

154 FERC ¶ 61,255  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.                      Docket No. ER16-766-000

ORDER GRANTING TARIFF WAIVER

(Issued March 30, 2016)

1. On January 27, 2016, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> 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 Big Rivers Electric Corporation (Big Rivers),<sup>3</sup> in a dispute resolved through MISO's alternative dispute resolution (ADR) process.<sup>4</sup> For the reasons discussed below, we grant MISO's request for waiver.

**I. Background**

2. MISO states that on December 11, 2014, Big Rivers submitted a request for ADR, contending that the Marginal Congestion Component (MCC)<sup>5</sup> of the day-ahead LMP at

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. pt. 35 (2015).

<sup>3</sup> MISO states that Big Rivers is acting as a Market Participant for Century Aluminum of Kentucky General Partnership (Century-Hawesville).

<sup>4</sup> MISO, Request for Waiver, Docket No. ER16-766-000 (filed Jan. 27, 2016) (Request for Waiver).

<sup>5</sup> The MCC is defined as “[a] component of [locational marginal price (LMP)] which is the transmission or Sub-Regional Power Balance congestion charge reflecting the cost of dispatching Resources available to the Transmission Provider such that transmission or Sub-Regional Power Balance constraints are respected, as measured

(continued ...)

the BREC.CENTURY CPNode<sup>6</sup> was overstated on August 8, 9, 15, 18, 19 and 20, 2014. MISO states that, in its request for ADR Big Rivers alleged that MISO improperly imposed excessive MCC charges on those dates because modeling and communication errors prevented MISO from recognizing the availability of a Special Protective Scheme (SPS) device installed in the Century-Hawesville facility that would have prevented the binding of transmission constraints at this CPNode. MISO states that Big Rivers observed that although the SPS device was temporarily out of service before August 8, 2014, it returned to service on that date. Further, MISO states that Big Rivers alleged that on August 15, 18, 19 and 20, 2014, MISO accounted for the SPS device as if it was monitoring based on the megavolt-amperes rating of the transmission lines, whereas it was instead monitoring based on actual line current. MISO states that Big Rivers claimed that, as a result of the modeling errors, the calculation of Day Ahead Asset Energy charges on these dates was overstated by approximately \$1.35 million based on the difference between the day-ahead LMP at the BREC.CENTURY CPNode, and the day-ahead price at the Indiana Hub.<sup>7</sup>

3. During the ADR process, MISO states that it determined that on August 8, 2014, it did not know that the SPS device was available to relieve congestion; and on August 15, 18 and 19, 2014, MISO was not aware that the SPS device was monitoring line current and could have relieved congestion on those dates. MISO states that it concluded that it had no information that would have warranted considering the SPS device available on August 8, 2014, and capable of relieving constraints on August 15, 18, and 19, 2014, and, therefore, it accordingly denied the claim of Big Rivers with regard to those operating days.<sup>8</sup>

4. However, MISO explains that it found that it knew the SPS device was available on August 9, 2014, and that the SPS device was able to reduce congestion because of its current monitoring capabilities on August 20, 2014. Accordingly, MISO proposes to grant relief to Big Rivers for August 9, and 20, 2014, by refunding the resulting excessive

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between the location and the Reference Bus.” MISO, FERC Electric Tariff, Module A, § 1.M (35.0.0).

<sup>6</sup> A CPNode, or Commercial Pricing Node, is defined as “[a]n 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.” MISO, FERC Electric Tariff, Module A, § 1.C (36.0.0).

<sup>7</sup> Request for Waiver at 2-3, 5-6.

<sup>8</sup> *Id.* at 3, 6.

congestion charges incurred by Big Rivers. MISO states that the overcharges were \$392,414.58 on August 9, 2014, and \$459,166.43 on August 20, 2014, totaling \$851,581.01. MISO states that it intends to source the refund from the excess congestion revenues market participants received due to the overstated MCCs on those dates.<sup>9</sup>

## II. Waiver Request

5. MISO requests waiver of section 39.1 of the Tariff, and any other related provisions regarding the operation of the day-ahead market, to the extent that the process described therein is silent regarding a remedy for any overstated MCCs that result from MISO's use of erroneous congestion data, to be effective January 28, 2016.<sup>10</sup>

6. 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.<sup>11</sup>

7. MISO states that it acted in good faith both in investigating the claims and in pursuing the resolution of those claims through the ADR process, adding that it seeks this waiver in good faith given the absence of Tariff language expressly authorizing the ADR relief MISO proposes to grant to Big Rivers on equitable grounds. MISO states that the waiver is limited in scope to the remedy for overstated MCCs for the BREC.CENTURY CPNode on August 9 and 20, 2014, which occurred when MISO did not account for the SPS device's availability and current monitoring capability, respectively. MISO states that this overstatement of MCCs is a concrete problem of Big Rivers and Century-Hawesville that the waiver will enable MISO to remedy. Absent the waiver, MISO maintains that it may not have sufficient authority to provide to Big Rivers the relief that was developed through the ADR process. MISO asserts that the waiver will not have undesirable consequences, such as harming third parties, as the ADR relief involves making whole Century-Hawesville, represented by Big Rivers, by correcting the MCCs. According to MISO, the relief granted will source these make-whole payments from the excess congestion revenues that market participants received due to the overstated MCCs

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<sup>9</sup> *Id.* at 3, 6.

<sup>10</sup> *Id.* at 7, 9.

<sup>11</sup> *Id.* at 4 (citing *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

on those dates, thereby putting the parties in the approximate position they would have been had MISO calculated the MCCs in accordance with the Tariff.<sup>12</sup>

8. MISO also states that to prevent any recurrence of this type of situation, it has pursued several process improvements. MISO states that it coordinated with Century-Hawesville to update the operating guide regarding the SPS device to address the issues that led to the ADR dispute. MISO adds that it increased internal communications between operators in day-ahead and real-time with regard to all SPS devices. Further, MISO states that an SPS validation protocol was developed and implemented for the day-ahead market that indicates congestion impacts to the BREC.CENTURY CPNode that meet or exceed a desired threshold, and it modified its representation of Century-Hawesville's SPS device in its contingency analysis applications to take into account its activation based on line current.<sup>13</sup>

### **III. Notice and Responsive Pleadings**

9. Notice of the request for waiver was published in the *Federal Register*, 81 Fed. Reg. 5734 (2016), with interventions and protests due on or before February 17, 2016. Timely motions to intervene were filed by NRG Companies<sup>14</sup> and American Municipal Power, Inc. Century-Hawesville filed a timely motion to intervene and comments. On March 3, 2016, Consumers Energy Company (Consumers) filed a motion to intervene out-of-time.

10. Century-Hawesville states that it supports the Tariff waiver because it will allow MISO to address most of the issues raised in the request for ADR submitted by Big Rivers, on behalf of Century-Hawesville. For purposes of resolving the request for ADR, Century-Hawesville states that it accepts MISO's representation that it was aware of the SPS device availability and operation on only two of the six days identified in the request for ADR. Century-Hawesville states that it reserves all rights to address the pricing implications of all of the days listed in the request for ADR should the Commission deny MISO's waiver request. Century-Hawesville adds that it also reserves all rights to address any issues raised in any other party's comments or protest in this proceeding.<sup>15</sup>

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<sup>12</sup> *Id.* at 7-8.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> For purposes of this proceeding, NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

<sup>15</sup> Century-Hawesville Comments at 2.

#### IV. Discussion

##### A. Procedural Matters

11. 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. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we will grant Consumers' late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

##### B. Commission Determination

12. 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.<sup>16</sup> We find that MISO's requested waiver satisfies these conditions, as discussed below.

13. We find that the underlying error, MISO's use of incorrect information regarding the SPS device that resulted in the overstatement of MCCs, was made in good faith. We further find that MISO acted in good faith in investigating and resolving the claims brought forth by Big Rivers and Century-Hawesville regarding this issue. We find that the waiver is limited in scope because waiver of the Tariff provisions permits MISO to provide the ADR relief limited to resolving the overstated MCCs for the BREC.CENTURY CPNode on August 9 and 20, 2014. Similarly, we find that the waiver resolves the concrete problem of overstated MCCs at this CPNode on August 9 and 20, 2014 that occurred due to MISO's use of erroneous congestion data. Finally, we find that the waiver will not have undesirable consequences, such as harming third parties, because the dispute was resolved through MISO's ADR process, no parties have protested the instant filing, and the relief granted will be recovered from the excess congestion revenues mistakenly paid due to overstated MCCs on August 9 and 20, 2014. Therefore, we grant MISO's request for waiver, to be effective January 28, 2016, as requested, for the limited purpose of implementing the relief resulting from its ADR process.

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<sup>16</sup> 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 2.

The Commission orders:

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

By the Commission. Commissioner Clark is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.