

155 FERC ¶ 61,239
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. ER16-1346-000

ORDER ACCEPTING AGREEMENT SUBJECT TO CONDITION

(Issued June 3, 2016)

1. On April 5, 2016, Midcontinent Independent System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.12 of the Commission's regulations,² an agreement for External Network Resource Interconnection Service (external NRIS) between MISO, as transmission provider, and Louisiana Energy and Power Authority (LEPA), as interconnection customer, regarding an existing generating facility located external to the MISO transmission system known as Project No. J373 in MISO's interconnection queue (External NRIS Agreement).³ In this order, we accept the External NRIS Agreement subject to condition, effective April 6, 2016, as requested.

I. Background

2. On March 8, 2013, the Commission accepted, subject to condition, revisions to Module E of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to provide for external NRIS by allowing generation external to MISO to

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.12 (2015).

³ MISO External NRIS Agreement Filing, Transmittal Letter at 1 (Filing); Section 2.0 of the External NRIS Agreement. MISO has designated the External NRIS Agreement as Original Service Agreement No. 2911 under MISO's FERC Electric Tariff, Vol. No. 1 Fifth Revised.

participate in capacity auctions by obtaining NRIS,⁴ after MISO determines that the external resource is deliverable based on MISO's deliverability studies performed in accordance with the generation interconnection criteria in Attachment X.⁵

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, among other things, that MISO's Tariff is unjust, unreasonable, unduly discriminatory, or preferential because it does not include the terms and conditions governing external NRIS, including details of the Initial Payment and Service Agreement for external NRIS customers.⁶ 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. MISO submitted the compliance filing in Docket No. ER16-1817-000 on May 31, 2016, and the filing is pending before the Commission.

4. Prior to the Complaint Order, on March 9, 2016, in Docket No. ER16-1120-000, MISO filed a *pro forma* Service Agreement to Attachment X of its Tariff that would address requests for external NRIS.⁷ MISO stated 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.⁸ On May 6, 2016, the Commission rejected the

⁴ 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). Unless otherwise defined, capitalized terms shall have the meaning given to them in the Tariff.

⁵ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,182, at P 13 (2013).

⁶ *Internal MISO Generation v. Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,248, at P 30 (2016) (Complaint Order).

⁷ MISO Filing of Attachment X for External Network Resource Interconnection Service Agreement, Docket No. ER16-1120-000 (filed Mar. 9, 2016).

⁸ *Id.*, Transmittal Letter at 1.

proposed *pro forma* Service Agreement without prejudice.⁹ The Commission found that the proposed *pro forma* Service Agreement did 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.¹⁰ Consistent with its finding in the Complaint Order, the Commission similarly found MISO's proposal to be unjust, unreasonable, unduly discriminatory, or preferential and therefore rejected it. The rejection was without prejudice to MISO submitting a *pro forma* Service Agreement as part of its compliance filing in the Complaint Proceeding.¹¹

II. Filing

5. In the Filing, which was submitted before the Commission issued the May 6 Order rejecting the *pro forma* Service Agreement without prejudice, MISO explains that the body of the External NRIS Agreement conforms to the *pro forma* Service Agreement for external NRIS filed in Docket No. ER16-1120-000.¹² MISO asks that the Commission accept the External NRIS Agreement subject to the outcome in Docket No. ER16-1120-000. 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 External NRIS Agreement effective as of April 6, 2016.¹³

III. Notice and Responsive Pleadings

6. Notice of the Filing was published in the *Federal Register*, 81 Fed. Reg. 21,858 (2016), with interventions and protests due on or before April 26, 2016. A timely motion

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,147 (2016) (May 6 Order).

¹⁰ *Id.* P 14.

¹¹ As part of its pending compliance filing in Docket No. ER16-1817-000, made in response to the Complaint Proceeding, MISO has refiled its previously-proposed *pro forma* Service Agreement for External NRIS with some modifications to comply with the Commission's directives. See MISO External NRIS Compliance Filing, Docket No. ER16-1817-000, Transmittal Letter at 5-7 (filed May 31, 2016).

¹² Filing, Transmittal Letter at 1.

¹³ *Id.* at 2.

to intervene and protest was filed by the American Wind Energy Association and Wind on the Wires (collectively, AWEA/WOW).

7. AWEA/WOW note that, at the time their protest was filed, MISO had not yet made its compliance filing in response to the Complaint Order, and that none of the terms and conditions explaining how MISO will process external NRIS requests are known.¹⁴ AWEA/WOW argue that, until the parameters of external NRIS and the terms of a *pro forma* Service Agreement for external NRIS customers are known, there is no record or Tariff provision upon which the Commission can rely to assess whether the terms and conditions of the External NRIS Agreement are just and reasonable.¹⁵ Accordingly, AWEA/WOW argue that the Commission should reject the Filing without prejudice until all issues related to external NRIS service are fully resolved. In the alternative, AWEA/WOW request that the Commission accept and suspend the effectiveness of the External NRIS Agreement for five months in order to allow time for the Commission to finalize the terms and conditions related to external NRIS and a *pro forma* Service Agreement for external NRIS.¹⁶

8. If the Commission does not reject the Filing, AWEA/WOW take issue with a number of specific aspects of the proposed External NRIS Agreement.¹⁷ First, AWEA/WOW state that Article 11.5 of the *pro forma* GIA requires an internal interconnection customer to put up 20 percent of the cost of the network upgrades listed in the GIA within 30 days of execution (or 10 percent if the network upgrade's in-service date is more than five years away).¹⁸ AWEA/WOW state that the External NRIS Agreement does not require LEPA to make this Initial Payment, in violation of the Commission's directive in the Complaint Order.¹⁹ AWEA/WOW state that the Initial Payment is necessary because it provides another means for interconnection customers to have confidence that other projects in the queue are viable, reducing the chance of delay or restudy.²⁰ AWEA/WOW further argue that the lack of an Initial Payment is unduly

¹⁴ AWEA/WOW Protest at 3.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 3, 7.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 8.

¹⁹ *Id.* at 8-9.

²⁰ *Id.* at 10.

discriminatory or preferential because LEPA will have a cost advantage to participate in MISO markets that is not afforded to similarly situated new internal interconnection customers seeking NRIS.

9. Second, AWEA/WOW protest section 3.0 of the External NRIS Agreement, which states that “[i]nterconnection customer agrees to fund studies and Network Upgrades needed to obtain [NRIS] consistent with the terms in Attachment X of the Tariff.”²¹ AWEA/WOW argue that it is not clear which studies LEPA will be subject to, because there are no provisions in Attachment X that clearly state that external NRIS customers are subject to the same studies (and study deposits) that are imposed on interconnection customers seeking interconnection service with generation located within MISO (such as feasibility, system impact, and facilities studies). AWEA/WOW note that the Commission has ordered MISO to file Tariff revisions that clarify and implement external NRIS, but until that Tariff submission is approved, AWEA/WOW argue that MISO should amend section 3.0 to clarify that LEPA will be subject to all studies under its Generator Interconnection Procedures.

10. Third, AWEA/WOW protest section 7.0 of the External NRIS Agreement, which allows MISO to terminate the agreement if “the Generating Facilities cease Commercial Operation for three (3) consecutive years.”²² AWEA/WOW argue that this section is incomplete, as the corresponding section of the *pro forma* GIA, Article 2.3.1, also allows termination if “a portion of the Generating Facility fails to achieve Commercial Operation for three (3) consecutive years following the Commercial Operation Date.”²³ AWEA/WOW argue that section 7.0 is not just and reasonable because it would allow LEPA to linger and hoard capacity for three years without consequence, whereas an interconnection customer internal to MISO would be subject to termination of its GIA.²⁴ Furthermore, AWEA/WOW note that Article 2.3.1 of MISO’s *pro forma* GIA uses the term “may” terminate, while section 7.0 of the External NRIS Agreement uses the term “shall” terminate.²⁵ AWEA/WOW support the use of the term “may” in order to afford MISO with discretion over whether to terminate the agreement, as MISO has explained to the Commission that there can be legitimate circumstances that inhibit a developer’s

²¹ *Id.* at 11.

²² *Id.* at 12.

²³ *Id.* at 13.

²⁴ *Id.* at 13-14.

²⁵ *Id.* at 14.

ability to achieve commercial operation within three years of the Commercial Operation Date. AWEA/WOW note that MISO has recently asked the Commission for guidance on the means by which MISO could extend the GIA in these circumstances, but until such guidance is issued, AWEA/WOW request that section 7.0 of the External NRIS Agreement be revised to be consistent with Article 2.3.1 of the *pro forma* GIA.²⁶

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 motion to intervene serves to make AWEA/WOW a party to this proceeding.

B. Commission Determination

12. We accept the External NRIS Agreement, subject to condition, effective April 6, 2016, as requested, as discussed below.²⁷ In the Complaint Proceeding, the Commission directed MISO to file revisions to its Tariff to provide the terms and conditions governing external NRIS, 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.²⁸ As noted above, MISO's filing in compliance with the Complaint Order is pending. In the May 6 Order, the Commission rejected MISO's proposed *pro forma* Service Agreement for external NRIS, on which the External NRIS Agreement is modeled, without prejudice to MISO submitting a *pro forma* Service Agreement as part of its compliance filing in the Complaint Proceeding, because the *pro forma* Service Agreement did not include any terms or conditions, or other procedures, for receiving

²⁶ *Id.* at 15 (citing MISO Comments on Petition to Revise Generator Rules and Procedures, Docket No. RM15-21-000, at 26-27 (filed Sept. 8, 2015); MISO Answer to the Complaint of Merricourt Power Partners, LLC, Docket No. EL15-90-000, at 3 (filed Sept. 1, 2015)).

²⁷ 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.

²⁸ Complaint Order, 154 FERC ¶ 61,248 at P 30.

external NRIS service as required by the Complaint Order.²⁹ While the External NRIS Agreement is modeled on the rejected *pro forma* Service Agreement, in the interest of allowing LEPA to receive its requested service while the Tariff language related to external NRIS is being finalized and at the same time ensuring that the terms and conditions of the External NRIS Agreement are just and reasonable, we accept the External NRIS Agreement subject to condition, making it subject to the outcome of the Complaint Proceeding in Docket Nos. EL15-99-000 and EL16-12-000.³⁰ We also grant MISO's request for waiver of the 60-day notice requirement to permit an effective date of April 6, 2016, for good cause shown.³¹

The Commission orders:

The External NRIS Agreement is hereby accepted, subject to condition, effective April 6, 2016, as requested, subject to the outcome of the Complaint Proceeding, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁹ May 6 Order, 155 FERC ¶ 61,147 at P 14. As noted above, MISO's proposed *pro forma* Service Agreement for External NRIS, submitted in compliance with the Complaint Proceeding, is pending before the Commission in Docket No. ER16-1817-000.

³⁰ For this reason, we do not find it necessary to address the arguments in AWEA/WOW's protest in this order.

³¹ *Central Hudson Gas & Elec. Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).