

140 FERC ¶ 61,258
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 28, 2012

In Reply Refer To:
Midwest Independent Transmission
System Operator, Inc.
Docket No. ER08-394-029

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

Attention: Arthur W. Iler, Assistant General Counsel

Reference: Compliance Filing Addressing Deliverability of Load Modifying Resources

Dear Mr. Iler:

1. On December 8, 2010, pursuant to section 205 of the Federal Power Act¹ and Part 35 of the Commission's regulations,² Midwest Independent Transmission System Operator, Inc. (MISO) filed a proposed solution to ensure the deliverability of Load Modifying Resources (LMR) in MISO's resource adequacy construct, 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.

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 deliverability of LMRs.⁵

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 ¶ 61,057 (2010) (April 2010 Compliance Order).

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.*,

(continued...)

3. In June 2009, in compliance with the Financial Settlements Compliance Order, MISO submitted an interim plan to ensure the participation of LMRs in MISO's voluntary capacity auction (Interim Mechanism). Specifically, MISO proposed to deem LMRs universally deliverable and thus eligible to participate in the voluntary capacity auction if certain conditions were met.⁶ MISO also proposed to require market participants that offer LMRs into the auction to certify (1) that the laws or regulations of the relevant electric retail regulatory authorities do not preclude the customers aggregated in the LMR from participating directly in MISO's markets; and (2) that the market participant would indemnify any LSE that acquires such LMR through the voluntary capacity auction for all penalties MISO may assess against the LSE if the LMR fails to perform.⁷ In April 2010, the Commission conditionally accepted the Interim Mechanism but directed MISO to file a permanent solution to ensure the deliverability of LMRs.⁸

4. In the December 2010 Compliance Filing, MISO proposes to retain the Interim Mechanism until it files tariff revisions to implement a permanent resource adequacy

125 FERC ¶ 61,060 (2008) (Financial Settlements Order). To help ensure that load serving entities acquire sufficient capacity to satisfy MISO's resource adequacy requirements, MISO conducts a voluntary capacity auction.

⁵ See Financial Settlements Order, 125 FERC ¶ 61,060 at P 54 (requiring MISO to explain how it will determine the deliverability of LMRs), *order on reh'g and compliance*, 127 FERC ¶ 61,054, at P 153 (2009) (Financial Settlements Compliance Order), *order on compliance filing*, 131 FERC ¶ 61,057 (2010) (April 2010 Compliance Order).

⁶ Market participants can only provide load modifying resources in the voluntary capacity auction if they have a larger quantity of universally deliverable planning resources than they are offering into the voluntary capacity auction as load modifying resources. Also, participation of market participants in the voluntary capacity auction is limited by the amount of universally deliverable planning resources that the load serving entity (LSE) serving load associated with the load modifying resource has historically used to meet its resource obligations. When planning resources are needed in a peak demand situation, the load modifying resources will provide capacity for the load of the offering market participant and the other planning resources of that market participant, that are universally deliverable, will be available to meet the peak load needs of the LSE purchasing the load modifying resources in the voluntary capacity auction.

⁷ April 2010 Compliance Order, 131 FERC ¶ 61,057 at P 4.

⁸ *Id.* P 19.

construct that ensures the deliverability of capacity and LMRs in 2011.⁹ MISO explains that the participation of LMRs in the voluntary capacity auction is integrally related to MISO's anticipated modifications. Consequently, MISO posits that its future proposal will include revisions addressing how LMRs participate in MISO's resource adequacy construct.¹⁰

5. MISO contends that the Interim Mechanism is just and reasonable because the qualification requirements for an LMR to participate in the voluntary capacity auction provide certainty to market participants.¹¹ Furthermore, MISO argues that limited participation in the Interim Mechanism does not indicate a design flaw because there are viable alternatives available to load serving entities other than participating in the auction.¹²

6. 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. A timely motion to intervene and comment was filed by the Coalition of Midwest Transmission Customers and EnerNOC, Inc. (CMTC and EnerNOC). On September 15, 2011, the Electric Power Supply Association (EPSA) and the NRG Companies (NRG) filed separate motions to intervene out-of-time.¹³

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make CMTC and EnerNOC 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 EPSA and NRG given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

8. CMTC and EnerNOC urge the Commission to accept MISO's December 2010 Compliance Filing. CMTC and EnerNOC argue that approval of the Interim Mechanism

⁹ December 2010 Compliance Filing at 3, 5.

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 3.

¹² *Id.* at 4.

¹³ 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.

would provide certainty to market participants regarding how LMRs are able to participate in MISO's voluntary capacity auction.¹⁴

9. On July 20, 2011, MISO proposed a resource adequacy construct that, among other, ensures the deliverability of LMRs.¹⁵ The Commission conditionally accepted the July 20, 2011 Filing.¹⁶ As a result, MISO's December 2010 Compliance Filing is moot and is hereby dismissed.

10. This order terminates Docket No. ER08-394-029.

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

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ CMTC and EnerNOC Comments at 2-3.

¹⁵ MISO, Application, Docket No. ER11-4081-000 (filed July 20, 2011) (July 20, 2011 Filing).

¹⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012).