153 FERC ¶ 61,114
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.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER12-747-001

ORDER ON REHEARING

(Issued October 29, 2015)

1. This order denies Midwest Independent Transmission System Operator Inc.'s (MISO)[1] request for rehearing of the Commission's order issued on February 28, 2012,[2] and denies MISO's motion to lodge.

I. Background

2. On December 30, 2011, MISO filed proposed revisions to Schedule 10-FERC (FERC Annual Charges Recovery) of its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff). In the February 28 Order, the Commission accepted for filing MISO's proposed Tariff revisions. The Commission found that the revisions to Schedule 10-FERC clarified that the Transmission Customers' share of FERC Annual Charges were a part of a withdrawing Transmission Owner's exit fee obligation, and that the revisions also described how MISO would charge a withdrawing Transmission Owner for that obligation.[3]

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[1] Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

[2] *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,141 (2012) (February 28 Order).

[3] *Id.* P 24.

3. The Commission also denied MISO's request for waiver of the 60-day prior notice requirement for an effective date of December 31, 2011, the date that Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (collectively, Duke Entities) withdrew from membership in MISO. MISO explained that it requested a December 31, 2011 effective date in the event insufficient amounts were collected by MISO from Transmission Customers in the Duke Entities' zones for their proportionate share of the assessment prior to withdrawal.[4] In response, the Commission stated that MISO had not sufficiently demonstrated that a waiver of the 60-day prior notice requirement was warranted. The Commission found that MISO's filing created a new obligation not already provided in the Tariff, and explained that, absent a strong showing of good cause, the Commission's policy was to "deny requests for waiver of notice for rate increases that do not implement a contract requirement, such as increases in requirements, coordination or transmission rates."[5] The Commission also stated that MISO had ample notice of the Duke Entities' withdrawal, and could have acted accordingly by making its filing 60 days before the date set for the Duke Entities' withdrawal. Therefore, the Commission denied MISO's request for waiver of the 60-day prior notice requirement, and accepted the Tariff revisions effective February 29, 2012.[6]

II. Request for Rehearing

4. On March 29, 2012, MISO filed a request for rehearing of the February 28 Order. Specifically, MISO requests rehearing of paragraph 26 of the February 28 Order where the Commission denied MISO's request for waiver of the 60-day notice requirement. MISO argues that it has demonstrated good cause for granting its waiver request. MISO argues that without the requested effective date, the Duke Entities' "proportionate shares of the 2012 Annual FERC Assessment would have to be passed on to MISO's remaining Transmission Customers, forcing them to unjustly shoulder costs that should rightly be borne by [the Duke Entities'] customers and effectively allowing [the Duke Entities] to 'free ride' for a portion of 2011 with regard to the FERC Annual Charge."[7] MISO states that the harm to its remaining transmission customers would be significant arguing that the shortfall resulting from the Duke Entities not paying their *pro rata* shares for

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[4] *Id.* P 8.

[5] *Id.* P 26 (citing *Central Hudson*, 60 FERC ¶ 61,106, at 61,339, *order on reh'g*, 61 FERC ¶ 61,089 (1992)).

[6] *Id.*

[7] MISO Request for Rehearing at 5.

seven months of the 2011 Annual FERC Assessment will be between $700,000 and $1.1 million.[8]

5. MISO also claims that the Commission mischaracterized revised Schedule 10-FERC by stating that the revisions imposed a new obligation on departed Transmission Owners that was not already provided in the Tariff. MISO asserts that the revisions clarify an existing obligation already provided under Article Five, section II.B of the Transmission Owners Agreement (Transmission Owners Agreement) and that Schedule 10-FERC has been in existence since 2003. Accordingly, MISO argues that departed Transmission Owners should continue to pay their proportionate share of the FERC Annual Charge after leaving MISO.[9]

6. In addition, MISO argues that the Commission erred by applying the wrong standard from *Central Hudson*, in denying MISO's request of the 60-day prior notice requirement. MISO claims that the revisions to Schedule 10-FERC do not constitute a rate increase, nor do they amount to an increase in requirements, coordination, or transmission rates. Therefore, MISO contends that the appropriate provision in *Central Hudson* which should be applied to its waiver request is that pertaining to new service, which states:

> Lastly, we address filings that provide for new service that is not pursuant to an acceptable contract or settlement. When considering requests for waiver related to the provision of new service, we must balance the requirement that utilities promptly file their rates as embodied in the Federal Power Act and the need of utilities to transact on short notice. Accordingly, we will grant waiver of notice if good cause is shown and the agreement is filed prior to the commencement of service.[10]

MISO explains that the Commission will grant waiver of notice for new service if good cause is shown and the agreement is filed before service commences. MISO

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[8] *Id.* at 4-6.

[9] *Id.* at 7-9 (citing The Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., which is designated as Rate Schedule No. 1 under the Tariff).

[10] *Id*. at 9 (citing *Central Hudson*, 60 FERC at 61,339).

argues that applying this standard would be more appropriate for MISO's request for waiver.[11]

7. MISO also asserts that the Commission has discouraged good faith negotiations by denying its waiver request. MISO claims that it was actively involved in good faith negotiations with numerous stakeholders, including the Duke Entities, on the proposed revisions to Schedule 10-FERC almost through the end of the 2011. MISO contends that it did not file the proposed revisions to Schedule 10-FERC more than 60 days prior to the end of the year when the Duke Entities were scheduled to leave MISO, because it was actively engaged in these negotiations. Therefore, MISO requests that the Commission approve MISO's request for waiver.[12]

8. On August 24, 2012, MISO filed a motion to expedite Commission action on its request for rehearing.

III. Motion to Lodge

9. On May 4, 2012, MISO filed a motion to lodge the Commission's decision in *PJM Interconnection, L.L.C.*[13] MISO asserts that as a result of the April 24 Order, PJM Interconnection, L.L.C. (PJM) will not charge the Duke Entities for any portion of PJM's 2011 FERC Annual Charge because the Duke Entities will be responsible for paying their *pro rata* share of MISO's 2011 FERC Annual Charge. However, MISO explains that the February 28 Order prevents MISO from collecting monthly payments from the Duke Entities from January 2012 through July 2012 for MISO's payment of the 2011 FERC Annual Charge. MISO argues that the February 28 Order and April 24 Order result in the Duke Entities have no obligation to pay their *pro rata* share of their FERC Annual Charge to any Regional Transmission Organization or, ultimately, the Commission.

IV. Discussion

A. Request for Rehearing

10. As discussed below, we deny MISO's request for rehearing of the February 28 Order. We affirm the Commission's finding in the February 28 Order

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

[12] *Id.* at 10-11.

[13] 139 FERC ¶ 61,068 (2012) (April 24 Order).

that MISO has not sufficiently demonstrated that a waiver of the 60-day prior notice requirement is warranted.

11. We disagree with MISO's argument that the Commission mischaracterized the revised Schedule 10-FERC by stating that it imposed new obligations on departed Transmission Owners not already provided in the Tariff. In the February 28 Order, the Commission stated that Article Five, section II.B of the Transmission Owners Agreement specified that Transmission Owners withdrawing from MISO must honor financial obligations incurred prior to the effective date of withdrawal, but that Article Five did not specify what those financial obligations consisted of. The Commission further found that the revisions to Schedule 10-FERC specified under the Tariff what financial obligations, in part, were to be honored upon withdrawal.[14] Accordingly, the proposed revisions added a charge that was not enumerated in the existing Transmission Owners Agreement or previously enumerated in the Tariff, and thus that charge was a new financial obligation under the Tariff. We find that these revisions constitute a rate increase because they create an additional charge that entities will incur upon leaving MISO. Therefore, we find that contrary to MISO's assertions that it merely had to demonstrate good cause to grant waiver, the correct standard to be applied under *Central Hudson* is the standard the Commission enunciated in the February 28 Order, *i.e.*, "absent a strong showing of good cause," the Commission's policy is to "deny requests for waiver of notice for rate increases that do not implement a contract requirement, such as increases in requirements, coordination or transmission rates."[15]

12. We also disagree with MISO's assertion that the appropriate provision in *Central Hudson* is that pertaining to new service. MISO has not explained how its filing provides a new service. MISO merely asserts that it would be more appropriate to apply this standard for MISO's request for waiver.

13. Further, we disagree with MISO that the Commission should approve MISO's request for waiver to encourage good faith negotiations. MISO claims that it did not make its filing more than 60 days prior to the withdrawal date of the Duke Entities because it was acting in good faith during ongoing negotiations with the Duke Entities. In the February 28 Order the Commission stated, and we reiterate here, that MISO had ample notice of the Duke Entities' withdrawal, and could have acted accordingly by filing 60 days before the date set for withdrawal. Indeed, MISO agreed that it had been on notice of the withdrawal of the Duke

[14] February 28 Order, 138 FERC ¶ 61,141 at P 25.

[15] *Central Hudson*, 60 FERC at 61,339.

Entities for over a year.[16] The Commission has found that justifications such as delays due to the mediation process, and efforts to accommodate the demands of other parties will not satisfy the standard of a strong showing of good cause such that the Commission will grant waiver of the 60-day prior notice requirement for rate increases that do not implement contract or settlement requirements.[17] Moreover, MISO's concern that Duke Entities' proportionate shares of the 2012 Annual FERC Assessment would have to be passed on to MISO's remaining Transmission Customers is not enough to satisfy the standard of a strong showing of good cause. Accordingly, we continue to find that MISO has not sufficiently demonstrated that a waiver of the 60-day prior notice requirement is warranted here.

B. Motion to Lodge

14. We also deny MISO's motion to lodge the April 24 Order. Given that the Commission has knowledge of its own holdings, we find a motion to lodge prior Commission orders is unnecessary.[18]

The Commission orders:

(A) MISO's request for rehearing is hereby denied, as discussed in the body of this order.

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[16] February 28 Order, 138 FERC ¶ 61,141 at P 22.

[17] *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,131, at PP 81, 83 (2011). *See also Wisconsin Pub. Serv. Corp.*, 110 FERC ¶ 61,192, at P 9 (2005) (waiting for state commission approval before filing for rate changes was insufficient to justify waiver); *Xcel Energy Servs. Inc.*, 111 FERC ¶ 61,206, at P 20 (2005) (press of other company business will not be accepted as sufficient demonstration of good cause for waiver).

[18] *La. Pub. Serv. Comm. v. Entergy Servs., Inc.*, 146 FERC ¶ 61,152, at P 13 (2014).

(B) MISO's motion to lodge is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.