

155 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System
Operator, Inc.

Docket No. ER16-1120-000

ORDER REJECTING PROPOSED AGREEMENT

(Issued May 6, 2016)

1. On March 9, 2016, Midcontinent Independent System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ a proposed *pro forma* Service Agreement to Attachment X of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) that would address requests for external Network Resource Interconnection Service (external NRIS).² In this order, we reject the Filing, without prejudice to MISO refiling a *pro forma* Service Agreement for external NRIS at a later date, as discussed below.

I. Background

2. On March 8, 2013, the Commission conditionally accepted revisions to Module E of MISO's Tariff to allow generation external to MISO to participate in capacity auctions by obtaining NRIS,³ after MISO determines that the external resource is deliverable

¹ 16 U.S.C. § 824d (2012).

² MISO Filing of Attachment X for External Network Resource Interconnection Service Agreement, Docket No. ER16-1120-000 (filed Mar. 9, 2016) (Filing). Unless otherwise defined, capitalized terms shall have the meaning given to them in the Tariff.

³ NRIS allows an interconnection customer to integrate its generating facility with the MISO transmission system in the same manner as for any generating facility being designated as a network resource. NRIS does not convey transmission service. *See* MISO FERC Electric Tariff, Attachment X (Generator Interconnection Procedures), § 1 (Definitions) (47.0.0).

based on MISO's deliverability studies performed in accordance with the generation interconnection criteria in Attachment X.⁴

3. On March 29, 2016, in Docket Nos. EL15-99-000 and EL16-12-000 (together, the Complaint Proceeding), the Commission granted a complaint in part and found that MISO's Tariff is unjust, unreasonable, unduly discriminatory, or preferential because the terms and conditions governing external NRIS, including details of the Initial Payment and Service Agreement for external NRIS customers, should be included in the Tariff.⁵ The Commission directed MISO to file within 60 days of the date of the Complaint Order revisions to its Tariff to provide language that addresses its external NRIS protocols, including the details of a Service Agreement for external NRIS customers, as well as the requirement for an Initial Payment and the details related thereto. As for a Service Agreement, the Commission noted that MISO had filed the instant *pro forma* Service Agreement for external NRIS customers, further noting that it did not contain a requirement for an Initial Payment.⁶

II. Filing

4. MISO states that generation resources requesting external NRIS do not connect directly to its transmission system; accordingly, many of the provisions in the *pro forma* Generator Interconnection Agreement (GIA) would not apply to these generation resources.⁷ Therefore, MISO states that it proposes a new *pro forma* Service Agreement to be included as Appendix 13 to Attachment X of its Tariff.⁸ MISO states that its proposed *pro forma* Service Agreement is just and reasonable under the "independent entity" standard of review set forth by the Commission to evaluate revisions proposed by regional transmission organizations to the interconnection procedures outlined in Order No. 2003.⁹ MISO states that its *pro forma* Service Agreement for external NRIS

⁴ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,182, at P 13 (2013).

⁵ *Internal MISO Generation v. Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,248, at P 30 (2016) (Complaint Order).

⁶ *Id.* P 30 & n.38.

⁷ Filing, Transmittal Letter at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 3 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003)).

accomplishes the goal of a more uniform and timely interconnection process by allowing for faster and more transparent processing of interconnection requests, thereby permitting more generation resources to interconnect to MISO's system at a faster pace and increasing the new generation that is available to participate in MISO electricity markets.¹⁰ MISO states that the Filing is the product of a months-long process between MISO and its stakeholders.¹¹

5. MISO states that an interconnection customer seeking external NRIS must have an existing generating facility, which is defined under section 2.1(e) of MISO's Generator Interconnection Procedures as a generator that is "either in-service, under construction, or [has] an unsuspended interconnection agreement with the transmission provider to which [it is] directly physically connected at the time of the request."¹² MISO states that NRIS does not satisfy the separate requirement to have transmission service with MISO, and proposed section 4.2 of the *pro forma* Service Agreement requires the interconnection customer to demonstrate appropriate transmission service for a term of at least five years from its source external to MISO to the MISO border.¹³ MISO further explains that the proposed *pro forma* Service Agreement for external NRIS includes some terms and conditions from its *pro forma* GIA.¹⁴

6. MISO requests that the Commission waive its 60-day prior notice requirement under section 35.3(a) of the Commission's regulations, 18 C.F.R. § 35.3(a) (2015), and make the proposed revisions effective as of March 10, 2016.¹⁵

III. Notice and Responsive Pleadings

7. Notice of the Filing was published in the *Federal Register*, 81 Fed. Reg. 13,783 (2016), with interventions and protests due on or before March 30, 2016. Timely motions to intervene were filed by: Great River Energy; American Municipal Power, Inc.; Alliant Energy Corporate Services, Inc.; NRG Power Marketing LLC and GenOn

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 5-6.

¹² *Id.* at 2.

¹³ *Id.* at 5.

¹⁴ *Id.* at 2, 4-5.

¹⁵ *Id.* at 7.

Energy Management, LLC; MISO Transmission Owners;¹⁶ Consumers Energy Company; and Wisconsin Public Service Corporation. A timely motion to intervene and comments were submitted by Manitoba Hydro. A timely motion to intervene and protest was filed by the American Wind Energy Association and Wind on the Wires (collectively, AWEA/WOW). On April 14, 2016, MISO filed a motion for leave to answer and answer to the AWEA/WOW protest. On April 28, 2016, AWEA/WOW filed a motion for leave to answer MISO's answer.

8. Manitoba Hydro notes a few instances where the language in the *pro forma* Service Agreement could be altered to provide clarity; for instance, Manitoba Hydro states that section 3 of the proposed agreement does not clarify the specific network upgrades the interconnection customer will agree to fund.¹⁷ Manitoba Hydro also expresses one general concern related to the lack of provision for a Facilities Construction Agreement.¹⁸

¹⁶ The MISO Transmission Owners for purposes of this proceeding consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois 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 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; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; 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 (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

¹⁷ Manitoba Hydro Comments at 3-4.

¹⁸ *Id.* at 4.

9. AWEA/WOW protest the Filing for a number of reasons. First, AWEA/WOW state that the Commission should reject the Filing as premature due to the ongoing Complaint Proceeding.¹⁹ AWEA/WOW assert that, if the Commission does not reject the Filing, it should accept the *pro forma* Service Agreement and suspend its effectiveness for five months in order to allow time for the Commission to finalize the terms and conditions related to external NRIS in the Complaint Proceeding.²⁰ If the Commission does not reject the Filing, AWEA/WOW take issue with a number of specific aspects of the proposed *pro forma* Service Agreement, including the lack of an Initial Payment, the need to provide the generation resource's queue position in its native system, the lack of specificity regarding which studies the external NRIS customer will be subject to, and MISO's alterations of the clause allowing for terminations from the general *pro forma* GIA.²¹

IV. Discussion

A. Procedural Matters

10. 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.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits answers to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept MISO's and AWEA/WOW's answers and will, therefore, reject them.

B. Commission Determination

12. We reject the Filing without prejudice to MISO refileing a *pro forma* Service Agreement for external NRIS.

13. In the Complaint Proceeding,²² the Commission found that MISO's Tariff is unjust, unreasonable, unduly discriminatory, or preferential because the terms and conditions governing external NRIS are not included in the Tariff. Accordingly, the

¹⁹ AWEA/WOW Protest at 6-7.

²⁰ *Id.* at 7-8.

²¹ *Id.* at 8-15.

²² *See supra* P 3.

Commission directed MISO to develop and include those procedures in its Tariff, including the details of a Service Agreement for external NRIS customers.²³ That compliance filing is due to the Commission later this month.

14. In the Filing, which was submitted pursuant to section 205 of the FPA prior to that Commission determination, MISO submitted a *pro forma* Service Agreement for external NRIS. MISO's proposal does not include any other terms or conditions for the provision of external NRIS service (such as the Initial Payment requirement) as required by the Commission in the Complaint Order, or other procedures for receiving external NRIS service similar to those that the Tariff provides for new internal ERIS and NRIS customers. Consistent with our finding in the Complaint Order, we therefore reject MISO's proposal and similarly find it to be unjust and unreasonable and unduly discriminatory or preferential. This rejection is without prejudice to MISO submitting a *pro forma* Service Agreement as part of its compliance filing in the Complaint Proceeding.

15. Because we are rejecting the proposed *pro forma* Service Agreement, we need not address Manitoba Hydro or AWEA/WOW's concerns regarding specific language used in the agreement.

The Commission orders:

MISO's Filing is hereby rejected without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ Complaint Order, 154 FERC ¶ 61,248 at P 30.