

153 FERC ¶ 61,297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER15-548-001

ORDER DENYING REQUEST FOR CLARIFICATION AND DENYING
REHEARING

(Issued December 17, 2015)

1. On June 17, 2015, Midcontinent Independent System Operator, Inc. (MISO) filed a request for clarification or, in the alternative, for rehearing of the Commission's May 18, 2015 Order.¹ In this order, we deny MISO's request for clarification and deny its request for rehearing, as discussed below.

I. Background

A. May 18 Order

2. On December 1, 2014, MISO filed a request for waivers in Docket No. ER15-548-000 (Waiver Filing) in response to the compliance requirements of Order No. 676-H.² Order No. 676-H revised the Commission's regulations to incorporate by reference, with certain enumerated exceptions, the latest version (Version 003) of the Standards for Business Practices and Communication Protocols for Public Utilities (Business Practice Standards) adopted by the Wholesale Electric Quadrant (WEQ) of the North American

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,144 (2015) (May 18 Order). The May 18 Order was issued in the instant docket, Docket No. ER15-548, as well as in MISO's Order No. 676-H compliance proceeding, Docket No. ER15-530.

² *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-H, FERC Stats. & Regs. ¶ 31,359, *as modified*, *Errata Notice*, 149 FERC ¶ 61,014 (2014), *order on reh'g*, 151 FERC ¶ 61,046 (2015) (676-H Rehearing Order).

Energy Standards Board (NAESB) as mandatory enforceable requirements. In the May 18 Order, the Commission granted certain waivers and dismissed in part and denied in part a waiver request, and directed a compliance filing.³

3. In its Waiver Filing, MISO requested temporary waiver until September 1, 2015, of the requirement to ensure that a firm redirect customer does not lose its rights on the original path until the conditional firm deadline has passed. MISO stated that in Order No. 676-H, the Commission resolved an outstanding uncertainty regarding the point at which a firm customer requesting redirect services loses its right to the original path, in light of the conditional reservation deadlines in section 13.2 of the *pro forma* tariff.⁴ MISO stated that, prior to the issuance of Order No. 676-H, it understood NAESB standard WEQ-001-9.5 to mean that such a customer loses its rights on the original path when it confirms the redirect request, even if that confirmation occurs before the expiration of the conditional reservation deadlines in the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). MISO stated that in Order No. 676-H, the Commission reaffirmed recent orders⁵ rejecting this argument and affirmed the policy set out in 2002 in *Dynegy* that a firm customer requesting redirect service should not lose its rights on the original path until the conditional firm deadline has passed.⁶

4. MISO argued that good cause existed to grant temporary waiver of the NAESB WEQ Version 003 standards and of the *Dynegy* policy's requirement to ensure that a firm customer seeking redirect service does not lose its rights over the original path until the conditional firm deadline has passed, because MISO was dependent upon its OASIS contractor, Open Access Technology International, Inc. (OATI), to ensure that the MISO OASIS software satisfies these standards. MISO stated that it was unable to

³ On July 17, 2015, in Docket No. ER15-530-001, MISO submitted a compliance filing in response to the May 18 Order. By unpublished letter order issued on November 24, 2015, the Commission accepted the compliance filing. *See Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER15-530-001 (Nov. 24, 2015) (delegated letter order).

⁴ MISO Waiver Filing at 3.

⁵ *Entergy Servs., Inc.*, 143 FERC ¶ 61,143, at PP 30-32 (2013) (2013 Entergy Rehearing Order), *order on reh'g*, 148 FERC ¶ 61,209, at P 12 (2014) (2014 Entergy Rehearing Order) (citing *Dynegy Power Marketing, Inc.*, 99 FERC ¶ 61,054 (2002) (*Dynegy*)).

⁶ May 18 Order, 151 FERC ¶ 61,144 at P 10.

comply with the requirement to satisfy these standards until after OATI fully implements the software necessary to permit compliance by making changes to the MISO OASIS software.

5. In support of its request for more time to implement the *Dynegy* policy, MISO stated that the changes that OATI needed to implement were complicated in nature and will have compounding effects on several secondary systems. Furthermore, MISO stated that the nature of the effects on the primary and secondary systems from the changes required an extensive testing period. MISO stated that it expected to spend a substantial period of time after receipt of the software testing it and working with OATI to resolve bugs and to ensure proper functionality. MISO stated that the May 2015 implementation date suggested by OATI in OATI's comments in the Order No. 676-H proceeding did not account for potential delays in the software. For these reasons, MISO stated that it needed approximately eight months, until September 2015, to properly implement the new functionality.

6. MISO stated that its waiver request satisfied the Commission's criteria to permit a waiver in that: (1) there was a concrete problem that needed to be remedied; (2) the waiver would not have undesirable consequences; (3) the waiver was of a limited scope; and (4) the entity seeking the waiver acted in good faith.⁷

7. Specifically, MISO argued that the concrete problem addressed by the waiver is MISO's inability to comply with the applicable NAESB WEQ Version 003 standards and the *Dynegy* policy by the February 2, 2015 deadline established in the Order No. 676-H proceeding. MISO stated that it required the waiver to give it additional time to fully comply and to ensure there are no errors in the implementation.⁸

8. With regard to causing undesirable consequences, MISO argued that it already had non-OASIS processes in place to ensure the implementation of the underlying Tariff requirements that will be performed, in the future, by the new OASIS functionality under the NAESB WEQ Version 003 standards. Conversely, MISO anticipated potential undesirable consequences if it were not granted waiver, because it would have to implement the functionality without a full course of testing to ensure that the implementation had been done correctly. Due to the complexity of this functionality, MISO asserted that it needed a temporary waiver of eight months in order to avoid such issues, while ensuring that existing non-OASIS processes that MISO had in place continued to operate during the interim period.⁹

⁷ *Id.* P 13.

⁸ *Id.* P 14.

⁹ *Id.* P 15.

9. With regard to the waiver having a limited scope, MISO stated that it was applying for a one-time waiver, which applied for a limited duration. MISO submitted that the waiver was only needed for implementation of the applicable NAESB WEQ Version 003 standards and the *Dynegy* policy and was therefore of limited scope.¹⁰

10. With regard to acting in good faith in seeking waiver, MISO stated that MISO had a strong culture of compliance and had sought to ensure that MISO will be in full compliance with the NAESB WEQ Version 003 standards.¹¹ MISO stated that it had worked closely with OATI on the software and had urged OATI to expedite the development and implementation. MISO stated that the need for a waiver arose through no fault of its own and that it sought waiver as a last resort.

11. In the May 18 Order, the Commission granted MISO's request for temporary waiver of certain NAESB WEQ Version 003 standards until September 1, 2015, finding that MISO had shown good cause for the requested waiver, because:

it is a one-time waiver until September 1, 2015; MISO is unable to comply with the listed NAESB WEQ Version 003 standards until OATI updates MISO's OASIS software; and MISO has non-OASIS processes in place to ensure the implementation of the underlying Tariff requirements that will be performed, in the future, by the new OASIS functionality under the NAESB WEQ Version 003 standards.[¹²]

12. However, the Commission dismissed MISO's request for temporary waiver, until September 1, 2015, of the *Dynegy* policy as unnecessary to comply with the requirements of Order No. 676-H. Citing the 676-H Rehearing Order, the Commission explained as follows:

[I]n Order No. 676-H, the Commission stated that "NAESB standards must conform to the Commission's *Dynegy* policy before the Commission would incorporate them by reference," and therefore, the Commission "requested that NAESB revise Standards WEQ-001-9.5, WEQ-001-10.5, and any other standards affected by those standards, to conform to the Commission's *Dynegy* policy."¹³ Accordingly, the Commission did not incorporate by

¹⁰ *Id.* P 16.

¹¹ *Id.*

¹² *Id.* P 22.

¹³ *Id.* P 24 (citing 676-H Rehearing Order, 151 FERC ¶ 61,046 at P 6).

reference Version 003 Business Practice Standards WEQ-001-9.5 and WEQ-001-10.5, and MISO's request for waiver is unnecessary. To the extent that MISO's waiver request could be viewed as a request for waiver of the policy set out in *Dynegy*, we deny such request.^[14] As the Commission stated in Order No. 676-H, the Commission's policy regarding when a redirect customer loses its rights to its original transmission path, as explained in *Dynegy* was "reinforced in the Commission's recent order in *Entergy Services, Inc.*," and still reflects the Commission's policy.^[15] MISO has failed to provide sufficient grounds to demonstrate that good cause exists to grant waiver of this policy.^[16]

B. MISO's Request for Clarification or, in the Alternative, Rehearing

1. Request for Clarification

13. MISO states that it is committed to full compliance with both the NAESB WEQ Version 003 standards and "the newly reaffirmed *Dynegy* rule."¹⁷ MISO states that it relies on its OASIS in order to ensure compliance with the applicable NAESB Business Standards. It states that as the NAESB Business Standards have evolved, so has MISO's OASIS functionality.

14. MISO states that in the May 18 Order, the Commission granted a limited waiver to MISO only for certain NAESB WEQ standards. MISO argues that the May 18 Order addresses MISO's request for waiver of the *Dynegy* policy in a manner that allows for varying interpretations. With respect to the Commission's determination that "[in Order No. 676-H,] the Commission did not incorporate by reference Version 003 Business Practice Standard[] WEQ-001-9.5 . . . and MISO's request for waiver is unnecessary[,]"¹⁸ MISO states that it did not seek a waiver from Version 003 WEQ-001-9.5. Rather, MISO

¹⁴ In so ruling, the Commission observed that "MISO's filing appears to indicate that it has a non-OASIS workaround that can manage implementation of the *Dynegy* policy until September 1, 2015 when it says OASIS functionality will be fully updated. See MISO Waiver Filing at 7-9." May 18 Order, 151 FERC ¶ 61,144 at P 24 & n.37.

¹⁵ *Id.* (citing Order No. 676-H, FERC Stats. & Regs. ¶ 31,359 at P 46 (citing *Entergy Services, Inc.*, 137 FERC ¶ 61,199 (2011), 2013 Entergy Rehearing Order, 143 FERC ¶ 61,143; 2014 Entergy Rehearing Order, 148 FERC ¶ 61,209)).

¹⁶ *Id.*

¹⁷ MISO Request for Clarification or Rehearing at 5.

¹⁸ May 18 Order, 151 FERC ¶ 61,144 at P 23.

states that it had contended that Order No. 676-H effectively suspended Version 003 WEQ-001-9.5 by reaffirming the *Dynegy* policy. MISO states that it more specifically sought a waiver from the requirement announced in Order No. 676-H that a customer requesting firm redirect service does not lose its rights on the original path until the conditional firm deadline of the redirect has passed. MISO states that as it interprets the May 18 Order, the Commission's discussion of the NAESB standards and the Commission's conclusion that "MISO's request for waiver is unnecessary," appears to confirm that there will be no enforcement actions related to that requirement until it is adopted into the revised NAESB WEQ standards and accepted by the Commission. However, MISO notes that in the same paragraph, the Commission stated that "[t]o the extent that MISO's waiver request could be viewed as a request for waiver of the policy set out in *Dynegy*, we deny such request."¹⁹ MISO argues that this statement appears to contradict the Commission's statement that MISO's request for waiver is unnecessary and instead indicates that compliance is expected before the revised NAESB WEQ standards are accepted by the Commission.

15. MISO submits information which, it states, may assist the Commission in clarifying its intent with regard to MISO and the *Dynegy* policy. MISO states that its existing OASIS software, which it acquired through OATI, is designed to process redirect requests in the manner specified by NAESB Standard WEQ-001-9.5. MISO states that it has no manual workarounds for processing of requests for redirect service in the manner required under the *Dynegy* policy, and therefore, until OATI updates its software to reflect the *Dynegy* policy, MISO will not be able to process redirect requests in the required manner.²⁰

16. MISO adds that it rarely receives competing requests for redirect requests during the conditional firm period; as a result, MISO asserts that it is highly unlikely that a customer requesting firm redirect service on MISO's system will lose access to firm transmission simply because MISO's OASIS software is unable to comply fully with the *Dynegy* policy.²¹ MISO states that the May 18 Order appeared to recognize that MISO cannot work around the limits of its OASIS software in order to ensure compliance with the *Dynegy* policy. MISO further states that the *Dynegy* policy presents new compliance obligations for MISO that will take some time for OATI to properly integrate into the OASIS software.²² Because it has neither an OASIS process nor a non-OASIS process to

¹⁹ MISO Request for Clarification or Rehearing at 6 (citing May 18 Order, 151 FERC ¶ 61,144 at P 23).

²⁰ *Id.* at 6.

²¹ *Id.*

²² *Id.* at 6-7.

achieve compliance in the meantime, MISO requests that the Commission clarify that MISO will not be subject to enforcement actions based on non-compliance with the *Dynegy* policy until those necessary updates are completed and properly tested.

2. Alternative Request for Rehearing

17. If the Commission does not grant its request for clarification, MISO requests rehearing. MISO argues that the *Dynegy* policy regarding the point at which a redirect customer loses rights to its original path was unclear until the issuance of Order No. 676-H. While MISO is committed to fully complying with the *Dynegy* policy, it is not able to do so until OATI completes the necessary upgrades to the MISO OASIS software. MISO contends that while the Commission granted temporary waivers for certain NAESB standards that require upgrades to the MISO OASIS software, “it did not grant a similar waiver for the newly-announced *Dynegy* rule, even though this requirement requires similarly time-sensitive upgrades.”²³

18. MISO argues that by denying MISO’s request for a temporary waiver, and subjecting MISO to potential enforcement actions before OATI is able to revise the MISO OASIS software to comply with the *Dynegy* policy, the Commission is improperly subjecting MISO to potential enforcement actions without fair notice.²⁴ MISO further argues that it was arbitrary and capricious for the Commission to deny MISO’s requested waiver in the face of a clear demonstration that MISO cannot comply with the *Dynegy* policy until OATI revises the MISO OASIS software.²⁵

II. Discussion

19. We deny MISO’s request that we clarify that MISO will not be subject to enforcement actions based on non-compliance with the *Dynegy* policy until the MISO OASIS software updates are completed and tested, through September 15, 2015. The *Dynegy* policy is applicable to MISO for the reasons stated in the May 18 Order, and MISO has not persuaded us that the Commission was incorrect in not permitting MISO a temporary waiver of that policy. In so finding, we disagree with MISO that there is any

²³ *Id.* at 7.

²⁴ *Id.* at 8 (citing *Kourouma v. FERC*, 723 F.3d 274, 279 (D.C. Cir. 2013) (citations omitted) (Agencies are required “to provide fair notice of the actions they consider unlawful” to ensure that “a regulated party acting in good faith will be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.”)).

²⁵ *Id.*

inconsistency between the Commission finding in the May 18 Order that a waiver of any NAESB standards relating to the *Dynegy* policy is unnecessary, while at the same time denying a waiver of the *Dynegy* policy itself. As discussed above, the May 18 Order reiterates that no NAESB standards to implement the *Dynegy* policy were incorporated into the Commission's regulations in Order No. 676-H and therefore any waiver of standards not so incorporated is unnecessary. However, as discussed in more detail below in our denial of MISO's request for rehearing, the requirement to comply with the *Dynegy* policy pre-dates Order No. 676-H. Thus the *Dynegy* policy must be complied with regardless of whether the Commission has incorporated into its regulations any NAESB standards intended to address that requirement. In any event, we note that MISO stated that it anticipated that its OASIS functionality would be fully updated by September 1, 2015.

20. We deny MISO's alternative request for rehearing. We disagree with MISO's argument that the Commission's policy regarding the point at which a redirect customer loses rights to its original path was unclear until the issuance of Order No. 676-H. In its request, MISO refers to the reaffirmation of the *Dynegy* policy in Order No. 676-H as a newly-announced rule, and that the *Dynegy* policy is a new compliance requirement.²⁶ Those references are inaccurate. The *Dynegy* policy was announced in 2002 and affirmed in the Entergy proceeding,²⁷ and as such, MISO cannot validly argue that the *Dynegy* policy was newly-announced in Order No. 676-H. We note that MISO requested rehearing of the Commission's affirmation of the *Dynegy* policy in the Entergy proceeding, and parties must comply with Commission orders pending rehearing.²⁸ For these same reasons, we disagree with MISO's claim that it did not receive fair notice that

²⁶ *E.g.*, MISO Request for Clarification or Rehearing at 1 ("MISO seeks clarification regarding its temporary waiver request for the rule announced in Order No. 676-H, that a customer requesting redirect service does not lose its rights to the original path until after the conditional deadline of the redirect has passed. . . . MISO has neither an OASIS nor a non-OASIS workaround to ensure that it can comply with the new redirect rule affirmed in Order No. 676-H.").

²⁷ 2013 Entergy Rehearing Order, 143 FERC ¶ 61,143 at PP 30-32 (discussing *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216, at P 55, *reh'g denied*, Order No. 676-A, 116 FERC ¶ 61,255 (2006)); 2014 Entergy Rehearing Order, 148 FERC ¶ 61,209 at P 12.

²⁸ *See* 18 C.F.R. § 385.713(e) (2015) (unless otherwise ordered by the Commission, the filing of a request for rehearing does not stay the Commission decision or order). In any event, in the Entergy proceeding, the Commission denied MISO's motion to intervene out-of-time and, in turn, dismissed its request for rehearing. *See* 2014 Entergy Rehearing Order, 148 FERC ¶ 61,209 at PP 10-11.

it is subject to potential enforcement actions concerning the *Dynegy* policy. Last, MISO's inability to timely comply with a Commission policy does not render the Commission's refusal to waive that policy arbitrary and capricious, as argued by MISO.

The Commission orders:

(A) MISO's request for clarification of the May 18 Order is hereby denied, as discussed in the body of this order.

(B) MISO's alternative request for rehearing of the May 18 Order is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.