

151 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Acciona Wind Energy USA LLC

Docket No. EL15-69-000

v.

Midcontinent Independent System Operator, Inc.

ORDER DENYING COMPLAINT

(Issued September 2, 2015)

1. On May 27, 2015, Acciona Wind Energy USA LLC (Acciona Wind) filed a complaint against Midcontinent Independent System Operator, Inc. (MISO) (Complaint) pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's regulations.² Acciona Wind alleges that MISO denied or delayed transmission service requests (TSR) for long-term firm point-to-point transmission service, that MISO improperly applied the provisions of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) by restricting transmission service available to Acciona Wind, and that MISO has improperly limited Acciona Wind's ability to access markets administered by PJM Interconnection, L.L.C. (PJM). In this order, the Commission denies the Complaint.

¹ 16 U.S.C. § 824e (2012).

² 18 C.F.R. § 385.206 (2015).

I. Background

A. Acciona Wind

2. Acciona Wind states that it indirectly owns and operates a 180 MW wind generation facility located in South Dakota (Tatanka Project).³ Acciona Wind also states that it indirectly owns 100 percent of the Class B membership interests in Tatanka Wind Holding LLC, which in turn owns one hundred percent of the interests in Tatanka Wind Power, LLC (Tatanka Wind).⁴

3. Tatanka Wind, MISO and Montana-Dakota Utilities Co. are parties to a generator interconnection agreement on file with the Commission.⁵ The generator interconnection agreement currently provides for 36 MW of Network Resource Interconnection Service (NRIS)⁶ and 144 MW of Energy Resource Interconnection Service (ERIS).⁷ The terms

³ Complaint at 1.

⁴ *Id.* at 2.

⁵ *Id.* The Commission accepted the currently-effective executed generator interconnection agreement under delegated authority. *See Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER15-1032-000 (Mar. 26, 2015). The currently-effective generator interconnection agreement superseded an unexecuted, contested generator interconnection agreement between the parties, accepted by the Commission on May 9, 2014. *See Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,107 (2014).

⁶ The MISO Tariff defines NRIS as:

Interconnection Service that allows Interconnection Customer to integrate its Generating Facility with the Transmission System in the same manner as for any Generating Facility being designated as a Network Resource. Network Resource Interconnection Service does not convey transmission service. Network Resource Interconnection Service shall include any network resource interconnection service established under an agreement with, or the [T]ariff of, a Transmission Owner prior to integration into MISO, that is determined to be deliverable through the integration deliverability study process.

MISO, FERC Electric Tariff, Module A, § 1.N (Definitions) (33.0.0).

of the generator interconnection agreement provide that all 180 MW of generation will receive NRIS upon the completion of one contingency identified in the generator interconnection agreement, a Multi-Value Project (MVP) (i.e., the N. LaCrosse—N. Madison 345 kV transmission line), expected to be completed by December 31, 2018.⁸

4. Tatanka Wind currently has two transmission service agreements with PJM for network integration transmission service. The first transmission service agreement provides for 108 MW of network integration transmission service on the PJM system from June 1, 2015 through June 1, 2020.⁹ The second transmission service agreement provides for an additional 72 MW of network integration transmission service on the PJM system from June 1, 2018 through June 1, 2023.¹⁰

5. Tatanka Wind has submitted five TSRs to MISO for long-term firm point-to-point service to PJM, described as follows.¹¹

6. On January 6, 2015, Tatanka Wind filed the first two TSRs.¹² Of these, one TSR was for 36 MW for the period June 1, 2015 to June 1, 2016, and the second was for

⁷ The MISO Tariff defines ERIS as:

The interconnection of a Generation Resource to the Transmission System or distribution system, as applicable, to be eligible to deliver the Generation Resource's electric output using the existing firm or non-firm capacity of the Transmission System on an as available basis.

MISO, FERC Electric Tariff, Module A, § 1.E (Definitions) (38.0.0).

⁸ Complaint at 6 (citing Ex. A).

⁹ *Id.* at 8 (citing Ex. F).

¹⁰ *Id.* (citing Ex. G).

¹¹ *Id.* at 8-9; MISO Answer at 2-4.

¹² Complaint at 8-9; MISO Answer at 2.

72 MW for the period June 1, 2015 to June 1, 2016.¹³ MISO denied both TSRs due to available flowgate capacity constraints within MISO.¹⁴

7. On January 14, 2015, Tatanka Wind submitted the third TSR for 36 MW for the period June 1, 2015 to June 1, 2020.¹⁵ MISO rejected this TSR due to MISO system capacity constraints, but counteroffered that Tatanka Wind could begin service on August 1, 2016.¹⁶ Acciona Wind accepted this counteroffer.

8. Between January 14 and January 21, 2015, Tatanka Wind filed two additional TSRs for 72 MW each for the period June 1, 2016 through June 1, 2020.¹⁷ MISO performed a system impact study (SIS) for these TSRs (TSR SIS).¹⁸ The TSR SIS indicated system constraints after 2019 and estimated that resolving the constraints would require upgrades.¹⁹ MISO claims the cost of the upgrades to be approximately \$60 million²⁰ while Acciona Wind claims “several hundred million dollars.”²¹ MISO states that it would not grant transmission service without the additional upgrades identified in the TSR SIS.²²

B. Relevant MISO Tariff Provisions

9. MISO provides transmission service on its system pursuant to the applicable terms and conditions of Module B (Transmission Service) to its Tariff. Section 17.1 (Application) of the MISO Tariff requires that TSRs are to be submitted on MISO’s Open

¹³ Complaint at 8-9; MISO Answer at 2.

¹⁴ Complaint at 9; MISO Answer at 2.

¹⁵ Complaint at 9; MISO Answer at 2-3.

¹⁶ Complaint at 9; MISO Answer at 2-3.

¹⁷ Complaint at 9; MISO Answer at 3-4.

¹⁸ Complaint at 9; MISO Answer at 3-4.

¹⁹ *See* Complaint, Ex. D at 17-19.

²⁰ MISO Answer at 4.

²¹ Complaint at 9.

²² MISO Answer at 4.

Access Same Time Information System (OASIS). MISO makes a determination of available transfer capability using the Flowgate Methodology (i.e., Available Flowgate Capability (AFC)) pursuant to Attachment C (Methodology to Assess Available Transfer Capability). In the event sufficient transfer capability does not exist to accommodate a TSR of longer than one year, MISO will respond by performing a TSR SIS pursuant to Attachment D (Methodology for Completing a System Impact Study) to determine whether the TSR requires the construction of upgrades to relieve any potential constraints.²³

10. In a series of orders issued in 2011, the Commission accepted MISO's proposal to revise section 19 of its Tariff to facilitate the export of generation located within MISO to load located outside of the MISO region by allowing the pre-certification of transmission paths that can be used for exports.²⁴ Section 19.1.1.2 (Pre-Certified Point-to-Point Transmission Drive-Out Paths) provides that a TSR can be approved without a new TSR SIS if the service request involves a pre-certified transmission path to MISO's border. Further, it provides that MISO will conduct annual transmission studies to determine the amount of transmission capacity available to make exports over the following five years by any resources in the MISO region. MISO maintains and updates a list of drive-out paths and available transmission on each path over the five-year planning window on its OASIS. In addition to the annual study, MISO updates the values of the available transmission capacity on each path when transmission service on one of the paths is sold to a transmission customer so that pre-certified paths do not become oversubscribed.²⁵

²³ MISO uses the OASIS Automation tool to identify AFC on all MISO flowgates with the impact of the requested TSR for the next 18 month window. To the extent the TSR is beyond 18 months of the queued date, MISO does not use the OASIS Automation tool results and will rely on "offline" analysis only. See MISO Transmission Planning Business Practices Manual, BPM-020-r12 (dated April 28, 2015) at § 5.3.2.1 (Flow-Based Analysis); see also *id.* § 5.3.2.2 (Network Analysis Concepts).

²⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,119 (Pre-Certification Order), *order on compliance*, 136 FERC ¶ 61,148 (2011).

²⁵ MISO, FERC Electric Tariff, Module B, § 19.1.1.2 (Pre-Certified Point to Point Transmission Drive-Out Paths) (31.0.0). This section of the MISO Tariff provides, in relevant part:

Once per year, as part of the planning process described in Attachment FF of this Tariff, the Transmission Provider will conduct a study to determine all Firm Point-to-Point transmission drive out paths where service can be offered

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II. Complaint

11. On May 27, 2015, Acciona Wind filed a complaint against MISO alleging that MISO inappropriately denied or delayed certain TSRs associated with the output from the Tatanka Project. Acciona Wind also alleges that MISO is improperly applying its Tariff provisions by restricting transmission service available to Acciona Wind related to the Tatanka Project. Acciona Wind further alleges that MISO has improperly limited Acciona Wind's ability to access the PJM market. Acciona Wind also requests fast-track processing of the Complaint.²⁶ Acciona Wind requests that the Commission direct MISO to: (1) approve the Tatanka Project TSR to provide 36 MW of firm transmission service for delivery to PJM effective June 1, 2015, or as soon as possible thereafter; (2) approve the Tatanka Project TSR to provide an additional 72 MW of firm transmission service for delivery to PJM effective June 1, 2015, or as soon as possible thereafter; and (3) include the Tatanka Project in MISO's pre-certified path study process in order to facilitate point-to-point transmission service beginning January 1, 2019 upon the completion of the contingent MVP expected to be in-service December 31, 2018.²⁷

12. First, Acciona Wind states that it submitted a TSR for the period June 1, 2015 to June 1, 2020 for its 36 MW of NRIS. Acciona Wind alleges that the reason MISO denied its request, but counteroffered with service commencing August 1, 2016, is because MISO is discriminating against generators that plan to use the MISO transmission system in order to sell into the PJM markets.²⁸ Therefore, Acciona Wind requests that the Commission direct MISO to approve the Tatanka Project TSR to provide 36 MW of firm

while maintaining the deliverability of Network Resources to Network Load, plus existing long-term Firm Point- to-Point service requests for the next 5 year planning horizon. The study will determine the available transmission service from each of Transmission Provider's sources to each neighboring transmission provider, with the service valid for one year corresponding to the planning year defined in [Resource Adequacy Requirements] of this Tariff. Such study results will be updated upon granting any long-term transmission service request.

²⁶ Complaint at 2, 21-22.

²⁷ *Id.* at 22-23.

²⁸ *Id.* at 8-9, 16-17.

point-to-point transmission service for delivery to PJM effective June 1, 2015, or as soon as possible thereafter.

13. Second, Acciona Wind claims that PJM has conducted a study which determined that adequate capacity exists on the MISO transmission system to deliver a total of 108 MW beginning June 1, 2015 and the full 180 MW beginning June 1, 2018, without upgrades.²⁹ Acciona Wind argues that MISO should accept PJM's study results and that MISO must update its "AFC calculations to honor the constraints identified and service granted on neighboring systems, like PJM."³⁰

14. Acciona Wind alleges that the TSR SIS that MISO performed is incorrect and claims that MISO is unduly discriminating against Acciona Wind along with other generators seeking to sell into the PJM market across the MISO transmission system. Therefore, Acciona Wind requests that the Commission direct MISO to approve the Tatanka Project TSR to provide an additional 72 MW of firm transmission service for delivery to PJM effective, June 1, 2015, or as soon as possible thereafter.

15. Third, Acciona Wind notes that MISO's evaluation of TSRs includes a Commission-approved pre-certified path study process, which is specified in section 19.1.1.2 of the MISO Tariff. Acciona Wind asserts that section 19.1.1.2 of the MISO Tariff permits transmission customers with NRIS to enter the pre-certified screening process and be approved for export transmission service without being subject to additional studies. Acciona Wind alleges that MISO interprets its Tariff to exclude the bulk of the Tatanka Project from the pre-certified path study process because MISO stated that only NRIS that is "unconditional" as of the date a TSR is submitted is eligible for inclusion. Acciona Wind alleges that the MISO Tariff makes no distinction between "conditional" and "unconditional" NRIS.

16. Acciona Wind believes that, upon completion of the MVP (the contingency identified in the generator interconnection agreement) with a projected in-service date of December 31, 2018, Acciona Wind should be able to move power to PJM. Acciona Wind claims that MISO will not permit the Tatanka Project to enter into the pre-certified path study process before being allowed to connect on January 1, 2019. Acciona Wind claims that this will result in an 18-month delay because MISO requires all generation to

²⁹ *Id.* at 18 (citing Ex. F and Ex. G).

³⁰ *Id.* (citing MISO, FERC Electric Tariff, Attachment C, section 2.1).

have “unconditional” NRIS before MISO will evaluate it in the pre-certified path process and the evaluation will take approximately 18 months.³¹

17. Acciona Wind argues that the MISO Transmission Planning Business Practices Manual supports including generation from the Tatanka Project pursuant to the interconnection agreement in the modeling of available export capacity to PJM during the five year planning window of the pre-certified path study process.³² Acciona Wind alleges that section 5.3.2.2 of the MISO Transmission Planning Business Practices Manual specifies that “[a]ll MTEP Appendix A projects *that are expected to be in service* should be included in each of the models that will be utilized for the study.”³³ Acciona Wind argues that this provision in the MISO Transmission Planning Business Practices Manual requires MISO to include generation that lists MTEP Appendix A projects as a final contingency required before granting NRIS.³⁴

18. Acciona Wind alleges that MISO claims that generation projects with NRIS that are subject to the construction of “conditional” facilities are ineligible for the pre-certified path study process i.e., only generation with “unconditional” NRIS are eligible for the pre-certified path study process. Acciona Wind states this means that MISO will only evaluate generation for pre-certification in conjunction with granting NRIS interconnection service.

19. Acciona Wind asserts that MISO will not allow generation projects to enter into the pre-certified path study process until the projects are considered “deliverable,” pursuant to section 19.1.1.2 of the MISO Tariff. Acciona Wind argues that the remaining generation will be “deliverable” upon completion of the MVP listed as a contingency in the generator interconnection agreement. Acciona Wind also argues that the Tatanka Project will become “deliverable” within MISO’s five-year planning horizon for the pre-certified path study process, and that MISO should consider the full Tatanka Project output as “deliverable” for the period after the projected MVP in-service date.

³¹ Acciona Wind states that MISO has included 36 MW of NRIS for the Tatanka Project in the pre-certified path study process for 2016-2018, but that MISO has not included the increase in NRIS of 144 MW in 2019. *See id.* at n.30.

³² Complaint at 13 (citing MISO Transmission Planning Business Practices Manual, BPM-020-r11 (Nov. 31, 2014) at § 5.3.2.2).

³³ *Id.* (emphasis added by MISO).

³⁴ *Id.* at 13.

20. Acciona Wind points to section 15.5 of the MISO Tariff to support its argument that MISO has the explicit authority to defer providing transmission service until the construction of necessary new transmission facilities or upgrade are completed.³⁵ Therefore, Acciona Wind requests that the Commission direct MISO to include the Tatanka Project in MISO's pre-certified path study process in order to facilitate point-to-point transmission service beginning on January 1, 2019, subject to completion of the final contingent network upgrade.

III. Notice of the Filing and Responsive Pleadings

21. Notice of the Complaint was published in the *Federal Register*, 80 Fed. Reg. 32,110 (2015), with protests and interventions due on or before June 16, 2015. Timely motions to intervene were filed by NRG Companies, E.ON Climate & Renewables North America LLC, Midwest Transmission Dependent Utilities (Midwest TDUs),³⁶ and MISO Transmission Owners.³⁷ MISO filed a timely answer. On July 1, 2015, Acciona Wind filed an answer to MISO's answer.

³⁵ *Id.* at 15 (citing MISO, FERC Electric Tariff, Module B, § 15.5 (Deferral of Service)). This section of the MISO Tariff provides:

The Transmission Provider may defer providing service until construction is completed of new transmission facilities or upgrades needed to provide Firm Point-To-Point Transmission Service whenever the Transmission Provider determines that providing the requested service would, without such new facilities or upgrades, impair or degrade reliability to any existing firm services.

³⁶ Midwest TDUs include: Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Municipal Energy Agency of Nebraska, and WPPI Energy.

³⁷ MISO Transmission Owners include: Ameren Services Company; American Transmission Company LLC; Arkansas Electric Cooperative Corporation; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC

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IV. MISO Answer

22. MISO believes that Acciona Wind's complaint is misplaced and reflects a misunderstanding of MISO's study process and interconnection service terms. MISO specifies that: (1) transmission service and interconnection service are independent processes; (2) network integration transmission service on PJM does not automatically grant service through MISO to PJM; (3) NRIS that is subject to conditions cannot follow the same processes as NRIS without conditions; and (4) pre-certified transmission requests follow a different path than non-pre-certified requests.

23. First, MISO states that Acciona Wind claims that MISO is denying 36 MW of NRIS from June 1, 2015 – June 1, 2016 that were already studied and granted under the 2014 Pre-Certified Path Study Process.³⁸ MISO asserts that Acciona Wind's Exhibit B omits several notes to the report, including:

**note: The value for the first 18 month from the TSR queue date is superseded by the AFC process using the OASIS Automation tool.*

*note: The pre-certified TSR can only be granted within 5 years from the TSR queue date. The posted list could be longer.

*note: The pre-certified TSR will [only] have roll-over rights.³⁹

Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); 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; Prairie Power Inc.; South Mississippi Electric Power Association; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

³⁸ MISO Answer at 15 (citing Complaint, Ex. C (Excerpt of MISO Pre-Certified Study Process List—June 2014)).

³⁹ *Id.* at 15-16 (citing MISO Answer, Att. 1) (emphasis added by MISO).

Thus, MISO argues that it is clear that the report does not grant the Tatanka Project with 36 MW of pre-certified Point-to-Point Transmission Service; rather the report grants service subject to available flowgate capacity (and the available flowgate capacity tool).⁴⁰

24. With regard to Acciona Wind's argument that section 5.3.2.2 of the MISO Transmission Planning Business Practice Manual includes an exception to the rule that all firm TSRs are evaluated by the AFC tool that should apply to the Tatanka Project, MISO argues that this exception is for pre-existing network service or an equivalent, not the Point-to-Point service requested by Acciona Wind for the Tatanka Project beginning June 1, 2015.⁴¹

25. Second, with respect to Acciona Wind's arguments that: (1) MISO is double counting constraints that were addressed when PJM evaluated Acciona Wind's service request on the PJM system; and (2) PJM has granted transmission service on the PJM system and, therefore, Attachment C (Methodology to Access Available Transfer Capability) to the MISO Tariff requires MISO to "update its AFC calculations to honor the constraints identified and service granted on neighboring systems, like PJM,"⁴² MISO argues that Acciona Wind mistakenly equates service on the PJM system with service on the MISO system.⁴³ MISO states that section 2.1 of Attachment C does not mean that MISO's studies will not find AFC concerns on MISO's system or adjacent systems even if PJM permits a TSR on the PJM system without network upgrades.⁴⁴ MISO also states that section 5.1.7 of the PJM-MISO Joint Operating Agreement (PJM-MISO JOA) requires MISO and PJM to coordinate, but each will make independent determinations regarding TSRs.⁴⁵ MISO argues that the PJM-MISO JOA does not require MISO to grant

⁴⁰ *Id.* at 16.

⁴¹ *Id.*

⁴² *Id.* at 17 (citing Complaint at 17-19).

⁴³ *Id.*

⁴⁴ *Id.* at 17-18.

⁴⁵ MISO Answer at 7-8 (quoting section 5.1.7 of the PJM-MISO JOA). According to the MISO Answer, section 5.1.7 of the PJM-MISO JOA provides:

5.1.7 Calculated Firm and Non-firm AFC.

Purpose: Data exchange is required to determine if a transmission service reservation (or interchange schedule)

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a TSR without requiring upgrades simply because PJM granted transmission service.⁴⁶ MISO disagrees with Acciona Wind's argument that MISO's refusal to grant service on a pre-certified path when PJM has granted NITS is undue discrimination.⁴⁷ MISO states that "[t]reating projects differently when they are not similarly situated is not undue discrimination and a project seeking NRIS within MISO is not similarly situated with a project seeking a separate [MISO] Tariff product, Point-to-Point Transmission Service, to PJM."⁴⁸

26. Lastly, MISO responds to Acciona Wind's argument that MISO did not properly consider TSRs for service after January 1, 2019 under its pre-certified path study process, pursuant to section 19.1.1.2 of the MISO Tariff. MISO states that Acciona Wind believes that it should qualify for the pre-certified path study process because Acciona Wind

will impact Flowgates to an extent greater than the (firm or non-firm) AFC and procedures are necessary to assure that each Party respects the other Party's Flowgates as follows.

Requirements:

(a) The Parties will exchange firm and non-firm AFC for all relevant Flowgates.

(b) *Each Party* will accept or reject transmission service requests based upon projected loadings on its own Flowgates as well as on RCFs [Reciprocal Coordinated Flowgates] under Article VI.

(c) *Each Party* will limit approvals of requests for transmission service between the Parties, including roll-over transmission service, so as to not exceed the lesser of the sum of the thermal or stability capabilities of the tie lines that interconnect the Parties, provided that firm transmission service customers retain the rollover rights and reservation priority granted to them under the applicable Party's OATT, and further provided that if explicitly stated in the applicable service agreement, a Party may limit rollover rights for new long-term firm service if there is not enough AFC to accommodate rollover rights beyond the initial term.

⁴⁶ MISO Answer at 8 (citing Pre-Certification Order, 134 FERC ¶ 61,119 at P 35 n.23).

⁴⁷ *Id.* at 19 (citing Complaint at 20).

⁴⁸ *Id.*

would have NRIS that is no longer subject to conditional facilities that are expected to be in service by that date.⁴⁹ MISO also responds to Acciona's assertion that the MISO Tariff does not expressly distinguish between "conditional" and "unconditional" NRIS. MISO states that Acciona mistakenly equates NRIS with NITS and misinterprets the Pre-Certified Path Study Process.⁵⁰

27. MISO explains that section 19.1.1.2 (Pre-Certified Point to Point Transmission Drive-Out Paths) states in part, as follows:

Once per year, as part of the [transmission] planning process described in Attachment FF of this Tariff, [MISO] will conduct a study *to determine all Firm Point-to-Point transmission drive out paths where service can be offered while maintaining the deliverability of Network Resources to Network Load*, plus existing long-term Firm Point-to-Point service requests for the next 5 year planning horizon. The study will determine the available transmission service from each of [MISO]'s sources to each neighboring transmission provider, with the service valid for one year corresponding to the planning year defined in [Resource Adequacy Requirements] of this Tariff. Such study results will be updated upon granting any long-term transmission service request.⁵¹

28. MISO argues that the language of section 19.1.1.2 supports its position that generation projects with NRIS that are subject to network upgrades are ineligible for this process.⁵² Specifically, MISO argues that the requirement to maintain "deliverability" of network resources demonstrates that pre-certified drive-out paths are identified after recognizing all deliverable network resources and existing long-term firm point-to-point TSRs. MISO argues that, because a generation project with NRIS that requires network

⁴⁹ *Id.* at 9-15.

⁵⁰ *Id.* at 10.

⁵¹ *Id.* (citing MISO, FERC Electric Tariff, Module B, § 19.1.1.2 (Pre-Certified Point to Point Transmission Drive-Out Paths) (31.0.0)) (emphasis added by MISO).

⁵² *Id.* at 11.

upgrades is not fully deliverable at the time the study is performed, MISO properly excludes them from the pre-certified path study process.⁵³

29. In addition, MISO argues that, although no distinction is made between “conditional” NRIS (subject to contingent facilities) and “unconditional” NRIS (not subject to contingent facilities), section 19.1.1.2 specifically addresses point-to-point transmission service and does not mention NRIS at all.⁵⁴ MISO states that Pre-Certified Point-to-Point Drive-out Path reports further demonstrate that allowing only fully available NRIS under the Pre-Certified Path Study Process is MISO’s policy.⁵⁵ MISO argues that the Commission does not require every detail to be included in the Tariff and that it is logical that a generation project without full “unconditioned” NRIS that is available for the entire five year period cannot be evaluated as part of the Pre-Certified Path Study Process. MISO states that it permitted the 36 MW for which Tatanka Project had NRIS that was not subject to the conditional facilities to proceed under this process.⁵⁶ MISO states that, as an alternative, the MISO Generator Interconnection Procedures defines a separate “conditional NRIS” service, which Acciona Wind could pursue for the Tatanka Project to attempt to utilize transmission system capacity that may be available prior to the conditional facilities entering service.⁵⁷

30. MISO states that Acciona Wind also reads out of context the language in section 5.3.2.2 of MISO’s Transmission Planning Business Practices Manual stating that “[a]ll MTEP Appendix A transmission projects that are expected to be in service should be included in each of the models that will be utilized for the study.”⁵⁸ MISO states that the pre-certified path study process is not discussed in section 5.3.2.2 and it is unreasonable to grant the Tatanka Project special review through a process which by its terms does not guarantee that TSRs to PJM will be not require further study. MISO states that it reviews TSRs under its process to determine if a SIS is needed and that

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 11-12.

⁵⁶ *Id.* at 11.

⁵⁷ *Id.* at n.34 (citing MISO, FERC Electric Tariff, Attachment X, app. 6 (Pro Forma Generator Interconnection Agreement), art. 4.1.2.3). *See also Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,107 at P 44.

⁵⁸ MISO Answer at 12-13 (citing Complaint at 13).

MISO reasonably followed this process and performed an SIS for Acciona Wind's Tatanka Project for TSRs beginning January 1, 2019.⁵⁹

31. With regard to Acciona Wind's argument that "[f]ailing to include the planned 2019 increase in NRIS unduly discriminates against exporters from the MISO system, in direct conflict with the purpose of the Pre-Certified Path Study Process," MISO states that the Commission already rejected this contention when it disagreed that the pre-certified path study process would lead to disparate treatment of exporting generators and those requesting NRIS "because the Tariff revision merely provides an additional study option and not a service like NRIS."⁶⁰

32. MISO states that it appropriately used its AFC tool and SIS process as identified section 5.3.2.1 of MISO's Transmission Planning Business Practice Manual which states that, "[i]f the start date of the TSR is within the next 18 months of the queued date and the end date is beyond the next 18 months of the queued date, MISO uses the OASIS Automation tool and the offline analysis."⁶¹

33. Lastly, with regard to Acciona Wind's contention that MISO should "defer" providing service until January 1, 2019, when new transmission facilities have been completed and that MISO made such a deferral for the Tatanka Project's existing 36 MW of NRIS by counter-offering a date when service would be available, MISO states that Acciona Wind misreads section 15.5 of the MISO Tariff.⁶² MISO states that section 15.5 of the MISO Tariff does not guarantee a right to have service considered in the pre-certified path study process.⁶³ MISO argues that this language: (1) provides MISO with

⁵⁹ *Id.* at 13.

⁶⁰ *Id.* (citing Pre-Certification Order, 134 FERC ¶ 61,119 at P 36).

⁶¹ *Id.* at 14.

⁶² *Id.*

⁶³ Section 15.5 of the MISO Tariff states:

The Transmission Provider may defer providing service until construction is completed of new transmission facilities or upgrades needed to provide Firm Point-To-Point Transmission Service whenever the Transmission Provider determines that providing the requested service would, without such new facilities or upgrades, impair or degrade reliability to any existing firm services.

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an option to defer providing service; (2) contemplates the deferral of service based on upgrades identified in a TSR SIS; and (3) does not provide a separate service that MISO is required to offer.⁶⁴ MISO states that its counter-offer for the 36 MW NRIS was based upon separate language in the Transmission Planning Business Practice Manual that provides for MISO to counter-offer, rather than rejecting the TSR outright, and was not a “deferral” of service.⁶⁵

V. Acciona Wind Answer

34. On July 1, 2015, Acciona Wind submitted an answer to MISO’s answer. Acciona Wind clarifies its arguments surrounding MISO’s use of the pre-certified path study process. First, Acciona Wind argues that MISO is interpreting section 19.1.1.2 too strictly and that the requirement that drive out paths be “deliverable” should not apply in this instance. Acciona Wind fails to see how including the requested transmission service would create any risk to the deliverability of the MISO system. Acciona Wind states that, due to the nature of the MVP, the MVP should not be treated as a “conditional facility that may or may not be completed,” but rather as an eventual certainty.⁶⁶ Acciona Wind states that it is willing to condition any grant of transmission service above 36 MW on the actual completion of the MVP.⁶⁷

35. Second, Acciona Wind argues that MISO did not in fact provide a reasonable rationale for why it has excluded the bulk of the Tatanka Project from the pre-certified path study process. Acciona Wind claims that in its answer MISO only cited to the cover page of the study results, rather than any language in the MISO Tariff. Acciona Wind states that, without any support in the MISO Tariff for its decision to not study the Tatanka Project, MISO has not provided a convincing argument for the Tatanka Project’s exclusion. Furthermore, Acciona Wind believes that MISO has not provided a suitable

MISO Answer at 14-15 (citing MISO, FERC Electric Tariff, Module B, § 15.5 (Deferral of Service) (30.0.0)).

⁶⁴ MISO Answer at 15.

⁶⁵ *Id.*

⁶⁶ Acciona Wind Answer at 3.

⁶⁷ *Id.* at 4.

response to Acciona Wind's Complaint, and that MISO is inappropriately reading terms and conditions into its Tariff.⁶⁸

VI. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.⁶⁹

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer unless otherwise ordered by the decisional authority.⁷⁰ We will accept the Acciona Wind's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. MISO Transmission Service Requested to Commence on June 1, 2015

38. We deny the Complaint. We find that Acciona Wind has not presented evidence showing that MISO improperly delayed the commencement of service for the 36 MW, and that Acciona Wind has not presented evidence showing that MISO denied long-term firm transmission service in violation of the MISO Tariff or business practice manuals, as discussed below.

39. With respect to Acciona Wind's existing request concerning 36 MW of NRIS, we find that MISO appropriately included Acciona Wind's generation in the pre-certified path study, and granted service on a delayed basis, in keeping with MISO's business practices, to begin August 1, 2016.⁷¹ We find that MISO counter-offered Acciona Wind's TSR service dates of June 1, 2015 – June 1, 2020 with a delay (i.e., August 1, 2016 – June 1, 2020) consistent with section 5.3.2.1 (Flow-Based Analysis) of the

⁶⁸ *Id.* at 5.

⁶⁹ 18 C.F.R. § 385.214 (2015).

⁷⁰ 18 C.F.R. § 385.213(a)(2) (2015).

⁷¹ See MISO Transmission Planning Business Practices Manual, BPM-020-r12 (Apr. 28, 2015) at § 5.3.2.1 (Flow-Based Analysis).

Transmission Planning Business Practices Manual. Thus, since the TSR start date (i.e., June 1, 2015) was within the next 18 months of the queued date, MISO used the OASIS Automation tool (i.e., AFC) and determined that Acciona Wind failed the AFC test for the period June 1, 2015 – July 31, 2016. Accordingly, MISO appropriately granted service after a delay, beginning August 1, 2016 and included the 36 MW in the pre-certified path study.

40. With respect to the request concerning 72 MW, we also find that MISO conducted the Acciona Wind TSR SIS consistent with MISO's Tariff and business practice manuals. We find that MISO reasonably concluded that it was appropriate to deny the TSRs given the lack of available transmission capacity absent upgrades. With regard to Acciona Wind's claim that "several hundred million dollars" of upgrades would be necessary, we disagree since Acciona Wind's estimate appears to include the MVP costs. Customers may only be required to fund the costs of network upgrades that are necessary for their service request; MISO only identified the cost of network upgrades that would not have been constructed "but for" the Tatanka Project.⁷²

41. We also find that Acciona Wind is mistaken in its contention that the results of a PJM TSR SIS would automatically mean that a MISO TSR SIS would provide the same results; the MISO TSR SIS and the PJM TSR SIS can yield different results. We find that section 5.1.7 (Calculated Firm and Non-firm AFC) of the MISO-PJM Joint Operating Agreement does not require MISO to grant a TSR without requiring the upgrades indicated in its TSR SIS simply because the result of a PJM TSR SIS does not indicate necessary upgrades on the MISO system.⁷³

⁷² See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2009), *order on reh'g*, 131 FERC ¶ 61,165 (2010).

⁷³ Section 5.1.7 of the MISO-PJM Joint Operating Agreement states, in relevant part:

Data exchange is required to determine if a transmission service reservation (or interchange schedule) will impact [f]lowgates to an extent greater than the (firm or non-firm) [Available Flowgate Capacity] and procedures are necessary to assure that each Party respects the other Party's Flowgates as follows. Requirements: (a) The Parties will exchange firm and non-firm AFC for all relevant Flowgates. (b) Each Party will accept or reject transmission service requests based upon projected loadings on its own Flowgates as well as on [Reciprocal Coordinated Flowgates].

(continued ...)

2. MISO Transmission Service Requested to Commence after January 1, 2019

42. We also deny the request to include the Tatanka Project in MISO's pre-certified path study process in order to facilitate point-to-point transmission service beginning January 1, 2019, upon the completion of the contingent MVP expected to be in-service December 31, 2018. We find that, although section 19.1.1.2 of the MISO Tariff lacks specificity, MISO's application of the pre-certified path study process to exclude those projects with NRIS dependent upon the completion of the construction of facilities is reasonable and consistent with its Tariff. MISO admits that section 19.1.1.2 of the MISO Tariff does not expressly include a distinction between "conditional" and "unconditional" NRIS. However, we find reasonable MISO's position that section 19.1.1.2 does not contemplate NRIS.

43. Furthermore, we find that the 144 MW of NRIS requested do not meet MISO's criteria for deliverability because the Tatanka Project will not have NRIS until after completion of the MVP. We find nothing in the record to challenge MISO's position, that MISO's policy is to exclude those projects with NRIS dependent upon the completion of the construction of facilities, consistent with section 19.1.1.2 of the MISO Tariff stating that any TSRs must "[maintain] the deliverability of [n]etwork [r]esources to [n]etwork [l]oad[.]" As MISO explains, the requirement to maintain "deliverability" of network resources demonstrates that pre-certified paths are identified after recognizing all deliverable network resources and existing long-term firm point-to-point TSRs. Because a generation project with limitations on its NRIS is not fully deliverable at the time the study is performed, such projects are properly excluded from the MISO Tariff section 19.1.1.2 pre-certified path study process that looks ahead to the next five years in order to ensure capacity exists for feasibility of the pre-certified paths. Thus, the 144 MW of ERIS do not currently meet the deliverability requirement of section 19.1.1.2 of the MISO Tariff because the 144 MW of ERIS will not become NRIS until after the completion of the MVP. Therefore, we conclude that MISO's policy of not considering conditional connected generation for pre-certified path studies is consistent with section 19.1.1.2 of the MISO Tariff. However, we expect that MISO will implement this policy of not considering conditional connected generation for pre-certified path studies on a non-discriminatory basis.

44. While we find that MISO appropriately excluded the 144 MW from the pre-certified path studies, and thus the Commission denies the specific relief requested by Acciona Wind, the Complaint raises the question of whether MISO should have offered

MISO, MISO Rate Schedules, Rate Schedule 5 (MISO-PJM Joint Operating Agreement), § 5.1.7 (Calculated Firm and Non-firm AFC) (2.0.0).

the 144 MW of service on a delayed basis contingent upon completion of the MVP in the TSR SIS process, pursuant to the existing provisions of section 15.5 of the MISO Tariff.⁷⁴ Acciona Wind claims that the upgrades identified in the SIS are “redundant upgrades no one believes are necessary to support the request for service following already planned upgrades.”⁷⁵ Without an explicit request from Acciona Wind to direct MISO to offer firm point-to-point service upon completion of the MVP, the Commission cannot rule on this matter. Thus, this order does not pre-judge whether MISO should have alternatively considered offering the 144 MW of transmission service on a delayed basis contingent upon completion of the MVP in the TSR SIS process consistent with section 15.5 of the MISO Tariff.

The Commission orders:

Acciona Wind’s Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁴ See *supra* n.35.

⁷⁵ Complaint at 15. In the Southwest Power Pool, Inc. (SPP) queue reform proceeding, the Commission denied SPP’s proposal to require customers to pay for upgrades to meet their requested commercial operation date if those upgrades would become unnecessary when other previously-planned upgrades are later placed in service. The Commission found that SPP should allow the customer to delay its interconnection service to coincide with the date that the previously planned upgrades are placed into service, rather than requiring construction of facilities that would quickly become unneeded. See *Southwest Power Pool, Inc.*, 147 FERC ¶ 61,201 (2014), *order on reh’g*, 151 FERC ¶ 61,235 (2015).