

145 FERC ¶ 61,226
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. ER12-2706-001

ORDER ON COMPLIANCE FILING

(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 In compliance with the November 27 Order, MISO proposed Tariff revisions (Compliance Filing). As discussed further below, we accept in part and dismiss in part the Compliance Filing.

I. September 28 Filing and November 27 Order

2. On September 28, 2012, MISO filed proposed Tariff revisions to specify the obligations of LSEs in retail-choice jurisdictions to satisfy MISO's resource adequacy requirements.³ MISO explained that its resource adequacy construct was subject to

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).

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 procure more resources than are necessary nor allowed to procure insufficient resources

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.

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. Notice and Responsive Pleadings

5. Notice of the Compliance Filing was published in the *Federal Register*, 78 Fed. Reg. 2388 (2013), with interventions, comments, and protests due on or before January 17, 2013. The Retail Energy Supply Association (RESA) filed a protest.

III. Discussion

A. Recovery of Administrative Costs

1. November 27 Order

6. In the November 27 Order, the Commission conditioned its acceptance of MISO's proposal on 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.¹³

2. Compliance Filing

7. In compliance with the November 27 Order, MISO proposes to revise section 69A.1.1.1.a of the Tariff¹⁴ to specify that a provider of last resort may submit to MISO documentation of any administrative costs related to its procurement of the planning reserve margin requirement for remaining demand.¹⁵ MISO additionally proposes to review the reasonableness of the costs submitted and to allocate costs that are

¹¹ *Id.*

¹² *Id.* P 27.

¹³ *Id.*

¹⁴ 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.](#)

¹⁵ Compliance Filing at 2.

“determined to be reasonably related” to the provider of last resort’s responsibility for procuring additional capacity.¹⁶

3. Protest

8. RESA argues that MISO’s proposal is unjust and unreasonable because it provides MISO with wide discretion as to the Commission-jurisdictional costs that would be recovered by the provider of last resort.¹⁷ RESA contends that MISO’s proposed Tariff provisions could be used by the provider of last resort to collect unwarranted and unjustified costs. RESA additionally argues that such costs should be verified and disclosed to all market participants. Further, RESA asserts that LSEs must have the opportunity to review and protest or comment on the costs that the provider of last resort would propose to recover.¹⁸ RESA also argues that such costs should be filed for approval with the Commission under section 205 of the Federal Power Act.¹⁹

9. RESA also argues that MISO’s proposal should be revised to reflect the fact that the provider of last resort is not necessarily the electric distribution company or the local utility.²⁰ According to RESA, any entity could conceivably act as the provider of last resort under the Tariff and the relevant state laws and procedures.²¹

4. Commission Determination

10. We will dismiss that portion of the Compliance Filing intended to facilitate the provider of last resort’s recovery of administrative costs. In an order issued concurrently granting MISO’s request for rehearing of the November 27 Order, the Commission finds that the provider of last resort will incur no additional administrative costs as a result of its duty to procure additional resources to satisfy the resource adequacy requirements associated with any unassigned forecast demand.²² Therefore, that portion of the

¹⁶ *Id.*

¹⁷ RESA Protest at 6-7.

¹⁸ *Id.* at 8.

¹⁹ *Id.* at 9 (citing 16 U.S.C. § 824d (2006)).

²⁰ *Id.* at 7.

²¹ *Id.*

²² *Midwest Indep. Transmission Sys. Operator, Inc.*, 145 FERC ¶ 61,225 (2013).

Compliance Filing intended to enable the provider of last resort's recovery of administrative costs is moot.²³

B. Other Compliance Directives

1. November 27 Order

11. The November 27 Order accepted the September 28 Filing subject to several additional compliance requirements. First, the Commission noted that MISO's proposal did not require MISO to publish transmission loss information by the first day in December, despite the fact that MISO's transmittal letter stated that the proposed Tariff Revisions would establish such a requirement.²⁴ Accordingly, the Commission directed MISO to propose the Tariff revision described in its transmittal letter.²⁵

12. The Commission further found that MISO's proposed formula for calculating the planning reserve margin requirement failed to define each element of the formula including the adjustment factor. The Commission therefore directed MISO to define the various components of its proposed formula and to confirm that the adjustment factor utilized in the formula represents the applicable planning reserve margin.²⁶

13. The Commission also found that the September 28 Filing did not specify when or if LSEs in retail-choice jurisdictions must report their plan for meeting their capacity obligation to MISO. Thus, the Commission directed MISO to propose Tariff revisions to specify the procedures by which LSEs in retail choice jurisdictions are to report their resource plans to MISO.²⁷

²³ RESA's contention that MISO should revise its proposal to make clear that the provider of last resort is not necessarily required to be the electric distribution company or local utility is beyond the scope of this proceeding, which focuses on whether the Compliance Filing satisfies the requirements set forth in the November 27 Order.

²⁴ November 27 Order, 141 FERC ¶ 61,155 at P 24 (citing September 28 Filing at 5).

²⁵ *Id.*

²⁶ *Id.* P 40.

²⁷ *Id.* P 45.

14. The Commission additionally observed that MISO did not specify a process for LSEs to challenge an electric distribution company's demand forecast. As a result, the Commission directed MISO to propose Tariff revisions to establish such procedures.²⁸

2. Compliance Filing

15. MISO proposes to revise section 69A.1.1(c) of the Tariff²⁹ to require publication of transmission loss information by the first day in December, rather than the first day of January.³⁰

16. Further, MISO proposes revisions to section 69A.1.2.1(b) of the Tariff³¹ that set forth the elements of the formula for calculating the planning reserve margin requirement.³² In addition to simplifying the formula, MISO specifies that the adjustment factor is defined as the planning reserve margin requirement for any electric distribution company divided by the sum of all of the prior summer retail customer coincident peak values for each of the electric distribution company's customers.

17. In addition, MISO clarifies the four methods that an LSE may use to meet its resource adequacy requirements, all of which must be submitted to MISO through the Module E Capacity Tracking Tool.³³ According to MISO, LSEs may meet the planning reserve margin requirement by submitting a fixed resource adequacy plan, purchasing zonal resource credits through the planning resource auction, self-scheduling capacity resources, or paying the capacity deficiency charge.

18. MISO further proposes to allow LSEs to challenge an electric distribution company's demand forecast under the dispute resolution procedures pursuant to section 12 of the Tariff.³⁴ Alternatively, LSEs may refer their dispute to the Commission

²⁸ *Id.* P 46.

²⁹ Midcontinent Independent System Operator, Inc., FERC Electric Tariff, Module E-1, [69A.1.1, Forecasted Demand Identification, 2.0.0](#).

³⁰ *See* Compliance Filing at 2.

³¹ Midcontinent Independent System Operator, Inc., FERC Electric Tariff, Module E-1, [69A.1.2.1, Preferred and Daily Peak Load Default Methods, 3.0.0](#).

³² Compliance Filing at 4-5.

³³ *Id.* at 5.

³⁴ *Id.*

for resolution.³⁵ MISO argues that providing LSEs with more robust opportunities to challenge an electric distribution company's demand forecast may result in endless disputes regarding demand forecasts and the resulting reserve margin requirements.³⁶ MISO also notes that LSEs may raise questions regarding an electric distribution company's demand forecast with the electric distribution company and MISO.³⁷

3. Commission Determination

19. We accept the proposed Tariff revisions as compliant with the November 27 Order.

The Commission orders:

The Compliance Filing is hereby dismissed in part and accepted in part, effective November 28, 2013, as discussed in the body of this order

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁵ *Id.*

³⁶ *Id.* at 5-6.

³⁷ *Id.*