

165 FERC ¶ 61,065
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Midcontinent Independent System Operator, Inc.

Docket No. ER18-1648-001

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO CONDITION

(Issued October 31, 2018)

1. On May 16, 2018, as amended on August 29, 2018, Midcontinent Independent System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed tariff revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to establish categorical time limits for the initiation of market and transmission settlement disputes and alternative dispute resolution (ADR), and any associated adjustments and corrections to settlement statements (Time Bar Revisions). In this order, we accept the Time Bar Revisions to become effective November 1, 2018, as requested, subject to condition, and direct MISO to submit a compliance filing within 30 days of the issuance of this order, as discussed below.

I. Background

2. MISO states that some regional transmission organizations have effective tariff provisions that expressly and clearly bar settlement disputes that are not submitted within specified time periods.² Specifically, MISO notes that PJM Interconnection, L.L.C. and Southwest Power Pool, Inc. have settlement time bars of two years and New York Independent System Operator, Inc. has a time bar of five months.³

¹ 16 U.S.C. § 824d (2012).

² MISO May 16, 2018 Transmittal Letter at 1 (Transmittal).

³ MISO notes that those effective tariff provisions establishing time bars for other RTOs were accepted by delegated letter order. *Id.* at 2, nn. 7-9.

3. MISO asserts that its Tariff does not currently include provisions that expressly and clearly bar settlement disputes that are not submitted within specified time periods. MISO states that while section 12 of its Tariff mentions a 70-day period for submitting market settlement disputes and a 90-day period for submitting transmission settlement disputes, these sections do not categorically limit the time for correcting errors that date back multiple years. MISO states that, as a result, it has had to address several such errors, some of which date almost as far back as the market start.⁴ MISO also asserts that its Tariff does not expressly specify time limits for initiating informal or formal ADR disputes under Attachment HH of the Tariff.

II. Filing

4. Through the Time Bar Revisions, MISO proposes to add a new section 12A (Limitations on Claims and Adjustments) to the Tariff and to revise sections 12 and 41.1 of the Tariff, as well as Attachment HH, of the Tariff. Regarding section 12A, MISO proposes to establish a 120-calendar day time limit for initiating transmission settlements or market settlements disputes in sections 12A(a) and 12A(b), respectively. MISO states that, for transmission settlements, the 120 days are to be counted from the date of the first transmission settlement statement, invoice, or bill issued for the relevant event or transaction.⁵ For market settlements, the 120 days are to be counted from the operating day. MISO also states that new sections 12A(c) and 12A(d) propose a “two-year time limit for the resettlement of settlement statements for any MISO system or software error that occurred after the effective date of section 12A and that may be discovered in the course of MISO’s handling of a timely settlement dispute.”⁶ MISO states that this two-year limit also applies to errors that MISO unilaterally discovers without a related dispute submission by a market participant. MISO states that it has limited this two-year resettlement period to system or software errors because these may not be easily discoverable.⁷ MISO states that, in contrast to system or software errors, other kinds of errors are readily discoverable from settlement statements as transmission customers and market participants have all necessary data to identify such errors.⁸ MISO states that it

⁴ *Id.* at 4.

⁵ *Id.* at 5.

⁶ *Id.* at 6.

⁷ MISO states that system errors are “those that are not automated, and instead occur through manual acts incorporated into operational processes” and that software errors “are those automated through computer software.” *Id.*

⁸ *Id.*

has also deleted an ambiguous sentence from section 41.1 that suggested that MISO had a one-year settlement period because the new section 12A now addresses the settlement period.⁹

5. MISO also proposes a new section I.B (Period for Submitting ADR Requests) to Attachment HH (Dispute Resolution Procedures) to specify limits for initiating informal and formal ADR disputes. In particular, new section I.B.1 states that a claim involving market or transmission settlement must have been previously submitted as a timely dispute pursuant to new section 12A before the claim can be eligible to be subsequently asserted in an informal or formal ADR dispute. MISO states that new section I.B.2 of Attachment HH specifies a 90-calendar day time limit for initiating an informal ADR dispute, counted from the day the timely market or transmission settlement dispute was “resolved or determined” by MISO.¹⁰ MISO also states that section I.B.3 of Attachment HH establishes a 90-calendar day time limit for initiating a formal ADR dispute, counted from the date a timely informal ADR dispute was “resolved or determined” by MISO.¹¹

6. Last, MISO states that its Time Bar Revisions will improve market certainty, promptness, and availability of information.¹²

III. Notice of Filing and Responsive Pleadings.

7. Notice of the May 16, 2018 filing was published in the *Federal Register*, 83 Fed. Reg. 23,913, with interventions and protests due on or before June 6, 2018. Timely motions to intervene were submitted by NRG Power Marketing LLC and GenOn Energy Management, LLC, Cooperative Energy, Ameren Services Company, Consumers Energy Company, American Municipal Power, Inc., Wisconsin Electric Power Company and Wisconsin Public Service Corporation, and MISO Transmission Owners.¹³ DC Energy,

⁹ In proposed section 12A(f), MISO also establishes a transition period to allow timely claims or disputes raised in section 12A for a service, market activity, charge or credit that occurred before section 12A’s effective date to be adjusted up to one-year prior to the effective date of 12A. MISO Tariff § 12A(f).

¹⁰ Transmittal at 7.

¹¹ *Id.*

¹² *Id.* at 4. MISO originally requested an August 1, 2018 effective date, but in its response to the deficiency letter issued in this proceeding (discussed below), MISO requests a November 1, 2018 effective date.

¹³ For this proceeding, the MISO Transmission Owners are: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company and Ameren

LLC (DC Energy) and MidAmerican Energy Company (MidAmerican) filed timely motions to intervene and comments. On June 22, 2018, MISO filed an answer to DC Energy's and MidAmerican's comments (MISO Answer).

8. On July 30, 2018, Commission staff issued a deficiency letter (Deficiency Letter) requesting additional information regarding MISO's filing. MISO submitted its response to the Deficiency Letter (Deficiency Response) on August 29, 2018. Notice of the Deficiency Response was published in the *Federal Register*, 83 Fed. Reg. 45,439 with interventions and protests due on or before September 20, 2018. On September 20, 2018, MidAmerican filed comments to the Deficiency Response (MidAmerican Second Comments). On September 27, 2018, MISO filed an answer to MidAmerican's September 20, 2018 comments (MISO Second Answer).

A. DC Energy's and MidAmerican's Comments

9. DC Energy states that it does not object to MISO's proposed amendments but is concerned that MISO's current settlement dispute and ADR provisions do not require MISO to act promptly during various procedural steps of a dispute. DC Energy argues that, in such procedures, the time requirements for market participants to respond should be balanced with approximately equal requirements for MISO to respond so that market

Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

participants can use the dispute resolution processes without unnecessary hurdles or delays.¹⁴

10. MidAmerican argues that MISO's filing equitably balances the two competing objectives of allowing time for aggrieved stakeholders to initiate settlement disputes and ADR proceedings while setting deadlines for identifying errors and making corrections.¹⁵ Nonetheless, MidAmerican seeks clarification in several areas. MidAmerican asserts that during the stakeholder process leading up to the filing of the Time Bar Revisions, MISO indicated that the reference to system or software errors "was not intended to restrict [MISO's] ability to correct billing errors and that MISO would grant billing corrections in the future as it had in the past (except for the proposed two-year limit on the potential correction period)."¹⁶ MidAmerican states that it supports MISO's filing to the extent that MISO does not intend for the phrase "system or software error of the Transmission Provider" to restrict MISO's historic resettlement practices.¹⁷

11. MidAmerican also argues that the phrase "counted from the date a timely market or transmission settlement dispute was resolved or determined by MISO" in Attachment HH regarding the deadlines for initiating ADR procedures is unclear.¹⁸ Finally, MidAmerican asks MISO to clarify whether the two-year period referenced in section 12A is the two-year period preceding the day of the disputed invoice (for transmission settlements) or the disputed operating day (for market settlements).¹⁹

B. MISO's Answer

12. In response to DC Energy, MISO states that the suggestion to limit the time for MISO to resolve disputes is outside the scope of the Time Bar Revisions. MISO also argues that, as a substantive matter, the Tariff need not specify inflexible periods within

¹⁴ DC Energy Comments at 2.

¹⁵ MidAmerican Comments at 3-4.

¹⁶ *Id.* at 6-7.

¹⁷ *Id.* at 7.

¹⁸ *Id.*

¹⁹ *Id.* at 8.

which settlement or ADR disputes should be resolved by MISO and that DC Energy has not cited a particular dispute that took unnecessarily long for MISO to resolve.²⁰

13. In response to MidAmerican, MISO states that the limitation of the two-year resettlement period to MISO system or software errors appropriately reflects the balance between requiring market participants to promptly initiate claims involving readily discoverable one-time MISO errors and the correction of more long lasting MISO errors.²¹ MISO argues that the framework it proposes strikes a “reasonable balance” and prevents market participants from bringing stale claims.²² MISO also notes that it will, “on a case-by-case basis, assess and act on any equitable considerations that may be sufficient to warrant requesting the Commission to waive a resettlement.”²³ MISO concludes that absent any such considerations, the proposed two-year resettlement period is appropriate.²⁴

14. In response to MidAmerican’s questions about the “resolved or determined” language in Attachment HH, MISO states that it uses the terms “resolved or determined” to indicate the date on which MISO takes final action on the market or transmission settlements dispute, so these terms are essentially synonymous. MISO states that it is willing to use only one or the other word if directed by the Commission to do so on compliance. Finally, MISO confirms MidAmerican’s interpretation of the two-year resettlement limit.²⁵

C. Deficiency Letter and Deficiency Response

15. On July 30, 2018, Commission staff issued the Deficiency Letter. Among other things, the Deficiency Letter asked for clarification regarding the term “system or software error” in proposed Tariff sections 12A(c) and 12A(d), the use of the phrase “may make an appropriate adjustment” in Tariff sections 12A(c) and 12A(d), the phrase “or other service under the Tariff” in sections 12A(b) and 12A(d), the ambiguity created by the use of the phrases “resolution or determination” and “resolved or determined” in

²⁰MISO Answer at 10-11.

²¹ *Id.* at 4.

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.* at 7.

²⁵ *Id.* at 8-9.

section I.B.2 of Attachment HH, errors with durations of longer than two-years, and whether an extended delay in the resolution of a settlement dispute or ADR dispute by MISO could limit the resettlement of incorrect billings for a customer.

16. MISO submitted its Deficiency Response on August 29, 2018 and requested an effective date of November 1, 2018. MISO states that, in some instances, it believes its originally proposed Time Bar Revisions are sufficient, but it nonetheless submits “on a contingency basis” additional revisions that it requests that the Commission “accept it if it finds the explanations provided . . . insufficient to dispense with the need for the amendments.”²⁶ Regarding the phrase “system or software error,” MISO states that it is amending its proposal to include a definition for “Continuing Error,” which it defines as a “continuing, system, software or other execution that is inconsistent with the Tariff.”²⁷ MISO states that it expects that errors would generally fall into two different categories. According to MISO, errors would either be (1) incorporated into system procedures or software, which are more likely to continue for longer durations and to not be readily discoverable by market participants, or (2) execution errors, which include human errors, in implementing Tariff provisions that are generally shorter in duration and more easily identifiable.²⁸ MISO also states that it cannot currently identify any other MISO errors that would not be included in these two categories.

17. MISO also states that, to eliminate any ambiguity surrounding MISO’s obligation to correct verified errors in new sections 12A(c) and 12A(d), it will replace the phrase “may make an appropriate adjustment” with the phrase “shall make an appropriate adjustment.”²⁹ MISO also states that the phrase “other service under the Tariff” in sections 12A(b) and 12A(d) does not include transmission service but is “intended to provide precautionary catch-all language for other aspects of Tariff implementation.” MISO states that if the Commission so requires, it proposes on a contingency basis to submit an amendment to delete this phrase.³⁰ In response to MidAmerican’s questions about the ambiguity of the phrases “resolution or determination” and “resolved or determined,” MISO amends sections II.B.2 and II.B.3 to state that the 90-day ADR

²⁶ Deficiency Response at 2.

²⁷ *Id.* at 3.

²⁸ *Id.*

²⁹ *Id.* at 3-4.

³⁰ *Id.* at 4.

submission period begins on the date on which the transmission provider makes a final determination of a settlement dispute.³¹

18. Additionally, in response to questions about ongoing errors that have had effects longer than two years, MISO argues that the need for market certainty and promptness of claims supports a two-year resettlement period.³² For this reason, MISO also states that the two-year correction period is counted backward from the day that was the basis for submitting a timely settlement dispute. To add further clarity, MISO proposes, on a contingency basis, to include the phrase “in accordance with section 12A(e)” at the end of sections 12A(c) and 12A(d), both of which refer to a two-year correction period for continuing errors related to transmission service or market activity, respectively. MISO has proposed these clarifying revisions on a contingency basis to make clear that section 12A(e) lays out the conditions for applying the two-year correction period if a continuing error is discovered.³³ To further clarify the link between section 12A(e) and sections 12A(c) and 12A(d), MISO proposes to revise the second sentence of section 12A(e) as follows (with revisions in bold and strikeout):

[i]f a timely claim or dispute under section 12A, or under Attachment HH, results in the discovery of a Continuing Error of the Transmission Provider that goes back earlier than the ~~applicable one hundred twenty (120)~~ **Calendar Day period set forth in section 12A Operating Day that was the basis for a timely market settlement dispute under section 12A(a), or than the issuance of the billing, invoice or settlement statement that was the basis of a timely transmission settlement dispute under section 12A(b)**, the Transmission Provider shall make the appropriate adjustments **for up to** two years from the date the Transmission Provider formally confirms, in writing, the existence of the Continuing Error.³⁴

Furthermore, MISO proposes to delete the phrase “including by the Transmission Provider” from the first sentence of section 12A(e) and to add the following penultimate sentence:

Notwithstanding the above, if the Transmission Provider discovers and verifies a Continuing Error, even if there is no timely market settlement or

³¹ *Id.* at 5.

³² *Id.* at 6.

³³ *Id.* at 8-10.

³⁴ *Id.* at 9-10.

transmission settlement dispute, the Transmission Provider shall make the appropriate adjustments up to two years from the date the Transmission Provider formally confirms, in writing, the existence of the Continuing Error.³⁵

MISO argues that these revisions reasonably balance the requirements of the filed rate doctrine regarding the correction of continuing errors and the need to promote market security and promptness of claims.³⁶

19. In response to the question about whether a delay in the resolution of a settlement dispute or an ADR dispute by MISO could limit the resettlement of incorrect billings, MISO states that, for example, the two-year correction window will not be affected by the time it may take for a dispute to be resolved by MISO, the Commission, or by a court. MISO states that, without the proposed two-year correction limit, even MISO errors that occurred more than two years earlier than such date would have to be corrected and that the avoidance of such a scenario is the reason for the Time Bar Revisions.³⁷

20. In response to MISO's Deficiency Response, MidAmerican filed comments stating that MISO's proposed Tariff revisions may need further revisions. MidAmerican points out that, consistent with MISO's other changes, MISO should also delete the phrases "or other service" and "or other service under the Tariff" from sections 12A(b) and 12A(d), respectively.³⁸ MidAmerican also contends that MISO should correct a typographical error in Attachment HH, Section I.B.3 to replace the word "of" with "on" so that that provision reads (with revisions in bold and strikeout):

Any formal dispute raised under this Attachment HH must be submitted to the Transmission Provider no later than ninety (90) Calendar Days from the date ~~of on~~ which the Transmission Provider makes a final determination of a timely submitted informal dispute under this Attachment HH.³⁹

21. Finally, in response to MISO's amendments to delete references to the date on which a dispute is "resolved or determined," MidAmerican argues that MISO should

³⁵ *Id.* at 10.

³⁶ *Id.*

³⁷ *Id.* at 11.

³⁸ MidAmerican Second Comments at 2-3.

³⁹ *Id.* at 3.

make conforming edits to Attachment HH, section I.B.4, which is the proposed transition provision for any settlement or informal ADR disputes that may have been resolved or determined 90 days before the effective date of the Time Bar Revisions.⁴⁰

22. In its Second Answer, MISO states that it agrees with the changes recommended by MidAmerican and that it is willing to incorporate such revisions as part of a clean-up compliance filing, if so directed by the Commission.⁴¹

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers filed by MISO because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

24. We find that the Time Bar Revisions, with certain modifications discussed below, are just and reasonable. In response to MidAmerican's concern that limiting certain corrections to system or software errors may restrict MISO's historic resettlement practices, we find that it is reasonable for MISO to limit the two-year resettlement period to continuing errors (which include system or software errors) because these may not be readily discoverable. As such, we agree that limiting corrections to continuing errors reflects an appropriate balance between requiring market participants to promptly initiate claims involving readily discoverable one-time MISO errors and the correction of more long-lasting MISO errors that may not be readily discoverable. We also find that DC Energy's argument that MISO should revise the Tariff to include specific time limits for MISO to respond to disputes is beyond the scope of this proceeding. Accordingly, we accept the Time Bar Revisions, including those that MISO "made on a contingency

⁴⁰ *Id.*

⁴¹ MISO Second Answer at 2.

basis”⁴² in its Deficiency Response, subject to condition,⁴³ make them effective November 1, 2018, as requested, and direct MISO to make the modifications we require below in a compliance filing due within 30 days of the date of this order.

25. First, our acceptance is conditioned upon MISO submitting a compliance filing to incorporate the Tariff revisions identified by MidAmerican in its comments on the Deficiency Response.⁴⁴ In particular, we direct MISO to delete the phrases “or other service” and “or other service under the Tariff,” from sections 12A(b) and 12A(d); replace the word “of” with “on” in proposed Attachment HH, Section I.B.3; and revise Attachment HH, Section I.B.4 to read (with revisions in bold and strikeout):

Where **the Transmission Provider has made a final determination** of a transmission settlement or market settlement dispute ~~was resolved or determined~~ within ninety (90) Calendar Days before the effective date of section I.B of this Attachment HH, an informal dispute may be submitted under this Attachment HH within ninety (90) Calendar Days after the effective date of section I.B. Where **the Transmission Provider has made a final determination** of an informal dispute ~~was resolved or determined~~ within ninety (90) Calendar Days before the effective date of section I.B of this Attachment HH, a formal dispute may be submitted under this Attachment HH within ninety (90) Calendar Days after the effective date of section I.B.

26. Our acceptance is also conditioned on MISO correcting what appears to be a typographical error found in both sections 12A(e) and 12A(f) as follows (with revisions in bold and strikeout):

results in the discovery of a Continuing Error of the Transmission Provider that goes back earlier than the **issuance of the billing, invoice or**

⁴² See, e.g., Deficiency Response at 2. We note that, in the clean and redlined Tariff sheets submitted with the Deficiency Response, MISO does not propose separate tariff sheets to delineate which proposed edits are “made on a contingency basis.”

⁴³ The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has “authority to propose *modifications to a utility’s [FPA section 205] proposal if the utility consents to the modifications.*” *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017). See also *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,141, at P 15 (2018).

⁴⁴ We note that, in response to MidAmerican’s raising the need for these Tariff revisions, MISO acknowledged their “propriety” and expressed a willingness to incorporate such provisions. MISO Answer at 2.

~~settlement~~ ~~Operating Day~~ that was the basis for a timely ~~market~~ ~~transmission~~ settlement dispute under section 12A(a), or than the ~~issuance of the billing, invoice or settlement statement~~ ~~Operating Day~~ that was the basis of a timely ~~transmission-market~~ settlement dispute under section 12A(b), the Transmission Provider shall make the appropriate adjustments up to the applicable two-year period set forth in section 12A.

This correction is necessary because section 12A(a) pertains to claims or disputes “for any Transmission Service under the Tariff” and that 12A(b) pertains to claims or disputes “for any Market Activities,” and not the reverse, as current sections 12A(e) and 12A(f) suggest.

The Commission orders:

(A) MISO’s Time Bar Revisions are hereby accepted, subject to condition, to be effective November 1, 2018, as requested, as discussed in the body of this order.

(B) We direct MISO to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.