145 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket No. ER12-2706-002

ORDER ON REHEARING

(Issued December 19, 2013)

1. On November 27, 2012, the Commission conditionally accepted Midwest Independent Transmission System Operator, Inc.'s (MISO)[1] proposed revisions to its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff), which clarified Load Serving Entities' (LSE) resource adequacy obligations where load switches providers.[2] On December 27, 2012, MISO and the Retail Energy Supply Association (RESA) filed requests for rehearing of the November 27 Order. As discussed further below, we grant MISO's request for rehearing and reject RESA's request for rehearing.

I. September 28 Filing and November 27 Order

2. On September 28, 2012, MISO proposed Tariff revisions to specify the obligations of LSEs in retail-choice jurisdictions to satisfy MISO's resource adequacy requirements.[3]

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

[2] *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,155 (2012) (November 27 Order).

[3] Midwest Independent Transmission System Operator, Inc., Application, Docket No. ER12-2706-000, at 2 (filed Sep. 28, 2012) (September 28 Filing).

MISO explained that its resource adequacy construct was subject to two risks in retail-choice jurisdictions.[4] First, MISO stated that some of the planning reserve margin requirement may not be sufficiently accounted for and modeled at the time of MISO's annual planning resource auction.[5] Second, MISO stated that some load may switch providers during the planning year, which would result in some LSEs procuring too much capacity and others procuring too little capacity.[6]

3. To address these concerns, MISO proposed Tariff revisions that clarify: (1) the total LSE requirements for identifying the planning resources that will be required to meet the planning reserve margin requirement during the planning year; (2) which LSEs will be responsible for acquiring planning resources to meet forecast loads during a planning year; and (3) how MISO will calculate and assign LSE obligations as retail and/or wholesale load switches during the planning year.[7] Specifically, under MISO's proposal, LSEs in jurisdictions that permit retail competition are required to notify MISO of their planning reserve margin requirements based on their shares of the electric distribution company's demand forecast.[8] Further, the LSE that is the provider of last resort for an electric distribution company's service territory would be required to procure the planning reserve margin requirement for any remaining demand (i.e., the electric distribution company's forecast coincident peak demand minus the sum of the LSEs' allocated portions of forecast coincident peak demand in the electric distribution company's service territory).[9]

4. In the November 27 Order, the Commission conditionally accepted MISO's September 28 Filing, subject to compliance, finding that MISO's proposal established detailed procedures governing the assignment of resource adequacy obligations in circumstances where wholesale or retail load switches providers.[10] The Commission further found that MISO's proposal would ensure that LSEs are neither required to

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[4] *Id.* at 3.

[5] *Id.*

[6] *Id.*

[7] November 27 Order, 141 FERC ¶ 61,155 at P 7.

[8] *See id.* P 13 (citing September 28 Filing at 11).

[9] *Id.*

[10] *Id.* P 22.

procure more resources than are necessary nor allowed to procure insufficient resources to satisfy their resource adequacy obligations.[11] However, the Commission conditioned its acceptance of MISO's proposal on, among other things, the requirement that MISO propose additional Tariff provisions to ensure that the provider of last resort remains revenue neutral with respect to the administrative cost of procuring the planning reserve margin requirement for remaining demand.[12]

II. <u>Discussion</u>

A. <u>MISO</u>

1. <u>Rehearing Request</u>

5. MISO argues that the Commission erred in directing MISO to propose Tariff revisions that enable the provider of last resort to recover the administrative cost of procuring resources to satisfy the resource adequacy requirements associated with any unassigned forecast demand.[13] According to MISO, a provider of last resort is required under the Tariff to perform the same administrative actions as any other LSE. The only difference for a provider of last resort is in the amount of load for which it must procure capacity. Thus, an LSE's responsibility as the provider of last resort entails no additional work, risk or cost.[14] MISO further states that no party in this proceeding has claimed that the provider of last resort would incur any administrative costs and, consequently, the November 27 Order creates uncertainty with respect to what type of administrative costs the provider of last resort could potentially recover.[15] MISO also states that stakeholders have agreed in committee meetings that no administrative costs are anticipated.[16]

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[11] *Id.*

[12] *Id.* P 27.

[13] MISO Rehearing Request at 3-5.

[14] *See id.* at 3.

[15] *Id.* at 4.

[16] *Id.* at 5.

2. Commission Determination

6. We will grant rehearing with respect to provider of last resort's recovery of administrative costs. As described by MISO, the provider of last resort incurs no additional administrative costs as a result of its responsibilities under MISO's proposal. No party in this proceeding has suggested that the provider of last resort would incur additional administrative costs in acquiring the requisite capacity. In addition, MISO represents that its stakeholders have agreed during committee meetings that no administrative costs are anticipated.[17]

B. RESA

1. Rehearing Request

7. RESA argues that the November 27 Order does not address the concerns previously raised by RESA with respect to the possibility that the sum of the LSEs' load forecasts might exceed the electric distribution company's load forecast.[18] Specifically, RESA contends that the November 27 Order does not acknowledge that such a gap can exist at all.[19] RESA states that MISO's proposal would not work "if a [provider of last resort] is responsible for procuring the planning reserve margin requirement for any remaining demand if the [provider of last resort] has elected to opt out of the auction by providing a Fixed Resource Adequacy Plan (FRAP) pursuant to [s]ection 69A.9 of the Tariff."[20] RESA states that if the provider of last resort utilizes resources in its FRAP to resolve the difference between the sum of the LSEs' loads and the electric distribution company's load forecast, then those resources would not be offered into MISO's annual auction.[21] Noting that MISO could possibly resolve this ambiguity by assigning the

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[17] *Id.*

[18] RESA Rehearing Request at 8-9.

[19] *Id.*

[20] *Id.* at 8. A FRAP is "a plan submitted by an LSE through the [Module E capacity tracking tool] to the [t]ransmission [p]rovider that is approved by the [t]ransmission [p]rovider which demonstrates that the LSE has sufficient [capacity] to meet all or part of its [planning reserve margin] for one or more [l]ocal [r]esource [z]ones." Midcontinent Independent System Operator, Inc., FERC Electric Tariff, Module A, 1.234a, Fixed Resource Adequacy Plan (FRAP), 0.0.0.

[21] RESA Rehearing Request at 8-9.

provider of last resort's responsibilities to a different LSE or group of LSEs, RESA urges the Commission to require MISO to address this contingency in a compliance filing.[22]

8. RESA also argues that the Commission erred in requiring MISO to allow the provider of last resort to recover the administrative cost of procuring resources to satisfy the resource adequacy requirements associated with any unassigned forecast demand.[23] Further, RESA suggests that requiring MISO to permit the provider of last resort to recover such administrative costs is inconsistent with section 206 of the Federal Power Act.[24] However, to the extent that the provider of last resort is permitted to recover such administrative costs, those costs should be limited to "direct costs" and be approved by the Commission.[25]

2. Commission Determination

9. We will reject RESA's rehearing request, as it is procedurally deficient.

10. RESA's rehearing request fails to include a separate statement of issues, as required by Order No. 663.[26] Among other things, Order No. 663 amended Rule 713 of the Commission's Rules of Practice and Procedure[27] to require that all rehearing requests to include a separate section entitled "Statement of Issues," listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.[28] Under Rule 713, any issue not so listed will be deemed to be waived.[29]

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[22] *Id.* at 9.

[23] *Id.* at 6-7.

[24] *Id.* at 8 (citing 16 U.S.C. § 824e (2006)).

[25] *Id.* at 9.

[26] *See Revision of Rules of Practice & Procedure Regarding Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (2005), *order on reh'g,* Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 (2006).

[27] 18 C.F.R. § 385.713 (2013).

[28] As explained in Order No. 663, the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated statement of issues ensures that

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11. RESA's rehearing request also improperly presents new evidence in support of arguments raised in its protest. Under Rule 713(c) of the Commission's Rules of Practice and Procedure, new matters may be raised on rehearing only if they are "based on matters not available for consideration by the Commission at the time of the final decision or order."[30] In the November 27 Order, the Commission considered and addressed the concerns RESA raised in its protest regarding the possibility that the sum of LSEs' demand forecasts may exceed the electric distribution company's demand forecast. In its rehearing request, RESA further develops these arguments, and offers no explanation of why the additional evidence presented in its rehearing request, including the affidavit of Mr. Zakem,[31] was not included in its protest. Therefore, we decline to consider this newly presented evidence.

12. Notwithstanding the procedural impropriety of RESA's rehearing request, as the Commission determined in the November 27 Order, RESA's concerns are unwarranted. In the November 27 Order, the Commission explained that the Tariff holds the electric distribution company responsible for load forecasts in retail-choice areas.[32] Therefore, under MISO's proposal, the provider of last resort will only procure capacity for any remaining demand (i.e., any difference between the electric distribution company's demand forecast and the sum of the relevant LSEs' demand forecasts).[33] To the extent that the LSEs' load forecasts indicate that there is no remaining demand, the Tariff does

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issues are properly raised before the Commission and avoids the waste of time and resources involved in litigating appeals regarding which the court of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission. *See* Order No. 663, FERC Stats. & Regs. ¶ 31,193 at PP 3-4.

[29] *See* 18 C.F.R. § 385.713; *Duke Power Co., LLC*, 116 FERC ¶ 61,171 (2006).

[30] 18 C.F.R. § 385.713(c) (2013); *see also Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. By Pub. Utils.*, 143 FERC ¶ 61,126, at P 7 & n.24 (2013) (citing *Keyspan-Ravenswood LLC v. N.Y. Indep. Sys. Operator, Inc.*, 119 FERC ¶ 61,319, at P 10 & n.12 (2007)).

[31] *Compare* RESA Rehearing Request at 8-9, *with* Retail Electric Supply Association, Protest, Docket No. ER12-2706-000, at 13 (filed Oct. 19, 2012).

[32] November 27 Order, 141 FERC ¶ 61,155 at P 26.

[33] *See* Midcontinent Independent System Operator, Inc., FERC Electric Tariff, Module E-1, 69A.1.1.1, Accounting for Total Demand Forecasts Given Wholesale and Retail Load Switching, 0.0.0.

not require the provider of last resort to procure additional capacity. Further, no provision of the Tariff suggests that any LSE's resource adequacy requirements can be reduced as a result of any other LSE's demand forecast. As to RESA's request that we reconsider the November 27 Order's requirement that MISO enable the provider of last resort to recover administrative costs, we note that we grant MISO's rehearing request, as discussed above.

The Commission orders:

(A) MISO's request for rehearing of the November 27 Order is hereby granted, as discussed in the body of this order.

(B) RESA's request for rehearing of the November 27 Order is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.