

141 FERC ¶ 61,020
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 5, 2012

In Reply Refer To:
Midwest Independent Transmission
System Operator, Inc.
Docket No. ER12-33-002

Corrie J. Bilke, Attorney
Midwest Independent Transmission System Operator, Inc.
720 City Center Dr.
Carmel, IN 46032

Reference: Compliance Filing

Dear Ms. Bilke:

1. On April 25, 2012, pursuant to section 205 of the Federal Power Act (FPA),¹ Midwest Independent Transmission System Operator, Inc. (MISO) submitted a filing proposing revisions to Schedules 10-G, 16-C, and 17-C² (jointly, alternative administrative cost schedules) to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) in compliance with the Commission's December 15 Order.³ In the December 15 Order, the Commission conditionally accepted

¹ 16 U.S.C. § 824d (2006).

² These schedules are alternative to Schedules 10, 16, and 17 as administrative cost adders for Duke Energy Ohio (Duke Ohio) and Duke Energy Kentucky (Duke Kentucky) that reflect that these companies have prepaid certain MISO administrative costs through their exit fees associated with their withdrawal from MISO. On October 21, 2010, the Commission approved Duke Ohio's and Duke Kentucky's withdrawal from MISO and integration into PJM Interconnection, L.L.C. *See Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.*, 133 FERC ¶ 61,058, at P 73 (2010), *order on reh'g*, 134 FERC ¶ 61,235 (2011).

³ *Midwest Independent Transmission System Operator, Inc.*, 137 FERC ¶ 61,198 (2011) (December 15 Order).

the alternative administrative cost schedules for filing subject to a further filing providing: (1) the calculation of Duke Ohio's and Duke Kentucky's final exit fees to the Commission; and (2) revised alternative administrative cost schedules that reflect the actual portion of the exit fee allocated to each schedule, in a compliance filing within 30 days of MISO providing a calculation of the true-up fee to Duke Ohio and Duke Kentucky.⁴

2. MISO states that in accordance with the December 15 Order, it has revised Schedules 10-G, 16-C, and 17-C to identify the specific amount of Duke Ohio's and Duke Kentucky's exit fee allocated to each of the schedules. MISO also states that it is submitting the exit fee calculation data that it provided to Duke Ohio and Duke Kentucky on March 26, 2012, on a confidential basis subject to Rule 606 of the Commission's Rules and Practice and Procedure.⁵ MISO states that the methodology used to compile the data was the result of negotiations between MISO, Duke Ohio, and Duke Kentucky while formalizing the Exit Fee Agreement.⁶

3. In addition to Rule 606, MISO requests that the Commission grant, pursuant to Rule 112 of the Commission's Procedural Rules,⁷ privileged treatment of the exit fee calculation data. According to MISO, such treatment should be granted as the financial data contained therein may be considered confidential in nature.⁸

4. MISO requests an effective date of December 31, 2011, for the compliance filing, which is the effective date approved by the Commission for Schedules 10-G, 16-C, and 17-C in the December 15 Order.⁹

5. Notice of MISO's filing was published in the *Federal Register*, 77 Fed. Reg. 27,040 (2012), with interventions and protests due on or before May 16, 2012. Timely comments were filed by Consumers Energy Company (Consumers Energy) and MISO filed an answer.

⁴ December 15 Order, 137 FERC ¶ 61,198 at P 19.

⁵ 18 C.F.R. § 385.606 (2012).

⁶ MISO Filing at 2.

⁷ 18 C.F.R. § 388.112 (2012).

⁸ MISO Filing at 2.

⁹ *Id.*

6. Consumers Energy asserts that the amount of the exit fee is not known by MISO's customers because the exit fee calculations were not provided in the public version of the filing even though MISO may have provided the calculation of the final exit fee for Duke Ohio and Duke Kentucky to the Commission. Consumers Energy contends that it does not question the application of Rule 606 settlement privilege or the Rule 112 privilege with respect to data that may be contained in the supporting documentation for the final exit fee calculation. However, Consumers Energy argues that there is no justification for making the exit fee itself non-public.¹⁰ It argues that the exit fee to be paid by Duke Ohio and Duke Kentucky should be made public so that MISO customers can assure themselves that no cost shifts will occur as a result of the departure of Duke Ohio and Duke Kentucky from MISO, and that they are not being made to subsidize business decisions like a transmission owner's Regional Transmission Operator selection.¹¹

7. In its answer, MISO clarifies that the final exit fee is publicly available. MISO explains that the exit fee is the sum of the dollar figures allocated to and listed in Schedules 10-G, 16-C, and 17-C, as those schedules were revised and made available in the public version of the compliance filing (e.g., \$8,727,681 + \$634,287 + \$4,432,309 = final exit fee of \$13,794,277). MISO states that the final exit fee is also listed in its 1st Quarter 2012 Financial Statements and will be available via the 1st Quarter 2012 FERC Form 3Q, which MISO plans to file no later than May 30, 2012.¹²

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

9. The Commission finds that MISO's filing, as required in the December 15 Order, properly includes revisions to Schedules 10-G, 16-C, and 17-C to identify the specific amount of Duke Ohio's and Duke Kentucky's exit fee allocated to each of the schedules. We also find that Consumer Energy's concerns have been addressed because the amount of the exit fee is available in the public version of MISO's compliance filing. MISO also has submitted the exit fee calculation data provided to Duke Ohio and Duke Kentucky by MISO in accordance with the December 15 Order. We accept MISO's filing to become

¹⁰ Consumers Energy Comments at 2.

¹¹ *Id.*

¹² MISO Answer at 4.

¹³ 18 C.F.R. § 385.213(a)(2).

effective on December 31, 2011, consistent with the effective date approved by the Commission in the December 15 Order.¹⁴

10. MISO provides the exit fee calculation data on a confidential basis pursuant to Rule 606 of the Commission's Rules of Practice and Procedure because the methodology used to compile the data was the result of negotiations between MISO, Duke Ohio, and Duke Kentucky while formalizing the Exit Fee Agreement. Accordingly, we grant MISO's request, pursuant to Rule 112 of the Commission's Rules of Practice and Procedure, for privileged treatment of the exit fee calculation data because the financial data contained therein may be considered confidential in nature.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ December 15 Order, 137 FERC ¶ 61,198 at P 16.