

156 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER16-2417-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued September 28, 2016)

1. In this order, we accept a compliance filing by Midcontinent Independent System Operator, Inc. (MISO) filed pursuant to the Commission's July 13, 2016 order (Compliance Filing).¹

I. Background

2. On July 10, 2010, MISO and MISO Transmission Owners² (MISO Parties) submitted revisions to the MISO Open Access Transmission, Energy and Operating

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 156 FERC ¶ 61,034 (2016) (MVP Remand Order).

² For the July 10, 2010 filing, MISO Transmission Owners included Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC (ATC); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc. (Duke Ohio), Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc. (Duke Kentucky); Great River Energy; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin); Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Indiana Gas & Electric Company; and Southern Minnesota Municipal Power Agency.

Reserve Markets Tariff (Tariff) to implement criteria for identifying and allocating the costs of Multi-Value Projects (MVP), which are projects that “enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws that address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple [MISO] transmission zones.”³

3. On December 16, 2010, the Commission accepted the proposed MVP usage charge for export and wheel-through transactions, except for transactions that sink in PJM Interconnection, L.L.C. (PJM). With regard to transactions that sink in PJM, the Commission stated that the MISO Parties had not shown that their proposal did not constitute a resumption of rate pancaking along the MISO-PJM seam. The Commission found that, while there had been some changes since the elimination of rate pancaking between MISO and PJM, the changes were insufficient to mitigate the RTO scope and configuration concerns that led the Commission to find that pancaked rates between MISO and PJM were unjust and unreasonable.⁴

4. On June 7, 2013, the United States Court of Appeals for the Seventh Circuit granted a petition for review regarding the Commission’s determination in the MVP Order and MVP Rehearing Order that MISO may not allocate costs of MVPs to export transactions that sink within PJM.⁵ The Seventh Circuit remanded the case to the Commission for further proceedings to determine, “in light of current conditions,” what if any limitation on export pricing to PJM by MISO is justified as regards MVPs.⁶

³ MVP Remand Order, 156 FERC ¶ 61,034 at P 4.

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at PP 423, 440 (2010) (MVP Order), *reh’g denied*, 137 FERC ¶ 61,074, at PP 288-290 (2011) (MVP Rehearing Order).

⁵ *Illinois Commerce Commission v. FERC*, 721 F.3d 764, at 778-780 (7th Cir. 2013) (*Illinois Commerce Commission II*), *cert. denied sub nom. Schuette v. FERC*, 134 S.Ct. 1277 (2014) and *cert. denied sub nom. Hoosier Rural Energy Co-op., Inc. v. FERC*, 134 S.Ct. 1278 (2014).

⁶ *Id.* at 780. On January 22, 2015, in response to the Seventh Circuit’s remand, the Commission issued an order establishing a paper hearing to supplement the record on this matter. *Midwest Indep. Transmission Sys. Operator, Inc.*, 150 FERC ¶ 61,026 (2015).

5. On July 13, 2016, the Commission, after developing a further record in a paper hearing, found that elimination of the limitation on export pricing to PJM is appropriate with respect to cost recovery for MVPs.⁷ Accordingly, the Commission directed MISO to submit a compliance filing with revisions eliminating this limitation to Schedule 26-A (MVP Usage Rate) and Attachment MM (Multi-Value Project Charge) and any other parts of its Tariff as applicable.⁸

II. Compliance Filing

6. MISO states that it reviewed its Tariff to identify any amendments necessary to comply with the Commission's directives in the MVP Remand Order and identified necessary amendments to Attachment MM, Schedule 26-A, Schedule 39 (MVP Financial Obligations and Cost Recovery), and Attachment L (Credit Policy), and that MISO proposes such changes in the Compliance Filing.⁹ Regarding Attachment MM, MISO proposes to delete exemptions to charges to export schedules sinking in PJM.¹⁰ Regarding Attachment 26-A, MISO proposes to delete language that creates an exemption from charges assessed on export schedules and through schedules that sink in PJM. Regarding Schedule 39, MISO proposes to amend the definition of "MVP Responsible Transactions" at section I.B to no longer exclude export transactions sinking in PJM from the scope of the definition. MISO additionally proposes to amend Schedule 39 to ensure that all withdrawing transmission owners, either those who subsequently join PJM or otherwise, receive the appropriate offset of their withdrawal fees. Regarding Attachment L, MISO proposes to eliminate language from Section I.A(7)(b) excluding transactions sinking in PJM.¹¹ MISO requests an effective date of July 13, 2016.

⁷ MVP Remand Order, 156 FERC ¶ 61,034 at P 52.

⁸ *Id.* P 59.

⁹ MISO's proposed amendments are designated as MISO, FERC Electric Tariff, FERC Electric Tariff [SCHEDULE 26A, Multi-Value Project Usage Rate, 31.0.0](#), [SCHEDULE 39, Multi-Value Project Financial Obligations and Cost Recovery, 31.0.0](#), [ATTACHMENT L, Credit Policy, 38.0.0](#), [ATTACHMENT MM, Multi-Value Project Charge \(MVP Charge\), 37.0.0](#).

¹⁰ Compliance Filing at 2.

¹¹ *Id.* at 2-3. MISO also stated that the tariff sheets submitted with the Compliance Filing contain language currently pending before the Commission in an unrelated docket

II. Notice of Compliance Filing and Responsive Pleadings

7. Notice of MISO's Compliance Filing was published in the *Federal Register*, 81 Fed. Reg. 55,189 (2016), 81 Fed. Reg. 56,629 (2016), with interventions or protests due on or before September 2, 2016. Timely motions to intervene were filed by: Alliant Energy Corporate Services, Inc.; American Electric Power Service Corporation (AEP), on behalf of its affiliates;¹² Calpine Corporation; Entergy Services, Inc. (Entergy Services);¹³ FirstEnergy Service Company (FirstEnergy) on behalf of its affiliates;¹⁴ American Municipal Power, Inc. (AMP); Public Service Electric and Gas Company (PSEG); Exelon Corporation (Exelon); Dayton Power and Light Company (Dayton P&L); Rockland Electric Company; PPL Electric Utilities Corporation (PPL); NRG Power Marketing LLC and GenOn Energy Management, LLC; PJM; Old Dominion Electric Cooperative; Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services and WPPI Energy; Duquesne Light Company (Duquesne); MISO

(Docket No. ER16-2175-000), committed to file any revisions to such language as necessary to comply with any Commission orders in Docket No. ER16-2175-000, and requested that the Commission treat such language as subject to the outcome of that proceeding. *Id.* at 3 & n.13. The Commission accepted MISO's proposed revisions in Docket No. ER16-2175-000 on September 1, 2016. *See Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER16-2175-000 (Sep. 1, 2016) (delegated letter order).

¹² AEP is intervening on behalf of: Appalachian Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Wheeling Power Company; AEP Appalachian Transmission Company; AEP Indiana Michigan Transmission Company; AEP Kentucky Transmission Company; AEP Ohio Transmission Company; and AEP West Virginia Transmission Company.

¹³ Entergy Services is intervening on behalf of: Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

¹⁴ FirstEnergy is intervening on behalf of: American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; West Penn Power Company; Potomac Edison Company; and Monongahela Power Company.

Transmission Owners;¹⁵ American Wind Energy Association (AWEA); Wisconsin Electric Power Company and Wisconsin Public Service Corporation; and EDF Renewable Energy, Inc. The City Council of the City of New Orleans, Louisiana filed a notice of intervention.

8. AWEA filed comments. Indicated PJM Transmission Owners (Indicated PJM TOs) filed comments or, in the alternative, a protest.¹⁶

9. AWEA supports MISO's Tariff amendments to apply the MVP charge to transactions sinking in PJM. In addition, AWEA states that the Tariff changes proposed in the Compliance Filing, along with the Commission's findings in the MVP Remand Order, warrant the rate pancaking ban being lifted to include all rates for point-to-point transmission service across the MISO-PJM seam.¹⁷

10. Indicated PJM TOs ask the Commission to clarify that the proposed Tariff revisions only authorize MISO to impose the MVP usage charge on voluntary transactions scheduled by MISO transmission customers delivering energy to or through PJM. Indicated PJM TOs assert that the Commission's reference to "who voluntarily takes transmission service in MISO under the MISO Tariff" means a customer who

¹⁵ MISO Transmission Owners for 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; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); 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.; Southern Illinois Power Cooperative; and Southern Minnesota Municipal Power Agency.

¹⁶ For purposes of their pleading, Indicated PJM TOs consist of: AEP, on behalf of its affiliates; Dayton P&L; Duquesne; Exelon; FirstEnergy, on behalf of its affiliates; PPL; and PSEG.

¹⁷ AWEA Comments at 3.

schedules transmission service under the Tariff. Additionally, Indicated PJM TOs state that there are several circumstances in which entities in PJM may receive power from MISO but not through scheduled transmission service under the Tariff.¹⁸

11. In addition, Indicated PJM TOs request that the Commission clarify that none of the costs of transmission facilities that are jointly allocated between MISO and PJM in accordance with cross border or inter-regional cost allocation methodologies under the PJM-MISO Joint Operating Agreement (JOA) may be recovered through the proposed MVP usage charge from customers engaging in transaction sinking in PJM. Indicated PJM TOs argue that, once a transmission project is selected through the PJM-MISO JOA joint planning process, the PJM-MISO JOA cost allocation methodology should be the exclusive means by which MISO recovers the cost of that project from PJM customers.¹⁹

12. On September 16, 2016, AMP filed a response to AWEA's comments. AMP argues that the further exclusion of rate pancaking sought by AWEA is outside the scope of the Compliance Filing. In any event, AMP argues, the MVP Remand Order does not support the relief that AWEA seeks.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, [18 C.F.R. § 385.213\(a\)\(2\) \(2016\)](#), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept AMP's answer and will, therefore, reject it.

B. Substantive Matters

14. We will accept MISO's proposed changes to Attachments MM and L and Schedules 26-A and 39. We find that MISO has complied with the Commission's directives in the MVP Remand Order by removing provisions in its Tariff which would have exempted entities exporting power from MISO to PJM from the MVP usage charge.

¹⁸ Indicated PJM TOs Comments at 5.

¹⁹ *Id.* at 6.

15. Regarding AWEA's request, we note that our concern with the Compliance Filing is solely on whether MISO's proposed revisions comply with the directives in the MVP Remand Order. AWEA's request concerning the rate pancaking ban on all point-to-point transmission service crossing the MISO-PJM seam is beyond the scope of the Compliance Filing.

16. We note that the two clarifications requested by Indicated PJM TOs -- clarification on the voluntary aspect of applied MVP usage charge and the use of the PJM-MISO JOA cost allocation methodology for cost recovery of transmission facilities that are jointly allocated between MISO and PJM -- are issues raised in their pending requests for rehearing of the MVP Remand Order.²⁰ Those issues likewise are beyond the scope of the Compliance Filing.

17. Accordingly, we will accept MISO's Compliance Filing, effective July 13, 2016, as requested.

The Commission orders:

MISO's Compliance Filing is hereby accepted to become effective July 13, 2016, as requested, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ Docket No. ER10-1791-004.