

154 FERC ¶ 61,059
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. ER16-330-000

ORDER GRANTING TARIFF WAIVER

(Issued January 29, 2016)

1. On November 13, 2015, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Midcontinent Independent System Operator, Inc. (MISO) filed a request for a limited, one-time waiver of certain provisions of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to allow MISO to implement equitable relief to Union Electric Co. (Ameren)³ in a dispute resolved through MISO's alternative dispute resolution (ADR) process. For the reasons discussed below, we grant MISO's request for waiver.

I. Background

2. MISO states that on October 20, 2014, Ameren initiated an informal ADR proceeding pursuant to Attachment HH (Dispute Resolution Procedures) of MISO's Tariff, asserting that Ameren's stage 1B ARR allocation in the 2014 – 2015 annual ARR allocation period from June 1, 2014 through May 31, 2015 was significantly lower (by 22 percent) than its allocation in previous years. MISO states that Ameren sought to recover \$7.2 million, representing its valuation of ARRs it did not receive due to the reduction in its ARR allocation.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2015).

³ Union Electric Co. is the public utility affiliate of Ameren Services Company (Ameren Services). The instant filing involves Ameren Missouri.

3. MISO states that, during the ADR proceeding, it investigated the cause of the discrepancy in coordination with Ameren. It was discovered that immediately before the 2014 – 2015 annual ARR allocation period, the three elemental pricing nodes (EPNode) representing load at Ameren’s Franklin substation were replaced with nine EPNodes to provide additional granularity. MISO states that, as per its business and operational procedures at that time, MISO used load data submitted by Ameren to the energy management system (EMS) rather than interpolating historical load data for the new EPNodes.

4. MISO states that upon review, it was discovered that using EMS load data was ill-suited for estimating the projected load of the new EPNodes during the winter season case in the allocation model, resulting in greater apparent congestion at this location and a subsequent reduction in the allocation of ARRs to Ameren during the winter case, but not for any other seasons. MISO explains that it determined that the remainder of the reduction in ARRs was otherwise caused by verified transmission constraints and nomination patterns of market participants. MISO states that, based on these findings, it concluded that it would be reasonable and equitable to grant Ameren relief for the reduction in ARRs due to unsuitable load data, but not for reduction due to the other causes.

5. MISO states that it then valued the impact on the winter case using prices from the original 2014 – 2015 annual financial transmission right (FTR) auction less the stage 2 ARR revenues received by Ameren. MISO states that, for the winter 2014 off-peak period, it found that the net impact was \$173,512.35; and for the winter 2014 peak period, the net impact was \$406,559.99. Thus, states MISO, it calculated the total net impact to be \$580,072.34. MISO states that the partial relief will be funded by Market Participants that received, in Stage 2, ARR revenues that would otherwise have been paid to Ameren if its Stage 1B ARR allocation had not been reduced due to the above-described use of EMS load data. MISO states that Ameren accepted MISO’s offer of partial relief, to which no objection was raised by the other parties that participated in the ADR proceeding.

II. Waiver Request

6. MISO requests waiver of section 43.2.4 of the Tariff (Nomination and Allocation of ARRs and Multi-Value Project ARRs), and any other related provisions regarding the nomination and allocation of ARRs, to the extent that the process described therein is silent regarding a remedy for any significant under-allocation of ARRs resulting from the MISO model’s use of unsuitable load data, to be effective November 14, 2015.

7. MISO states that in granting tariff waivers, the Commission generally focuses on four criteria: (1) the entity seeking the waiver acted in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) and the waiver will not have undesirable consequences, such as harming third parties.⁴

8. MISO states that it seeks the tariff waiver in good faith in light of the absence of tariff language expressly authorizing the ADR relief MISO has granted to Ameren on equitable grounds. MISO states that the requested waiver is limited in scope to the reduction in Ameren's stage 1B ARR allocation in the 2014 – 2015 annual ARR allocation period, attributable to the MISO model's use of unsuitable load data for one particular substation. MISO states that this under-allocation of stage 1B ARRs is a concrete problem of Ameren that the waiver will enable MISO to remedy. Further, MISO states that the waiver will not have undesirable consequences, such as harming third parties, as the ADR relief involves making Ameren whole by giving it the ARR revenues it would and should have received had its stage 1B ARR allocation not been unduly reduced due to the MISO model's use of unsuitable load data.

9. MISO also states that in order to prevent any future recurrence of this type of situation, MISO is exploring improvements to the FTR model building process, and to the procedures for how data submitted by market participants is validated and flagged for further follow up when significant changes are identified.

III. Notice and Responsive Pleadings

10. Notice of MISO's November 13, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 72,965 (2015), with interventions and protests due on or before December 4, 2015. The following parties submitted timely motions to intervene: Boston Energy Trading and Marketing, LLC; Entergy Services, Inc.; NRG Power Marketing LLC and GenOn Energy Management, LLC; and Wisconsin Public Service Corporation and Wisconsin Electric Power Company. Ameren Services filed a timely motion to intervene and comments in support of MISO's request for waiver.

11. Ameren Services states that it supports MISO's request for waiver and agrees that good cause exists to grant the requested waiver. Ameren Services further states that MISO is acting in good faith, that the requested waiver is limited in scope and will remedy a significant under-allocation of ARRs due to unsuitable modeling data. Finally, Ameren Services states that granting the waiver will not have undesirable consequences, such as harming third-parties.

⁴ MISO Request for Waiver at 4 (citing *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

IV. Discussion

A. Procedural Matters

12. 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. Commission Determination

13. The Commission previously granted one-time waivers of tariff provisions in situations where: (1) the underlying error is made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁵ We find that MISO's requested waiver satisfies these conditions, as discussed below.

14. We find that MISO acted in good faith in determining that Ameren's stage 1B ARR allocation had been unduly reduced by MISO's use of EMS load data that was ill-suited for estimating the projected load at the Franklin substation and taking action to equitably resolve the situation. We also find that the requested waiver is of limited scope because it applies only to the ADR relief provided specifically to Ameren for the ARR revenues it would have received had its 2014 – 2015 stage 1B ARR allocation not been reduced due to the use of unsuitable load data.

15. Further, we find MISO's requested waiver addresses a concrete problem, which was the reduction in Ameren's 2014 – 2015 stage 1B ARR allocation period due to the use of unsuitable load data, which was a discrete event. Finally, we find that the waiver will not have undesirable consequences, such as harming third parties, because none of the participating ADR parties objected to the ADR relief and no parties have protested the instant filing. Therefore, we grant MISO's request for waiver, to be effective November 14, 2015, as requested, for the limited purpose of implementing the relief resulting from its ADR process.

⁵ See, e.g., *Southeastern Power Admin.*, 143 FERC ¶ 61,210, at P 7 (2013); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011); *ISO New England Inc.*, 117 FERC ¶ 61,171 at P 21.

The Commission orders:

MISO's request for waiver is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.