

154 FERC ¶ 61,074
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 Nos. ER16-469-000
ER16-470-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued February 2, 2016)

1. On December 4, 2015, Midcontinent Independent System Operator, Inc. (MISO) submitted, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) and the Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc., a Delaware Non-Stock Corporation (MISO Transmission Owners Agreement). The proposed revisions modify MISO's transmission project status reporting requirements, competitive bidding process, dispute resolution provisions, and variance analysis procedures. In this order, we accept, subject to condition, MISO's proposed revisions, effective February 3, 2016.

I. Notice and Responsive Pleadings

2. Notices of the filings were published in the *Federal Register*, 80 Fed. Reg. 76,971 (2015), with interventions and protests due by December 28, 2015.

3. Timely motions to intervene were filed by: Ameren Services Company (on behalf of Ameren Illinois Company, Ameren Transmission Company of Illinois and Union Electric Company); American Municipal Power, Inc.; Consumers Energy Company; DATC LLC; Entergy Services, Inc.; International Transmission Company; Madison Gas

¹ 16 U.S.C. § 824d (2012).

and Electric Company; Midcontinent MCN LLC; MISO Transmission Owners;² NextEra Energy Transmission, LLC; and Wisconsin Public Service Corporation. Arkansas Public Service Commission filed a notice of intervention. On January 4, 2016 and January 7, 2016, respectively, Illinois Commerce Commission and Transource Energy, LLC (Transource) filed motions to intervene out-of-time.

II. Discussion

A. Procedural Issues

4. 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. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we grant Illinois Commerce Commission's and Transource's late-filed motions to intervene, given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

² MISO Transmission Owners for this filing consist of: Ameren Services Company (for Union Electric Company, Ameren Illinois Company, and Ameren Transmission Company of Illinois); American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC (for Duke Energy Indiana, Inc.); East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; South Mississippi Electric Power Association; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

B. Substantive Issues**1. Proposed Changes to Tariff and Transmission Owners Agreement**

5. On December 4, 2015, in Docket No. ER16-469-000, MISO submitted: (1) proposed revisions to developers' project status reporting requirements, the competitive bidding process, and the variance analysis procedures contained in Attachment FF of its Tariff; and (2) revisions to definitions in Module A of its Tariff. On the same day, in Docket No. ER16-470-000, MISO submitted changes to the Transmission Owners Agreement.³ MISO states that the proposed revisions harmonize regional transmission project reporting requirements with the competitive bidding process and *pro forma* Selected Developer Agreement, refine MISO's alternative dispute resolution process to better accommodate competitive bidding, and enhance MISO's Order No. 1000-compliant variance analysis procedures.⁴ Specifically, MISO states that its proposed revisions: (1) apply its Variance Analysis process to all Multi-Value Projects and Market Efficiency Projects, regardless of whether they are competitively awarded; (2) articulate the factors that MISO will consider in its Variance Analysis process in deciding the proper outcome and expand the range of problems that a mitigation plan may be used to solve; (3) create a Variance Analysis trigger for a Selected Developer Default; (4) articulate more specific procedures for conducting a Variance Analysis; (5) create greater uniformity between Multi-Value Projects and Market Efficiency Projects that are subject to competition and those that are not; (6) establish a more predictable transmission project reporting schedule; (7) provide MISO with the information needed to monitor transmission projects; and (8) remove the waiver of transmission project development obligations in the dispute resolution procedures during disputes regarding developer selection.⁵

³ MISO requests that both filings be treated as one because eTariff filing constraints are the sole reason they are being submitted separately. Transmittal at 1 (references to the Transmittal are to Docket No. ER16-469-000).

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁵ Transmittal at 2-3.

6. MISO requests an effective date of February 2, 2016 for the proposed changes to its Tariff and the Transmission Owners Agreement.⁶

2. Commission Determination

7. We accept, subject to condition, MISO's proposed revisions to its Tariff and Transmission Owners Agreement,⁷ effective February 3, 2016.⁸ We direct MISO to file, within 30 days of the date of issuance of this order, a compliance filing, as discussed below.

8. First, we require MISO to revise its proposed definition of Eligible Projects. MISO explains in its transmittal that its proposed revisions "expand the scope and . . . enhance the project status reporting requirements applicable to Eligible Projects, whether those facilities are considered Competitive Transmission Facilities or not."⁹ However, we find that it is unclear from the proposed definition of Eligible Projects whether this category includes all Market Efficiency Projects and Multi-Value Projects, or only those eligible for MISO's competitive bidding process. Given MISO's explanation of the scope of Eligible Projects, we direct MISO to submit, within 30 days of the date of issuance of this order, a compliance filing to revise the definition of Eligible Projects to state: "Shall mean any Market Efficiency Projects ("MEP") and Multi-Value Projects ("MVP") approved by the Transmission Provider's Board after December 1, 2015 ~~that may be eligible for~~ regardless of whether such project is subject to the Transmission Provider's Competitive Developer Selection Process."¹⁰

9. In addition, we find that MISO's proposed definition of Alternate Selected Developer does not clearly describe all of the circumstances in which an Alternate

⁶ Transmittal at 38.

⁷ The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

⁸ Although MISO requests an effective date of February 2, 2016, absent waiver, the earliest that the proposed revisions may become effective is after 60 days' notice, i.e., on the 61st day after filing.

⁹ Transmittal at 8.

¹⁰ MISO Tariff, Module A, § II.1.E (Definitions – E).

Selected Developer's Proposal would be implemented. MISO states in its transmittal that an Alternate Selected Developer would assume the responsibility to develop, construct, own, operate, and maintain a Competitive Transmission Project "in the event that the Selected Transmission Developer fails to execute the Selected Developer Agreement or provide the required financial security."¹¹ However, MISO's proposed definition does not explicitly refer to a Selected Developer's failure to provide the required Project Financial Security. To prevent any confusion with respect to this point, we direct MISO to revise the definition of "Alternate Selected Developer(s)" as follows:

Shall be the RFP Respondent(s) whose Proposal is selected to be the alternate Proposal by the Executive Oversight Committee, pursuant to Attachment FF of the Tariff, for implementation if the Selected Developer fails to execute or request an unexecuted filing of the Selected Developer Agreement and provide the required Project Financial Security within the timeframe provided in Attachment FF Section VIII.H.¹²

10. Further, we find one part of a proposed transmission project reporting requirement must be clarified. Specifically, MISO proposes that all Eligible Project facilities report:

estimated project costs, including the estimated cost to complete each facility, any binding cost caps or cost containment that were included in the Selected Proposal, any material changes therein as compared to the applicable Baseline Cost Estimate, the total project expenditures to date, and the estimated percentage (%) of project spend as compared to the estimated total cost to complete the facilities...¹³

We find the meaning of the phrase "percentage of project spend" in this section to be unclear. Thus, we direct MISO to submit a compliance filing, within 30 days of the date of issuance of this order, to revise section I.C.11(a) to clarify the meaning of "percentage of project spend."

¹¹ Transmittal at 14.

¹² MISO Tariff, Module A, § II.1.A (Definitions - A).

¹³ MISO Tariff, Attachment FF, § I.C.11(a).

11. In addition, MISO proposes a requirement to report on binding cost caps and cost containment in section I.C.11(a) of Attachment FF, which applies to all Eligible Projects, including those not subject to the competitive bidding process. However, this proposed reporting requirement is not applicable to reports for Eligible Projects that are not also Competitive Transmission Facilities. Therefore, we direct MISO to submit a compliance filing, within 30 days of the date of issuance of this order, to revise section I.C.11 of Attachment FF to delete the words “any binding cost caps or cost containment that were included in the Selected Proposal” from section I.C.11(a)(ii) of Attachment FF and to add it to section I.C.11(b) of Attachment FF, which is the section that outlines the requirements that apply to only Competitive Transmission Facilities.

12. We also note that MISO uses the capitalized term “Baseline Cost Estimate” when describing status reporting requirements applicable to Eligible Project facilities in section I.C.11(a) of Attachment FF. However, this term is not defined in the Tariff until section IX.C.1.1. Therefore, to provide clarity, we direct MISO to submit a compliance filing, within 30 days of the date of issuance of this order, revising the Tariff to state “as set forth in Section IX.C.1.1” wherever the term “Baseline Cost Estimate” is used in Attachment FF other than in section IX.C.1.

13. Finally, MISO’s proposed section IX.C.1.1 of Attachment FF states that, for the facilities assigned to an incumbent Transmission Owner included in the Eligible Project not eligible for the Competitive Transmission Process, “the Baseline Cost Estimate shall be the project cost estimate provided by the respective Transmission Owner through their status update provided upon achieving Milestone #2A pursuant to the Business Practices Manuals and Attachment FF Section I.C.11 of the Tariff.”¹⁴ However, MISO proposes to remove the reference to Milestone #2A from section I.C.11 in Attachment FF of the Tariff. Therefore, we direct MISO to submit, within 30 days of the date of issuance of this order, revisions to section IX.C.1.1 of Attachment FF to remove the language stating “and Attachment FF Section I.C.11 of the Tariff” so that it is clear that Milestone #2A can be found in the Business Practice Manuals.

The Commission orders:

(A) We accept MISO’s revisions to its Tariff and the Transmission Owners Agreement, effective February 3, 2016, subject to condition, as discussed in the body of this order.

¹⁴ MISO Tariff, Attachment FF, § IX.C.1.1 (Baseline Cost Estimate).

(B) We direct MISO to submit a compliance filing within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.