

143 FERC ¶ 61,292
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER13-1094-000

ORDER REJECTING TARIFF REVISIONS

(Issued June 28, 2013)

1. On March 14, 2013, Midwest Independent Transmission System Operator, Inc. (MISO)¹ filed proposed revisions to Section 13.1 of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to specify a new minimum term of one year for Firm Point-To-Point Transmission Service² within MISO's transmission system (March 14 Filing). For the reasons set forth below, the Commission rejects the proposed Tariff revisions.

I. Background

2. MISO states that when it originally proposed Section 13.1 of its Tariff, which followed the *pro forma* open access transmission tariff (*pro forma* OATT) adopted in Order No.888,³ as affirmed in Order No. 890,⁴ it had no operating energy markets.⁵

¹ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

² Unless noted otherwise, capitalized terms shall have the meaning given to them in the MISO Tariff.

³ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046

(continued...)

MISO states that with the advent of market redispatch and efficient congestion management, a System Impact Study for Short-Term Firm Point-To-Point Transmission Service requests became largely unnecessary when the sink and source were located internal to the market.⁶ Thus, MISO states that under the currently effective Tariff, when a customer selects Firm Point-To-Point Transmission Service that is short-term in nature (i.e., daily, weekly, or monthly service) to be provided within MISO's transmission system, such service is evaluated using an automatic Available Flowgate Capability (AFC) program without requiring a System Impact Study.⁷

3. MISO states that it has found that if a customer selects a resource close to the load, constraints between the selected source and sink may not appear in the AFC evaluation. Further, MISO states that because an internal Point-To-Point customer may designate any commercial node as a source, the Point-To-Point path bears no relationship to the actual transaction path, and in fact, MISO states that a generator may be designated even if it is not operating at the time the service is provided to load. Thus, MISO states that firm load may be served for extended periods by combining successive Short-Term Firm Point-To-Point requests without any regard to such transaction path.⁸

4. MISO states that internal Point-To-Point Service is normally not problematic because the energy and operating reserves markets are capable of efficiently

(1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 73 FR 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FR 12,540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61,511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

⁵ March 14 Filing, Transmittal Letter at 3.

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.*

redispatching to eliminate or reduce congestion.⁹ However, MISO maintains that in some cases, customers with Behind the Meter Generation located in load pockets use Short-Term Firm Point-To-Point Transmission Service to import power into the customer's system on a basis which is functionally equivalent to Network Integration Transmission Service. MISO states that because it is unable to dispatch Behind the Meter Generation to resolve the congestion occurring in the load pocket, MISO is forced to curtail surrounding Network and Long-Term Firm transactions on a *pro rata* basis.¹⁰ MISO asserts that such a *pro rata* reduction can have negative consequences for developing the transmission system. Specifically, MISO states that the study of transmission loadings and the possible conclusion that transmission upgrades are needed can be frustrated by applications for transmission service that are intended to serve firm, long-term requirements but are purchased as if they were intended for immediate-term purposes.¹¹

II. Description of Filing

5. In the March 14 Filing, MISO submitted proposed revisions to Section 13.1 of Module B to its Tariff to specify a new minimum term of one year for Firm Point-To-Point Transmission Service when that service is provided within MISO's transmission system. Section 13.1 of Module B of the Tariff currently provides a minimum term of one day for such service. MISO proposes to retain a minimum term of one day except for when both the receipt and delivery are within MISO's transmission system. Specifically, MISO proposes to revise section 13.1 of Module B, as follows:

The minimum term of Firm Point-To-Point Transmission Service shall be one (1) day, except that when both the Point of Receipt and the Point of Delivery reside within the Transmission Provider's Transmission System the minimum term for Firm Point-To-Point Transmission Service shall be one (1) year. The maximum term of Firm Point-To-Point Transmission Service shall be specified in the Service Agreement.¹²

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.* at 3-4 (citing MISO, FERC Electric Tariff, Module B, § 13.1 (1.0.0)). The underlined portion refers to new language proposed by MISO.

6. MISO states that by adjusting the minimum term for Firm Point-To-Point Transmission Service within the MISO transmission system to one year, it will assure that such customers with Behind the Meter Generation will be treated similarly to Long-Term Firm Point-To-Point and Network Integration Transmission Service customers that have supported necessary upgrades and expansions of the system.¹³ MISO states that increasing the minimum term to one year for Firm Point-To-Point Transmission Service within MISO's transmission system will place all users of internal Firm Point-To-Point Transmission Service on the same basis by triggering the need for a System Impact Study to correctly identify load pockets that cannot be efficiently redispatched to resolve congestion.

III. Notice of Filing and Responsive Pleadings

7. Notice of the March 14 Filing was published in the *Federal Register*, 78 Fed. Reg 17,391 (2013), with interventions and protests due on or before April 4, 2013. Timely motions to intervene were filed by Wisconsin Public Service Corporation and Upper Peninsula Power Company, DTE Electric Company, and American Municipal Power, Inc. Timely motions to intervene and comments were filed by the MISO Transmission Owners¹⁴ and Wisconsin Electric Power Company (Wisconsin Electric). Timely motions to intervene and protests were filed by the Michigan Public Power Agency (MPPA) and Lansing Board of Water & Light (Lansing). An out-of-time motion to intervene was filed by Consumers Energy Company. MISO filed a motion for leave to answer and

¹³ *Id.* at 3.

¹⁴ For purposes of this filing, the MISO Transmission Owners are: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

answer on April 19, 2013 and MPPA filed a motion for leave to answer and answer on May 9, 2013.

A. Protests and Comments

8. In its protest, MPPA states that MISO is seeking to eliminate Short-Term Firm Point-To-Point Transmission Service, a basic form of transmission service under the *pro forma* OATT.¹⁵ MPPA asserts that MISO has not provided data or evidentiary support for its proposal, has not demonstrated that the proposed change is superior to the *pro forma* OATT, and has not established a “problem” it claims to be fixing or the cause of the alleged problem.¹⁶ MPPA argues that if approved, the proposal would eliminate an important service for municipal utilities with Behind the Meter Generation and force those customers to incur higher cost transmission charges for service they do not need or use (i.e., network service), or require them to take inferior service (i.e., non-firm transmission service).¹⁷

9. MPPA alleges that MISO is targeting wholesale customers with Behind the Meter Generation that use Short Term Firm Point-To-Point Transmission Service, and that MISO seeks to force those customers to enlist in Network Integration Transmission Service. MPPA states that instead of the proposed Tariff change, MISO should look at ways to incentivize customers with Behind the Meter Generation to purchase network service.¹⁸ MPPA suggests that charging customers based upon their actual use of the system through netting Behind the Meter Generation from Network Integration Transmission Service billing determinants can increase reliability and demand response opportunities.¹⁹

10. Finally, MPPA cites the following section from Order No. 890 for the proposition that the decision of whether a customer buys Network Integration Transmission Service or Point-To-Point Transmission Service is an economic decision for the customer:

[A] customer may exclude a particular load at discrete points of delivery from its load ratio share of the allocated cost of the transmission provider’s

¹⁵ MPPA Protest at 2-3.

¹⁶ *Id.* at 3-4, 6.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 5-6.

¹⁹ *Id.* at 7.

integrated system. The Commission determined, however, that customers electing to do so must seek alternative transmission service, such as point-to-point transmission service, for any load that has not been designated as network load for network service. In Order No. 888-A, the Commission stated that it would permit a network customer to either designate all of a discrete load as network load under the network integration transmission service or to exclude the entirety of a discrete load from network service and serve such load with the customer's behind the meter generation and/or through any point-to-point transmission service.²⁰

11. Similarly, Lansing argues that MISO has failed to demonstrate that the Tariff deviations are "consistent with or superior to" the *pro forma* OATT, and that the Commission should reject the modifications such that the minimum term for Firm Point-To-Point Transmission Service will remain one day, consistent with the *pro forma* OATT.²¹ Lansing states that MISO has failed to show that combining successive Short-Term Firm Point-To-Point Transmission reservations is significant or widespread.²² Further, Lansing suggests that if there is a problem with the AFC evaluation program because the designated Point-To-Point path does not bear any relationship to the actual transaction path or that the program grants Point-To-Point service requests that should be denied, then the solution is for MISO to modify its AFC evaluation program.²³

12. Lansing also refutes MISO's argument that it is unable to dispatch Behind the Meter Generation of Point-To-Point transmission customers to resolve congestion that may occur in a load pocket.²⁴ Lansing states that Point-To-Point Service and Network Integration Transmission Service are fundamentally different and that redispatch rights apply only to network customers.²⁵

13. Lansing also states that there is no basis to conclude that MISO's development of the transmission system has been impaired due to Short-Term Firm Point-To-Point Service. Lansing argues that MISO has not explained how its circumstances differ from

²⁰ *Id.* at 8 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1614).

²¹ Lansing Protest at 1.

²² *Id.* at 11-12.

²³ *Id.* at 12-13.

²⁴ *Id.*

²⁵ *Id.* at 12.

those of other Regional Transmission Organizations (RTOs) and transmission providers offering Short-Term Firm Point-To-Point Service.²⁶ Finally, Lansing asserts that if MISO is able to substantiate the existence of problems that merit concerns, MISO should be required to explore less drastic alternatives to the elimination of daily, weekly, and monthly Firm Point-To-Point Service.²⁷

14. MISO Transmission Owners state that they support MISO's proposed revisions to the Tariff. They state that when a source is electrically close to the load, system constraints are commonly not identified during the automated process of evaluating and approving a transmission service request and this can present an operational challenge.²⁸ In addition, MISO Transmission Owners assert that internal Point-To-Point Transmission Service requests do not require tagging which, in combination with the existence of Behind the Meter Generation, make it difficult for operators to determine relative amounts of curtailments in relatively short operating time constraints in order to maintain system reliability.²⁹ Finally, MISO Transmission Owners argue that MISO's proposal will ensure that all Firm Point-To-Point Transmission Service requests are subject to a System Impact Study that can identify potential constraints.³⁰

15. Wisconsin Electric also supports MISO's proposed Tariff changes, agreeing with MISO's assertion that the ability to manage congestion may be hindered by customers with Behind the Meter Generation located in load pockets using Short-Term Firm Point-To-Point Transmission Service to import power into the customer's system on a basis functionally equivalent to Network Integration Transmission Service.³¹ Wisconsin Electric also agrees with MISO that the study of transmission loadings and the possible conclusion that transmission upgrades are needed can be frustrated by applications for transmission service that are intended to serve firm, long-term requirements but are purchased as if they were intended for immediate-term purposes.³² Wisconsin Electric maintains that MISO's proposal will place all users of internal Firm Point-To-Point

²⁶ *Id.* at 14.

²⁷ *Id.* at 15.

²⁸ MISO Transmission Owners Comments at 5.

²⁹ *Id.*

³⁰ *Id.*

³¹ Wisconsin Electric Comments at 3.

³² *Id.*

Transmission Service on the same basis by triggering the need for a System Impact Study to correctly identify load pockets that cannot be efficiently redispatched to resolve congestion.³³

B. Answers

16. In its answer, MISO maintains that in the past 15.5 months prior to the instant filing, data shows that Short-Term Firm Point-To-Point Transmission Service reservations at two of MISO's sinks located in Michigan experienced transmission service requests for Short-Term Firm Point-To-Point Transmission Service that together comprise approximately 100 percent of the hours during that extended period of time and dozens of megawatts at times of heaviest use.³⁴ Because of the heavy reliance on service that is not studied for system and expansion service, MISO states the problem was addressed in stakeholder discussions and the proposed changes in the Tariff were recommended as a result of such discussions.³⁵

17. MISO states that MPPA and Lansing incorrectly interpret the Commission's orders and regulations as requiring that no change can be made by an RTO to an existing tariff unless the change benefits all customers of transmission service.³⁶ MISO claims that internal Short-Term Firm Point-To-Point Transmission Service has been transformed since the start of its energy and ancillary services markets such that it is functionally equivalent to Firm Network Integration Transmission Service, including the level of firmness of the product.³⁷ MISO states that removal of the provision of Short-Term Firm Point-To-Point Transmission Service for internal transactions will eliminate an unduly discriminatory provision of the Tariff, serving the purpose of Order No. 890.³⁸ MISO maintains that in its protest, MPPA repeatedly refers to MISO's "elimination" of Point-To-Point Transmission Service.³⁹ MISO clarifies in its answer that it is proposing to continue all forms of Point-To-Point Transmission Service, modifying only internal

³³ *Id.* at 3-4.

³⁴ MISO Answer at 2.

³⁵ *Id.*

³⁶ *Id.* at 4.

³⁷ *Id.* at 5.

³⁸ *Id.* at 4-5.

³⁹ *Id.* at 6 (citing MPPA Protest at 2, 3, 6, and 8).

Point-To-Point Transmission Service reserved on a short-term firm basis such that development of the transmission system is properly supported.⁴⁰

18. MISO maintains that the change it proposes will be beneficial for purposes of developing the transmission system by requiring internal Firm Transmission Service customers to undergo a System Impact Study, which could reveal the need for system upgrades and prevent the customer from becoming a non-firm customer subject to curtailment.⁴¹

19. MISO states that the Commission has recognized regional differences in Tariff provisions⁴² and should permit the proposed revisions here. The changes are intended to adjust for the impact of MISO's development of energy and ancillary services markets which remain different from markets elsewhere and conditions in MISO's footprint at an earlier time.⁴³

20. In its answer, MPPA states that MISO failed to provide any of the evaluated data it claims to have extracted prior to its filing and did not provide any context in which the data was evaluated.⁴⁴ MPPA asserts that if there is a "problem" it is *de minimus* as MISO only points to two unidentified sink points throughout the MISO footprint as using Short-Term Firm Point-To-Point Transmission Service more often than MISO would like them to use it.⁴⁵ MPPA reiterates that rather than eliminating Short-Term Firm Point-To-Point Transmission Service, MISO should incentivize customers with Behind the Meter Generation to convert to Network Integration Transmission Service by modifying the Network Integration Transmission Service billing determinants as has been accomplished in other regions of the country.⁴⁶

⁴⁰ MISO Answer at 6 and n.18.

⁴¹ *Id.*

⁴² *Id.* at 7-8 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,107 (2009) and *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,054 (2009)).

⁴³ *Id.* at 8.

⁴⁴ MPPA Answer at 2.

⁴⁵ *Id.* at 3-4.

⁴⁶ *Id.* at 4-5 (citing *PJM Interconnection, LLC*, 113 FERC ¶ 61,279 (2005)).

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴⁷ 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,⁴⁸ we will also grant Consumers Energy Company's out-of-time motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁴⁹ prohibits an answer to a protest or an answer, unless otherwise ordered by the decisional authority. We will accept the answers filed by MISO and MPPA because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

23. We reject MISO's filing without prejudice to MISO, in a future section 205 filing, substantiating the problems it alleges here and proposing a remedy that is narrowly tailored to addressing them and is consistent with or superior to the *pro forma* OATT.⁵⁰

24. MISO asserts that some customers with Behind the Meter Generation located in load pockets have used Short-Term Firm Point-to-Point Transmission Service to import power into the customer's system on a basis functionally equivalent to Network Integration Transmission Service. However, MISO has pointed to only two sinks located in Michigan and has not explained how its proposed remedy is tailored to the problem it alleges. For example, MISO has not explained why it could not modify its AFC evaluation program, as Lansing suggests, or otherwise require a System Impact Study when necessary to address its concerns. We cannot find that, based on only two examples for which MISO did not provide supportive data, it is just and reasonable for MISO to eliminate all Short-Term Firm Point-To-Point Transmission Service internal to MISO of less than one year for all transmission customers.

⁴⁷ 18 C.F.R. § 385.214 (2012).

⁴⁸ *Id.* § 385.214(d).

⁴⁹ *Id.* § 385.213(a)(2).

⁵⁰ 18 C.F.R. §§ 35.28 (c)(4), 35.28 (c)(4)(ii). *See, e.g., New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,274, at P 13 (2008).

25. Furthermore, we are not persuaded by MISO's argument that the proposed changes would eliminate undue discriminatory pricing terms by requiring a single pricing method for equivalent uses of the MISO transmission system.⁵¹ The Commission accepted MISO's currently effective Tariff as just and reasonable and not undue discriminatory, including the provisions MISO proposes to alter. Moreover, Section 13.1 of MISO's Tariff tracks the language of the *pro forma* OATT originally adopted in Order No. 888, as affirmed in Order No. 890. We cannot conclude that the provision in question provides for undue discriminatory pricing terms based on this record.

26. Finally, we find that MISO has failed to demonstrate that its market operations justify these specific modifications. The Commission grants authorization to vary from the *pro forma* OATT when parties in their filings show that the variations are consistent with or superior to those found in the *pro forma* OATT. For example, the Commission granted MISO waiver of the requirements in the Commission's open access regulations to convert AFC into Available Transfer Capability (ATC) and to post path ATC, Total Transfer Capability, Capacity Benefit Margin, and Transfer Reserve Margin values on the Open Access Same-time Information System for paths internal to MISO's energy market footprint, in part because the supporting attachments clearly demonstrated that waiver of these requirements was justified in the context of MISO's market operations.⁵² In the instant case, MISO has failed to demonstrate that its market has evolved in a manner that warrants this deviation from the *pro forma* OATT.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵¹ *Id.* at 4-5.

⁵² *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,107, at P 21 (2009).