154 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. Docket No. ER16-248-000

ORDER GRANTING WAIVER

(Issued January 7, 2016)

1. On November 2, 2015, Midcontinent Independent System Operator, Inc. (MISO) requested a limited waiver (2015 Waiver Request) of sections 39.2.5 and 40.2.5 of its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff), which establishes a $1,000/MWh Energy Offer Price cap (offer cap) on incremental energy offers in MISO's day-ahead and real-time energy markets. MISO also requested waiver of section 64.1.4, which describes the process MISO's Independent Market Monitor (Market Monitor) uses to establish reference levels for generation resources in MISO. MISO requests that the Commission waive these Tariff provisions from January 1, 2016, through April 2016. In this order, we find good cause to grant waiver of the aforementioned Tariff provisions from January 1, 2016 through April 30, 2016, as discussed below.[1]

I. Background

2. MISO states that in January and March 2014 the $1,000/MWh offer cap limited the incremental energy offers of some MISO resources below their incremental energy costs given the high natural gas prices at the time. MISO adds that approximately 900 MW of MISO generation resources in March 2014 were offered at the $1,000/MWh offer cap in both the day-ahead and real-time markets, indicating that those offers may have been constrained by the offer cap.[2] MISO asserts that its analysis indicates that

[1] The 2015 Waiver Request states that waiver is needed "through April 2016." MISO Transmittal at 11. We interpret "through April 2016" to mean April 30, 2016.

[2] MISO Transmittal at 3-4.

when natural gas prices rise to or above $67/MMBtu, some of MISO's natural gas resources may be unable to recover their marginal cost by the $1,000/MWh offer cap.[3]

3. MISO states that during periods with extreme and unexpected fuel cost spikes, the $1,000/MWh offer cap could put certain generators with must-offer requirements in the untenable position of being obligated to offer their output at a level below their marginal cost of production.[4] While MISO does not currently anticipate for this winter natural gas prices similar to those experienced during the Polar Vortex of the 2013/14 winter, MISO contends that such predictions are uncertain and thus a temporary waiver is necessary out of an abundance of caution.[5] MISO states that the proposed waiver will ensure that it will be able to use all available resources to reliably meet load during extreme weather conditions. MISO also notes that the Commission has addressed this issue in other regions and has granted waivers due to reliability concerns associated with extreme weather conditions.[6]

4. MISO states that it has evaluated alternatives to the instant proposal and determined that allowing a Market Participant to include its incremental energy costs in excess of the $1,000/MWh offer cap in the hourly No Load component of its supply offer would address the issue while having the least impact on MISO's market systems and processes. MISO also states that it sought stakeholder input regarding whether MISO should maintain the current $1,000/MWh offer cap or to raise the offer cap to $1,500/MWh or some other value, and that stakeholders indicated a preference for keeping the offer cap at its current $1,000/MWh level.[7]

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[3] *Id*.

[4] *Id*. at 4.

[5] *Id*. at 5.

[6] *Id*.

[7] *Id*. at 9. On September 29, 2015, MISO asked stakeholders at its Market Subcommittee meeting if the value for a fixed energy offer cap should be set at $1,000/MWh, $1,500/MWh, or some other value. Stakeholder feedback indicated that the interim approach of a $1,000/MWh energy offer cap used last winter, in addition to uplift for verifiable costs above the cap, was the preferred option. *See* MISO, Energy Offer Cap Evaluation, Market Subcommittee (Oct. 27, 2015), https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/MSC/2015/20151027/20151027%20MSC%20Item%2005c%20Energy%20Offer%20Cap.pdf.

5. MISO notes that the Commission approved a similar waiver request for MISO last winter (2014 Waiver Request).[8] MISO also states that the instant waiver request is identical to that proposal.[9] However, MISO asserts that, consistent with the directives of the 2014 Waiver Request Order, MISO will institute a true-up mechanism within its settlement process to ensure that any make-whole payment credits associated with incremental energy costs in excess of $1,000/MWh result in the recovery of actual and verifiable costs alone.[10]

6. As was required for the 2014 Waiver Request,[11] MISO also proposes to have its Market Monitor file a report after the waiver period detailing: (1) the total MWh of energy with incremental energy costs in excess of $1,000/MWh that cleared in each of the day-ahead and real-time markets; (2) the total dollar value of incremental energy costs that were included in No Load offers (due to being in excess of the $1,000/MWh energy offer cap); (3) the total dollar value of make-whole payment credits that were

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[8] MISO, Request for Waiver, Docket No. ER15-691-000 (filed Dec. 19, 2014) (2014 Waiver Request). The Commission approved MISO's 2014 Waiver Request on February 9, 2015. *See Midcontinent Independent System Operator, Inc.*, 150 FERC ¶ 61,083 (2015) (2014 Waiver Request Order).

[9] MISO Transmittal at 1, 6.

[10] *Id.* at 2. In the 2014 Waiver Request Order, the Commission expressed concern that there may be circumstances where the proposal could allow market participants to recover more than their incurred cost because the total amount that will need to be recovered will depend on the unit's actual dispatch quantity, which is not known with certainty at the time that the No Load offer is submitted. The No Load offer is a fixed amount that does not vary with output, while incremental energy costs, such as fuel costs, vary with output. Consequently, the Commission required MISO to institute a true-up mechanism within its settlements process, such that make-whole payment credits associated with incremental energy costs in excess of $1,000/MWh result only in the recovery of actual and verifiable costs. The Commission also found that in order for the Market Monitor's consultative process to be implemented consistently, assumptions with respect to anticipated dispatch would need to be developed in a non-discriminatory manner for all resources. Accordingly, the Commission required the Market Monitor to develop and document the procedure or protocol used to determine the assumed dispatch level used to calculate the total amount of incremental energy costs that are to be included in a market participant's No Load offer reference level. *See* 2014 Waiver Request Order, 150 FERC ¶ 61,083 at PP 22-24.

[11] 2014 Waiver Request Order, 150 FERC ¶ 61,083 at P 25.

granted to resources associated with the increased No Load costs in part (2) above; and (4) a list of the intervals, including time stamps, during which resources that cleared in MISO's day-ahead and real-time markets had incremental costs in excess of $1,000/MWh.[12]

7. MISO asserts that it has continued to engage in discussions with its stakeholders to evaluate longer-term solutions to the offer cap and states that it looks forward to receiving guidance from the Commission based on the Commission's stated intent to address offer price caps as part of its price formation rulemaking.[13]

II. Notice and Responsive Pleadings

8. Notice of MISO's filing was published in the *Federal Register*, 80 Fed. Reg. 69,205 (2015), with interventions and protests due on or before November 23, 2015. NRG Companies,[14] Exelon Corporation, Wisconsin Public Service Corporation, MidAmerican Energy Company, Dynegy,[15] Entergy Services, Inc.,[16] and American Municipal Power, Inc. filed timely motions to intervene.

9. America's Natural Gas Alliance (ANGA), Midwest TDUs,[17] and Electric Power Supply Association (EPSA) filed timely motions to intervene and comments.

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[12] MISO Transmittal at 10.

[13] *Id*. at 2 (citing *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Notice of Proposed Rulemaking, 80 Fed. Reg. 58,393, at P 7 (Sept. 29, 2015), FERC Stats. & Regs. ¶ 32,710 (2015) (Settlement Intervals and Shortage Pricing NOPR)).

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

[15] For purposes of this filing, Dynegy is Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company.

[16] Entergy Services, Inc. moves to intervene in this proceeding on behalf of Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

[17] Midwest TDUs are comprised of Madison Gas and Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and WPPI Energy.

10. Midwest TDUs support MISO's 2015 Waiver Request and proposal to recover incremental energy costs above $1,000/MWh through out-of-market compensation via the no load payment rather than through the market clearing price.[18] Midwest TDUs state that future weather conditions and fuel prices are difficult to predict. Midwest TDUs agree with MISO that resources bidding into MISO's energy market must be able to offer and recover their actual and verifiable incremental energy costs. Midwest TDUs state that compensating resources for incremental energy costs over the offer cap through make-whole payments as opposed to through locational marginal prices (LMPs) will give the Market Monitor time to review generator costs after the market is run. Midwest TDUs add that the proposed waiver maintains the important market power mitigation functions of the existing offer cap during normal market conditions and provides backstop protection to consumers who may otherwise incur high costs in extraordinary weather and market conditions if such conditions materialize during the upcoming winter.[19]

11. ANGA and EPSA both support the 2015 Waiver Request insofar as it permits generators to recover their actual costs.[20] EPSA argues, however, that the 2015 Waiver Request should only be granted if cost-based incremental energy offers above $1,000/MWh are allowed to set the LMP so that the offers can be used to develop accurate price signals and provide market participants and regulators with information about additional products and/or services that may be needed.[21] ANGA also argues that these offers should set LMP and maintains that in all competitive markets, competition will temper supply offers and incent new entry when physical and opportunity costs are accurately represented in LMPs.[22]

12. ANGA asserts that offer caps can interfere with the ability of suppliers to develop supply offers based on market fundamentals and observes that this will be the second time MISO has used a stop-gap measure, relying on out-of-market make-whole payments.[23] ANGA agrees with MISO that timely Commission guidance is needed to

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[18] Midwest TDUs Comments at 4.

[19] *Id.* at 3-5.

[20] ANGA Comments at 1; EPSA Comments at 2.

[21] EPSA Comments at 2.

[22] ANGA Comments at 3-4.

[23] *Id.* at 4 (citing *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 41 (2014) (approving a temporary waiver of PJM's offer cap on the basis that the "proposed waiver

(continued ...)

develop a long-term solution regarding offer caps and asks the Commission to encourage MISO to find a long-term solution prior to the 2016/17 winter.[24] ANGA opposes using the 2015 Waiver Request as precedent for MISO or any other market.

13. ANGA states that the Commission has expressed its intent to address offer caps as part of its price formation proceeding but states that market power mitigation is better addressed via market mitigation provisions specifically designed to address the causes of, and opportunities for, the exercise of market power. ANGA argues that the offer cap can be increased significantly above $1,000/MWh because MISO already has a robust market power mitigation mechanism. It argues that because MISO's own testing has not identified obstacles to implementing a higher cap a solution could be implemented before next winter. Should the Commission want an offer cap to provide a back-stop to prevent market power abuse, ANGA urges the Commission to carefully balance this objective with the objective of market efficiency.[25]

14. EPSA asserts that allowing resources to recover costs through make-whole payments rather than through the LMP is inconsistent with Commission precedent which states that it is harmful when LMPs do not reflect the marginal cost of production,[26] and it is antithetical to the Commission's goals as stated in the price formation proceeding.[27]

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will ensure that marginal prices paid by consumers appropriately equal the incremental cost of servicing them, and efficient market signals—not constrained by a cap—should provide market participants with the information necessary to make informed business decisions, including hedging fuel risk")).

[24] *Id.*

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

[26] EPSA Comments at 6-7 (citing *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281, at PP 192-194 (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009)).

[27] *Id.* at 7 (citing Notice, Docket No. AD14-14-000 at 2 (June 19, 2014) ("Ideally, the locational energy market prices in the energy and ancillary services markets would reflect the true marginal cost of production, taking into account all physical system constraints, and these prices would fully compensate all resources for the variable cost of providing service")).

EPSA states that LMPs are artificially suppressed when operators call on resources out of market, resulting in uplift which is allocated outside of the LMP mechanism.[28]

15. EPSA asserts that Commission guidance to MISO is necessary and cannot take a back seat to MISO-led stakeholder-based reform. EPSA argues that MISO's inability to raise its existing offer cap to $1,500/MWh in its stakeholder process indicates that the stakeholder process is not the appropriate venue for time-sensitive solutions that permit competitive generators to recover fuel and marginal costs outside of a pre-existing Tariff or state regulatory cost recovery mechanism. EPSA also states that MISO's submission of waiver requests the past two years indicates that the waiver mechanism has become a stand-in for meaningful reform which MISO could not realize in a timely manner through its stakeholder processes. EPSA disagrees with MISO's characterization of the 2015 Waiver Request as a short-term request because recurring winters, fuel price spikes, and reliability and resource adequacy challenges are long-term problems which it states must be addressed through a permanent solution.[29]

16. Finally, EPSA urges the Commission to expeditiously pursue a formal generic rulemaking on offer caps before the 2016/17 winter. EPSA states that the policy issues raised by MISO's 2015 Waiver Request and the other emergency filings from other Regional Transmission Operators and Independent System Operators demonstrate that the $1,000/MWh offer cap is no longer appropriate or reasonable for these markets and that a permanent solution is needed. EPSA further notes that the Commission has recognized this problem through its price formation effort.[30] EPSA maintains that offer caps should be addressed on an interconnection-wide basis to ensure that resources can make offers that reflect their verifiable marginal costs and set LMPs in the day-ahead and real-time markets. EPSA adds that a generic proceeding is necessary to address offer caps in MISO, PJM Interconnection, L.L.C. (PJM), and New York Independent System Operator, Inc. (NYISO) because failing to promptly address the offer caps in MISO and NYISO would raise significant reliability issues for PJM's neighboring control areas which share common interstate natural gas pipeline supplies.[31]

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

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

[30] *Id.* at 11 (citing Settlement Intervals and Shortage Pricing NOPR, 80 Fed. Reg. 58,393 at P 7).

[31] *Id.* at 11-13.

III. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

18. The Commission has previously granted waiver of tariffs in situations where, as relevant here: (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver did not have undesirable consequences, such as harming third parties.[32]

19. We find that MISO's 2015 Waiver Request satisfies the aforementioned conditions. First, the requested waiver is limited in scope in that it is limited in duration to the period from January 1, 2016 through April 30, 2016, and because it limits the resources that can bid above the $1,000/MWh offer cap to those with verifiable incremental energy costs that exceed the offer cap. Second, the waiver addresses a concrete problem that, in the absence of a waiver, resources with must-offer requirements might be required to provide service for reliability purposes without receiving payments sufficient to recover their incremental energy costs. Additionally, without the waiver, other resources could be discouraged from offering energy when it is most needed. Third, we find that any potential harm to third parties from implementing the waiver is mitigated by the Market Monitor's review as described below. Accordingly, we find that it is appropriate to temporarily waive sections 39.2.5, 40.2.5, and 64.1.4 of the Tariff for the period of January 1, 2016 through April 30, 2016, subject to the conditions described herein. Furthermore, consistent with the 2014 Waiver Request Order,[33] we clarify that the waiver will apply to any actual, verifiable incremental costs of providing energy and that market participants with incremental energy costs in excess of $1,000/MWh may not

[32] *See, e.g.*, *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014); *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012). *See also, e.g.*, *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *accord ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

[33] 2014 Waiver Request Order, 150 FERC ¶ 61,083 at P 16.

submit No Load offers that exceed their newly devised No Load offer reference levels, as discussed below.

20. MISO's experience during the Polar Vortex of the 2013/14 winter demonstrates that fuel costs can increase to a level such that the current $1,000/MWh offer cap prevents resources from submitting incremental energy offers that reflect their marginal production costs. If similar weather and natural gas supply conditions materialize in the 2015/16 winter, some resources could face the untenable position of being forced to offer electricity at levels below their actual cost.

21. We also accept MISO's proposal, consistent with the Commission's directive in the 2014 Waiver Request Order,[34] to (1) require its Market Monitor to file a report with the Commission detailing the use of the waiver; and (2) implement a true-up mechanism within its settlements process to ensure that make-whole payment credits associated with incremental energy costs in excess of $1,000/MWh result only in the recovery of actual and verifiable costs.[35] This aspect of the proposal mitigates any potential harm to third parties from implementing the waiver by helping to ensure that customers only pay actual and verifiable costs.

22. In addition, we again require the Market Monitor to develop and document the procedure or protocol it will use to determine the assumed dispatch level used to calculate the incremental energy costs that are to be included in a market participant's No Load offer reference level.[36]

23. Consistent with the 2014 Waiver Request Order,[37] in accepting MISO's 2015 Waiver Request, we are not allowing market participants with incremental energy costs above $1,000/MWh to submit No Load offers that exceed their newly devised No Load offer reference levels (which will include only the resource's regular No Load costs plus the incremental energy costs in excess of the $1,000/MWh energy offer cap).

24. With respect to arguments raised by ANGA and EPSA that the Commission should order MISO to allow resources that clear the energy market and have costs in excess of the $1,000/MWh offer cap set the LMP, we decline to do so at this

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[34] *Id.* PP 23-25.

[35] *See supra* P 5.

[36] 2014 Waiver Request Order, 150 FERC ¶ 61,083 at P 24.

[37] *Id.* P 21.

time. MISO's proposed solution is less desirable than an accurate inclusion of costs in the market clearing prices. However, given the immediacy of the need to address the binding offer cap problem for this winter and MISO's statement that this proposal has the least impact on its market systems, it is reasonable to grant this waiver for the limited time period requested to address the risks posed by high natural gas prices this winter.

25. We disagree with EPSA's argument that MISO filing a second waiver request makes it self-evident that the waiver mechanism has become a stand-in for meaningful reform. We also find that the fact that this is a second request for waiver of these Tariff provisions is not in and of itself a basis for denying the waiver. As stated above, MISO has satisfied all of the elements necessary to receive a waiver request. We find that the waiver is an appropriate solution given the importance of addressing in a timely manner the potential this winter for the $1,000/MWh offer cap to result in resources with must-offer requirements being required to offer electricity at levels below their actual cost while inhibiting others from offering into the market when their marginal production costs exceed $1,000/MWh.

26. In response to ANGA's and EPSA's requests to direct MISO to develop a long-term offer cap solution, the Commission is in the process of considering the broader issue of offer caps and other price formation matters in jurisdictional markets.[38] We find that further discussion regarding changes to the offer cap beyond the winter of 2015/2016 is more appropriately addressed in that proceeding.

<u>The Commission orders</u>:

(A) Waiver of sections 39.2.5, 40.2.5, and 64.1.4 of MISO's Tariff is hereby granted to allow resources with incremental energy costs above the $1,000/MWh offer cap to include those costs in the No Load component of their supply offers during the January 1, 2016, through April 30, 2016 period, as discussed in the body of this order.

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[38] Settlement Intervals and Shortage Pricing NOPR, 80 Fed. Reg. 58,393 at P 7.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.