154 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NRG Power Marketing LLC	Docket No. EL16-3-000
v.	
Midcontinent Independent System Operator, Inc.	

ORDER DENYING COMPLAINT

(Issued February 1, 2016)

1. On October 9, 2015, NRG Power Marketing LLC (NRG) filed a complaint against Midcontinent Independent System Operator, Inc. (MISO) pursuant to sections 206 and 306 of the Federal Power Act (FPA)[1] and Rule 206 of the Commission's regulations.[2] NRG alleges that MISO unlawfully violated its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) when it modified the Commercial Pricing Nodes (CPNodes) in the MISO South[3] region following the 2013 annual Financial Transmission Right (FTR) Auction (2013 Annual Auction) and the October 2013 multi-period monthly FTR Auction (October 2013 Multi-Period Monthly Auction), which effectively nullified the results of those FTR auctions and rendered the FTRs purchased

[1] 16 U.S.C. §§ 824e, 825e (2012).

[2] 18 C.F.R. § 385.206 (2015).

[3] MISO South consists of the transmission systems owned by: the Entergy Operating Companies (Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Texas, Inc.), Central Louisiana Electric Company, South Mississippi Electric Power Association, Lafayette Utilities System and East Texas Electric Cooperative.

by NRG through those auctions valueless (Complaint). For the reasons discussed below, we deny NRG's Complaint.

I. **Background**

2. MISO administers energy and ancillary services markets utilizing a congestion management system based on Locational Marginal Pricing.[4] Financially, the price of congestion[5] is measured as the difference in the cost of energy, less transmission losses, at two different locations in the network. In MISO such locations are called CPNodes.[6] When such LMP price differences occur, a congestion charge is assessed to transmission users based on their nodal injections and withdrawals. These price differences can be variable and difficult to predict. In order to manage day-ahead risk associated with the variability in prices due to transmission congestion, MISO offers various forms of FTRs to allow market participants who hold the rights to protect against such price risks.[7]

3. Once a year, MISO allocates Auction Revenue Rights (ARR) to market participants based on firm historical usage of the transmission network. ARRs are financial instruments that entitle their holders to a share of the revenue generated in the annual FTR auctions that are held soon after the ARR allocation. Among other things,

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[4] MISO Tariff, Section 1.L defines Locational Marginal Price (LMP) as a "price for energy at a given Commercial Pricing Node in the Transmission Provider Region which is the marginal cost of serving demand at the Commercial Pricing Node while meeting Zonal and Market-Wide Operating Reserve Requirements. Such price may be either Ex Ante or Ex Post locational marginal pricing."

[5] The Marginal Congestion Component of a Day-Ahead LMP reflects the marginal cost of managing the transmission congestion that will arise from an incremental energy demand at the Elemental Pricing Node supplied by an incremental energy injection at the reference bus in the Security Constrained Economic Dispatch algorithm. *See* MISO Tariff, Section 39.2.9.b.i.

[6] MISO Tariff, Section 1.C defines Commercial Pricing Node (CPNode) as an "Elemental Pricing Node or an Aggregate Price Node in the Commercial Model used to schedule and settle Market Activities. Commercial Pricing Nodes include Resources, Hubs, Load Zones and/or Interfaces." LMP prices, and by extension the Marginal Congestion Components for which FTRs can hedge, are developed for CPNodes.

[7] *See generally Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, at P 5, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006).

ARRs are specified by receipt and delivery points at certain CPNodes and by whether the ARR is feasible or infeasible based on a Simultaneous Feasibility Test[8] performed by MISO.

4. In MISO, FTRs allow market participants to manage day-ahead congestion charge risk between generation and load. FTRs are specified between identified CPNodes, and each FTR has an FTR Receipt Point and a separate and distinct FTR Delivery Point. Pursuant to its Tariff, MISO conducts FTR auctions on an annual and a monthly basis. MISO conducts annual FTR auctions in order to facilitate hedges for the cost of congestion during the 12-month period beginning June 1. Subsequent to each annual FTR auction, MISO conducts Multi-Period Monthly Auctions to sell residual FTR capacity and facilitate market participants in buying and selling existing FTRs. MISO also conducts partial-year FTR allocations when new transmission owners are integrated into MISO after the start of the Annual ARR Allocation Period. Based on historical usage of the transmission system, MISO allocates FTRs, rather than allocating ARRs and selling FTRs, in these partial-year allocations.

5. MISO's Tariff provisions regarding the sale and settlement of FTRs do not discriminate between FTRs that source and/or sink inside the MISO footprint and those that do not. Section 42 of the Tariff states that MISO "maintain[s] a list of possible FTR Receipt Points and FTR Delivery Points . . ." without restricting the location of such receipt or delivery points, or generally restricting the combination of such receipt and delivery points that may be paired for an FTR. Additionally, section 42.3 of the Tariff states that "[t]he FTR Receipt Point and FTR Delivery Point specified in a given FTR (Obligation or Option) may be any one of the following: Node for the relevant Generation Resource. Hub. Load Zone. Interface."

6. NRG is a wholly owned subsidiary of NRG Energy, Inc. (NRG Energy) and a power marketer. Through various subsidiaries, NRG Energy owns generating facilities with an aggregate capacity of approximately 5,000 megawatts (MW) in the MISO footprint, many of which are interconnected with transmission facilities in the MISO South region of MISO. NRG markets the output of most of these facilities and also serves load in MISO South pursuant to long-term requirements agreements with more than a dozen municipalities and electric cooperatives.

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[8] MISO Tariff, Section 1.S, defines the Simultaneous Feasibility Test as a "test for a state in which each set of injections and withdrawals associated with receipt point-to-delivery point FTRs and power transfers associated with FTRs would not exceed any thermal, voltage, or stability limits within the Transmission Provider Region under normal operating conditions or for monitored contingencies."

II. NRG's Complaint

7. Between April 17, 2013 and May 10, 2013, MISO conducted the 2013 Annual Auction for the period June 2013 through May 2014. Commencing on October 14, 2013 and ending on October 15, 2013, MISO then conducted the October 2013 Multi-Period Monthly Auction for the period November 2013 through February 2014. NRG states that many of the FTRs it purchased in these auctions had both FTR Receipt Points and FTR Delivery Points in what would soon become MISO South and that it had bought and sold similar FTRs in past auctions. Shortly after the conclusion of the October 2013 Multi-Period Monthly Auction, MISO conducted a Partial-Year FTR Allocation in order to allow market participants an opportunity to obtain FTRs for a new zone added as a result of the MISO South integration. NRG states that it acquired additional FTRs through the Partial-Year FTR Allocation, but that it did not duplicate the FTRs already purchased through the 2013 Annual Auction and the October 2013 Multi-Period Monthly Auction.

8. NRG explains that after the bid window for the Partial-Year FTR Allocation closed, MISO informed market participants that it had redefined the CPNodes in MISO South as a single CPNode. NRG states that MISO's action rendered the FTRs sourcing and sinking in MISO South that NRG purchased through the 2013 Annual and 2013 October Multi-Period Monthly Auctions worthless.

9. NRG states that it had a number of meetings and other discussions with MISO staff after learning about the redefined CPNodes in MISO South. NRG further states that MISO staff suggested that they attempt to resolve the matter through MISO's alternative dispute resolution (ADR) process pursuant to Attachment HH of MISO's Tariff.[9] NRG claims that, based on discussion with MISO staff, it delayed the submission of a written request for ADR until after the congestion data necessary to estimate the impact of MISO's action became available in June 2014. NRG reports that MISO then denied NRG's request for ADR in a letter dated March 31, 2015. NRG states that it next submitted a written demand for arbitration pursuant to Attachment HH of MISO's Tariff to MISO on June 29, 2015. NRG states that MISO responded by asserting that it considered the issues raised by NRG to be more appropriate for resolution by the Commission, which led to NRG's filing of the instant Complaint.

10. NRG argues that, by collapsing the CPNodes in MISO South into one node, MISO effectively nullified the results of the 2013 Annual and October 2013 Multi-Period Monthly Auctions and therefore violated its Tariff and unlawfully deprived NRG of the value of the FTRs it purchased in those auctions. Specifically, NRG contends that MISO's collapsing of the CPNodes in MISO South deprived NRG of its right to "receive

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[9] Complaint at 10-11.

compensation for . . . congestion related transmission charges" for the FTRs it had purchased in the 2013 Annual and October 2013 Multi-Period Monthly Auctions.[10] NRG further asserts that even if MISO had the authority to modify the CPNodes for previously-sold FTRs, MISO exercised its authority in an unreasonable and unduly discriminatory manner because only certain FTR holders, e.g., NRG, were affected by MISO's action.

11. NRG notes that in discussions with MISO, MISO has tried to suggest that section 38.1.1 of the Tariff authorized MISO to collapse the MISO South CPNodes into a single point. However, NRG argues that MISO's contention regarding section 38.1.1 is inaccurate because there is nothing in the provision to suggest that MISO's authority to "modify" CPNodes allows it to zero out FTRs that have already been sold or otherwise to prevent existing FTRs from fulfilling their core purpose of providing a hedge against congestion.[11] NRG asserts that section 38.1.1 is a general provision regarding MISO's duty to perform "services pertaining to the Energy and Operating Reserve Markets," one that cannot trump the specific provisions governing the conduct of FTR Auctions.[12] NRG further argues that even if section 38.1.1 is an independent grant of authority under which MISO may modify CPNodes for FTRs that have already been granted, it is not an unlimited grant of authority.[13] According to NRG, although the Commission has made clear that independent system operators (ISO) and regional transmission organizations (RTO) enjoy "a great deal of discretion in interpreting their own tariffs . . ." an ISO/RTO must still ensure that its "interpretation of its tariff is reasonable" and that its actions "conform to the explicit provisions of its tariff . . . ."[14]

12. NRG also claims that MISO recognized the impropriety of clearing in FTR auctions FTRs with the same source and sink because it had amended the Tariff shortly before the 2013 Annual Auction to prohibit FTR bidders from specifying, and MISO from accepting, clearing or granting of any FTR that specifies a source and sink within the same Bus.[15] NRG argues that when MISO collapsed the CPNodes for MISO South, it

[10] *Id.* at 10-11 (citing the MISO Tariff at § 1.F).

[11] *Id.*

[12] *Id.* at 11.

[13] *Id.*

[14] *Id.* at 12 (quoting *Astoria Generating Co., L.P. v. New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,044, at P 30 (2015)).

[15] *Id.* at 13 (citing MISO Tariff at §§ 44.3.2(a)(ii), 44.3.2(d), 44.5.1, 45.3.2(a)(ii),

(continued...)

retroactively "re-specified" and then accepted, cleared and granted FTRs with the same source and sink, an action the Tariff expressly forbids.[16]

13. NRG further contends that MISO's claims that NRG was on notice that MISO would collapse the CPNodes are baseless and irrelevant. NRG maintains that MISO had never suggested that it intended to nullify FTRs until the bid window for the Partial-Year FTR Allocation was closed. NRG also claims that it received verbal assurances from MISO representatives that they intended to maintain the CPNodes for the FTRs granted in the 2013 Annual and October 2013 Multi-Period Monthly Auctions.[17] NRG further argues that the inherent nature of a Partial-Year FTR Allocation contradicts MISO's stated intent that the Partial-Year FTR Allocation placed market participants on notice that they could not rely on FTRs sourcing and sinking in MISO South sold through the earlier auctions.[18] NRG asserts that the MISO Tariff makes clear that the Partial-Year FTR Allocation "will be conducted with base loading from the latest Annual FTR Auction models to ensure the Simultaneous Feasibility of all existing FTRs."[19] NRG notes that MISO also explained in stakeholder materials prepared in anticipation of the MISO South integration that the "Partial-Year FTR Allocation will be a single stage Allocation with 100% of available transmission capacity considering already existing FTRs from the most recent Annual FTR Auction . . . ."[20] NRG also claims that MISO has made statements that belie its position regarding the FTRs.[21]

45.3.2(d)). As defined in the Tariff, a Bus is "a specific electrical location within the Transmission System and within other transmission systems within the Eastern Interconnection modeled in the Network Model."

[16] Complaint at 13.

[17] *Id.* at 14 (citing Affidavit of Mark Gilrain at ¶ 10).

[18] *Id.* at 14-15.

[19] *Id.* at 15 (quoting MISO Tariff at § 42.6).

[20] *Id.* (quoting MISO, MISO Southern Region Integration Workshop, at 52 (May 9, 2013)).

[21] *Id.* at 16-17 (referring to NRG Questions Regarding Changes to the FTR Auction Model Data after the Portal Closing (provided as Financial Transmission Rights Working Group February 5, 2014 meeting materials)).

14. Next, NRG argues that provisions in the MISO Tariff clearly put the onus on MISO to ensure that the FTRs it is offering are expected to be feasible.[22] NRG stresses that MISO cannot offer FTRs and then change the CPNodes after-the-fact based on claims of supposed infeasibility, because the Tariff requires MISO to calculate FTR credits and charges based on the congestion between "a designated FTR Receipt Point to a designated FTR Delivery Point specified in each FTR Obligation or FTR Option."[23]

15. NRG also argues that it is difficult to accept MISO's suggestion that the MISO South integration was not expected when it sold FTRs between MISO South CPNodes in the 2013 Annual and October 2013 Multi-Period Monthly Auctions.[24] According to NRG, MISO fully expected the MISO South integration to occur on December 19, 2013 when it conducted the 2013 Annual and October 2013 Multi-Period Monthly Auctions.[25] NRG further states that MISO took a number of steps to address the allocation of FTRs, ARRs and Long-Term Transmission Rights (LTTR) in advance of the MISO South integration.[26]

16. NRG also contends that even if MISO had authority to modify the CPNodes, which it does not, according to NRG, MISO exercised its authority in an unreasonable and unduly discriminatory manner.[27] NRG argues that when MISO identified the infeasibility in the Partial-Year FTR Allocation and decided to collapse the CPNodes for MISO South, MISO could have, and should have, informed market participants and allowed them to adjust their bids into the Partial-Year FTR Allocation.[28] According to NRG, this approach to infeasibility was a clear abuse of MISO's discretion.[29] NRG argues that although FTRs that source *or* sink in MISO South can contribute to infeasibility every bit as much as FTRs that source *and* sink in MISO South, MISO

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[22] *Id.* at 16 (referring to MISO Tariff at §§ 44.1 and 45.1).

[23] *Id.* (quoting MISO Tariff at § 39.3.4(a)).

[24] *Id.* at 17.

[25] *Id.* (citing Docket Nos. ER13-945-000 and ER13-1170-000).

[26] *Id.* at 17-18 (citing Docket No. ER13-665-000).

[27] *Id.* at 19.

[28] *Id.*

[29] *Id.*

placed the burden of resolving this infeasibility solely on holders of FTRs that source and sink in MISO South, an unlawful and discriminatory approach to infeasibility under the FPA.[30]

17. NRG contends that MISO could have and should have made a filing with the Commission under section 205 of the FPA to reconfigure the CPNodes for the FTRs already sold in the 2013 Annual and October 2013 Multi-Period Monthly Auctions in a non-discriminatory fashion.[31]

18. NRG requests that the Commission require MISO to compensate NRG for the loss in value of its FTRs resulting from the collapsing of the CPNodes in MISO South, for which NRG paid approximately $240,000. NRG's estimated loss in value of $13.5 million is based on a formula that multiplies the MW quantity of the disputed FTRs by the spread between marginal congestion components of the day-ahead LMPs for each hour at proxy CPNodes that NRG determined to have the same or similar definition as the CPNodes for the disputed FTRs over the same time period. These proxy CPNodes include the day ahead marginal cost component as calculated by MISO during the period December 19, 2013 through May 31, 2014, which are based on congestion modeled on the post-integration MISO transmission system that includes the transmission facilities in MISO South.

19. Finally, NRG requests that if the Commission is unwilling to grant its requested relief, the Commission make clear that NRG is free to pursue other remedies in another forum, such as an arbitral or judicial proceeding.[32]

III. Notice and Responsive Pleadings

20. Notice of NRG's Complaint was published in the *Federal Register*, 80 Fed. Reg. 63,547 (2015), with answers, interventions, and protests due on or before October 29, 2015. On October 29, 2015, MISO filed a timely answer to the Complaint, and Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies, filed a timely motion to intervene and protest. Council of the City of New Orleans, Louisiana (City of New Orleans) filed a notice of intervention. Timely motions to intervene were filed by Exelon Corporation, Xcel Energy Services Inc., Wisconsin Electric Power Company, American Municipal Power, Inc., and Madison Gas and

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[30] *Id.* at 20.

[31] *Id.*

[32] *Id.* at 22.

Electric Company. The Missouri Public Service Commission and the Mississippi Public Service Commission filed motions to intervene out-of-time.

21. On November 13, 2015, NRG filed a motion for leave to answer and answer to MISO's answer and Entergy's protest. On November 30, 2015, MISO filed a motion for leave to answer and answer to NRG's answer.

A. Answers and Protests

22. MISO requests that the Commission dismiss the Complaint with prejudice, arguing that the Partial-Year FTR Allocation was the initial opportunity for market participants to obtain congestion hedges for MISO South, that NRG's argument regarding the Tariff's prohibition against same-Bus FTRs is inapplicable, and that NRG has failed to prove any actual damages resulting from MISO's actions taken in connection with the integration of MISO South.[33]

23. MISO argues that the Partial-Year FTR Allocation was the first opportunity for market participants to obtain congestion hedges for MISO South, as required by the MISO Tariff for mid-cycle integrations.[34] MISO asserts that, prior to that time, it neither had the authority nor the obligation to allocate rights on MISO South as if it were already in MISO for purposes of FTRs sold in FTR Auctions preceding the integration.[35] MISO further argues that registration and other data needed to create the Partial-Year FTR Allocation models were not submitted until June 26 – July 26, 2013, after the 2013 Annual FTR Auction occurred.[36] MISO also contends that the Tariff requires it only to consider the Transmission Provider Region in existence at the time of each annual and monthly FTR auction, preventing market participants any opportunity to hedge for congestion on the MISO South transmission system ahead of, and apart from, the Partial-Year FTR Allocation.[37] MISO argues that its interpretation of the Tariff is reasonable based on the rationale that post-integration congestion hedges be based on ARR Entitlements to be modeled in the Partial-Year FTR Allocation, not the pre-integration

[33] MISO Answer at 8, 19, and 22.

[34] *Id.* at 8.

[35] *Id.* at 9.

[36] *Id.*

[37] *Id.* at 9-10 (citing §§ 44.1 and 45.1 of the MISO Tariff).

FTR Auctions, which did not yet include MISO South's transmission facilities.[38] Further, due to uncertainty regarding which entities proposing to integrate into MISO would actually be able to join MISO on the target date of December 19, 2013, MISO argues it would have been premature to model MISO South at that time.[39] Finally, MISO claims that it would have been unfair to other market participants in MISO South to expand the scope of NRG's pre-integration FTRs beyond the pre-integration footprint because virtually all of those market participants relied on the Partial-Year FTR Allocation to initially obtain congestion hedges for the post-integration footprint.[40]

24. MISO also argues that it properly redefined and retired the Interface CPNodes as internal and identical, consistent with its handling of interfaces in prior integrations.[41] MISO reasons that interfaces are, by definition, external to MISO and consequently, after MISO South's integration, the Interface CPNodes ceased to have any function.[42] According to MISO, it appropriately redefined MISO South's Interface CPNodes to reflect the reality that they were no longer necessary as a means for scheduling interchange or for otherwise modeling MISO's interaction with external areas that no longer existed.[43] MISO also asserts that it reasonably redefined the Interface CPNodes into an identical CPNode and that the remapping included not only pre-integration FTRs that specified them as sources *and* sinks, but also those that specified them as sources *or* sinks.[44] MISO explains that because the Interface CPNodes were external to MISO pre-integration, the pre-integration FTR Auction models accounted only for any portion of export, import or through transactions that were within MISO's pre-integration footprint, including potential loop flow.[45] MISO argues that the integrated MISO South area did not need to be modeled with interfaces for purposes of MISO export, import and through transactions because the MISO South area was no longer external to MISO.[46] MISO

[38] *Id.* at 11.

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

[40] *Id.* at 12.

[41] *Id.* at 13.

[42] *Id.*

[43] *Id.*

[44] *Id.* at 14 (emphasis in original).

[45] *Id.*

concludes that its redefinition of the Interface CPNodes into a new CPNode therefore appropriately applied the hedging function of the pre-integration FTRs only to the pre-integration footprint, which was the basis for their feasibility and value under the pre-integration FTR Auctions.[47]

25. MISO further argues that pre-integration FTRs were subject to transmission system changes affecting specified FTR sources and sinks, per the MISO Tariff.[48] MISO argues that the Tariff defines FTRs as a congestion-related financial instrument in the context of the transmission system and the MISO region, making their potential congestion value in the Day-Ahead Market depend on changes to that context.[49] MISO contends that it needs to update its Commercial Model periodically to properly reflect transmission system changes, which in the case of MISO South's integration necessitated the termination of the Interface CPNodes and required their redefinition in such a way as to preserve the limitation of pre-integration FTRs to congestion hedging for the pre-integration MISO footprint.[50]

26. MISO also argues that NRG knew or should have known that MISO South was not modeled in the pre-integration FTR auctions and that NRG has no legal basis for relying on pre-integration FTR Auctions to prematurely obtain any MISO South financial hedges.[51] MISO claims that NRG not only had constructive notice of the Tariff's provisions regarding the Partial-Year FTR Allocation – because of the publication of a notice of filing – but was actually aware of such provisions, as NRG participated in the Commission proceeding involving Tariff revisions through which MISO sought to address potential gaps in ARR Entitlements of market participants therein.[52] Additionally, MISO states that NRG had access to the models used for the pre-integration FTR Auctions, and either knew or should have known that those models were confined to

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[46] *Id.*

[47] *Id.*

[48] *Id.* at 16.

[49] *Id.*

[50] *Id.* at 17.

[51] *Id.*

[52] *Id.*

the pre-integration MISO footprint.[53] MISO further dismisses NRG's claim that it relied on purported conversations with former MISO employees regarding the modeling of MISO South's Interface CPNodes after the Partial-Year FTR Allocation, stating that MISO is unaware of any such communications.[54]

27. MISO further argues that NRG's contention regarding the prohibition against same-bus FTRs is inapplicable.[55] MISO asserts that NRG wrongly contends that redefining Interface CPNodes as the same CPNode is "exactly" like specifying a source and sink within the same bus and that, to the contrary, the Tariff has separate and very different definitions of a bus, an interface, and an ARR Zone.[56] MISO states that the Tariff's prohibition against same-bus FTRs aims to prevent the bidding or clearing of same-bus FTRs through which market participants may unduly extract congestion revenues or pose undue credit risks, which does not prevent MISO, as the administrator of the Tariff and the markets, from redefining and retiring Interface CPNodes in connection with the integration of a new area, such as MISO South.[57] MISO also argues that the redefinition of the CPNodes was not based on infeasibility *per se*, but rather on a realization by MISO during the Partial-Year FTR Allocation process that pre-integration FTRs were auctioned and remained outstanding that were not modeled to contemplate transmission capacity and congestion costs associated with MISO South in the post-integration environment.[58] According to MISO, unless redefined properly, the Interface CPNodes made it appear that, after the integration, the pre-integration FTRs suddenly also hedged for MISO South congestion costs.[59] MISO asserts that the scope of the transmission capacity covered by the pre-integration FTRs would have been unduly expanded to include transmission capacity in MISO South, even if such capacity was not modeled, and therefore not auctioned, in the pre-integration FTR Auctions, which would

[53] *Id.* at 18.

[54] *Id.*

[55] *Id.* at 19.

[56] *Id.*

[57] *Id.* at 20.

[58] *Id.* at 21.

[59] *Id.*

have resulted in an "undue outcome" that MISO properly remedied by redefining the Interface CPNodes.[60]

28. MISO also argues that NRG failed to allege or prove any damages, particularly unhedged congestion costs, and failed to mitigate its damages.[61] MISO asserts that NRG failed to explain why the redefinition of the Interface CPNodes could have conceivably exposed NRG to any congestion costs, considering that the termination of the Interface CPNodes eliminated the possibility of any congestion to which NRG could have been exposed between these Interface CPNodes.[62] MISO further argues that NRG has not sufficiently supported or explained its assertion that its calculation of damages used CPNodes that had the "same definition" as the sources and sinks of the pre-integration FTRs.[63] MISO also notes that during the informal ADR process, NRG failed to respond to MISO's question of what hedging shortfall NRG suffered along the relevant transmission paths, taking into account the FTRs it obtained at the Partial-Year FTR Allocation.[64] MISO further argues that the total number of MWs for which NRG made nominations in the Partial-Year FTR Allocation was nearly identical to the total number of MWs for which it made nominations in the ensuing Annual ARR Allocation, which undermines NRG's claim that its nominations during the Partial-Year FTR Allocation were reduced due to its reliance on the pre-integration FTRs it had purchased in the 2013 auctions, or that the FTRs it acquired were insufficient to hedge its post-integration congestion costs.[65] MISO argues that NRG does not allege that it attempted to mitigate its damages by acquiring whatever FTRs were available in monthly FTR Auctions, nor that NRG netted out of its damage calculation any congestion credits it received from any FTRs that it may have obtained in such monthly FTR Auctions.[66] MISO further notes

[60] *Id.*

[61] *Id.* at 22.

[62] *Id.* at 22-23.

[63] *Id.* at 23.

[64] *Id.*

[65] *Id.*

[66] *Id.* at 24.

that during the ADR process, it offered to refund the approximately $240,000 that NRG spent on the FTRs, an offer that NRG rejected.[67]

29. Finally, MISO argues that there is no basis or need for the Commission to reserve any option, which NRG wants to be acknowledged, to subsequently seek relief, particularly money damages, from an arbitral forum or a lower court.[68] MISO asserts that NRG's request for relief rests entirely on its claim of alleged Tariff violations, which fall squarely under the Commission's jurisdiction, and any precedent involving money damages for contract breaches is inapplicable herein.[69]

30. Entergy states that, as a load serving entity and a transmission customer with long-term firm point-to-point transmission rights, NRG had long-term rights under Entergy's Open Access Transmission Tariff that were converted to Reserved Source Points under the MISO Tariff, which qualified NRG to participate in the MISO process for allocation, not purchase, of Partial-Year FTRs and ARRs.[70] Entergy further states that MISO's process for allocation of Partial-Year FTRs and ARRs provided incentive for NRG to register its Reserved Source Points by July 26, 2013 and nominate FTRs in the Partial-Year Allocation.[71] Entergy states that, in contrast, any entity can participate in annual and multi-month FTR auctions and purchase FTRs for speculative purposes.[72] Entergy states that because entities pay in an "Auction," while entities must instead request FTRs that represent their historical rights in an "Allocation," NRG's argument that it was required to buy or bid for the Partial-Year FTRs that it received, as well as the argument that it purchased the disputed FTRs to provide a hedge from its generation to its loads following the MISO South Integration, does not hold up.[73] Additionally, Entergy states that there was no economic incentive for NRG to rely on FTRs received in the 2013 Annual FTR Auction to nominate less than its entire rights for the Partial-Year FTR

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[67] *Id.*

[68] *Id.*

[69] *Id.* at 25.

[70] Entergy Protest at 7-8. Reserved Source Points, as defined in MISO's Tariff, are "the Baseload Reserved Source Point for use in the ARR allocation process."

[71] *Id.* at 8.

[72] *Id.*

[73] *Id.* at 8-9.

Allocation, and if NRG did so, the decision was not driven by any extra costs associated with receiving Partial-Year FTRs.[74]

31. Furthermore, Entergy avers that the disputed FTRs do not provide a hedge for NRG's load and generation in MISO South, as NRG claims.[75] Entergy states that the paths of the disputed FTRs are north to south, and generally represent sources in the northern part of MISO South (e.g., Arkansas) and sinks in the southern part of MISO South (e.g., Louisiana and south Texas).[76] Entergy claims that NRG's two largest generators in MISO South (Big Cajun and Cottonwood) are located in southern Louisiana and NRG serves load in Louisiana, Texas and Arkansas.[77] Entergy states that instead of following the north to south direction of the paths of the disputed FTRs purchased by NRG, NRG's generation-to-load paths are predominately east to west and west to east within Louisiana and Texas with some flows south to north from Louisiana to Arkansas.[78] Entergy therefore claims that NRG's reliance argument is completely unsupported due to the fact that the paths of the disputed FTRs flow in the opposite direction of its generation-to-load obligations.[79]

32. Entergy states that at no time did it or the Entergy Operating Companies seek to purchase FTRs to hedge for their loads in the MISO auctions prior to the Partial-Year FTR Allocation since it would have been unreasonable given the opportunity to nominate and receive Partial-Year FTRs during that allocation process and because MISO's Tariff did not allow participation in pre-integration auctions.[80] Entergy states that MISO made clear that market participants in what would become MISO South could not participate in the first Multi-Period Monthly Auction held October 14 – 15, 2013, and that instead their first opportunity for participation in the auctions was in November 2013.[81] Entergy

[74] *Id.* at 9.

[75] *Id.*

[76] *Id.*

[77] *Id.*

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

[79] *Id.* at 11.

[80] *Id.* at 11-12 (citing MISO Tariff, Module C, Section 42.6).

[81] *Id.* at 13 (citing *MISO*, Financial Transmission Rights Working Group Presentation, Multi Period Monthly Auction – Update, 2 (May 1, 2013)).

further states that as NRG was an active participant in the working group dealing with MISO South member FTR auction participation, NRG either ignored MISO's instructions to not participate in the first Multi-Period Monthly Auction or NRG bought FTRs in that pre-integration auction in order to speculate.[82]

33. Entergy avers that, as a result of NRG's participation in Docket No. ER13-665-000, in which MISO proposed supplemental rules for ARR/FTR allocation in MISO South, NRG must have understood that the first opportunity to receive FTR hedges for load and other long-term rights in MISO South would be in the Partial-Year FTR Allocation. Furthermore, Entergy alleges that NRG must have also known that MISO pledged to work with entities that have concerns regarding their allocation of FTRs or ARRs to try to resolve entitlement gaps.[83]

34. Entergy states that the process for identifying and registering Reserved Source Points began April 1, 2013, and overlapped the timeframe, beginning on April 17, 2013, when NRG bid for and received the disputed FTRs in the 2013 Annual FTR Auction.[84] Entergy further states that, at the same time that NRG should have been availing itself of MISO's supplemental rules and consulting with MISO if it had concerns regarding entitlement gaps, NRG was allegedly bidding on FTRs to cover those same gaps.[85] Entergy holds that the Complaint should be dismissed because of NRG's failure to follow available remedies related to entitlement gaps as prescribed in the MISO Tariff and Commission order discussed above.

35. Entergy claims that awarding NRG the $13.5 million for the alleged loss in value of the disputed FTRs would have the effect of prioritizing NRG's speculative purchase of FTRs over the rights of load-serving entities in MISO South.[86] Entergy states that NRG's actions are in violation of the principles of Order No. 681,[87] in that NRG seeks to be allocated transmission congestion hedges as a market participant rather than a load

[82] *Id.* at 14.

[83] *Id.* at 12 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,236, at PP 29, 38 (2013)).

[84] *Id.* at 13.

[85] *Id.*

[86] *Id.* at 14.

[87] *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226.

serving entity, as well as seeks to be awarded hedges that are unrelated to its historical usage of the system or its reasonable needs as a load serving entity and seeks to evade pro-rata curtailment of constrained paths, substituting a "first come, first served" allocation for MISO's prorationing rules.[88] Entergy argues that MISO did not unduly discriminate among holders of FTRs sourcing and sinking in MISO South because MISO followed its Tariff in ensuring simultaneous feasibility in the allocations of the Partial-Year FTRs and, given that some rights were infeasible, MISO reasonably allocated the rights among those with long-term transmission rights instead of FTR speculators, like NRG.[89]

36. Entergy requests that the Complaint be dismissed. However, Entergy states that, in the alternative, the Commission should direct MISO to refund the purchase price for the disputed FTRs and collect that amount from the same entities to which the revenues from the sale of the disputed FTRs were originally credited.[90] Entergy states that it disputes NRG's lost value calculation and further states that such calculation raises issues of material fact that should be addressed in a hearing if the Commission grants the Complaint.[91]

37. In its answer, NRG states that MISO's answer acknowledges that it took actions that rendered NRG's existing FTRs valueless.[92] NRG states that neither MISO nor Entergy are able to identify any provision of the Tariff that permits MISO to take away, modify or devalue FTRs.[93] NRG reiterates that MISO assured NRG that MISO intended to maintain the CPNodes for the FTRs sold in the pre-integration FTR Auctions.[94]

38. NRG states that FTRs that roughly parallel the path between the Arkansas trading hub and its load do provide a hedge, albeit an imperfect hedge, for the risk of congestion

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[88] Entergy Protest at 14-15.

[89] *Id.* at 15-16.

[90] *Id.* at 16.

[91] *Id.*

[92] NRG Answer at 2.

[93] *Id.*

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

between generation and load, and if the FTRs at issue were honored, they would have served this function.[95]

39. NRG states that by acknowledging that NRG should be refunded the purchase price of the FTRs, MISO and Entergy implicitly concede that if there was an error, it was MISO's error to sell FTRs between CPNodes in MISO South through the 2013 FTR Auctions, and not NRG's error in purchasing those FTRs, and that no provision of the Tariff or the FPA authorizes MISO to rescind that sale.[96]

40. In its response to NRG's answer, MISO argues that NRG fails to address the central issue of the case, i.e., that the pre-integration FTRs were acquired based on FTR Auction models that did not yet represent MISO South as part of MISO.[97] MISO further argues that NRG's answer fails to recognize that, because MISO's model represented MISO South as an external area, the determinative issue in this case is the limited hedging scope of the pre-integration FTRs, not whether FTRs acquired in the Partial-Year FTR Allocation have "priority" over pre-integration FTRs.[98] MISO also asserts that NRG mistakenly regards MISO's Interface CPNodes redefinition as affecting only pre-integration FTRs with sources *and* sinks in MISO South, and not pre-integration FTRs with sources *or* sinks in MISO South.[99] Finally, MISO argues that NRG fails to allege, much less substantiate, any such unhedged congestion costs suffered by NRG during the term of its pre-integration FTRs.[100]

IV. <u>Discussion</u>

A. <u>Procedural Matters</u>

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

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[95] *Id.* at 6-7.

[96] *Id.* at 8.

[97] MISO November 30 Answer at 3.

[98] *Id.* at 3-4.

[99] *Id.* at 4.

[100] *Id.* at 5.

we grant the unopposed, late-filed interventions of the Missouri Public Service Commission and the Mississippi Public Service Commission.

42. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed by NRG and MISO because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

43. We deny the Complaint. We find that NRG has failed to demonstrate that MISO's actions taken with respect to pre-integration FTRs acquired by NRG in the 2013 auctions violated MISO's Tariff.

44. As discussed below, we find that MISO's actions were consistent with the Tariff. The Tariff provides that the Partial-Year FTR Allocation was the first opportunity for market participants to obtain FTRs for the MISO South region. MISO's relevant Tariff provision, section 42.6, states:

> "A Partial-Year FTR Allocation will be conducted for the Market Participant in the new ARR Zones[101] added as a result of Transmission Provider Region expansion . . . [and] will cover the period of time when the new ARR Zones become effective up to the start of the next Annual ARR Allocation . . . [and] Market Participants in the new ARR Zone(s) may participate in the monthly FTR Auctions pursuant to Section 45 of the Tariff, following the Partial-Year FTR Allocation"[102]

45. While Tariff section 42.6 does not explicitly bar market participants in the new ARR Zones from participating in monthly FTR auctions prior to the Partial-Year FTR Allocation, it does contemplate that initial FTRs for the new ARR Zones should only be procured through the Partial-Year FTR Allocation. If market participants were able to procure FTRs in a new ARR Zone prior to the Partial-Year FTR Allocation the provision would have no meaning and/or be unnecessary. Further, because the new ARR Zone (i.e., MISO South) did not become effective until after the integration on December 19,

[101] The MISO Tariff defines ARR Zones as "Geographic areas defined for the purpose of allocating ARRs based upon locations where a Market Participant serves Load." *See* MISO Tariff, Section 1.A, Definitions – A.

[102] MISO Tariff, Section 42.6 (emphasis added).

2013, it would be unreasonable to expect MISO to have accounted for the new ARR Zone configuration, and its related transmission constraints and congestion characteristics, when it conducted the 2013 Annual and October 2013 Multi-Period Monthly Auctions. In purchasing FTRs prior to the Partial-Year FTR Allocation with sources and sinks in the region that would become MISO South, NRG should have recognized that such pre-integration FTRs as a congestion hedge on the pre-integration MISO transmission system would not provide value as FTRs between sources and sinks in the new ARR Zones following the Entergy integration.

46. Additionally, we find that MISO provided notice to market participants at a working group meeting consistent with this reading of the Tariff.[103] Specifically, NRG participated in a proceeding addressing ARR entitlements associated with the MISO South integration and was thus familiar with Tariff provisions related to FTR disposition upon MISO South integration. Additionally, NRG participated in at least four stakeholder meetings prior to the conclusion of the 2013 Annual Auction where MISO discussed the MISO South integration, including the treatment and allocation of FTRs. If NRG disputed MISO's understanding of its Tariff, NRG should have filed a complaint prior to the 2013 Annual Auction and the October 2013 Multi-Period Monthly Auction.

47. It is evident that pre-integration FTRs with both sources and sinks in what would become MISO South are fundamentally different products, with different potential values, than post-integration FTRs with both sources and sinks in MISO South. NRG purchased the former but now seeks to be compensated for the potential value of the latter in the post-integration world. MISO calculates the target Day-Ahead congestion revenue distribution for each FTR as the difference between the Marginal Congestion Component of the Day-Ahead LMP at the source CPNode and the Marginal Congestion Component of the Day-Ahead LMP at the sink CPNode multiplied by the FTR MWs for each hour. Where the source and/or sink CPNodes are outside of the MISO region, such as NRG's pre-integration FTRs with source and sink CPNodes in what would become MISO South, the target day-ahead congestion revenues reflect the value of injecting the MW associated with the FTR at the external interface of the MISO system associated with the source CPNode and withdrawing that amount of MWs at the external interface of the MISO system associated with the sink CPNode.[104] FTR holders would only

[103] MISO Answer at 17-18 (citing the testimony of Kevin Vannoy at 6-7).

[104] *See* MISO Tariff, Section 39.3.3.a ("Financial Schedules and Through Schedules are settled only for the Transmission Usage Charge derived pursuant to Section 39.3.3.c."). The Transmission Usage Charge funds the target day-ahead congestion revenues by including the cost of congestion between the sink and source

(continued...)

receive revenues to the extent that there is a difference in the LMPs at the external interfaces of the MISO system associated with the source and sink CPNodes for the FTR. That is, such FTRs, while nominally sourcing and sinking outside of the MISO system, only provide a congestion hedge between the associated external interface points of the pre-integration MISO transmission system. However, absent any redefinition by MISO, after the integration of MISO South, the pre-integration FTRs that NRG purchased with sources and sinks within MISO South would entitle NRG to receive congestion revenues based on the difference in the LMPs at the source and sink points within MISO South, which would also include the impact on congested flowgates within the new MISO South.

48. We find that MISO took appropriate action to redefine the CPNodes of the pre-integration FTRs sourcing and/or sinking in what is now MISO South to maintain post-integration the specific value that they were intended to provide based on congestion caused by the associated impacts on the pre-integration MISO system. Additionally, contrary to NRG's assertions, MISO's consolidation of the CPNodes in MISO South, which eliminated the potential value of the disputed FTRs, was not unduly discriminatory, since MISO made adjustments to all pre-integration FTRs with source and/or sink points in MISO South to maintain the product originally sold. These adjustments potentially affected the value of all FTRs with source or sink points in MISO South.

49. We also find that any MISO communications to NRG regarding the disposition of NRG's FTRs from the monthly and annual auctions are not dispositive of whether MISO provided notice that the Partial-Year FTR-Allocation was the first opportunity for market participants to obtain FTRs for the MISO South region. The communications cited in the Complaint were made in February of 2014, subsequent to the monthly and annual FTR auctions, as well as the Partial-Year FTR Allocation. Such communications neither were binding on MISO, nor affected NRG's FTR purchases, which had already occurred.

50. Additionally, we find baseless NRG's assertions that it was harmed by MISO's actions because NRG would have bid differently into the Partial-Year FTR Allocation had it known that MISO would render the FTRs that NRG purchased through the monthly and annual FTR auctions valueless. That NRG's nominations in the Partial-Year FTR Allocation were identical to the total number of MWs for which it made nominations in the ensuing Annual ARR nomination, as MISO states, undermines NRG's claim that it would have bid differently in the Partial-Year FTR Allocation had it anticipated MISO's actions.

Interface CPNodes that equates to the difference between the Marginal Congestion Components at the source and sink.

51. Further, section 38.1.1 of the Tariff allows MISO to "[i]mplement and maintain the Commercial Pricing Nodes for Load and Generation Resources that comprise Hubs, Zones and Interfaces, and modify each to meet the needs of Market Participants." As MISO states, in performing its functions under section 38.1.1 it was required to redefine CPNodes, including Interfaces, and to remap FTRs on the terminated CPNodes in order to appropriately apply the hedging function of the pre-integration FTRs only to the pre-integration footprint reflected in its pre-integration auction models and which was only available for purchasing FTRs in the auctions conducted prior to the Partial-Year FTR Allocation. MISO explains, and we agree, that the scope of the transmission capacity covered by the pre-integration FTRs would have been unduly expanded to include transmission capacity in MISO South, even though such capacity was not modeled and not auctioned in the pre-integration FTR auctions, which would have resulted in an undue outcome that MISO properly remedied by redefining the Interface CPNodes. Further, the fact that the registration and other data needed to create the Partial-Year FTR Allocation models were not submitted to MISO until June 26 – July 26, 2013, after the 2013 Annual FTR Auction occurred, also supports a finding that MISO acted reasonably with respect to the pre-integration FTR auctions.[105]

The Commission orders:

The 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.

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[105] *Id.* at 9.