated that approximately $13 million could have been mitigated by an evaluation of the combined impact of inflated offer parameters, and these RSG costs could have increased if other resources had exploited the current vulnerabilities in the RSG mitigation approach within Narrow Constrained Areas and Broad Constrained Areas.[14]

7. MISO therefore states that, pursuant to the IMM's recommendation, the RSG mitigation framework to be applied within Narrow Constrained Areas and Broad Constrained Areas should conform to the Voltage and Local Reliability Commitment mitigation approach and evaluate the combined effect that a given resource's offer parameters have on its production cost. MISO states that the Voltage and Local Reliability mitigation approach more effectively addresses market power that may be exercised to increase RSG credits. According to the IMM, basing the market power mitigation on the joint effect of all offer parameters is a superior approach for identifying anticompetitive conduct since it precludes offer strategies involving multiple offer parameters, each of which, when only considered individually, would remain within the mitigation conduct thresholds, but that collectively result in sizable increases in the RSG credits to the resource.[15]

8. Regarding the appropriate mitigation conduct threshold, MISO states that the IMM has determined that Narrow Constrained Areas and Broad Constrained Areas should be governed by a threshold of $25 per MWh or a 25 percent increase in as-offered production and operating reserve costs, whichever is greater, rather than the Voltage and Local Reliability Commitment mitigation threshold of 10 percent for production and operating reserve costs. According to MISO, the IMM states that local market power concerns associated with Voltage and Local Reliability Commitments are significantly greater than the concerns relating to Narrow Constrained Areas and Broad Constrained Areas. Consequently, the IMM finds the tighter 10 percent conduct threshold is appropriate for the Voltage and Local Reliability Commitment context, but is too tight for Narrow Constrained Areas and Broad Constrained Areas. MISO concludes that, according to the IMM, the proposed broader conduct thresholds for Narrow Constrained Areas and Broad Constrained Areas provide sufficient latitude in offer costs to account

[14] *Id.*, Transmittal Letter at 3 (citing Patton Test. PP 21-24).

[15] *Id.*, Transmittal Letter at 3; Patton Test. P 18.

for uncertainty regarding the true marginal costs of suppliers, and the reasonable operating restrictions of their resources.[16]

9. MISO also proposes to eliminate the impact test for resources receiving RSG credits in Narrow Constrained Areas and Broad Constrained Areas, by setting the impact test on RSG credits to $0. MISO contends that the Commission has found this approach just and reasonable for the type of potential local market power that could be exercised by units needed for Voltage and Local Reliability Commitments.[17] MISO argues that the same approach is also warranted for Narrow Constrained Areas and Broad Constrained Areas because they involve similar local market power concerns.[18]

10. According to MISO, the IMM first recommended changes similar to the instant proposal in its 2013 State of the Market Report, and MISO first discussed the proposal with MISO's Markets Subcommittee in December 2014. MISO states that it presented draft Tariff revisions to the group, and no comments opposing the changes were received, and one comment expressed support for the amendments.[19]

11. In order to effectuate these changes, MISO proposes to add language to Module D, section 64.1.2 of the Tariff adopting the Voltage and Local Reliability Commitment approach of assessing the collective effect of offer parameters on production cost, and on time-based and other non-time and non-dollar based offer parameters, for purposes of mitigation of RSG credits for Narrow Constrained Areas and Broad Constrained Areas. MISO also proposes a production cost increase threshold of $25 per MWh, or 25 percent, whichever is greater (rather than the Voltage and Local Reliability Commitment-related 10 percent threshold). In section 64.2.1 of the Tariff, MISO also proposes to delete references to the previous designation of an RSG impact threshold of $50 per MW per hour for Narrow Constrained Areas and Broad Constrained Areas. Finally, MISO proposes additional revisions to section 64.2.1 which eliminate an impact test for mitigation of RSG credits in Narrow Constrained Areas and Broad Constrained Areas by

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[16] *Id.*, Transmittal Letter at 4; Patton Test. PP 19-20.

[17] *See* VLR Order, 140 FERC ¶ 61,171 at P 118.

[18] April 28 Filing, Transmittal Letter at 3.

[19] *Id.* at 4.

setting to zero ("$0 per MW per Hour") the threshold for determining any "substantial effect" of RSG credits for unit commitments in Narrow Constrained Areas and Broad Constrained Areas.[20]

III. Notice of Filings and Responsive Pleadings

12. Notice of the April 28 Filing in Docket No. ER15-1571-000 was published in the *Federal Register*, 80 Fed. Reg. 26,916 (2015), with protests and interventions due on or before May 19, 2015. Timely motions to intervene were filed by Consumers Energy Company, NRG Companies,[21] Wisconsin Electric Power Company, and Midwest TDUs.[22] A notice of intervention was filed by Arkansas Public Service Commission. No protests were filed.

13. Notice of the Amended Filing in Docket No. ER15-1571-001 was published in the *Federal Register*, 80 Fed. Reg. 29,697 (2015), with protests and interventions due on or before June 8, 2015. None was filed.

IV. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

V. Discussion

15. We conditionally accept MISO's proposed revisions, as amended, to sections 64.1.2 and 64.2.1 of the Tariff and make them effective June 30, 2015, as requested, subject to a compliance filing discussed below. We note that no intervenors opposed any of MISO's proposed new mitigation thresholds. We find that MISO's proposed new section 64.1.2.h of the Tariff, which contains thresholds for mitigation of RSG credits, is just and reasonable. We find that the proposed conduct thresholds, including the proposed threshold of the greater of $25 per MWh or 25 percent of a resource's

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[20] *Id.* at 5; Amended Filing, Transmittal Letter at 1.

[21] For purposes of this filing, NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

[22] Midwest TDUs is comprised of Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, and WPPI Energy.

production costs and operating reserve costs, are appropriate given the ability of resources that are eligible to receive RSG credits in Narrow Constrained Areas and Broad Constrained Areas to exercise market power, as described by MISO and the IMM. We find that more stringent thresholds for mitigation of RSG credits for resources in Narrow Constrained Areas and Broad Constrained Areas will prevent market participants with such resources from abusing their market power by submitting bid levels or bidding parameters or combinations of bidding parameters substantially different from those in their reference levels.

16. We also find that MISO's proposed revisions to section 64.2.1 of the Tariff, which eliminate the impact test for resources receiving RSG credits in Narrow Constrained Areas and Broad Constrained Areas, are just and reasonable. We note that if a market participant disagrees with the mitigation of its resource, it may use the dispute resolution procedures in section 67 of the Module D mitigation measures of the Tariff or file a complaint at the Commission pursuant to section 206 of the FPA.

17. However, we condition our acceptance of MISO's proposal on MISO making revisions to both its proposed Tariff provisions and certain related provisions in section 64.1.2 to more clearly describe the mitigation which will occur, and to correct associated cross-references in the Tariff. First, section 64.1.2 lacks precision with respect to whether mitigation applies to a generation units' offers that are used in the market model or if it applies simply to the RSG credits paid. While MISO intends for mitigation related to RSG credits to mitigate the RSG credit, rather than the offer parameters that are used in the market model, the distinction is not made clear in the Tariff. Accordingly, we direct MISO to make the following revisions in its compliance filing due within 30 days of the date of this order: (1) revise sections 64.1.2.a and 64.1.2.c to begin "The following thresholds shall be employed by the IMM to identify economic withholding that may warrant the mitigation of a *unit's offer…*;" (2) revise section 64.1.4.e to begin "Economic withholding of Generation Resources needed for Voltage and Local Reliability Commitments may warrant mitigation *of the Day Ahead or Real Time Revenue Sufficiency Credits* for the duration…;" (3) revise proposed section 64.1.2.h to begin "Economic withholding of a Generation Resource committed in a Broad Constrained Area or Narrow Constrained Area may warrant mitigation *of the Day Ahead or Real Time Revenue Sufficiency Guarantee Credits…*;" and (4) revise proposed section 64.1.2.h(i) to state "The Generation Offer results in an increase *in a Generation Resource's Production Costs and Operating Reserve Costs* that exceeds the greater of twenty-five dollars or twenty-five percent (25%) in Production and Operating Reserve Cost due to an increase in the Generation Offer from the applicable Reference Level Generation for a Generation Resource, or…."

18. We also direct MISO to revise section 64.1.2.a.iii to be titled "Contingency Reserve Offers and *Regulating Reserve* Total Costs Offers" so that the reference to Total Cost is not confused with Production and Operating Reserve Costs now discussed in

section 64.1.2, and such that it is consistent with the language within section 64.1.2.a.iii.A. Additionally, we direct MISO to revise the section numbers in section 64.1.2 as follows to appropriately cross-reference sections: (1) re-designate current section 64.1.2.d to be section 64.1.2.c.i; (2) re-designate section 64.1.2.d.i to be section 64.1.2.c.ii; (3) re-designate section 64.1.2.d.ii to be section 64.1.2.c.iii; (4) re-designate section 64.1.2.d.iii be to section 64.1.2.c.iv; (5) re-designate section 64.1.2.e to be section 64.1.2.c.v; (6) re-designate section 64.1.2.f to be section 64.1.2.d; (7) re-designate section 64.1.2.g to be section 64.1.2.e; and (8) re-designate proposed section 64.1.2.h to be section 64.1.2.f. Such revisions are necessary because section 64.1.2.c incompletely, and thus incorrectly, identifies the subsequent sections to which it applies, including proposed section 64.1.2.h proposed in this filing. We direct MISO to make these revisions in its compliance filing due within 30 days of the date of this order.

<u>The Commission orders</u>:

(A) The RSG Mitigation Filings are hereby conditionally accepted for filing, to become effective June 30, 2015, as discussed in the body of this order.

(B) MISO is hereby required 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.