140 FERC ¶ 61,254
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER12-1283-000

ORDER ON TARIFF REVISIONS

(Issued September 28, 2012)

1. On March 16, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)[1] to establish a new Module E-2, which would enable Load Serving Entities (LSE) for new load within the MISO region that is served from transmission facilities that have been transferred to the functional control of MISO by the transmission owner (New LSE) to comply with MISO's resource adequacy requirements on an interim basis until such LSEs can be included in MISO's annual resource adequacy construct. In this order, the Commission rejects MISO's proposed tariff provisions without prejudice for the reasons discussed below.

I. Background

2. On June 11, 2012, the Commission conditionally accepted MISO's proposal for an annual resource adequacy construct, as described in a new Module E-1 of the Tariff that will supersede Module E.[2] Pursuant to Module E-1, MISO will conduct an annual planning resource auction that will begin three days before the last business day in March and will end on the last business day in March. During this period, market participants

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[1] Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Fourth Revised Vol. No. 1.

[2] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012) (Capacity Auction Order); *see also* MISO, Application, Docket No. ER11-4081-000 (filed July 20, 2011) (July 20, 2011 Filing).

will submit their resource offers into the auction for the Planning Year that begins on June 1 and ends on May 31 of the following calendar year.[3]

3. Pursuant to Module E-1, LSEs can obtain resources to satisfy their resource adequacy requirements by either offering or self-scheduling resources in the annual auction or submitting a Fixed Resource Adequacy Plan (FRAP)[4] that demonstrates that they have sufficient resources. In the event an LSE is found to be resource deficient, it will be assessed a deficiency penalty. MISO will also establish seven Local Resource Zones[5] and zonal resource adequacy requirements for which separate auctions will be conducted. Finally, to the extent that LSEs use resources that are located in zones other than the zones in which their load is located, a Zonal Deliverability Charge will be assessed to reflect price differentials between the zones.[6]

II. Description of Filing

4. MISO proposes to add Module E-2 to the Tariff, which will, among other things, enable "New LSEs" to comply with MISO's resource adequacy requirements in Module

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[3] Capacity Auction Order, 139 FERC ¶ 61,199 at P 175; July 20, 2011 Filing, Doying Aff. at ¶¶ 82-91.

[4] A FRAP is "a plan submitted by an LSE through the [Module E capacity tracking tool] to the [t]ransmission [p]rovider that is approved by the [t]ransmission [p]rovider which demonstrates that the LSE has sufficient [capacity] to meet all or part of its [planning reserve margin] for one or more Local Resource Zones." Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Module A, 1.234a, Fixed Resource Adequacy Plan (FRAP), 0.0.0.

[5] Local Resource Zones are geographic areas within the MISO region that have been prescribed by MISO to address congestion that limits planning resource deliverability in accordance with the criteria in Module E-1 of the Tariff. Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Module A, 1.365c, Local Resource Zone (LRZ), 0.0.0.

[6] The Zonal Deliverability Charge is a charge that may be assessed to an LSE based upon the congestion contribution to the constraints between Local Resource Zones of any capacity resources that are located outside of the Local Resource Zone where the LSE has Load. Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Module E-1, 1.705a, Zonal Deliverability Charge (ZDC), 0.0.0.

E-1.[7] MISO intends for Module E-2 to address the resource adequacy requirements of New LSEs as well as MISO's role during the transitional period until the New LSEs' assets can be included in the annual resource adequacy process described in Module E-1.[8]

5. MISO's proposal provides two methods by which New LSEs may demonstrate resource adequacy until they can participate in the annual resource adequacy process. First, a New LSE can submit a FRAP that demonstrates that a New LSE would remain resource adequate from the time its load integrates into the MISO region through the remainder of the Planning Year. Second, if the timing permits, a New LSE may participate in MISO's annual planning resource auction.

6. If a New LSE chooses to submit a FRAP, it must do so at least 30 calendar days before the date that the New LSE and MISO have agreed to integrate the New LSE's load. The FRAP must demonstrate that adequate planning resources are deliverable to the New LSE's load in order to satisfy the New LSE's peak demand forecast multiplied by the sum of one plus MISO's system-wide planning reserve margin. If MISO determines that the New LSE has not included sufficient resources in its initial FRAP, it would notify the New LSE of the deficiency, in which case the New LSE would be obligated to remedy the deficiency within 15 days. However, if the deficiency is not remedied within that timeframe, MISO proposes to defer the New LSE's integration date until the New LSE submits a FRAP that satisfies its obligations, as determined by MISO.

7. If a New LSE chooses to participate in the annual planning resource auction, the New LSE would be authorized to meet its planning reserve margin requirements by self-scheduling its Zonal Resource Credits[9] in the auction, purchasing Zonal Resource Credits through the auction, or submitting a FRAP.[10]

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[7] The term "New LSEs" is designed to apply to both new and existing MISO members. A New LSE might not be a new MISO Member but could serve new load within the MISO Balancing Authority as a result of a Transmission Owner transferring functional control of its transmission facilities to the MISO through execution of the MISO Transmission Owners Agreement. March 16 Filing at 2-3.

[8] *Id.*

[9] Zonal Resource Credits are MW units of planning resources that are eligible to be offered into the planning resource auction, to be sold bilaterally, and/or to be submitted through a FRAP. Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Module A, 1.712a, Zonal Resource Credit (ZRC), 0.0.0.

[10] March 16 Filing at 4.

8. Under MISO's proposal, a New LSE that has its assets, with an effective date on or before June 1, registered and confirmed with MISO on or before the March Commercial Model due date, will be able to participate in the upcoming planning resource auction. If the New LSE does not meet these requirements, it would be ineligible to participate in the planning resource auction and instead must submit a FRAP to demonstrate resource adequacy.

9. In the event a New LSE is eligible to participate in the annual resource auction and decides to do so, MISO proposes to determine whether the New LSE's load should be part of one or more existing or new Local Resource Zones. MISO also states that it would determine capacity import and export limits for each Local Resource Zone in which the New LSE's load resides.[11]

10. MISO requests that the proposed tariff provisions become effective on October 1, 2012, the same effective date for the provisions of Module E-1.[12] Because Module E-2 is designed to complement the provisions of Module E-1, MISO requests waiver of the Commission's regulations to effectuate such a date.[13]

III. Notice of Filing and Responsive Pleading

11. Notice of MISO's filing was published in the *Federal Register*, 77 Fed. Reg. 17,467 (2012), with interventions, comments, and protests due on or before April 6, 2012. Timely motions to intervene were filed by The Detroit Edison Company, Consumers Energy Company, Xcel Energy Services, Inc., Exelon Corporation, Wisconsin Electric Power Company, and American Municipal Power, Inc. A timely motion to intervene and comment was filed by Arkansas Electric Cooperative Corporation (Arkansas Electric). On April 23, 2012, MISO submitted an answer in response to the comments of Arkansas Electric. On July 27, 2012, the Arkansas Public Service Commission (Arkansas Commission) submitted a motion to intervene out-of-time.

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[11] *Id.* at 5.

[12] *Id.*; *see also* Capacity Auction Order, 139 FERC ¶ 61,199; July 20, 2011 Filing at 23.

[13] March 16 Filing at 5 (citing 18 C.F.R. § 35.3(a) (2011)).

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the Arkansas Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a comment or protest unless otherwise ordered by the decisional authority. We will accept MISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

14. As discussed below, we reject MISO's proposal without prejudice to a future proposal that that fully addresses the concerns identified herein. Specifically, MISO's proposal could impede the integration of New LSEs' load into the MISO region, denying such LSEs' participation in MISO's energy and operating reserves market and Balancing Authority Area, and is therefore unduly discriminatory and preferential. Furthermore, MISO's proposal fails to adequately incorporate locational market mechanisms previously required by the Commission in a manner that is not unduly discriminatory or preferential.

1. Integration of New LSEs

a. Comments

15. Noting that MISO's proposal indicates that a New LSE's integration will be deferred until it submits an acceptably revised FRAP, Arkansas Electric expresses concern that the ramifications of this proposed provision are unclear. Further, Arkansas Electric questions whether a New LSE would be entitled to receive transmission service and to participate in MISO's energy and operating reserves market in the event its integration is deferred as a result of the New LSE's resource deficiency.[14]

[14] Arkansas Electric Comment at 5.

b. **Answer**

16. In response to Arkansas Electric's arguments concerning the consequences of deferring the integration of a New LSE, MISO states that it will not permit a New LSE to integrate into the MISO region and to receive the benefits of participating in MISO's energy and operating reserves market unless MISO approves the New LSE's FRAP.[15] MISO further states that if the New LSE is unable to remedy deficiencies in its FRAP, then the New LSE would not be able to integrate into the MISO Balancing Authority Area. Specifically, MISO contends that it would not be able to provide a resource deficient New LSE with NERC Reliability Coordination, Balancing Authority Area functions or Operating Reserves (collectively, Balancing Authority Area services).[16] Therefore, MISO asserts that a capacity deficient New LSE would need to make arrangements to meet all applicable FERC and NERC requirements.[17]

c. **Commission Determination**

17. In MISO's March 16, 2010 Filing, MISO proposes to defer the integration date of a New LSE that is resource deficient, until the New LSE submits a FRAP demonstrating that it is resource sufficient.[18] In its answer, MISO makes clear that it proposes to bar New LSEs that are resource deficient from participating in MISO's energy and operating reserves market.[19] Additionally, MISO states that it intends to withhold Balancing Authority Area services from such New LSEs.[20] In the Capacity Auction Order, the Commission held that MISO failed to justify requiring resource deficient LSEs to participate in the annual planning resource auction. The Commission noted that an appropriate incentive for ensuring resource sufficiency would be provided by a deficiency charge.[21] Notably, however, LSEs that are subject to Module E-1 of the Tariff are not barred from participating in MISO's market as a consequence of their capacity deficiency. Likewise, MISO does not deny Balancing Authority Area services to those LSEs with insufficient capacity resources that are subject to Module E-1. There may be a

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[15] MISO Answer at 5.

[16] *Id.* at 5-6.

[17] *Id.*

[18] March 16 Filing at 4

[19] MISO Answer at 5-6.

[20] MISO Answer at 5-6.

[21] Capacity Auction Order, 139 FERC ¶ 61,199 at P 40.

basis for deferring the integration date of transmission-owning New LSEs that are capacity deficient.[22] However, MISO offers no justification for this aspect of its proposal, and has provided no basis for denying Balancing Authority Area services to transmission-dependent New LSEs that are capacity deficient but must depend on the transmission owner or MISO for such services. Because MISO has provided no justification for its disparate treatment of resource deficient New LSEs, and all other resource deficient LSEs, we find that MISO has not demonstrated that this aspect of its proposal is just, reasonable, and not unduly discriminatory or preferential.

2. Locational Market Mechanisms

a. Comments

18. Arkansas Electric raises two concerns with respect to the interaction between MISO's proposal and Local Resource Zones. First, Arkansas Electric requests that the Commission direct MISO to clarify how a New LSE can demonstrate deliverability of its planning resources in the absence of zonal boundaries.[23] Second, Arkansas Electric asserts that because zonal boundaries significantly affect rates, the Tariff should specify the factors to be considered in establishing Local Resource Zones applicable to New LSEs as well as the timeframe for determining zonal boundaries.[24]

b. Answer

19. With respect to Local Resource Zones, MISO clarifies that the criteria for zonal determinations and deliverability requirements are specified in section 68A.3 of Module E-1.[25] MISO explains that the geographic boundaries of each of the Local Resource Zones will be based on: (1) the electrical boundaries of Local Balancing Authorities; (2) state boundaries; (3) the relative strength of transmission interconnections between Local Balancing Authorities; (4) the results of LOLE studies; (5) the relative size of Local Resource Zones; and (6) natural geographic boundaries, such as lakes and rivers.[26]

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[22] For example, MISO could have concerns that it will not be able to manage system reliability for a large transmission-owning New LSE that has a significant shortage of resources to meet peak period requirements.

[23] Arkansas Electric Comment at 4.

[24] *Id.*

[25] MISO Answer at 6-7.

[26] *Id.* at 6.

c. Commission Determination

20. We find that MISO's proposal is not only inconsistent with Module E-1 of the Tariff, but also with the Commission's precedent requiring MISO to establish locational market mechanisms as a component of its resource adequacy construct. MISO offers no justification for why it cannot comply with these requirements upon the integration of new transmission owning members outside of the annual resource adequacy construct.

21. The Commission has previously expressed concern about the deliverability of capacity resources in the MISO region.[27] Specifically, in the Locational Requirements Order, the Commission stated that a more robust and permanent approach to address congestion that limits the deliverability of capacity was necessary.[28] The Commission directed MISO to evaluate locational capacity requirements in other regions to ensure sufficient capacity is available in import-restricted zones to satisfy the planning reserve margin. Further, the Locational Requirements Order directed MISO to "inform the Commission . . . what steps are being taken to develop a more permanent approach."[29] In the Locational Requirements Compliance Order, the Commission rejected MISO's August 2009 compliance filing because MISO had failed to identify a permanent approach to address congestion, as required by the Locational Requirements Order.[30] The Commission clarified that the Locational Requirements Order required MISO to "develop a plan that details the steps that will be taken to incorporate [locational] market mechanisms into the Resource Adequacy Plan."[31]

22. In the Capacity Auction Order, the Commission conditionally accepted MISO's most recent attempt to integrate locational market mechanisms into MISO's resource adequacy construct, as set forth in Module E-1 of the Tariff.[32] MISO proposed Module E-1, in part, to comply with the Commission's orders addressing concerns about the

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[27] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283, *reh'g denied*, 125 FERC ¶ 61,061 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,144 (2009) (Locational Requirements Order), *order on compliance filing*, 131 FERC ¶ 61,228 (2010) (Locational Requirements Compliance Order), *order on clarification*, 135 FERC ¶ 61,081 (2011).

[28] Locational Requirements Order, 126 FERC ¶ 61,144 at P 47.

[29] *Id.*

[30] Locational Requirements Compliance Order, 131 FERC ¶ 61,228 at P 23.

[31] *Id.* P 24.

[32] Capacity Auction Order, 139 FERC ¶ 61,199 at PP 1, 84, 100.

deliverability of capacity resources throughout the MISO region.[33] MISO proposed to satisfy the Commission's deliverability concerns by, among other things: (1) establishing seven Local Resource Zones to ensure that sufficient qualified planning resources, including load modifying resources, are deliverable to meet load requirements in each portion of the MISO region; and (2) creating a Zonal Deliverability Charge to reflect differences in zonal prices for LSEs with load and resources in different zones. Notably, pursuant to Module E-1, MISO assigns all LSEs to Local Resource Zones and subjects all LSEs to the Zonal Deliverability Charge.[34] In the Capacity Auction Order, the Commission held that the Zonal Deliverability Charge in conjunction with the creation of Local Resource Zones satisfied the Commission's prior directives because the charge "recognizes transmission constraints in resource planning and will help to ensure reliability."[35]

23. Module E-2, however, fails to adequately incorporate locational market mechanisms like those included in Module E-1, as required by the Commission's prior directives. While MISO's proposal to establish Local Resource Zones entails a deliverability analysis,[36] MISO's proposal fails to expose all New LSEs to a locational price signal, such as the Zonal Deliverability Charge. Under MISO's proposal, New LSEs that submit a FRAP will not be assigned to Local Resource Zones, as noted by Arkansas Electric, and hence will not be subject to the Zonal Deliverability Charge.[37] However, New LSEs that participate in the planning resource auction will be assigned to Local Resource Zones, pursuant to proposed section 69.11.3.b, and consequently, New LSEs will be subject to the Zonal Deliverability Charge. Consequently, MISO's proposal does not provide an effective locational price signal to those New LSEs that submit a FRAP to meet their resource adequacy requirements prior to being included in MISO's

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[33] July 20, 2011 Filing at 2 (citing Locational Requirements Order, 126 FERC ¶ 61,144, *order rejecting compliance filing*, Locational Requirements Compliance Order, 131 FERC ¶ 61,228, *order on clarification*, 135 FERC ¶ 61,081).

[34] *See* Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Module E-1, 69A.9, Opting Out of the Planning Resource Auction, 0.0.0 ("An LSE that contains [Zonal Resource Credits] from Planning Resources that are not physically located in the same [Local Resource Zone] where the LSE has Demand may be subject to a Zonal Deliverability Charge . . . .").

[35] Capacity Auction Order, 139 FERC ¶ 61,199 at P 100.

[36] MISO Answer at 6 ("These boundaries will be based upon the best available deliverability analysis . . . .").

[37] *See* Arkansas Electric Comment at 4 & n.8.

annual resource adequacy construct. Moreover, MISO has not demonstrated that such disparate treatment of New LSEs that rely on a FRAP and New LSEs that participate in the planning resource auction is not unduly discriminatory and preferential.

3. FRAP

a. Comments

24. Arkansas Electric requests clarification on how a New LSE would demonstrate resource adequacy in the event the FRAP provisions proposed by MISO are rejected in Docket No. ER11-4081-000.[38]

b. Answer

25. Concerning the ability of a New LSE to demonstrate resource adequacy in the event that the FRAP provisions proposed in Module E-1 are rejected by the Commission, MISO explains that proposed Module E-2 assumes that these provisions would be accepted. MISO indicates that it would have to develop an alternate proposal for integrating New LSEs in the event the FRAP provisions are rejected.

c. Commission Determination

26. Since the time that Arkansas Electric filed its comments in this proceeding, the Commission has accepted the FRAP provisions in the Capacity Auction Order. Thus, Arkansas Electric's request for clarification has been overtaken by events, and is moot.[39]

The Commission orders:

MISO's proposed tariff sheets are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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

[39] Capacity Auction Order, 139 FERC ¶ 61,199 at P 41.