140 FERC ¶ 61,257
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 28, 2012

In Reply Refer To:
Midwest Independent Transmission
System Operator, Inc.
Docket No. ER08-394-028

Midwest Independent Transmission System Operator, Inc.
720 City Center Drive
Carmel, IN 46032

Attention: Arthur W. Iler, Assistant General Counsel

Reference: Compliance Filing to Incorporate Locational Capacity Market Mechanisms

Dear Mr. Iler:

1. On December 8, 2010, pursuant to section 205 of the Federal Power Act[1] and Part 35 of the Commission's regulations,[2] Midwest Independent Transmission System Operator, Inc. (MISO) submitted a proposed plan to incorporate locational capacity market mechanisms into its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) in compliance with the Commission's previous directives (December 2010 Compliance Filing).[3] In this order, the Commission dismisses MISO's December 2010 Compliance Filing as moot.

[1] 16 U.S.C. § 824d (2006).

[2] 18 C.F.R. Part 35 (2012).

[3] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,228 (2010) (Locational Requirements Compliance Order), *order on clarification*, 135 FERC ¶ 61,081 (2011).

2. In 2008, the Commission conditionally accepted MISO's existing long-term resource adequacy construct.[4] Over the course of the subsequent compliance proceedings, the Commission issued orders addressing the relationship between the deliverability analysis used by MISO in the creation of planning zones and the deliverability analysis used for designating capacity resources.[5] In the Locational Requirements Order, the Commission accepted MISO's proposal to resolve deliverability concerns that had been raised by numerous stakeholders, but stated that a more robust and permanent approach to address congestion that limits the deliverability of capacity was nevertheless necessary.[6] 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."[7]

3. In August 2009, MISO submitted a compliance filing, explaining that its stakeholders could not reach consensus regarding a proposal to resolve the issues identified by the Commission in the Locational Requirements Order. As a result, MISO argued that no further revisions to its resource adequacy construct were necessary. 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 that limits the aggregate deliverability of capacity.[8] 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

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[4] *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283, *reh'g denied*, 125 FERC ¶ 61,061 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,060 (2008).

[5] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,062 at P 162, *order on reh'g*, 126 FERC ¶ 61,144 (2009) (Locational Requirements Order), *order on compliance filing*, Locational Requirements Compliance Order, 131 FERC ¶ 61,228, *order on clarification*, 135 FERC ¶ 61,081.

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

[7] *Id.*

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

Resource Adequacy Plan."[9] Thus, the Commission directed MISO to submit an additional compliance filing within six months.[10]

4. In December 2010, in compliance with the Locational Requirements Compliance Order, MISO proposed a plan to incorporate locational capacity market mechanisms into Module E of the Tariff. MISO explains that it has met with stakeholders to develop a more effective and efficient resource adequacy construct.[11] In addition, MISO describes an "integrated set of foundational elements" which would establish locational capacity market mechanisms. MISO's plan describes a resource adequacy construct that would, among other things: (1) develop zonal capacity requirements; (2) create market mechanisms to achieve the resource adequacy requirements, including self-supply and opt-out features, as well as hedging mechanisms for load serving entities with planning resources located in different zones than their load; (3) extend the forward capacity procurement horizon to one year; (4) improve interregional capacity portability; and (5) enhance the provisions of Module D of the Tariff to address the exercise of market power and withholding of resources. However, MISO explains that it will be unable to make final decisions regarding the nature of the necessary revisions for several months. As a result, MISO states that it will continue to actively participate in stakeholder discussions to improve its resource adequacy construct.[12]

5. Notice of MISO's filing was published in the *Federal Register*, 75 Fed. Reg. 79,365 (2010), with interventions and protests due on or before December 29, 2010. On December 15, 2010, Xcel Energy Services, Inc. (Xcel), First Energy Service Company, and Minnesota Power filed a joint motion for extension of the comment period (joint motion). On December 15, 2010, the Detroit Edison Company filed comments in support of the joint motion. On December 22, 2010, the Commission granted the joint motion, extending the comment period until January 7, 2011.

6. Timely motions to intervene were filed by: Michigan South Central Power Agency; Michigan Public Power Agency; and GenOn Energy Management, LLC, GenOn Power Midwest LP, and GenOn Wholesale Generation, LP (collectively, GenOn). Comments or protests were filed by the Midwest Transmission Dependent Utilities

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[9] *Id.* P 24.

[10] *Id.*

[11] December 2010 Compliance Filing at 2.

[12] *Id.* at 2-3.

(Midwest TDUs);[13] Ameren Services Company on behalf of the Ameren Companies (Ameren);[14] Xcel;[15] Exelon Corporation, Dynegy Power Marketing, Inc., and GenOn (collectively, the Joint Protesters). On January 10, 2011, the Independent Market Monitor (Market Monitor) filed a motion to intervene out-of-time and comments.

7. On January 24, 2011, MISO filed an answer to the comments and protests of Xcel, Midwest TDUs, the Joint Protesters, the Market Monitor, and Ameren.

8. On September 15, 2011, the Electric Power Supply Association (EPSA) and the NRG Companies (NRG) filed separate motions to intervene out-of-time.[16]

9. 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), we will grant the late-filed motions to intervene filed by the Market Monitor, EPSA, and NRG given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. 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 protest or comment 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.

10. Ameren supports MISO's plan to modify its resource adequacy construct. Ameren identifies a number of issues relating to MISO's resource adequacy requirements that

[13] For the purpose of this proceeding, Midwest TDUs consist of Great Lakes Utilities, Indiana Municipal Power Agency, Madison Gas & Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and WPPI Energy.

[14] For the purpose of this filing, the Ameren consists of Ameren Illinois Company, Union Electric Company, and Ameren Energy Marketing Company.

[15] Xcel submitted comments on behalf of its utility operating affiliates, Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation.

[16] NRG consists of NRG Power Marketing LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cottonwood Energy Company LP, and NRG Sterlington Power LLC.

must also be addressed in a future proposal by MISO.[17] For example, Ameren references the ability of vertically integrated utilities to both self-supply capacity and to participate in MISO's voluntary capacity auction. Ameren requests that the Commission direct MISO to address the issues identified by Ameren when MISO files tariff revisions to implement its plan.

11. The Market Monitor supports the foundational principles outlined in MISO's plan. In particular, the Market Monitor supports MISO's zonal requirements.[18] The Market Monitor asserts that MISO should continue to work with neighboring RTOs to address prevailing barriers to interregional capacity trading. The Market Monitor also recommends that the Commission require MISO and MISO's stakeholders to consider all of the parameters that characterize demand in MISO's resource adequacy construct, including the shape and slope of the demand curve.[19]

12. Midwest TDUs oppose MISO's creation of a mandatory forward capacity market.[20] According to Midwest TDUs, most of the sectors of MISO's Advisory Committee oppose MISO's plan.[21] Midwest TDUs point out that the Organization of MISO States also opposes MISO's plan. Midwest TDUs state that the Supply Adequacy Working Group voted overwhelmingly against developing a mandatory forward capacity auction. Midwest TDUs assert that stakeholder votes indicate support for a near-term approach to testing forward resource adequacy. Midwest TDUs argue that a mandatory capacity market would be inappropriate for the MISO region because most load-serving entities have obligations to serve and retail choice does not apply. Midwest TDUs argue that the stakeholder discussions should focus on whether to adopt a mandatory forward capacity auction, rather than how such a market should be structured.

13. Xcel argues that MISO's plan goes beyond the directives of the Locational Requirements Order because MISO was under no obligation to consider a centralized

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[17] Ameren Comment at 3-5.

[18] Market Monitor Comment at 3-4.

[19] *Id.* at 8-9. The Market Monitor points out that by simply establishing a minimum capacity requirement and a deficiency price, which together would create a vertical demand curve, the Commission should recognize that some of the most important parameters of a demand curve are being established implicitly. *Id.* at 8.

[20] Midwest TDUs Protest at 2.

[21] *Id.*

capacity market.[22] To the extent that the Commission is willing to consider the issues presented in MISO's plan, Xcel asserts that a forward capacity procurement horizon could increase costs. Xcel contends that MISO should continue to honor firm transmission reservations, such as network integration transmission service or firm point-to-point transmission service, as a right that cannot be curtailed by modifications to MISO's resource adequacy construct. Further, Xcel states that any development of transmission constrained locational zones should account for delivery of capacity using firm transmission into and out of that zone. Finally, Xcel posits that the Locational Requirements Order did not necessarily require MISO to use auction planning credits or to incorporate network resources that are aggregately deliverable across the MISO footprint.

14. The Joint Protesters argue that MISO has failed to comply with the Commission's prior orders because MISO has merely summarized its stakeholder process discussing a plan, rather than filing a plan to incorporate locational capacity market mechanisms itself.[23] The Joint Protesters generally support the prospect of a centralized capacity market but request that the Commission establish a firm date for MISO to file tariff amendments to incorporate locational capacity requirements. Finally, the Joint Protesters argue that the Commission should require that MISO's future proposal include provisions to mitigate the exercise of market power by both capacity buyers and sellers.

15. In its answer, MISO asserts that enhancements to the resource adequacy construct under discussion with stakeholders will serve as a foundation for the inclusion of locational market mechanisms. With respect to the specific resource adequacy construct recommendations of Xcel, MISO notes that these features are still under discussion with stakeholders and expresses its concern that predetermination of certain design elements would be imprudent.[24] For the same reason, MISO considers the concerns of Midwest TDUs to be premature.[25] MISO also expects that the ongoing stakeholder process will address the issues raised by Ameren.[26]

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[22] Xcel Protest at 4-5.

[23] Joint Protesters Protest at 2.

[24] MISO Answer at 5.

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

[26] *Id.* at 8.

16. On July 20, 2011, MISO proposed a resource adequacy construct that, among other, establishes locational capacity market mechanisms.[27] The Commission conditionally accepted the July 20, 2011 Filing, finding that the proposal, as conditioned, satisfied the Commission's prior directives to incorporate locational market mechanisms that address deliverability.[28] As a result, MISO's December 2010 Compliance Filing is moot and is hereby dismissed.

17. This order terminates Docket No. ER08-394-028.

By direction of the Commission. Commissioner Clark is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[27] MISO, Application, Docket No. ER11-4081-000 (filed July 20, 2011) (July 20, 2011 Filing).

[28] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 at PP 71-77 (2012).