170 FERC ¶ 61,179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Midcontinent Independent System Operator, Inc. Docket No. ER20-843-000

ORDER GRANTING WAIVER REQUEST

(Issued March 4, 2020)

1. On January 17, 2020, pursuant to section 205 of the Federal Power Act (FPA),[1] Midcontinent Independent System Operator, Inc. (MISO) submitted a request for a limited, one-time waiver (Waiver Request) of a provision of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) regarding eligibility requirements for long-term transmission rights (LTTRs) in order to implement relief granted to Southern Company Services, Inc. (Southern) through MISO's alternative dispute resolution (ADR) process. As discussed below, we grant the Waiver Request, effective January 18, 2020, as requested.

I. **Background**

2. MISO states that Southern, as agent for Alabama Power Co. (Alabama Power), is a party to two transmission service agreements (TSAs) that were originally executed prior to the Entergy operating companies' (Entergy) integration into MISO in December 2013.[2] Specifically, under the TSAs, Southern transmits energy produced by two wind facilities located in Southwest Power Pool, Inc. that are designated as network resources to serve Alabama Power's load: (1) Chisholm View Wind Project, LLC (Chisholm View) in Oklahoma for 202 MW, effective in 2011, and (2) Buffalo Dunes Wind Project, LLC (Buffalo Dunes) in Kansas for 202 MW, effective in 2012.[3] MISO specifies that the

[1] 16 U.S.C. § 824d (2018).

[2] Transmittal at 3.

[3] Southern Comments at 12.

transmission service in both of these TSAs is through and out of MISO and delivered to Alabama Power in Southern's Balancing Authority Area.[4]

3. MISO explains that prior to Entergy's integration, MISO proposed, and the Commission approved, supplemental rules to prevent a situation in which newly-integrating Load-Serving Entities (LSEs) would experience an LTTR[5] "entitlement gap." MISO states that the supplemental rules were to enable the integrating LSEs to obtain necessary entitlement rights for LTTRs, upon integration.[6] According to MISO, Southern did not actively participate in the development of these supplemental rules or the Commission's proceeding approving these supplemental eligibility rules. MISO states that this was because Southern was not aware that, after Entergy's integration into MISO, Southern may not be able to obtain sufficient LTTRs as congestion hedges for its through and out transactions as a legacy long-term firm transmission customer of Entergy.[7]

4. MISO states that Southern's need to be able to hedge against congestion risks for the Chisholm View and Buffalo Dunes TSAs therefore was not addressed as part of the supplemental rules.[8] As a result, according to MISO, Southern has since been unable to obtain adequate LTTRs to hedge its Chisholm View and Buffalo Dunes TSAs.[9] MISO states that this is primarily because Chisholm View and Buffalo Dunes, as wind facilities, are unable to meet the Tariff's 50% capacity factor required of Generation Resources to qualify as part of the Baseload Reserved Source Set (BRSS, or Baseload Reserved Source Points (RSPs)) that are used as a basis for determining eligibility for LTTR entitlements.[10] MISO explains that a MISO Market Participant can nominate ARR entitlements in Stage 1A of MISO's Annual ARR Allocation Process to the extent they are supported by

[4] Transmittal at 3.

[5] MISO explains that LTTRs are long-term variants of Auction Revenue Rights (ARRs), with annual rollover rights of at least 10 years. ARRs are entitlements to a share of the revenues generated in MISO's annual auction of Financial Transmission Rights (FTRs). *Id.* at 10.

[6] *Id.* at 12 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,236 (2013) (MISO Supplemental Rules Order)).

[7] *Id.* at 13-14.

[8] *Id.* at 12-13.

[9] *Id.* at 2.

[10] *Id.* at 3, 7.

generation that has at least a 50% capacity factor.[11] MISO states that, in addition to Chisholm View and Buffalo Dunes not qualifying for ARR entitlements in Stage 1A due to those wind facilities not being able to satisfy the 50% capacity factor, Southern was not allocated any ARR nominations in Stage 1B for the most recent year planning period.[12] MISO states that it is unaware of any other pre-integration TSAs that would be similarly situated, and it is also unaware of any other Market Participants whose congestion hedging levels have been as low or non-existent as Southern's levels.[13]

5. According to MISO, in April 2019, Southern initiated an informal ADR process. MISO explains that, through this ADR process, it determined that a prospective waiver of its Tariff would be required to allow MISO to implement equitable relief intended to partly alleviate the inability of Southern, as an LSE, to obtain adequate congestion hedges in connection with the two TSAs.[14]

II. Waiver Request

6. MISO requests a prospective waiver of section 43.2.4.a.i(b) of its Tariff, which requires a 50% capacity factor for a resource (specifically, a BRSS) which will be relied upon by an LSE to support that LSE's entitlements that can be nominated for LTTRs.[15] MISO states that, subject to the Commission granting the Waiver Request, MISO has agreed to grant Southern relief in the form of 50 MW of BRSS entitlements for each of Southern's two TSAs, totaling 100 MW for both TSAs.[16] MISO notes that the 100 MW of BRSS entitlements would comprise approximately one-fourth of the total 404 MW

[11] *Id.* at 11-12. MISO explains that Stage 1A is the initial stage in the annual ARR allocation process. According to MISO, ARR entitlements based on Baseload RSPs that satisfy simultaneous feasibility can be nominated for LTTRs in Stage 1A. MISO further specifies that, other Non-Baseload RSPs, called Peak Reserved Source Set Generation Resources, can be nominated only in the subsequent Stage 1B. MISO notes that the Tariff also provides a Stage 2 phase in which surplus annual FTR auction revenues are distributed to ARR holders on a *pro rata* basis depending on the difference between each ARR holder's nomination cap and its ARR allocations. According to MISO, any remaining infeasibility of LTTRs is uplifted to all holders of LTTRs.

[12] *Id.* at 14.

[13] *Id.* at 8.

[14] *Id.* at 1.

[15] *Id.* at 1 n.3.

[16] *Id.* at 4, 15.

under Southern's TSAs.[17] MISO notes that the waiver would enable Southern to nominate the 100 MW of BRSS entitlements in Stage 1A in all subsequent Annual ARR Allocations in order to ensure Southern receives LTTRs, provided simultaneous feasibility is satisfied.[18]

7. MISO states that it concluded that relief was warranted in light of the mandate under section 217(b)(4) of the FPA and requirement in Order No. 681 that LSEs be provided with congestion hedges that meet their reasonable needs.[19] MISO states that had Southern's ARR eligibility challenges been considered or foreseen before Entergy's integration, Southern's unique situation likely would have been addressed.[20] However, MISO states that it has been unable to determine why the matter was not brought to its attention prior to Entergy's integration.[21] According to MISO, granting the partial relief is expected to have annual impacts on other existing LTTR holders in the form of a reduction of ARR payments and increase of uplift costs arising from infeasible LTTRs that may result.[22] However, MISO asserts that such impacts are the kind that would have resulted if Southern's unique situation had been accommodated as part of Entergy's integration into MISO.[23] MISO states that affected LTTR holders were notified and

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[17] *Id.* at 8, 15.

[18] *Id.* at 4-5, 7-8, 10, 11, n.27, n.28.

[19] *Id.* at 3-4, n.4 (citing 16 U.S.C. § 824q (2018); *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 116 FERC ¶ 61,077, at PP 2, 323, *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g and clarification*, Order No. 681-B, 126 FERC ¶ 61,254 (2009)).

[20] *Id.* at 4, 14.

[21] *Id.* at 13.

[22] *Id.* at 5, 9.

[23] *Id.* at 9, 14.

given the chance to participate in the ADR process[24] and no intervenors opposed the relief.[25]

8. MISO states that the Waiver Request meets the Commission's criteria for granting a waiver. First, MISO asserts that it acted in good faith because it evaluated the claims brought forth by Southern and granted equitable relief through its ADR process.[26] Second, MISO states that the waiver is limited in scope because it only applies to the 50% capacity factor provision in its Tariff related to BRSS and only covers approximately one-fourth of the total MW under Southern's TSAs.[27] MISO observes that this waiver does not need to be renewed in subsequent years because, once granted, BRSS entitlements do not expire.[28] Further, MISO states that this relief is specific to the unique pre-integration context of Southern and that MISO is unaware of any other similarly situated TSAs.[29] Third, MISO states that waiver would address the concrete problem of Southern's inability to attain sufficient congestion hedges.[30] Finally, MISO asserts that there are no undesirable consequences such as harm to third parties because its proposed relief is consistent with its obligations under the FPA and Order No. 681 to ensure that LSEs have the opportunity to attain long-term transmission service arrangements.[31] MISO acknowledges that granting waiver to allow Southern to receive BRSS entitlements will affect other existing LTTR holders in the form of reduction of ARR payments and increased uplift.[32] However, MISO argues that these Market Participants were notified and given the chance to intervene in the

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[24] *Id.* at 5 n.7. MISO states that the following parties potentially affected by the proposed relief intervened in the ADR process: Calpine Energy Solutions, LLC; Duke Energy Indiana, LLC; Great River Energy; MidAmerican Energy Company (MidAmerican); MidAmerican Energy Services, LLC; Northern Indiana Public Service Company LLC; and Southern Indiana Gas & Electric Co.

[25] *Id.* at 5.

[26] *Id.* at 7.

[27] *Id.* at 7-8.

[28] *Id.*

[29] *Id.* at 8.

[30] *Id.*

[31] *Id.* at 8-9.

[32] *Id.* at 8.

ADR process.[33] MISO adds that the impacts are of the kind that would have appropriately resulted if the supplemental rules related to Entergy's integration had also accommodated the unique situation of Southern.[34]

9. MISO requests a January 18, 2020 effective date for the Waiver Request and Commission action by March 4, 2020, so that MISO can provide the relief to enable Southern to nominate the granted entitlements on March 9-10, 2020 for the upcoming 2020-2021 annual ARR allocation.[35]

III. Notice of Filing and Responsive Pleadings

10. Notice of MISO's filing was published in the *Federal Register*, 85 Fed. Reg. 4318 (Jan. 24, 2020), with interventions and protests due on or before February 7, 2020. Mississippi Public Service Commission and the Mississippi Public Utilities Staff filed a notice of intervention. Timely motions to intervene were filed by: MidAmerican; Entergy Services, Inc.;[36] Southern;[37] Cooperative Energy; DC Energy, LLC; and Ameren Services Company.[38] Southern filed comments.

11. Southern states that it and Alabama Power support MISO's Waiver Request.[39] Southern asserts that the reason its eligibility for LTTRs was not previously considered in connection with development of the supplemental rules is because MISO completed its stakeholder process regarding the supplemental rules before service commenced under the two TSAs, but after those TSAs were executed.[40] Southern explains that the LTTR allocations for its 404 MW under the TSAs have been negligible or non-existent since

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[33] *Id.*

[34] *Id.*

[35] *Id.* at 15.

[36] Entergy Services, Inc. filed this motion on behalf of Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, and Entergy Texas, Inc.

[37] Southern filed this motion on behalf of itself and Alabama Power.

[38] Ameren Services Company filed this motion on behalf of Ameren Illinois Company, Ameren Transmission Company of Illinois, and Union Electric Company.

[39] Southern Comments at 1, 4, 5.

[40] *Id.* at 2.

Entergy joined MISO.[41] According to Southern, MISO's Waiver Request honors MISO's commitment to "work with . . . parties to assess their concerns regarding LTTR entitlement gaps."[42] Southern further asserts that MISO remains bound by the requirements of Order Nos. 681 and 681-A "to meet the reasonable LTTR needs of eligible LSEs."[43] Southern contends that granting the waiver is in the public interest as described in Order No. 681 and its related orders and consistent with Commission policy favoring settlement of disputes for the sake of administrative efficiency, preservation of resources, and promotion of transaction stability and finality.[44]

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

13. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.[45] We find that MISO's Waiver Request satisfies these criteria.

14. First, we find that MISO acted in good faith by investigating and resolving Southern's claims regarding its inability to adequately hedge its congestion and by seeking to comply with the Commission's requirement in Order No. 681 that LSEs be provided with congestions hedges to meet their reasonable needs. Second, we find that the waiver is limited in scope because it is limited to a single provision of the Tariff, Section 43.2.4.a.i(b), regarding the 50% capacity factor requirement for BRSS, and this is a one-time waiver enabling Southern to qualify for 100 MW in BRSS entitlements on a prospective basis. We also find that the

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[41] *Id.* at 3.

[42] *Id.* at 4 (citing MISO Supplemental Rules Order, 142 FERC ¶ 61,236 at P 38).

[43] *Id.* (citing MISO Supplemental Rules Order, 142 FERC ¶ 61,236 at P 38 & n.19; Order No. 681-A, 117 FERC ¶ 61,201 at P 65).

[44] *Id.* at 5.

[45] *See, e.g.*, *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

relief provided through the waiver addresses circumstances unique to Southern with respect to its ability to obtain LTTRs following Entergy's integration into MISO and note MISO's belief that no other similarly situated TSAs exist.[46] Third, we find that the waiver resolves a concrete problem by enabling MISO to provide partial relief to Southern to hedge its congestion risk. Finally, we find that the waiver will not have undesirable consequences. Although MISO represents that the proposed waiver is expected to affect existing LTTR holders in the form of reduced ARR payments and increased uplift costs, the potential impact to existing LTTR holders is limited by the proposed level of BRSS entitlements (100 MW for 404 MW of firm transmission service). Moreover, Southern's dispute was resolved through MISO's ADR process; MISO provided an opportunity for potentially affected LTTR holders to intervene and participate in the ADR process, and no intervenors opposed the relief. Finally, we note that no parties have protested the instant filing.

The Commission orders:

MISO's Waiver Request is hereby granted, effective January 18, 2020, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[46] *See* Transmittal at 8.