

154 FERC ¶ 61,168
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. ER14-2445-002
ER14-2445-004

ORDER DISMISSING REHEARING AND DISMISSING COMPLIANCE FILING

(Issued March 4, 2016)

1. On January 12, 2015, Midcontinent Independent System Operator, Inc. (MISO) filed a request for rehearing of the Commission's December 12, 2014 Hurdle Rate Order.¹ Several other parties also filed requests for rehearing of the Hurdle Rate Order. Specifically, the requests for rehearing take issue with the Commission's requirement for MISO to amend the Hurdle Rate formula to use only flows over 1,000 MW in the total dispatch flows in calculating the initial Hurdle Rate; they argue that the Hurdle Rate was being treated as a congestion charge; and they take issue with the distribution of the congestion revenues generated by the Hurdle Rate. We dismiss the requests for rehearing as moot, as discussed below.

2. On January 12, 2015, MISO submitted a compliance filing as directed by the Commission in the Hurdle Rate Order, making changes to the calculation of the initial Hurdle Rate and the adjustment equation (January 12 Compliance Filing). We dismiss MISO's January 12 Compliance Filing as moot, as discussed below.

I. Background

3. In 2004, the Commission accepted a Joint Operating Agreement to better coordinate power flows and improve seams management between MISO and Southwest Power Pool, Inc. (SPP) (MISO-SPP JOA).²

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,225 (2014) (Hurdle Rate Order).

² *See Sw. Power Pool, Inc.*, 109 FERC ¶ 61,008 (2004), *reh'g denied*, 110 FERC ¶ 61,031 (2005).

4. On January 28, 2014, SPP filed a complaint against MISO under sections 206 and 306 of the Federal Power Act (FPA)³ in which it sought a Commission order finding that MISO is violating the MISO-SPP JOA and the SPP Open Access Transmission Tariff (SPP Tariff), and requiring MISO to compensate SPP under the SPP Tariff for MISO's use of the SPP transmission system for real-time energy transfers between MISO Midwest and MISO South following the integration of the Entergy Operating Companies⁴ into MISO on December 19, 2013 (SPP Complaint).⁵

5. Concurrent with the SPP Complaint, SPP filed an unexecuted service agreement to assess MISO charges for MISO's use of the SPP transmission system as a result of MISO's real-time energy transfers between the MISO Midwest and MISO South regions (SPP Service Agreement).⁶

6. On February 18, 2014, MISO filed a complaint against SPP under sections 206 and 306 of the FPA, alleging that the SPP Complaint and SPP's filing of the SPP Service Agreement violate the MISO-SPP JOA and SPP's Tariff, and seeking a Commission order requiring SPP to cease sending invoices to MISO and to nullify the invoices already sent (MISO Complaint).⁷

7. On March 28, 2014, the Commission issued an order⁸ that, *inter alia*, addressed the SPP Complaint, the SPP Service Agreement, the MISO Complaint, and the MISO-SPP JOA Remand,⁹ which also involved the MISO and SPP dispute over the terms of the MISO-SPP JOA. In the MISO-SPP JOA Order, the Commission accepted for filing the

³ 16 U.S.C. §§ 824e, 825e (2012).

⁴ Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

⁵ Southwest Power Pool, Inc., Complaint and Request for Fast Track Processing and Motion to Consolidate, Docket No. EL14-21-000 (filed Jan. 28, 2014).

⁶ Southwest Power Pool, Inc., Submission of Unexecuted Non-Firm Point-to-Point Transmission Service Agreement, Docket No. ER14-1174-000 (filed Jan. 28, 2014).

⁷ Midcontinent Independent System Operator, Inc., Complaint and Motion to Consolidate, Docket No. EL14-30-000 (filed Feb. 18, 2014).

⁸ *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,231 (2014) (MISO-SPP JOA Order).

⁹ *Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013). The Court remanded to the Commission its interpretation of section 5.2 of the MISO-SPP JOA which involves contract path sharing.

SPP Service Agreement, suspended it for a nominal period, and made it effective January 29, 2014, subject to refund. In addition, the Commission consolidated the four proceedings and established hearing and settlement judge procedures.

8. In order to limit its exposure to charges under the SPP Service Agreement, MISO proposed the Sub-Regional Power Balance Constraint to limit intra-regional flows, i.e., those flows between MISO Midwest and MISO South, to the 1,000 megawatt (MW) contract path limit between MISO Midwest and MISO South, rather than allowing flows up to the 2,000 MW limit established in the Operations Reliability Coordination Agreement (ORCA).¹⁰ On June 10, 2014, the Commission conditionally accepted MISO's proposal to establish the Sub-Regional Power Balance Constraint and the Sub-Regional Power Balance Constraint Demand Curve.¹¹

9. On June 16, 2014, the Commission accepted, suspended for a nominal period, and set for hearing and settlement judge procedures, MISO's proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) related to the recovery of costs invoiced to MISO under the tariff of another transmission provider.¹²

II. Hurdle Rate Filing and Hurdle Rate Order

10. On July 16, 2014, MISO submitted proposed revisions to Schedule 28B of the MISO Tariff to include an additional step to the Sub-Regional Power Balance Constraint Demand Curve to reflect potential charges under the SPP Service Agreement for intra-regional flows in excess of 1,000 MW that occur under MISO's transmission service

¹⁰ Entergy Arkansas, Ameren Corporation, and Associated Electric Cooperative, Inc. (Associated Electric) are parties to an interconnection agreement under which they share the capacity of the 500/345 kV transformers on a high-voltage interconnection. The direct contiguous tie capability between Entergy Arkansas and Ameren is approximately 1,000 MW of the 1,500 MW total capability of the interconnection (i.e., the 1,000 MW contract path limit). The ORCA provides agreed upon transmission limits to address reliability and loop flow concerns among MISO and neighboring entities. *See Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,032 (2013).

¹¹ *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,194 (2014). Prior to the implementation of the Sub-Regional Power Balance Constraint and the Sub-Regional Power Balance Demand Curve in Schedule 28B, MISO managed intra-regional flows using a multi-transmission element proxy flowgate approach (proxy flowgate approach).

¹² *See Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,206 (2014) (Cost Recovery Order).

agreements with SPP (Hurdle Rate Filing).¹³ Specifically, MISO's proposed Hurdle Rate revisions would add a "hurdle" to the economic dispatch in the day-ahead and real-time market (Hurdle Rate). This would allow intra-regional flows to exceed the 1,000 MW contract path limit between MISO Midwest and MISO South when the incremental savings from allowing the flows exceed the transmission charges under the SPP Service Agreement.¹⁴ The Hurdle Rate would apply until the ORCA limit is reached.¹⁵

11. MISO explained that cost recovery and allocation matters related to invoices received pursuant to the SPP Service Agreement are not included in this filing; rather, they were being discussed as part of the settlement procedures established in the Cost Recovery Order. MISO stated that it is committed to ensuring alignment between the modifications to the Sub-Regional Power Balance Constraint Demand Curve proposed in the instant filing and any cost recovery mechanism ultimately adopted.

12. In the Hurdle Rate Order, the Commission found that MISO had demonstrated that its Hurdle Rate proposal would improve the currently effective Sub-Regional Power Balance Constraint Demand Curve and could provide significant benefits by allowing increased intra-regional flows when economic.¹⁶ In addition, the Commission established an effective date of July 17, 2014. However, the Commission found that MISO's proposed method of calculating the Hurdle Rate would undermine MISO's objective of allowing flows over 1,000 MW only when production cost savings exceed the potential SPP transmission charges. Accordingly, the Commission required MISO to make a compliance filing to modify its calculations of the initial Hurdle Rate and adjustments to the Hurdle Rate, and to clarify several aspects of the Hurdle Rate Filing. In addition, the Commission accepted MISO's proposal to use existing tariff procedures for distribution of congestion revenues generated by the Hurdle Rate and found that arguments that increased congestion costs created by the Hurdle Rate should be considered in the allocation of SPP Service Agreement charges are outside the scope of the instant proceeding and should be considered as part of ongoing hearing and settlement judge procedures in Docket No. ER14-1736-000. The Commission also directed MISO to submit an informational filing 12 months after the acceptance of MISO's compliance filing and a second informational filing 12 months thereafter discussing the impact of the Hurdle Rate on market participants. Due to the nature of the Hurdle Rate as a constraint in the day-ahead and real-time market, the Commission exercised its discretion to not order refunds and directed MISO to implement the changes

¹³ MISO July 16, 2014 Hurdle Rate Filing, Vannoy Test. at 3.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 6-7.

¹⁶ Hurdle Rate Order, 149 FERC ¶ 61,225 at P 2.

to the Hurdle Rate required by the Commission following acceptance of MISO's compliance filing.

III. Requests for Rehearing

13. MISO filed a request for rehearing of the Hurdle Rate Order. The Public Utility Commission of Texas (Texas Commission), the Louisiana Public Service Commission, the Arkansas Public Service Commission, and the Council of the City of New Orleans (collectively, MISO South State Commissions) filed a request for rehearing and/or clarification. The Mississippi Public Service Commission filed comments in support of MISO's request for rehearing. Madison Gas & Electric Company and WPPI Energy (collectively, Wisconsin TDUs) filed a notice of non-response to the MISO South State Commissions' request for rehearing and/or clarification. Potomac Economics, Ltd., MISO's Independent Market Monitor (MISO Market Monitor), filed a motion for reconsideration of the Hurdle Rate Order. SPP filed an answer to the MISO Market Monitor's request for rehearing.¹⁷

14. MISO takes issue with the Commission's requirement to amend the Hurdle Rate formula to use only flows over 1,000 MW in the total dispatch flows in calculating the initial Hurdle Rate. Specifically, MISO argues that this requirement does the following: (1) ignores the incompatibility of the SPP Service Agreement billing determinants and a market mechanism to manage flows; and (2) creates an unjust and unreasonable cost shift resulting in over-recovery from the same market participants.

15. The MISO South State Commissions take issue with the treatment of the Hurdle Rate as a congestion charge and the distribution of congestion revenues generated by the Hurdle Rate. The MISO South State Commissions argue that the Commission erred by ignoring the fact that the Hurdle Rate does not serve the same purpose as a congestion charge. The MISO South State Commissions contend that the purpose of a congestion charge is to send a price signal due to the existence of physical transmission constraints. According to the MISO South State Commissions, unlike a congestion charge, the Hurdle Rate does not represent the cost of physical constraints. Instead, they assert that the Hurdle Rate should serve to make the Sub-Regional Power Balance Constraint more sophisticated. Additionally, the MISO South State Commissions argue that MISO applies the cost recovery mechanism approved in the Cost Recovery Order in parallel to its distribution of the Hurdle Rate revenues and collects the SPP Service Agreement charges from market participants in MISO Midwest and MISO South *pro rata*, based on their market load ratio share. They assert that the Hurdle Rate treats the importing sub-

¹⁷ Although the MISO South State Commissions styled their request for rehearing as a request for rehearing and/or clarification, and the MISO Market Monitor styled its request for rehearing as a motion for reconsideration, in substance they are requests for rehearing and we treat them as such.

region (predominantly MISO South) differently from the exporting sub-region (predominantly MISO Midwest), and that this violates the requirement of the FPA that public utilities provide the same treatment to similarly situated customers. The MISO South State Commissions also seek clarification regarding the informational filings required in the Hurdle Rate Order.

16. The MISO Market Monitor requests that the Commission reconsider acceptance of the Hurdle Rate, asserting that it is inflated and exacerbates the problems it was intended to address.

IV. January 12 Compliance Filing

17. In the January 12 Compliance Filing, MISO proposes the following changes: (1) calculating the initial Hurdle Rate using only flows over 1,000 MW in the Total Dispatch Flow parameter; (2) eliminating the reference to congestion revenues in the Hurdle Rate adjustment based on the Commission directive with respect to the initial Hurdle Rate; and (3) revising Schedule 28B to specify that it applies only to the ORCA and SPP Service Agreement. MISO also makes the following commitments: (1) it will include processes for adjusting the Hurdle Rate in the Business Practices Manuals upon the Commission's acceptance of the January 12 Compliance Filing; and (2) it will not consider interest charges invoiced by SPP in adjustments to the Hurdle Rate. Additionally, MISO makes several clarifications. MISO requests that the effective date for the January 12 Compliance Filing be consistent with the Hurdle Rate Order.

18. On February 6, 2015, MISO submitted an amendment to the January 12 Compliance Filing (Amended Compliance Filing). In that filing, MISO states that it inadvertently failed to make the necessary changes in section 3.2 of Schedule 28B in the MISO Tariff to reflect the updated amount of the initial Hurdle Rate. Accordingly, MISO filed revised tariff sheets for section 3.2 of Schedule 28B to reflect the initial Hurdle Rate price of \$41.92 instead of \$9.57.

V. Settlement Agreement and Hurdle Rate Removal

19. On October 13, 2015, the Settlement Parties¹⁸ filed a settlement agreement, which would resolve all issues set for hearing in the MISO-SPP JOA Order (Settlement Agreement). The Settlement Agreement provides for MISO to make a fixed payment to

¹⁸ In addition to MISO and SPP, Associated Electric, Southern Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company, the Tennessee Valley Authority, Louisville Gas and Electric Company and Kentucky Utilities, PowerSouth Energy Cooperative, and NRG Energy, Inc. (NRG) are parties to the Settlement Agreement. The parties to the Settlement Agreement outside of MISO, SPP, and NRG are collectively referred to as the Joint Parties.

SPP and the Joint Parties to settle all claims for the period between January 29, 2014, the effective date of the SPP Service Agreement, and February 1, 2016, the proposed implementation date of the Settlement Agreement. Additionally, the Settlement Agreement provides for the withdrawal of the SPP and the MISO Complaints, as well as the SPP Service Agreement, within 40 days after a final, unreviewable Commission order accepting or approving the Settlement Agreement. The Settlement Agreement also provides that SPP will withdraw its petition for review of the Commission's orders in Docket No. ER13-948-000, *et al.* to the U.S. Court of Appeals for the District of Columbia, Case No. 14-1053. In accordance with the Settlement Agreement, MISO also filed, on October 13, 2015, proposed revisions to its Tariff to remove the Hurdle Rate, effective February 1, 2016. MISO stated that, because the SPP Service Agreement will be withdrawn and the Settlement Agreement provides terms and conditions for MISO to pay SPP and the Joint Parties for transmission capacity when MISO exceeded the 1,000 MW contract path between MISO Midwest and MISO South, there is no longer any need to constrain its economic dispatch so that transfers above the 1,000 MW contract path limit only occur when production cost savings exceed SPP Service Agreement charges. On January 21, 2016, the Commission issued orders approving the Settlement Agreement and accepting removal of the Hurdle Rate.¹⁹

VI. Notice of Filing and Responsive Pleadings

20. Notice of the January 12 Compliance Filing was published in the *Federal Register*, 80 Fed. Reg. 2687 (2015) with interventions and protests due on or before February 2, 2015. Wisconsin TDUs and the Texas Commission filed protests.

21. Notice of the Amended Compliance Filing was published in the *Federal Register*, 80 Fed. Reg. 8303 (2015) with interventions and protests due on or before February 27, 2015. None was filed.

VII. Discussion

A. Procedural Matters

22. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2015), prohibits an answer to a request for rehearing. Accordingly, we will reject SPP's answer as an impermissible answer to a request for rehearing.

B. Substantive Matters

23. As described above, the Commission has issued orders approving the Settlement Agreement and accepting the Hurdle Rate's removal effective February 1, 2016.

¹⁹ *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,021 (2016); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,023 (2016).

Consequently, because the Hurdle Rate is no longer effective, and in the Hurdle Rate Order, the Commission exercised its discretion to not order refunds and directed MISO to implement the changes to the Hurdle Rate required by the Commission following acceptance of MISO's compliance filing, there is no need to address the January 12 Compliance Filing, and we dismiss it as moot.

24. The requests for rehearing raise the following issues: (1) whether there should be a Hurdle Rate; (2) how the Hurdle Rate should be calculated; and (3) how the congestion revenues generated by the Hurdle Rate will be allocated given that MISO collects the SPP Service Agreement charges from market participants in MISO Midwest and MISO South *pro rata*, based on their market load ratio share, pursuant to the cost recovery mechanism approved in the Cost Recovery Order. As the Commission provided in the Hurdle Rate Order that any changes to the Hurdle Rate would be implemented only prospectively following acceptance of MISO's compliance filing, any relief with respect to the first two issues would have been prospective.²⁰ In light of the Commission's approval of the Settlement Agreement and acceptance of the Hurdle Rate's removal and our resulting dismissal of the January 12 Compliance Filing, we dismiss the first two issues as moot. Further, as discussed in the Hurdle Rate Order, issues regarding the allocation of SPP Service Agreement charges incurred by MISO prior to the Hurdle Rate removal are outside the scope of the instant proceeding and are being addressed in the ongoing hearing and settlement judge procedures established in the Cost Recovery Order in Docket No. ER14-1736-000 and any arguments that increased congestion costs created by the Hurdle Rate should be considered in the allocation of SPP Service Agreement charges may be addressed in that ongoing proceeding.

The Commission orders:

(A) The requests for rehearing are hereby dismissed as moot, as discussed in the body of this order.

(B) MISO's January 12 Compliance Filing is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ Hurdle Rate Order, 149 FERC ¶ 61,225 at P 61.