

142 FERC ¶ 61,065
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. ER13-470-000

ORDER ACCEPTING TARIFF AMENDMENTS

(Issued January 25, 2013)

1. On November 28, 2012, the Midwest Independent Transmission System Operator, Inc. (MISO) submitted for filing proposed modifications to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). MISO states that it seeks to clarify the obligations of entities that are subject to Carved-Out Grandfathered Agreements (Carved-Out GFAs) with respect to the Resource Adequacy Requirements of the Tariff. In this Order, we accept the modifications to be effective on January 28, 2013, as requested.

I. Background

2. When MISO set up its energy markets and congestion management system, there were pre-existing grandfathered agreements (GFAs) for transmission services that contained scheduling and other provisions that were not consistent with the MISO market procedures. The Commission encouraged voluntary conversion of GFAs to service under the Tariff, and required others to convert pursuant to the just and reasonable standard of review. GFAs that were not converted to Tariff service were “carved out” of the new energy markets and scheduling provisions, and thus are known as Carved-Out GFAs.¹

3. The provisions in section 38.8.4 of the Tariff discuss the MISO requirements to which Carved-Out GFAs are subject, and the treatment to which they are entitled. Among other things, the provisions specify the financial transmission right treatment, scheduling procedures, settlement of charges for imbalances and certain other charges to

¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236, at P 143 (2004), *order on reh'g*, 111 FERC ¶ 61,042 (2005), *order on reh'g*, 112 FERC ¶ 61,311 (2005).

which Carved-Out GFAs are subject, and require that parties to Carved-Out GFAs supply certain data to MISO.

4. MISO's Resource Adequacy Requirements include procedures that allow the transmission provider to ensure that sufficient generation and/or demand resources are available to meet the peak load requirements on its system. The Resource Adequacy Requirements for MISO are contained in Module E and Module E-1 of the Tariff, encompassing Tariff sections 68 and 69. MISO's Resource Adequacy Requirements have been revised over time. In 2012, the Commission accepted a revision to the Resource Adequacy Requirements provisions, designated as Module E-1, which became effective on October 1, 2012, that is intended to supersede the currently effective Module E. At present, MISO is transitioning from Module E to Module E-1 procedures.²

5. The Tariff Introduction to Module E-1 states that the Module "provides mandatory requirements to be met by the Transmission Provider, Market Participants serving Load in the Transmission Provider Region or serving Load on behalf of a Load Serving Entity ("LSE"), or other Market Participants, to ensure access to deliverable, reliable and adequate Planning Resources to meet peak Demand requirements on the Transmission System."

6. Briefly, MISO's Resource Adequacy Requirements require, among other things, that LSEs in MISO's region provide to MISO annual forecasted demand data. MISO then calculates a Planning Reserve Margin Requirement that each LSE must satisfy. LSEs can meet their Planning Reserve Margin Requirement by making resources available or using resource credits, or paying a Capacity Deficiency Charge.

II. MISO's Filing

7. MISO proposes Tariff revisions with respect to the applicability of Resource Adequacy Requirement provisions of Modules E and E-1 to entities that operate under Carved-Out GFAs or agreements administered as Carved-Out GFAs.³

² See *Midwest Independent Transmission System Operator, Inc.*, 139 FERC ¶ 61,199 (2012), *reh'g pending*. Certain provisions of Module E-1 will overlap with Module E during the transition period. As relevant to this Order, the differences between the Modules are not germane.

³ MISO explains that under its 2005 settlement agreement (Settlement Agreement) with Minnkota Power Cooperative, Inc. (Minnkota), as amended in 2008, Minnkota would use its own transmission and resources, but would agree to be administered and financially settled as if it were a carved-out GFA. MISO Transmittal Letter at 2-3.

8. First, MISO proposes to revise section 38.8.4.1, Registration and Provision of Other Data, to explicitly state that all LSEs located in MISO's balancing authority area, "including the parties to Carved-Out GFAs, and agreements administered as Carved-Out GFAs, shall comply with all Module E and Module E-1 requirements."⁴ MISO proposes to revise section 38.8.4.6 to include "agreements administered as Carved-Out GFAs" (along with "Carved-Out GFAs") as transactions that, except as otherwise provided in section 38, would not be subject to any charges under the Tariff except under Schedules 3, 5, 6, 10, 17, and 18.⁵ Further, MISO proposes to specify that parties to Carved-Out GFAs or agreements administered as Carved-Out GFAs shall be subject to Financial Settlements Charges in section 69.9 and Deficiency Charges in section 69A.10.⁶

9. Additionally, MISO proposes to revise section 1.580 to amend the definition of the Resource Adequacy Requirement to specify that it is described in both Modules E and E-1 of the Tariff.⁷

10. MISO explains that it uses the information required under its Resource Adequacy Requirement for: (1) conducting regional MISO Transmission Expansion Plan planning; (2) calculating the Planning Reserve Margin; and (3) evaluating whether any LSE is capacity deficient. MISO asserts that such requirements apply to all LSEs within the MISO balancing authority area, and that without such data from all LSEs, MISO would be unable to determine the Planning Reserve Margin Requirements, such that the LSE could be resource deficient.⁸

11. MISO asserts that section 38.8.4.1 does not exempt parties to Carved-Out GFAs from complying with the Resource Adequacy Requirements of the Tariff. It argues that the Tariff provisions addressing Carved-Out GFA obligations were approved by the Commission before Module E's long-term resource adequacy requirements were

⁴ FERC Electric Tariff, Module C, [38.8.4.1, Registration and Provision of Other Data., 1.0.0.](#)

⁵ MISO also proposes to remove reference from this section to Schedule 40 charges, which were rejected by the Commission in February 2012. *Midwest Independent Transmission System Operator, Inc. and Midwest ISO Transmission Owners*, 138 FERC ¶ 61,142 (2012).

⁶ FERC Electric Tariff, Module C, [38.8.4.6, Market Settlement and Exemption from Certain Charges, 2.0.0.](#)

⁷ FERC Electric Tariff, Module A, [1.580, Resource Adequacy Requirements \(RAR\), 1.0.0.](#)

⁸ MISO Transmittal Letter at 5.

approved and added to the Tariff. That is the reason, according to MISO, that section 38.8.4.1 does not currently state the requirement that parties to Carved-Out GFAs must comply with Resource Adequacy Requirements found in Modules E and E-1 of the Tariff.⁹

12. MISO asserts that it is important that all LSEs be subject to Module E and E-1 provisions, including the deficiency charge provisions. MISO asserts that while it does not believe that the language of Module E or E-1 is ambiguous with respect to the obligations of parties to Carved-Out GFAs, it nonetheless proposes to clarify their applicability to such agreements as well as to agreements administered as Carved-Out GFAs.¹⁰

III. Notice of Filings and Responsive Pleadings

13. Notice of MISO's filing was published in the *Federal Register*, 77 Fed. Reg. 73,027 (2012), with interventions and protests due on or before December 19, 2012. Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative, Xcel Energy Services, Inc., American Municipal Power, Inc., and the Wisconsin Electric Power Company filed timely motions to intervene. Minnkota and Great River Energy (Great River) filed timely motions to intervene and comments. On December 20, 2012, Consumers Energy Company filed a motion to intervene out-of-time. On January 4, 2013, Otter Tail Power Company filed a motion to intervene out-of-time. On January 3, 2013, MISO filed an answer.

IV. Discussion

A. Procedural Matters

14. 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.

15. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹¹ the Commission will grant Otter Tail Power Company's and Consumers Energy Company's unopposed motions to intervene out-of-time, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6

¹¹ 18 C.F.R. § 385.214(d) (2012).

B. Substantive Matters

1. Comments and Answers

16. Minnkota describes itself as a non-jurisdictional, non-profit generation and transmission cooperative LSE within MISO's balancing authority area, and is a party to agreements that are administered as Carved-Out GFAs. Minnkota does not object to the specific Tariff revisions MISO proposes, but argues that if accepted, the Commission should confirm that the revisions do not subject Minnkota to Module E requirements.¹² Minnkota argues that it is not subject to Module E requirements because it has a 2005 settlement agreement with MISO as amended in 2008¹³ that exempts Minnkota from most provisions of the MISO Tariff. Minnkota states that the Settlement Agreement's provisions that subject Minnkota to parts of MISO's Tariff do not include Module E.¹⁴ Minnkota argues that despite MISO's assertion that nothing in MISO Tariff section 38.8.4 excludes Carved-Out GFAs from the Module E resource adequacy requirements, the Settlement Agreement does not require that all exclusions be enumerated. Furthermore, Minnkota argues, Tariff section 38.8.4 addresses scheduling and operating reserve requirements, not planning reserve requirements (i.e., Module E Resource Adequacy Requirements).¹⁵

17. Additionally, Minnkota argues that section 7.1 of the Settlement Agreement expressly prohibits MISO from using its Federal Power Act "Section 205 rights to propose any modification that materially affects this Agreement." Minnkota further explains that in order to modify the Settlement Agreement without Minnkota's consent, the Commission, under the *Mobile-Sierra* doctrine, must find that the existing Settlement Agreement provisions, which Minnkota asserts bar the application of Module E requirements to Minnkota, seriously harm the public interest. Minnkota contends that because MISO has not adequately demonstrated any reliability problems, the *Mobile-Sierra* burden has not been met.¹⁶

¹² See Minnkota Comments at 2 and n.4.

¹³ See *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,491 (2005) (Order approving settlement); *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER09-300-000, Letter Order (Dec. 17, 2008) (unpublished) (accepting amendment to settlement).

¹⁴ Minnkota Motion to Intervene at 4-5.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 7-9.

18. Minnkota states that it believes that it could voluntarily comply with Module E requirements, but emphasizes the voluntary nature of this compliance. Minnkota states that it has voluntarily provided and will continue to provide load and resource data to demonstrate that Minnkota has sufficient planning reserves to meet its resource requirements. Minnkota explains that it provides data in adherence to Mid-Continent Area Power Pool resource adequacy requirements, not those set forth by the MISO Tariff. Minnkota asserts that MISO has never explained why Minnkota's existing and forecasted planning reserves are insufficient or what additional data MISO needs.¹⁷ Minnkota notes that MISO had an opportunity to identify any deficiencies in Minnkota's planning reserves during negotiations to amend the Settlement Agreement in 2008, but chose not to.¹⁸

19. Great River states that it supports MISO's proposal as reasonable. Great River contends that MISO's proposal may be generally expressed as requiring that every LSE must satisfy its resource adequacy requirements to some Balancing Authority. To this end, Great River asserts that without appropriate data from all LSEs, MISO might not be able to maintain the load-interchange-generation balance, thus forcing other LSEs to provide resource adequacy protection for other LSE load.¹⁹

20. MISO, in its answer, responds that it appreciates Minnkota's willingness to participate in Module E requirements voluntarily; however, MISO believes this is insufficient to maintain system reliability on a non-discriminatory basis. MISO contends that it is disingenuous for Minnkota to claim it is exempt from certain reliability provisions but not others as the result of the Settlement Agreement. According to MISO, the Settlement Agreement was intended to exempt Minnkota from being assessed transmission charges for services that Minnkota did not require. Now, MISO states, Minnkota's generation resources are dispatched through MISO's Security Constrained Economic Dispatch like other LSEs' resources. MISO argues that the Settlement Agreement does not provide Minnkota *carte blanche* rights to receive MISO Tariff services at no cost and obligation.²⁰

21. MISO argues that Minnkota's voluntary use of the Mid-Continent Area Power Pool planning reserve requirement methodology is inadequate to ensure system reliability, and that system reliability is too important to allow parties to choose to

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 7.

¹⁹ Great River Comments at 3.

²⁰ MISO Answer at 3-5.

comply with requirements no longer in force.²¹ MISO notes that the importance of system reliability has been acknowledged by the Commission and is mandated by Congress.²² MISO contends that all parties in the MISO balancing area authority must comply with Modules E and E-1 obligations so that some participants may not “lean on the system.”²³

22. MISO argues that it needs the clear, express authority to require all LSEs to meet Modules E and E-1 requirements. MISO notes that if a loss of planning resources did occur and Minnkota did not comply with Modules E and E-1, MISO would have to shed load on a pro rata basis among other LSEs. Thus, MISO states, basic fairness dictates that all LSEs within the MISO balancing authority area must adhere to a common set of rules.²⁴

2. Commission Determination

23. We accept MISO’s proposed revisions to sections 1.580, 38.8.4.1, and 38.8.4.6 of the Tariff as just and reasonable. We find that the proposed revisions to sections 38.8.4.1 and 38.8.4.6 clarify to whom various Resource Adequacy Requirements of Modules E and E-1 apply. We also accept MISO’s proposed revision to the definition of “Resource Adequacy Requirement” in section 1.580, which reflects the requirements of Module E-1. We also find that MISO’s deletion of the reference to Schedule 40 in section 38.8.4.6 is consistent with the Commission’s February 28, 2012 rejection of proposed Schedule 40.²⁵

24. We make no determination here as to whether Minnkota’s Settlement Agreement exempts Minnkota from some or all of the Module E and E-1 requirements, or whether requiring Minnkota to comply with the Tariff revisions would materially affect its rights under the Settlement Agreement. Those issues would require an interpretation of the Settlement Agreement, which is not necessary to accept the proposed Tariff language. Here, we address only the justness and reasonableness of MISO’s proposed Tariff revisions.

²¹ *Id.* at 5.

²² *Id.* (citing *Resource Adequacy Assessment Reliability Standard*, 134 FERC ¶ 61,212, at P 12 (2011); 16 U.S.C. § 824o (2006); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594; S1874 Congressional Record, March 14, 2002).

²³ *Id.* at 6.

²⁴ *Id.* at 6-7.

²⁵ *Midwest Independent Transmission System Operator, Inc.*, 138 FERC ¶ 61,142, at P 1.

25. We note that MISO and Minnkota have been discussing compliance with the Module E and E-1 requirements, and we encourage the parties to work towards a resolution that takes into account Minnkota's rights and obligations and MISO's need to ensure resource adequacy.²⁶

The Commission orders:

MISO's proposed revisions to sections 1.580, 38.8.4.1, and 38.8.4.6 are hereby accepted to be effective on January 28, 2013.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ If either party believes that a further Commission determination is necessary to enforce perceived rights and obligations, they should initiate an appropriate proceeding at the Commission.