157 FERC ¶ 61,156
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. ER16-2685-000

ORDER GRANTING WAIVER

(Issued November 29, 2016)

1. On September 28, 2016, Midcontinent Independent System Operator, Inc. (MISO) requested a limited waiver (Waiver Request) of sections 39.2.5 and 40.2.5 of its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff), which establishes a $1,000/MWh Energy Offer Price cap (offer cap) on incremental energy offers in MISO's day-ahead and real-time energy markets. MISO also requested waiver of section 64.1.4, which describes the process that MISO's Independent Market Monitor (Market Monitor) uses to establish reference levels for generation resources in MISO. MISO requests that the Commission waive these Tariff provisions from December 1, 2016, through April 30, 2017. In this order, we find good cause to grant waiver of the aforementioned Tariff provisions from December 1, 2016 through April 30, 2017, as discussed below.

I. **Background**

2. MISO states that in January and March 2014 the $1,000/MWh offer cap limited the incremental energy offers of some MISO resources below their incremental energy costs given the high natural gas prices at the time.[1] MISO adds that, in March 2014, MISO generation resources offered approximately 900 MW at the $1,000/MWh offer cap in both the day-ahead and real-time markets, indicating that the offer cap may have constrained those offers.[2] MISO asserts that based on its natural gas generation fleet and

[1] MISO Sept. 28, 2016 Transmittal at 3-4 (Filing).

[2] *Id.*

heat rate distribution, some of MISO's gas-fired generation could be impacted by the $1000/MWh Energy Offer Price Cap when natural gas prices rise to $67/MMBtu.[3]

3. MISO further states that during periods with extreme and unexpected fuel cost spikes, the $1,000/MWh offer cap could put certain generators with must-offer requirements in the untenable position of being obligated to offer their output at a level below their marginal cost of production.[4] While MISO does not currently anticipate natural gas prices in the upcoming winter to reach the levels experienced during the Polar Vortex in the 2013/14 winter, MISO contends that such predictions are uncertain and thus a temporary waiver is necessary out of an abundance of caution.[5] MISO states that the proposed waiver will ensure that it will be able to use all available resources to reliably meet load during extreme weather conditions. MISO also notes that the Commission has addressed this issue in other regions and has granted waivers due to reliability concerns associated with extreme weather conditions.[6]

4. MISO states that it has evaluated alternatives to the instant proposal and determined that allowing a market participant to include its incremental energy costs in excess of the $1,000/MWh offer cap in the hourly No Load component of its supply offer would address the issue while having the least impact on MISO's market systems and processes. MISO also states that it sought stakeholder input regarding whether MISO should maintain the current $1,000/MWh offer cap or to raise the offer cap to $1,500/MWh or some other value, and that stakeholders indicated a preference for keeping the offer cap at its current $1,000/MWh level.[7]

5. MISO states that, in granting tariff waivers, the Commission focuses on whether: (1) the entity seeking the waiver acted in good faith; (2) the waiver is of a limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.[8] MISO contends that its waiver request meets these four criteria. First, MISO states that it acted in good faith by evaluating

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[3] *Id*. at 4.

[4] *Id*.

[5] *Id*. at 4-5.

[6] *Id*. at 5.

[7] *Id*. at 9.

[8] *Id*. at 5.

alternative proposals, such as increasing MISO's offer cap to $1,500/MWh or some other value, and a majority of MISO's stakeholders indicated a preference for keeping the offer cap at $1,000/MWh. Second, MISO argues that the waiver is limited in scope because it is effective only from December 1, 2016, through April 30, 2017. Third, MISO contends that the waiver addresses a concrete problem due to the past experience with the Polar Vortex and the potential for extreme weather conditions in the future.[9] Fourth, MISO states that the waiver will not have undesirable consequences, such as harming third parties, because the energy offers are subject to monitoring and mitigation by MISO's Market Monitor and the recovery of costs in excess of the current offer cap will be limited to actual, verified fuel costs.[10]

6. MISO notes that the Commission approved similar waiver requests for the winter of 2014/15,[11] and for the winter of 2015/16.[12] MISO asserts that, consistent with the directives of the 2015 Waiver Order and the 2016 Waiver Order, MISO will institute a true-up mechanism within its settlement process to ensure that any make-whole payment credits associated with incremental energy costs in excess of $1,000/MWh result in the recovery of actual and verifiable costs alone.[13]

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[9] *Id.* at 9-10.

[10] *Id.* at 2.

[11] *Midcontinent Independent System Operator, Inc.*, 150 FERC ¶ 61,083 (2015) (2015 Waiver Order).

[12] *Midcontinent Independent System Operator, Inc.*, 154 FERC ¶ 61,006 (2016) (2016 Waiver Order).

[13] *Id*. at 2. In the 2015 Waiver Order, the Commission expressed concern that there may be circumstances where the proposal could allow market participants to recover more than their incurred cost because the total amount that will need to be recovered will depend on the unit's actual dispatch quantity, which is not known with certainty at the time that the No Load offer is submitted. The No Load offer is a fixed amount that does not vary with output, while incremental energy costs, such as fuel costs, vary with output. Consequently, the Commission required MISO to institute a true-up mechanism within its settlements process, such that make-whole payment credits associated with incremental energy costs in excess of $1,000/MWh result only in the recovery of actual and verifiable costs. The Commission also found that in order for the Market Monitor's consultative process to be implemented consistently, assumptions with respect to anticipated dispatch would need to be developed in a non-discriminatory manner for all resources. Accordingly, the Commission required the Market Monitor to

(continued ...)

7. As was required in the 2015 Waiver Order and the 2016 Waiver Order,[14] MISO also proposes to have its Market Monitor file a report after the waiver period detailing: (1) the total MWh of energy with incremental energy costs in excess of $1,000/MWh that cleared in each of the day-ahead and real-time markets; (2) the total dollar value of incremental energy costs that were included in No Load offers (due to being in excess of the $1,000/MWh energy offer cap); (3) the total dollar value of make-whole payment credits that were granted to resources associated with the increased No Load costs in part (2) above; and (4) a list of the intervals, including time stamps, during which resources that cleared in MISO's day-ahead and real-time markets had incremental costs in excess of $1,000/MWh.[15]

8. MISO notes that the Commission has issued a Notice of Proposed Rulemaking in Docket No. RM16-5-000 that pertains to offer caps.[16] MISO asserts that it has continued to engage in discussions with its stakeholders to evaluate longer-term solutions to the offer cap while awaiting the result of that proceeding. MISO further states that it will develop any longer-term solution as part of its compliance with the Commission's final rule on offer caps – which at the time of MISO's filing had not been issued.[17]

II. <u>Notice and Responsive Pleadings</u>

9. Notice of MISO's filing was published in the *Federal Register*, 81 Fed. Reg. 69,055 (2016), with interventions and protests due on or before October 19, 2016. Missouri Public Service Commission filed a notice of intervention. NRG Companies,[18]

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develop and document the procedure or protocol used to determine the assumed dispatch level used to calculate the total amount of incremental energy costs that are to be included in a market participant's No Load offer reference level. *See* 2015 Waiver Order, 150 FERC ¶ 61,083 at PP 22-24.

[14] 2015 Waiver Order, 150 FERC ¶ 61,083 at P 25; 2016 Waiver Order, 154 FERC ¶ 61,006 at P 21.

[15] Filing at 10.

[16] *Id.* at 2 (citing *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, FERC Stats. & Regs. ¶ 32,714 (2016)).

[17] *Id*.

[18] For purposes of this filing, the NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

Exelon Corporation, American Municipal Power, Inc., and Alliant Energy Corporate Services, Inc. filed timely motions to intervene.

III. Discussion

A. Procedural Matters

10. 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.

B. Substantive Matters

11. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.[19]

12. We find that MISO's Waiver Request satisfies the aforementioned conditions. First, we find that by working with its stakeholders to evaluate alternatives to its waiver request, MISO acted in good faith. Second, the requested waiver is limited in scope in that the duration is from December 1, 2016 through April 30, 2017, and is limited in its application to resources with verifiable incremental energy costs that exceed the offer cap. Third, the waiver addresses the concrete problem that, in the absence of a waiver, resources with must-offer requirements might be required to provide service without receiving payments sufficient to recover their incremental energy costs. Additionally, without the waiver, resources without a must-offer requirement could be discouraged from offering energy when it is most needed. Fourth, we find that any potential harm to third parties from implementing the waiver is mitigated by the Market Monitor's review as described below. Accordingly, we find that it is appropriate to temporarily waive sections 39.2.5, 40.2.5, and 64.1.4 of the Tariff for the period of December 1, 2016 through April 30, 2017, subject to the conditions described herein. Furthermore, consistent with the 2015 Waiver Order[20] and the 2016 Waiver Order,[21] we clarify that

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[19] *See, e.g.*, *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

[20] 2015 Waiver Order, 150 FERC ¶ 61,083 at P 16.

[21] 2016 Waiver Order, 154 FERC ¶ 61,006 at P 23.

the waiver will apply to any actual, verifiable incremental costs of providing energy and that market participants with incremental energy costs in excess of $1,000/MWh may not submit No Load offers that exceed their newly devised No Load offer reference levels, as discussed below.

13. MISO's experience during the Polar Vortex of the 2013/14 winter demonstrates that fuel costs can increase to a level such that the current $1,000/MWh offer cap prevents resources from submitting incremental energy offers that reflect their marginal production costs. If similar weather and natural gas supply conditions materialize in the 2016/17 winter, some resources could face the untenable position of being forced to offer electricity at levels below their actual cost.

14. We also accept MISO's proposal, consistent with the Commission's directive in the 2015 Waiver Order[22] and the 2016 Waiver Order[23] to (1) require its Market Monitor to file a report with the Commission detailing the use of the waiver; and (2) implement a true-up mechanism within its settlements process to ensure that make-whole payment credits associated with incremental energy costs in excess of $1,000/MWh result only in the recovery of actual and verifiable costs.[24] This latter aspect of the proposal mitigates any potential harm to third parties from implementing the waiver by helping to ensure that customers only pay actual and verifiable costs.

15. In addition, we again require the Market Monitor to develop and document the procedure or protocol it will use to determine the assumed dispatch level used to calculate the incremental energy costs that are to be included in a market participant's No Load offer reference level.[25]

16. Consistent with the 2015 Waiver Order[26] and the 2016 Waiver Order,[27] in accepting MISO's instant Waiver Request, we are not allowing market participants with

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[22] 2015 Waiver Order, 150 FERC ¶ 61,083 at PP 23-25.

[23] 2016 Waiver Order, 154 FERC ¶ 61,006 at P 21.

[24] *See supra* P 5.

[25] 2015 Waiver Order, 150 FERC ¶ 61,083 at P 24; 2016 Waiver Order, 154 FERC ¶ 61,006 at P 21.

[26] 2015 Waiver Order, 150 FERC ¶ 61,083 at P 21.

[27] 2016 Waiver Order, 154 FERC ¶ 61,006 at P 23.

incremental energy costs above $1,000/MWh to submit No Load offers that exceed their newly devised No Load offer reference levels (which will include only the resource's regular No Load costs plus the incremental energy costs in excess of the $1,000/MWh energy offer cap).

17. On November 17, 2016 the Commission issued a final rule on offer caps (Order No. 831) that required each regional transmission organization and independent system operator to: (1) cap each resource's incremental energy offer at the higher of $1,000/MWh or that resource's verified cost-based incremental energy offer; and (2) cap verified cost-based incremental energy offers at $2,000/MWh when calculating locational marginal prices.[28] Order No. 831 is intended, among other things, to provide a long-term solution to the issues associated with MISO's $1,000/MWh offer cap which are addressed through its Waiver Request.

The Commission orders:

(A) Waiver of sections 39.2.5, 40.2.5, and 64.1.4 of MISO's Tariff is hereby granted to allow resources with incremental energy costs above the $1,000/MWh offer cap to include those costs in the No Load component of their supply offers during the December 1, 2016, through April 30, 2017 period, as discussed in the body of this order.

(B) The Market Monitor is required to make an informational filing as indicated in MISO's Waiver Request within 30 days of the expiration of MISO's waiver, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[28] *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 157 FERC ¶ 61,115 (2016).