

135 FERC ¶ 61,189  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER10-1696-001

ORDER DENYING REHEARING

(Issued May 27, 2011)

1. In this order, we deny Missouri River Energy Services' (Missouri River) request for rehearing of the Commission's August 31, 2010 order,<sup>1</sup> as discussed below.

**I. Background**

2. On July 1, 2010, Midwest Independent Transmission System Operator, Inc. (MISO) submitted for filing, under section 205 of the Federal Power Act (FPA),<sup>2</sup> a proposed amendment to Module B of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to address conflicting provisions in section 30.8 of Module B and the must offer provisions in section 69.5 of Module E.<sup>3</sup> Under the then-effective version of section 30.8 of Module B, a network customer's use of the interface capacity was restricted to the lesser of the network customer's actual network load or the available interface capacity. Under the must offer provisions in section 69.5 of Module E, a market participant is required to offer into the day-ahead market a quantity of energy equal to the installed capacity that was converted into planning resource credits.<sup>4</sup> Accordingly, the quantity of energy originating from an external resource that is a capacity resource, which is required to be offered into the

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<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,189 (2010) (August 31 Order).

<sup>2</sup> 16 U.S.C. § 824d (2006).

<sup>3</sup> MISO July 1, 2010 Filing, Docket No. ER10-1696-000, at 2-3.

<sup>4</sup> *Id.*

day-ahead energy market to meet the must offer requirement and that clears the day-ahead market, may be in excess of a network customer's actual network load, violating the restriction in section 30.8.

3. To resolve this possible conflict, MISO proposed to add a limited exception to Module B's restriction on the use of interface capacity. The proposed modification to section 30.8 of Module B eliminates the usage restriction related to the network customer's load and permits the network customer to use interface capacity to schedule a quantity of energy in excess of load to the extent such energy is scheduled to meet the network customer's must offer requirements set forth in Module E of the Tariff.

4. In the August 31 Order, the Commission accepted MISO's proposed revision to the Tariff. Specifically, the Commission found it reasonable for MISO to modify the restrictions on customer use of interfaces in its Tariff so that market participants can utilize their external resources fully at these interfaces and thereby facilitate compliance with the must offer requirements in the MISO Resource Adequacy plan in Module E of its Tariff. Furthermore, the Commission found that the proposed revision will eliminate a potential limitation on the use of external resources to meet resource adequacy requirements of the MISO region and therefore the proposal enhances long-term reliability.<sup>5</sup>

5. The Commission did not agree with Missouri River's contention that the proposal imposes cost burdens that other market participants do not bear. The Commission understood Missouri River's concern to be with the restrictions of its Western Area Power Administration (WAPA) contract that limits its ability to comply with MISO's must offer requirements. The Commission concluded that MISO's proposal did not have any bearing on this separate contract issue.<sup>6</sup>

6. In addition, the Commission found in the August 31 Order that MISO's proposal did not fail to meet the requirements of Order No. 890.<sup>7</sup> Specifically, the Commission found that MISO's proposal provides reliability benefits that are an improvement in the *pro forma* tariff. Moreover, the Commission explained, the fact that MISO's proposal

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<sup>5</sup> August 31 Order, 132 FERC ¶ 61,189 at P 20.

<sup>6</sup> *Id.* P 21.

<sup>7</sup> *Id.* P 22; *See also Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *Order on Clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

does not resolve Missouri River's issue does not indicate that the proposal fails to meet the standards of Order No. 890.<sup>8</sup>

## II. Request for Rehearing

7. On September 28, 2010, Missouri River filed a request for rehearing of the August 31 Order. Missouri River asserts that the Commission erred in two respects: first, when it failed to engage with the facts presented by Missouri River that the MISO proposal was inadequate to remove the tariff-based limitations on MISO members' ability to meet the Module E must offer requirements using external resources; and second, when it failed to direct MISO to develop a complete resolution of the issue in its stakeholder committee process, that is, one that resolves the continued inability of MISO members with external resources to meet the must offer requirements of Module E without incurring financial harm.<sup>9</sup>

8. Missouri River argues that while its contract for Open Access Transmission Service Tariff (OATT) service with WAPA is the basis for its protest of MISO's proposed tariff changes, the basis for its concern is not unique to this contract. Missouri River asserts that the WAPA OATT contains the standard, Commission-approved *pro forma* limitation on the amount of network transmission service that may be provided.<sup>10</sup> That limitation does not provide an exception, similar to the one proposed by MISO in its July 1 Filing for Module B, which would enable Missouri River to meet the MISO must offer requirement with external resources located on the WAPA system. Because MISO's proposal conflicts with the provisions of the Commission's *pro forma* tariff, it argues, MISO's proposed solution would not resolve the problems faced by Missouri River or any other MISO customer that has external generation capacity subject to a contract based on the *pro forma* tariff and that relies on those external resources to meet its must offer obligations under MISO's Module E. Whether or not there are other entities that are similarly situated to Missouri River, Missouri River states, is a factual matter that warrants the Commission and/or MISO's consideration. However, in its August 31 Order, Missouri River argues, the Commission did not address Missouri River's claims that its situation was not unique and the Commission's failure to consider and address this factual issue is arbitrary and capricious and supports granting rehearing.<sup>11</sup>

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<sup>8</sup> August 31 Order, 132 FERC ¶ 61,189 at P 22.

<sup>9</sup> Missouri River Request for Rehearing at 4.

<sup>10</sup> *Id.* at 5 (citing WAPA OATT, § 30.8 (Dec. 1, 2009)).

<sup>11</sup> *Id.* at 5-6.

9. Furthermore, Missouri River argues that MISO's claims that the problems raised by Missouri River are unique, and the Commission's justification for accepting MISO proposed Tariff revisions, appear to be based entirely on the fact that no other party joined Missouri River in protesting MISO's "solution." Missouri River states that while no other party joined its protest, this fact does not constitute evidence that the problem is unique to Missouri River and that no other party would be affected by the deficiencies inherent to MISO's proposal.<sup>12</sup> Missouri River argues that there are a number of other reasons, such as the complexity of the issue and the lack of financial penalties for non-compliance with Module E, which are equally likely to explain the absence of other protesters.

10. Finally, Missouri River argues that the Commission erred when it failed to require MISO to initiate stakeholder review and develop a complete resolution of the limitations on MISO members with External Resources to comply with the must offer requirements of Module E. Missouri River asserts that MISO's proposed Tariff revisions resolve only half of the problem for Missouri River and similarly situated entities. If the Tariff limitation remains unresolved, Missouri River argues, network customers with external generation located in a neighboring system whose OATT contains *pro forma* provisions would face potential financial penalties imposed by MISO for the network customer's failure to comply with the must offer provisions or face additional costs resulting from the need to purchase additional capacity from MISO. Despite Missouri River raising this issue before MISO as early as 2006, Missouri River states that it remains unresolved. As a result, Missouri River requests that the Commission require MISO to work with its stakeholders to devise a solution that completely resolves the conflict.<sup>13</sup> Unless the conflict is resolved, Missouri River asserts that it and other similarly situated parties will either be in violation of MISO's Tariff or WAPA's OATT or other neighboring system tariffs.<sup>14</sup>

### **III. Commission Determination**

11. We will deny Missouri River's request for rehearing of the August 31 Order. Missouri River has presented no new arguments to persuade us to reconsider our findings in the August 31 Order. MISO's revisions to section 30.8 add a limited exception to Module B's restriction on the use of interface capacity. This modification eliminates the usage restriction related to the network customer's load and permits the network customer to use interface capacity to schedule a quantity of energy in excess of load to

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<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.*

the extent such energy is scheduled to meet the network customer's must offer requirements set forth in Module E of the Tariff. As explained in the August 31 Order, the revisions enhance long-term reliability and are an improvement in the *pro forma* tariff.<sup>15</sup>

12. In response to Missouri River's argument that MISO's Tariff revisions resolve only half of the problem for Missouri River and similarly situated entities, the Commission is required only to review MISO's proposal to ensure that MISO adopts just and reasonable rates, terms and conditions.<sup>16</sup> The Commission's review is complete if we determine that the proposal filed by MISO is just and reasonable and not unduly discriminatory or preferential.<sup>17</sup> In accepting MISO's proposed revision to section 30.8 of Module B, the Commission found that MISO satisfied this standard. Accordingly, Missouri River's request that the Commission direct MISO to resolve the limitations on Missouri River and similarly situated entities in meeting the must offer obligations in Module E of the Tariff is beyond the scope of this section 205 proceeding.

13. We also find unavailing Missouri River's argument that its situation is not unique and the Commission's failure to consider and address this issue are arbitrary and capricious. The Commission did not find in the August 31 Order that Missouri River's situation in meeting its must offer obligations is unique. Rather, the Commission found in the August 31 Order that it is "reasonable for MISO to modify restrictions on customer use of interfaces in its Tariff so that market participants can utilize their external resources fully at these interfaces and thereby facilitate compliance with the must offer requirements in the MISO Resource Adequacy Plan in Module E of its Tariff."<sup>18</sup> In addition, the Commission found in the August 31 Order that the Tariff revisions "will eliminate a potential limitation on the use of external resources to meet resource adequacy requirements of the MISO region and therefore the proposal enhances long-term reliability."<sup>19</sup> Whether Missouri River's situation is unique or not is irrelevant to these findings and the Commission's determination that MISO's proposal is just and reasonable and not unduly discriminatory or preferential. Nothing in Missouri River's request for rehearing has persuaded us to reconsider these findings.

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<sup>15</sup> August 31 Order, 132 FERC ¶ 61,189 at P 20, 22.

<sup>16</sup> 16 U.S.C. § 824d.

<sup>17</sup> *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,223, at P 71 (2010).

<sup>18</sup> August 31 Order, 132 FERC ¶ 61,189 at P 20.

<sup>19</sup> *Id.*

14. Finally, we will not require MISO to initiate a stakeholder review to resolve the limitations on MISO members with external resources to comply with the must offer requirements of Module E. Restrictions in tariffs external to MISO, including WAPA's OATT, have no bearing on MISO's proposed Tariff modification in this proceeding. Therefore, this request is beyond the scope of this proceeding and is denied.

The Commission orders:

Missouri River's request for rehearing of the August 31 Order is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.