

154 FERC ¶ 61,022  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc. Docket Nos. ER14-1174-001

Midwest Independent Transmission System Operator, Inc. EL11-34-003

Southwest Power Pool, Inc. EL14-21-001

v.

Midcontinent Independent System Operator, Inc.

Midcontinent Independent System Operator, Inc. EL14-30-001  
v.

Southwest Power Pool, Inc.

ORDER DISMISSING REQUESTS FOR REHEARING AS MOOT

(Issued January 21, 2016)

1. This order addresses the requests for rehearing of the Commission’s March 28, 2014 order<sup>1</sup> on four proceedings involving the dispute between Midcontinent Independent System Operator, Inc. (MISO)<sup>2</sup> and Southwest Power Pool, Inc. (SPP) over terms of the Joint Operating Agreement between MISO and SPP (MISO-SPP JOA). In this order, we dismiss the requests for rehearing as moot, as discussed below.

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<sup>1</sup> *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,231 (2014) (MISO-SPP JOA Order).

<sup>2</sup> Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

## I. Background

2. In 2004, the Commission accepted the MISO-SPP JOA to better coordinate power flows and improve seams management between MISO and SPP.<sup>3</sup>

3. On January 28, 2014, SPP filed an Federal Power Act (FPA) section 206<sup>4</sup> complaint (SPP Complaint) in which it sought a Commission order finding that MISO is violating the MISO-SPP JOA and the SPP Open Access Transmission Tariff (SPP Tariff), and requiring MISO to compensate SPP under the SPP Tariff for MISO's use of the SPP transmission system for real-time energy transfers between MISO Midwest and MISO South following the integration of the Entergy Operating Companies<sup>5</sup> into MISO on December 19, 2013.<sup>6</sup> Concurrent with the SPP Complaint, SPP also filed an unexecuted service agreement to assess charges for MISO's use of the SPP transmission system for the transfers between MISO Midwest and MISO South (SPP Service Agreement).<sup>7</sup> On February 18, 2014, MISO filed an FPA section 206<sup>8</sup> complaint (MISO Complaint) against SPP alleging that the SPP Complaint and SPP's filing of the SPP Service Agreement violate the MISO-SPP JOA and SPP's Tariff, and seeking a Commission order requiring SPP to cease sending invoices to MISO and to nullify the invoices already sent.<sup>9</sup>

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<sup>3</sup> See *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,008 (2004), *reh'g denied*, 110 FERC ¶ 61,031 (2005).

<sup>4</sup> 16 U.S.C. § 824e (2012).

<sup>5</sup> Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, L.L.C; Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc. (Entergy New Orleans); and Entergy Texas, Inc. (Entergy Texas).

<sup>6</sup> *Southwest Power Pool, Inc., Complaint and Request for Fast Track Processing and Motion to Consolidate*, Docket No. EL14-21-000 (filed Jan. 28, 2014).

<sup>7</sup> *Southwest Power Pool, Inc., Submission of Unexecuted Non-Firm Point-to-Point Transmission Service Agreement*, Docket No. ER14-1174-000 (filed Jan. 28, 2014).

<sup>8</sup> 16 U.S.C. § 824e (2012).

<sup>9</sup> *Midcontinent Independent System Operator, Inc., Complaint and Motion to Consolidate*, Docket No. EL14-30-000 (filed Feb. 28, 2014).

4. On March 28, 2014, the Commission issued an order<sup>10</sup> addressing four proceedings: (1) an opinion of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacating and remanding Commission orders interpreting section 5.2 of the MISO-SPP JOA;<sup>11</sup> (2) the SPP Complaint; (3) the MISO Complaint; and (4) the SPP Service Agreement. In the MISO-SPP JOA Order, the Commission accepted for filing the SPP Service Agreement, suspended it for a nominal period, and made it effective January 29, 2014, subject to refund. In addition, the Commission consolidated the four proceedings and established hearing and settlement judge procedures.

## **II. Requests for Rehearing**

5. MISO, MISO Transmission Owners,<sup>12</sup> and Entergy Services, Inc. (Entergy Services) seek rehearing of the MISO-SPP JOA Order. MISO Transmission Owners argue that the Commission erred in establishing hearing and settlement judge proceedings in response to the MISO-SPP Remand rather than instituting a paper hearing or alternative administrative process. Entergy Services argues that the Commission accepted the SPP Service Agreement even though the *Mobile-Sierra* doctrine requires it to consider the terms of the MISO-SPP JOA, which contradict with the implementation of the SPP Service Agreement. MISO argues that the SPP Service Agreement is a non-conforming agreement and that the MISO-SPP JOA Order improperly makes MISO a

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<sup>10</sup> *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,231 (2014) (MISO-SPP JOA Order).

<sup>11</sup> *Southwest Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013).

<sup>12</sup> The MISO Transmission Owners in this proceeding are: Ameren Services Company, as agent for Union Electric Company; Ameren Illinois Company; Big Rivers Electric Corporation; City Water, Light & Power (Springfield, IL); Cleco Power, LLC; Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; 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; Michigan Public Power Agency; 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.; 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; and Wabash Valley Power Association, Inc.

transmission customer of SPP, which departs from long-standing Commission policies and precedent without explanation. Additionally, MISO asserts that there is no legal basis for the unreserved use penalties charged under the SPP Service Agreement. MISO Transmission Owners also take issue with the length of the suspension period, arguing that it should have been for the maximum five month period rather than a nominal period of one day. Entergy Services further argues that refunds would not be an adequate remedy for the charges incurred under the Service Agreement, and therefore the Commission should reverse its decision to accept the SPP Service Agreement.

6. On May 13, 2014, SPP filed an answer to the requests for rehearing filed by MISO, Entergy Services, and the MISO Transmission Owners.

7. On November 7, 2014, MISO filed a motion for expedited consideration of its request for rehearing the MISO-SPP JOA Order. Wisconsin TDUs<sup>13</sup> and the Organization of MISO States filed answers in support of MISO's motion, and SPP and the SPP Transmission Owners<sup>14</sup> filed answers in opposition to MISO's motion. MISO filed an answer to SPP's and the SPP Transmission Owners' answers.

### **III. Settlement Agreement**

8. On October 13, 2015, the Settlement Parties<sup>15</sup> filed a settlement agreement that would resolve all issues set for hearing in the MISO-SPP JOA Order

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<sup>13</sup> In this proceeding, the Wisconsin TDUs are: Madison Gas & Electric Company and WPPI Energy.

<sup>14</sup> In this proceeding, the SPP Transmission Owners are: Kansas City Power & Light Company 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.

<sup>15</sup> In addition to MISO and SPP, Associated Electric Cooperative, Southern Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company, the Tennessee Valley Authority, Louisville Gas and Electric Company and Kentucky Utilities, PowerSouth Energy Cooperative, and NRG Energy, Inc. (NRG) are parties to the Settlement Agreement. The parties to the Settlement Agreement outside of MISO, SPP, and NRG are collectively referred to as the Joint Parties.

(Settlement Agreement). The Settlement Agreement provides for MISO to make a fixed payment to SPP and the Joint Parties to settle all claims for the period between January 29, 2014, the effective date of the SPP Service Agreement, and February 1, 2016, the proposed implementation date of the Settlement Agreement. Additionally, the Settlement Agreement provides for the withdrawal of the SPP Complaint, the MISO Complaint, and the SPP Service Agreement, within 40 days after a final, unreviewable Commission order accepting or approving the Settlement Agreement. SPP will also withdraw its Petition for Review of the Commission's Orders in Docket No. ER13-948-000, *et al.* to the U.S. Court of Appeals for the District of Columbia, Case No. 14-1053.

#### **IV. Discussion**

9. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2015), prohibits an answer to a request for rehearing. Accordingly, we will reject SPP's answer as an impermissible answer to a request for rehearing.

10. The Commission is issuing an order approving the Settlement Agreement concurrently with this order. In light of the Commission's approval of the Settlement Agreement, we dismiss the requests for rehearing as moot.

#### **The Commission orders:**

The requests for rehearing are hereby dismissed as moot, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.