

153 FERC ¶ 61,063
UNITED STATES OF AMERICA

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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark.

Midcontinent Independent System Operator, Inc.

Docket No. ER14-2022-001

ORDER GRANTING WAIVER

(Issued October 15, 2015)

1. On March 31, 2015, Midcontinent Independent System Operator, Inc. (MISO) filed a request for a one-year extension (Waiver Extension) of an existing waiver¹ of certain provisions of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), and of certain North American Energy Standards Board (NAESB) standards relating to the processing of long-term firm Transmission Service Requests (TSRs) (Request for Waiver Extension). In this order, we grant the Request for Waiver Extension, effective April 1, 2015 through the earlier of April 1, 2016 or the resolution of the dispute between MISO and Southwest Power Pool, Inc. (SPP) in Docket No. ER14-1174-000, *et al.* (MISO-SPP JOA Proceeding).²

¹ MISO filed its Initial Waiver Request and a Supplemental Waiver Request on May 22, 2014 and October 1, 2014, respectively in Docket No. ER14-2022-000. The Commission granted that waiver on December 18, 2014. *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,254 (2014) (Waiver Order).

² The dispute between MISO and SPP regarding the interpretation of the MISO-SPP Joint Operating Agreement (JOA) is pending in hearing and settlement judge procedures established by the Commission in March 2014. *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,231 (2014) (MISO-SPP JOA Order).

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I. Background

A. Transmission Service Requests Between MISO Midwest and MISO South

2. In 2011, the Commission accepted a MISO proposal to revise section 19 of the Tariff to facilitate the export of generation located within MISO to load located outside of the MISO region by allowing the pre-certification of transmission paths that can be used for TSRs involving exports.³

3. In March 2014, the Commission accepted, suspended and set for hearing and settlement judge procedures an unexecuted non-firm point-to-point transmission service agreement filed by SPP (SPP Service Agreement).⁴ The SPP Service Agreement allows MISO to reserve transmission service for MISO's use of the SPP transmission system for transfers of real-time energy between MISO South and MISO Midwest in excess of MISO's 1,000 MW contract path limit between the two regions.⁵ Pursuant to the SPP Service Agreement, SPP invoices MISO for flows above 1,000 MW up to the 2,000 MW path limit established in the Operations Reliability Coordination Agreement (ORCA),⁶ with unreserved use penalties for any flows in excess of amounts that MISO reserves on the SPP OASIS.

4. In response to the MISO-SPP JOA Order, MISO made filings to: (1) limit flows to the 1,000 MW contract path limit to avoid SPP Service Agreement charges; and (2) establish a process for recovering from its customers costs incurred under the SPP Service Agreement for any flows that exceed the 1,000 MW contract path limit. In the

³ Initial Waiver Request, Docket No. ER14-2022-000 at 3 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,119, *order on compliance*, 136 FERC ¶ 61,148 (2011)).

⁴ MISO-SPP JOA Order, 146 FERC ¶ 61,231.

⁵ MISO South currently represents the integration of Entergy, along with Cleco Power, Lafayette Utilities Systems, East Texas Cooperatives and South Mississippi Electric Power Association, into MISO effective December 19, 2013. MISO Midwest is the area covered by MISO's traditional footprint.

⁶ The ORCA has been modified to raise the 2,000 MW limit to 3,000 MW. The modification was accepted on April 15, 2015. *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER15-1141-000 (Apr. 15, 2015) (delegated letter order).

first filing, submitted in Docket No. ER14-1713-000, MISO proposed a Sub-regional Power Balance Constraint demand curve to limit MISO market flows between MISO South and MISO Midwest to 1,000 MW with constraint relaxation values at \$40, \$50, or \$500/MWh, depending on the percentage of exceedance. The Commission conditionally accepted for filing the MISO proposal, effective April 12, 2014, as requested, subject to a compliance filing.⁷ In the second filing, submitted in Docket No. ER14-1736-000, MISO proposed to recover SPP Service Agreement charges from MISO market participants *pro rata* based on loads effective January 29, 2014, which is the effective date of the SPP Service Agreement. The Commission accepted and suspended the latter proposal, subject to refund, and established hearing and settlement judge procedures.⁸

5. MISO subsequently filed, and the Commission accepted in December 2014, a proposal that modified the Sub-regional Power Balance Constraint demand curve to allow flows above 1,000 MW by establishing a hurdle rate.⁹ In the Hurdle Rate Order, the Commission accepted MISO's proposal to insert the hurdle rate into its Security Constrained Economic Dispatch model to determine when production cost savings from exceeding the 1,000 MW contract path limit are greater than the SPP Service Agreement charges, while still limiting flows to the 2,000 MW maximum established in the ORCA.

6. In its Initial Waiver Request, MISO stated that after the integration of the Entergy Corporation Operating Companies and adjacent entities into MISO to form MISO South, MISO pre-certified approximately 1,500 MW of TSRs for export from MISO South to PJM Interconnection, L.L.C. (PJM), most of which have been sold.¹⁰ MISO also stated that on April 22, 2014, one market participant in MISO South submitted TSRs based on pre-certified transmission paths to enable it to participate in PJM's capacity market.¹¹ MISO also stated that there were ten pending long-term firm TSRs from a single

⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,194 (2014). As a result of the constraint relaxation charges, MISO will re-dispatch its system to honor the flow limit until the re-dispatch cost exceeds the constraint relaxation charge, at which point it will allow flows to exceed the flow limit.

⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,206 (2014).

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,225 (2014) (Hurdle Rate Order).

¹⁰ Initial Waiver Request, Docket No. ER14-2022-000 at 4.

¹¹ *Id.* at 3.

customer with an aggregate capacity of 2,831 MW that fit within the category that were subject to its waiver request.¹²

B. Initial and Supplemental Waiver Requests

7. MISO stated that as a result of its 1,000 MW contract path limit for flows between MISO South and MISO Midwest, MISO needed to request waiver of certain Tariff provisions and NAESB standards in order to manage the processing of long-term firm TSRs for generation flows between MISO South and MISO Midwest, including flows for exports from MISO South to PJM.¹³ As more fully explained below,¹⁴ MISO sought waiver of Attachment Q of the Tariff and section 38.1(a)(2) of the Commission's regulations, as well as sections 17.2, 17.6, 17.7, and 19, and Attachment J of the Tariff, which require MISO to take certain actions in response to long-term firm TSRs within specified times.

8. Specifically, with regard to long-term firm TSRs involving generation flows between MISO South and MISO Midwest, MISO stated that: (1) where current TSRs have already been approved, MISO will implement the TSRs; (2) where current TSRs are accepted by MISO but have not yet been confirmed by the requestor, the requestor may withdraw the TSRs or confirm the TSRs subject to redirects; and (3) where TSRs are queued, MISO will suspend any action on them (including any study) during the waiver period.¹⁵ MISO stated that by suspending action on long-term firm TSRs in the queue, MISO will preserve the queue status of the pending TSRs.¹⁶

9. MISO requested in its Initial Waiver Request a waiver from May 22, 2014 through the date that the MISO-SPP JOA Proceeding is either settled or resolved or MISO is able to revise its TSR process in a manner that adequately addresses the uncertainty resulting from the dispute.¹⁷ In its Supplemental Waiver Request, MISO revised the waiver period

¹² Supplemental Waiver Request, Docket No. ER14-2022-000 at 7.

¹³ Initial Waiver Request, Docket No. ER14-2022-000 at 5.

¹⁴ *See infra* P 15.

¹⁵ Initial Waiver Request, Docket No. ER14-2022-000 at 6.

¹⁶ Supplemental Waiver Request, Docket No. ER14-2022-000 at 1.

¹⁷ Initial Waiver Request, Docket No. ER14-2022-000 at 5.

from May 22, 2014 through April 1, 2015, the end of the Operations Transition Period under the ORCA.¹⁸

10. MISO stated that its request met the Commission's four criteria for waiver: (1) the entity seeking waiver acted in good faith; (2) the waiver is of a limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.¹⁹

C. Waiver Order

11. The Commission agreed with MISO that it met the criteria for waiver.²⁰ Specifically, the Commission found that MISO acted in good faith with respect to the Tariff provisions for which waiver was sought because MISO acted with appropriate diligence in filing the Initial Waiver Request to deal with the circumstances that effectively placed a 1,000 MW contract path limit on MISO's ability to grant additional long-term firm TSRs over the MISO South-MISO Midwest interface. Second, the Commission found that the waiver was limited in scope because it was limited in time to a period ending April 1, 2015 and limited to the narrow category of long-term firm TSRs over the MISO South-MISO Midwest interface.²¹ Third, the Commission found that MISO adequately explained the concrete problems that the 1,000 MW contract path limit creates with respect to its ability to process long-term firm TSRs. The Commission noted that, according to MISO, the result of processing a long-term firm TSR over the MISO South-MISO Midwest interface would be that MISO could grant the TSR only if the customer agreed to finance transmission facility upgrades, but if the customer refused to finance the upgrade, the customer would lose its queue position.²² Finally, the Commission found that the waiver request did not appear to have undesirable

¹⁸ Supplemental Waiver Request, Docket No. ER14-2022-000 at 1.

¹⁹ *Id.* at 8 (citing *ISO New England, Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

²⁰ Waiver Order, 149 FERC ¶ 61,254 at P 28.

²¹ *Id.* P 29.

²² *Id.* P 30.

consequences for third parties. The Commission noted that there were no protests by transmission customers or potential transmission customers alleging harm under the waiver.²³

II. Request for Waiver Extension

12. MISO states that the transactions covered by the Request for Waiver Extension are identical to those addressed by the Initial Waiver Request. Specifically, MISO requests a continued waiver of the provisions in its Tariff and the Commission regulations governing the processing of long-term firm TSRs that source from MISO South and sink in a non-contiguous geographic region. This request does not cover any other long-term firm TSRs, and does not cover short-term TSRs, which will continue to be processed in accordance with the terms of the Tariff.²⁴

13. MISO states that, as it explained in its Initial Waiver Request, MISO currently manages flows between MISO South and MISO Midwest with a 1,000 MW contract path limit between its two regions. MISO states that it has construed the 1,000 MW contract path limit as a firm limit when evaluating transmission service requests against that path for transmission request processing purposes. MISO asserts that there is a continuing need to manage such flows. According to MISO, a number of long-term firm TSRs remain in the queue that seek capacity from MISO South to non-contiguous geographic regions outside of MISO. MISO expects the number of already-sold long-term firm TSRs to exceed the 1,000 MW contract path limit until 2019. MISO intends to honor fully these transmission commitments, but explains that they make it very difficult for MISO to process adequately any additional long-term firm TSRs.²⁵

14. MISO argues that without the Waiver Extension, it would have to either: (1) deny these pending long-term firm TSRs in light of the 1,000 MW contract path limit, thus depriving the entities that submitted them of their queue priority; or (2) ask the requesting entities to fund additional transmission upgrades, whose cost those entities may be

²³ *Id.* P 31.

²⁴ Request for Waiver Extension, Docket No. ER14-2022-001 at 2.

²⁵ *Id.*

unwilling to incur pending the resolution of the underlying disputes concerning use of the 1,000 MW contract path. MISO observes that the Commission has extended previously granted limited tariff waivers in similar circumstances.²⁶

15. Specifically, MISO requests a continued waiver of the same provisions waived in the Waiver Order, specifically, Attachment Q of the Tariff and section § 38.1(a)(2)²⁷ of the Commission's regulations as well as sections 17.2, 17.6, 17.7, and 19, and Attachment J of the Tariff, which govern the processing of long-term firm TSRs sourcing from MISO South and sinking in a non-contiguous geographic region. MISO states that certain NAESB requirements are applicable to MISO pursuant to 18 C.F.R. § 38.2 and Attachment Q of the Tariff. In particular, the NAESB standards at sections 001-4.7.2 and 001-4.13 require MISO to take certain actions in response to long-term firm TSRs within a specified time. In addition, MISO asserts that Tariff sections 17.2, 17.6, 17.7, and 19, and Attachment J, require that MISO evaluate and respond to Firm TSRs pursuant to specified timing and response requirements. According to MISO, these requirements include: (1) the time periods for MISO's response to a submitted TSR, set forth in section 17.2, section 19 and Attachment J; and (2) the need for a System Impact Study and notice to the Tariff Customer requesting transmission service pursuant to sections 17.6 and 17.7. MISO seeks an extension of the existing waiver of these requirements as they apply to all pending and future long-term firm TSRs between MISO South and MISO Midwest. MISO asserts that this request does not cover any other long-term firm TSRs, and does not cover short-term TSRs, which will continue to be processed in accordance with the terms of the Tariff.²⁸

16. MISO states that its request meets the Commission's four criteria for waiver: (1) the entity seeking waiver acted in good faith; (2) the waiver is of a limited scope;

²⁶ *Id.* at 3 (citing *Cal. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,086 (2015) (order granting extension of waiver concerning certain tariff pricing parameters); *Pacific Gas and Elec. Co.*, 136 FERC ¶ 61,243 (2011) (order granting extension of waiver concerning certain tariff reporting requirements)).

²⁷ In the Initial Waiver Request and the Request for Waiver Extension, MISO incorrectly references section 38.2(a)(2) of the Commission's regulations. The correct reference is to section 38.1(a)(2). 18 C.F.R. § 38.1(a)(2) (2015).

²⁸ Request for Waiver Extension, Docket No. ER14-2022-001 at 2-4.

(3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.²⁹

17. MISO contends that it has acted in good faith. MISO states that, as explained in its Initial Waiver Request, MISO has actively taken steps to minimize any adverse impacts of managing flows between MISO Midwest and MISO South in light of the 1,000 MW contract path limit, the need for which was a sudden and unexpected development. According to MISO, the Request for Waiver Extension is a necessary step in managing the impact of the contract path limitation. MISO states that it seeks to avoid any adverse impacts to its Market Participants, and asks for this waiver so that it can hold pending and future long-term firm TSRs over the MISO South-MISO Midwest interface in abeyance, and preserve the priority of the entities submitting such TSRs. MISO maintains that its actions to date in seeking this waiver continue to be in good faith, and for the benefit of its Market Participants seeking long-term firm transmission service.³⁰

18. MISO continues that the Request for Waiver Extension remains of limited scope, both in terms of time and transactions impacted. MISO asserts that, as outlined above, the Request for Waiver Extension covers only a limited subset of transactions – those pending and future long-term firm TSRs that involve flows between MISO South and MISO Midwest. MISO adds that the Waiver Extension has a definitive end date of April 1, 2016. MISO states that it anticipates having further clarity by then of the nature and scope of the capacity available for use in moving power between its North and South regions that will enable it to fairly process the pending long-term firm TSRs between the two regions.³¹

19. Next, MISO argues that the Request for Waiver Extension addresses a concrete problem. Given the uncertainties surrounding the existing 1,000 MW contract path limit, particularly the fact that it may be temporary, MISO states that transmission customers likely will be unwilling to fund the construction of new upgrades in order to obtain transmission service over the MISO South-MISO Midwest interface; at the same time,

²⁹ *Id.* at 4 (citing *ISO New England, Inc.*, 117 FERC ¶ 61,171 at P 21, citing *Wisvest-Connecticut*, 101 FERC ¶ 61,372, at 62,551 (2002); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003); *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996)).

³⁰ *Id.* at 4-5.

³¹ *Id.* at 5.

transmission customers do not want to lose their priority to transmission service over that interface if and when additional existing capacity opens up for use. MISO explains that such a loss of priority would result if MISO were required to process TSRs in accordance with the Tariff while there is an existing contract path limitation. A waiver of the Tariff requirements outlined above allows MISO to hold these TSRs in abeyance, and to preserve their priority until the issues underlying the 1,000 MW contract path limit over the MISO South-MISO Midwest interface are resolved.³²

20. Finally, MISO asserts that the Waiver Extension will not have any adverse consequences for any entity. According to MISO, the only entities affected are those with pending long-term firm TSRs over the MISO South-MISO Midwest interface, and those entities in the future that may submit long-term firm TSRs for service over that interface. MISO states that, without a waiver, they would be faced with the difficult choice of consenting to build new capacity which might turn out not to be needed, or of losing their priority to service if they decline the construction of such capacity. MISO asserts that the Request for Waiver Extension would allow MISO to hold TSRs in abeyance, and to preserve their priority to existing capacity over the MISO South-MISO Midwest interface if it becomes available in the future.³³

III. Notice and Responsive Pleadings

21. Notice of the Request for Waiver Extension was published in the *Federal Register*, 80 Fed. Reg. 18,613 (2015) with interventions and protests due on or before April 21, 2015. Timely motions to intervene were filed by American Electric Power Company, Inc.,³⁴ Westar Energy, Inc., Lincoln Electric System, City Utilities of Springfield, Missouri, Western Area Power Administration, Omaha Public Power District, The Empire District Electric Company, Transource Energy, LLC (Transource), Midcontinent MCN, LLC, Nebraska Public Power District, NextEra Energy Transmission Midwest, LLC, South Central MCN, LLC, Duke-American Transmission Company, and Oklahoma Gas and Electric Company. Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC, and Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company, filed timely

³² *Id.* at 5-6.

³³ *Id.* at 6.

³⁴ American Electric Power Company, Inc. filed its motion to intervene on behalf of Public Service Company of Oklahoma and Southwestern Electric Power Company.

joint motions to intervene. Entergy Services, Inc.,³⁵ GridAmerica Holdings Inc., MISO Transmission Owners,³⁶ Dayton Power and Light Company, and FirstEnergy Service Company³⁷ filed motions to intervene out-of-time.

³⁵ Entergy Services, Inc. filed its motion to intervene out-of-time on behalf of Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

³⁶ MISO Transmission Owners is comprised of Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Arkansas Electric Cooperative Corporation; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); CLECO Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, Inc.; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; 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; Prairie Power Inc.; South Mississippi Electric Power Association; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

³⁷ FirstEnergy Service Company filed its motion to intervene out-of-time on behalf of its affected affiliates.

22. Transource, SPP Transmission Owners,³⁸ SPP, Joint Parties,³⁹ NRG Companies (NRG),⁴⁰ and South Central MCN, LLC and Midcontinent MCN, LLC (together, MCN) filed comments and/or protests.

23. PJM filed an answer on May 6, 2015. PJM Utilities Coalition (PJM Utilities)⁴¹ filed a motion for leave to answer and answer on May 18, 2015.

A. Comments and Protests

24. MCN and Transource⁴² argue that MISO's request for an extension of the waiver may delay proper long-term transmission planning under the MISO Transmission Expansion Planning (MTEP) process and established planning models. MCN adds that MISO's reliance on waivers to satisfy demand in excess of the 1,000 MW contract path limit through 2019 creates special accommodations to benefit certain service arrangements. MCN and Transource assert that, regardless of the outcome of the

³⁸ SPP Transmission Owners is comprised of KCP&L and KCP&L Greater Missouri Operations Company; American Electric Power Service Company, on behalf of Public Service Company of Oklahoma and Southwestern Electric Power Company; City Utilities of Springfield, Missouri; Lincoln Electric System; Omaha Public Power District; The Empire District Electric Company; Westar Energy, Inc.; Sunflower Electric Power Corporation; Mid-Kansas Electric Company, LLC; Nebraska Public Power District; and Oklahoma Gas & Electric Company.

³⁹ Joint Parties is comprised of Associated Electric Cooperative Inc., Louisville Gas and Electric Company, Kentucky Utilities Company, PowerSouth Energy Cooperative, Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company, by and through their agent Southern Company Services, Inc., and the Tennessee Valley Authority.

⁴⁰ NRG Companies is comprised of NRG Power Marketing LLC and GenOn Energy Management, LLC.

⁴¹ PJM Utilities is comprised of American Electric Power Service Corporation, The Dayton Power and Light Company, and FirstEnergy Service Company, each on behalf of its affected affiliates, and East Kentucky Power Cooperative, Inc.

⁴² MCN states that it objects to the waiver, and Transource states that it takes no immediate position on the waiver.

settlement proceedings associated with the SPP Service Agreement, additional transmission capacity between MISO Midwest and MISO South will be necessary, and such upgrades are not currently addressed in the MTEP 15 and were not identified in the MTEP 14. Transource adds that MISO's refusal to study the need for additional transfer capability at the MISO South-MISO Midwest seam does not promote the goals of Order No. 1000. According to MCN and Transource, granting the Request for Waiver Extension provides no incentive for MISO to plan for transmission until the "surplus" transmission capacity of its neighbors is exhausted.⁴³

25. MCN and Transource also argue that transmission developers would be harmed if they are not given an opportunity to build projects necessary to provide needed transmission capacity. MCN adds that customers who are bearing the cost of MISO's 1,000 MW limits on transfers would be harmed because, according to the MISO Independent Market Monitor, the market impact in MISO of the 1,000 MW contract path limit results in at least \$12 million per month in increased production costs. MCN states that MISO could potentially identify certain Market Efficiency Projects that would not require the Transmission Customer requesting new firm transmission service to pay for the upgrades. MCN concludes by observing that while the Commission's approval of the initial waiver in the Waiver Order was based on the assumption that no party was harmed, an additional year's waiver, combined with MISO's continued failure to initiate proper transmission planning procedures, presents a very different situation in which third parties will be harmed.⁴⁴ Transource questions how MISO will honor firm reservation commitments after the waiver expires as well as how MISO will address any oversold transmission requests during the waiver period.⁴⁵

26. SPP Transmission Owners,⁴⁶ MCN, and Transource assert that the SPP Service Agreement would not provide MISO with the means to provide firm transmission service to fulfill the transmission service requests in its queue. According to SPP Transmission Owners, the Request for Waiver Extension pertains to requests received by MISO for firm transmission services between MISO South and MISO Midwest in excess of the 1,000 MW contract path limit connecting these two regions and between MISO South

⁴³ MCN Protest at 2; Transource Protest at 2-3.

⁴⁴ MCN Protest at 2-3.

⁴⁵ Transource Comments at 2-4.

⁴⁶ SPP Transmission Owners states that they take no position on whether the Commission should grant or deny the waiver.

and non-contiguous regions. SPP Transmission Owners and Transource argue that the existing non-firm transmission service agreement filed by SPP, however, would not provide MISO with superior, firm transmission service that it could in turn re-sell to its own customers absent a settlement regarding this non-firm transmission service agreement that would permit the provision of such service. SPP Transmission Owners argue that MISO should be required to explain how it intends to address the fact that it has already oversold firm service for a four-year forward looking period.⁴⁷ MCN and Transource argue that because this agreement would not provide MISO with firm service in excess of the 1,000 MW contract path limit, MISO would still be required to build transmission between MISO South and MISO Midwest in order to make firm service available.⁴⁸

27. PJM asserts that regardless of whether the transmission service was properly granted or whether the ultimate amount of service is resolved in the course of pending litigation, any firm transmission service from MISO South to PJM must be treated as such given PJM's reliance on the generators using this transmission service as capacity resources. PJM states that generators physically located outside of the PJM region may participate as a capacity resource in PJM's markets only to the extent these external resources have procured firm transmission service to deliver the energy from those resources to the PJM region. While MISO has committed to honor all firm transmission service, PJM observes that the comments in this proceeding call into question not only the validity of the firm transmission service granted over the 1,000 MW contract path, but also the capability of the generation resources located in the MISO footprint, which are PJM capacity resources, to provide energy when called upon by PJM, particularly during emergency conditions. PJM is concerned that conditional transmission service that is not honored or that is quasi-firm in nature would result if this firm transmission service is found to be invalid. PJM states that it cannot depend on resources utilizing such transmission service to reliably serve load in PJM. Therefore, PJM seeks acknowledgment by MISO of the firm nature of the transmission service associated with these capacity resources to ensure that PJM capacity resources in MISO South granted firm transmission service will have available transmission service when called upon to serve load in PJM.⁴⁹

⁴⁷ SPP Transmission Owners Comments at 1-4.

⁴⁸ MCN Protest at 2; Transource Protest at 2.

⁴⁹ PJM Comments at 3-4.

28. PJM Utilities⁵⁰ agree with PJM that the Commission should require MISO to take affirmative steps to honor its commitment to provide firm service to avoid serious reliability implications not only for PJM, but for all affected transmission systems. PJM Utilities continue that, to the extent generators have erred in their application to PJM about their deliverability or MISO erroneously granted firm transmission service beyond its capability, there must be corrections to the generators' ability to import capacity into PJM, and PJM should take steps to disqualify the generation resources from its market if it determines they have secured substandard service. Further, PJM Utilities assert that resources from MISO South affected by this situation should be required either to construct the necessary transmission upgrades to ensure that the capacity is deliverable to PJM, or to replace their capacity obligation in an Incremental Auction and be considered ineligible for future PJM capacity auctions until this situation is resolved. Otherwise, PJM Utilities state that reliability in the PJM, MISO, SPP, and the Joint Parties' transmission systems will be compromised at peak times. PJM Utilities conclude that these questions must be answered prior to the Commission's decision on MISO's request for a waiver extension.⁵¹

29. Additionally, PJM Utilities believe that the over-subscription of the 1,000 MW contract path calls into question whether the capacity transactions into PJM over this path are truly firm. PJM Utilities maintain that PJM should not assume that these TSRs are unconditionally firm just because MISO already granted them because, as SPP and Joint Parties have stated in their comments, MISO cannot make any commitment to PJM about the availability of firm service on a third party's transmission system. PJM Utilities argue that if generators within MISO South have not secured firm service to PJM, it is not good enough, as PJM's Answer suggests, to simply treat that service as firm for purposes of PJM's capacity deliverability analysis.⁵²

30. Similarly, SPP is concerned that MISO has in fact not honored the "firm limit" represented by MISO's 1,000 MW contract path between MISO South and MISO Midwest, notwithstanding MISO's representations that it has already sold a number of long-term firm TSRs exceeding the 1,000 MW contract path limit through 2019 and that MISO intends to honor these commitments. According to SPP, sometime after April 22, 2014, MISO, in response to a customer request, sold 1,500 MW of firm transmission

⁵⁰ PJM Utilities states that its comments are limited to reinforcing the importance of the reliability questions implicated by MISO's requested waiver extension.

⁵¹ PJM Utilities Comments at 3-4.

⁵² *Id.* at 2-3.

service from MISO South to MISO Midwest for ultimate delivery to PJM. SPP observes that these sales took place after the MISO-SPP JOA Order was issued.⁵³ SPP adds that the generation associated with the 1,500 MW firm transmission sale is pseudo-tied to PJM and not under MISO's dispatch control, meaning that it will flow from MISO South to MISO Midwest and onto PJM at PJM's direction, without regard to the 1,000 MW contract path limit of MISO's system and, by necessity, using the transmission paths of other systems.⁵⁴

31. SPP states that MISO has not purchased firm transmission service from SPP or, to SPP's knowledge, from any other provider, to support this 1,500 MW of firm service, and MISO has not made arrangements for the provision of such firm service in excess of MISO's 1,000 MW contract path limit. SPP concludes that the Commission should demand further information regarding MISO's 1,500 MW firm service arrangement, and MISO should explain whether, and on what basis, it granted a firm transmission service request between MISO South and MISO Midwest in excess of the 1,000 MW contract path limit and whether any other long-term firm TSRs have been granted across the MISO South and MISO Midwest interface. SPP states that the Commission should consider the implications of these firm sales on the MISO-SPP JOA Proceeding.⁵⁵

32. NRG seeks confirmation that the Request for Waiver Extension is limited to processing of long-term firm TSRs above 1,000 MW contract path limit for generation flows between MISO South and MISO Midwest. Because MISO does not seek a waiver on processing TSRs up to the 1,000 MW contract path limit and because there are no issues regarding flows at 1,000 MW and below, NRG asserts that MISO should process TSRs up to the 1,000 MW in a manner consistent with the applicable Tariff provisions. NRG also requests that the Request for Waiver Extension end at the earlier of April 1, 2016 or when the MISO-SPP JOA Proceeding is resolved.⁵⁶ NRG states that MISO has indicated that the waiver is needed due to the uncertainty of flows over 1,000 MW as a result of the dispute in the MISO-SPP JOA Proceeding. NRG contends that its proposed end date is more practical than the requested effective date because once this dispute is resolved, MISO would no longer need such a waiver from its Tariff provisions.

⁵³ SPP observes that, to date, MISO has failed to make any reservation under that Service Agreement. SPP Comments n.7.

⁵⁴ SPP Comments at 2-3.

⁵⁵ *Id.* at 3-4.

⁵⁶ NRG Protest at 5.

33. Joint Parties state that since the extended waiver would, consistent with the Commission's previous findings in the initial order, continue to be limited to the timing requirements for processing TSRs and would neither circumvent nor impact any of the other pending proceedings, the Joint Parties do not oppose MISO's request for an extension of the waiver.⁵⁷

IV. Discussion

A. Procedural Matters

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), 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) (2015), we grant the late-filed motions to intervene filed by Entergy Services, Inc., GridAmerica Holdings Inc., MISO Transmission Owners, Dayton Power and Light Company, and FirstEnergy Service Company given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

35. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by PJM and PJM Utilities because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

36. The Commission has previously granted requests for waiver from tariff requirements in situations where: (1) the applicant has been unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁵⁸ We find that MISO's Request for Waiver Extension satisfies these conditions and we will grant the extension until the earlier of April 1, 2016 or the resolution of the dispute in the MISO-SPP JOA Proceeding.

⁵⁷ Joint Parties Comments at 2.

⁵⁸ Waiver Order, 149 FERC ¶ 61,254 at P 28.

37. As the Commission found with the Initial Waiver Request, we find that MISO has acted in good faith with respect to the Tariff provisions for which waiver is sought. The dispute in the MISO-SPP JOA Proceeding has not been resolved and, as a result, MISO filed its Request for Waiver Extension to address the processing of long-term firm TSRs.

38. We also find that the Request for Waiver Extension is as limited in scope as the Initial Waiver Request. The Request for Waiver Extension is limited in time. MISO seeks an end date of April 1, 2016. However, as NRG notes, once the dispute in the MISO-SPP JOA Proceeding is resolved, MISO would no longer need the Waiver Extension. Accordingly, we will grant the waiver effective April 1, 2015 through the earlier of April 1, 2016 or the resolution of the dispute in the MISO-SPP JOA Proceeding. Also, the Waiver Extension is limited to maintaining the queue status of long-term firm TSRs over the MISO South-MISO Midwest interface. The Waiver Extension does not apply to the processing of long-term firm TSRs that source and sink solely within MISO Midwest or source and sink solely within MISO South and does not apply to the processing of any short-term TSRs.

39. We further find that MISO has adequately explained the concrete problems that the 1,000 MW contract path limit creates with respect to its ability to process long-term firm TSRs. Additionally, according to MISO, the result of processing a long-term firm TSR over the MISO South-MISO Midwest interface would be that MISO could grant it only if the transmission customer agreed to finance transmission upgrades. If MISO offered transmission service requiring a transmission upgrade, the customer would lose its queue position if it refused to accept that offer. Thus, the Waiver Extension resolves the issue presented in MISO's filing.

40. Finally, we find that the Waiver Extension has not been shown to have undesirable consequences for third parties. There is no protest in this proceeding by any potential transmission customer alleging harm because its request for transmission service over the interface between MISO South and MISO Midwest will be delayed under MISO's Request for Waiver Extension. There is also no protest from any transmission customer alleging harm caused by a waiver of the Tariff provisions governing MISO's TSR processing.

41. However, certain parties have raised other allegations of harm. The Request for Waiver Extension we grant here concerns the timing requirements for processing certain TSRs submitted to MISO and MISO's ability to suspend processing of such TSRs in its queue. The amount of long-term firm capacity MISO has sold, the amount of firm transmission service MISO can provide and whether generators selling capacity into PJM have sufficiently firm transmission are not at issue in this proceeding. Thus, the allegations of PJM, PJM Utilities, SPP and SPP Transmission Owners are beyond the scope of this proceeding.

42. While MCN and Transource argue that granting the waiver may have the effect of failing to provide for adequate transmission planning in the region, we disagree. The waiver sought by MISO, and granted by the Commission, is limited to the timeline for processing certain long-term TSRs in the MISO transmission queue. This waiver does not relieve MISO of its responsibility to plan for the region's broader transmission needs. Specifically, MISO remains obligated under Attachment FF of its Tariff to regularly prepare the MTEP, which must consider expected use patterns and analyze both reliability needs and the needs of the competitive bulk power market under a wide variety of contingency conditions.⁵⁹ We expect that MISO will continue to evaluate, as part of its MTEP process, whether additional transmission capacity is needed between MISO South and MISO Midwest.

The Commission orders:

MISO's Request for Waiver Extension is hereby granted, effective April 1, 2015 through the earlier of April 1, 2016 or the resolution of the dispute in the MISO-SPP JOA Proceeding, as discussed above.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵⁹ MISO, FERC Electric Tariff, Attachment FF, Section I.C. As part of the MTEP process, MISO conducts baseline reliability studies to ensure compliance with all applicable reliability standards. As the registered Planning Authority/Planning Coordinator, MISO is required to identify a solution for each identified violation of the reliability standards that could otherwise lead to overloads, equipment failures or blackouts. Attachment FF, Section II.A. MISO is required to plan its transmission system to incorporate Market Efficiency Projects for which benefits exceed costs by 1.25 times. Attachment FF, Section II.B. Additionally, MISO conducts Multi Value Project-based planning to develop the most robust plan under a wide variety of economic and public policy conditions to provide widespread benefits across the footprint. Attachment FF, Section II.C. Further, MISO is required to identify and evaluate possible interregional transmission projects that could address transmission needs more efficiently or cost-effectively than separate regional transmission projects. Attachment FF, Section II. E.