

165 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

EDF Renewable Energy, Inc.

Docket No. EL18-55-001

v.

Midcontinent Independent System Operator, Inc.

ORDER DENYING REHEARING

(Issued October 31, 2018)

1. On April 2, 2018, the Commission denied a complaint by EDF Renewable Energy, Inc. (EDF) against Midcontinent Independent System Operator, Inc. (MISO), requesting that the Commission require MISO to file revisions to its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) to implement a “fast track” Definitive Planning Phase (DPP) mechanism or alternative mechanism as part of MISO’s generator interconnection procedures (GIP), or for the Commission to take other action in response to MISO’s interconnection queue processing delays (EDF Complaint).¹

2. E.ON Climate & Renewables North America, LLC, Invenergy Development North America LLC, Tenaska Wind Holdings, LLC, and Project Resources Corporation DF (Wind Generation Developers), intervenors in the proceeding, jointly sought rehearing of the April 2018 Order. Rehearing is denied, as discussed below.

I. Background

3. MISO’s Tariff, as revised in 2017,² requires that generation projects that request interconnection service must enter MISO’s existing DPP. The DPP is the final phase of MISO’s generator interconnection process, during which MISO conducts interconnection

¹ *EDF Renewable Energy, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,003 (2018) (April 2018 Order).

² *Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,003, at P 22 (2017) (MISO 2017 Queue Reform Order).

studies to determine whether network upgrades are needed to accommodate the interconnection requests.³ The process includes projected timelines from commencement of the DPP to the tendering of a Generator Interconnection Agreement (GIA), and is intended to ensure that new generation projects are able to reliably interconnect in a transparent and nondiscriminatory fashion.⁴

4. On January 4, 2018, EDF, a renewable energy company, filed a complaint⁵ with the Commission, pursuant to section 206 of the Federal Power Act (FPA).⁶ EDF alleged that the DPP process was not just and reasonable because MISO was not meeting the prescribed deadlines in its Tariff.⁷ EDF argued that the DPP process had been delayed beyond MISO's Tariff requirements, and that many projects would not be able to obtain a GIA in sufficient time to achieve commercial operation before December 31, 2020, the deadline to receive full benefits of the Federal Production Tax Credit (PTC) for eligible wind generation. In an attempt to remedy the interconnection study delays, EDF proposed a one-time "fast track" DPP mechanism that it claimed would increase the ability of generating projects to meet the required commercial operation date to receive the full benefit of the PTC.⁸

5. The Commission denied the EDF Complaint in the April 2018 Order on the basis that EDF did not meet its burden of proof under section 206 of the FPA to show that the interconnection process included in the GIP under MISO's Tariff, or MISO's performance thereunder, is unjust and unreasonable.⁹

6. Relatedly, EDF filed a complaint in Docket No. EL18-26-000 concerning the coordination of affected system studies between MISO, PJM Interconnection, L.L.C., and Southwest Power Pool, Inc. The Commission issued an order on that complaint on

³ April 2018 Order, 163 FERC ¶ 61,003 at P 1 n.3.

⁴ MISO, MISO FERC Tariff, Attachment X. *See also* April 2018 Order, 163 FERC ¶ 61,003 at P 6.

⁵ EDF, Complaint, Docket EL18-55-000 (Jan. 4, 2018) (EDF Complaint).

⁶ 16 U.S.C. § 824e (2012).

⁷ April 2018 Order, 163 FERC ¶ 61,003 at P 6.

⁸ EDF Complaint at 3.

⁹ April 2018 Order, 163 FERC ¶ 61,003 at PP 47, 50.

February 2, 2018, and established a technical conference, which was held in early April 2018, in Docket Nos. EL18-26-000 and AD18-18-000.¹⁰

II. Requests for Rehearing

7. On rehearing, Wind Generation Developers argue that the April 2018 Order erred by denying the EDF Complaint. Wind Generation Developers contend that the Commission did not: (1) render a decision consistent with substantial evidence in the record;¹¹ or examine whether MISO has made “reasonable efforts to meet its interconnection queue deadlines” as required by its Tariff;¹² (2) meaningfully address harm to consumers;¹³ (3) analyze the need for a one-time variance from MISO’s GIP for PTC purposes;¹⁴ or (4) order a remedy that would resolve the issues identified.¹⁵

III. Discussion

A. The Commission Adequately Supported the Decision to Deny the EDF Complaint

1. Rehearing Arguments

8. Wind Generation Developers argue that the Commission failed to render a decision consistent with substantial evidence in the record.¹⁶ Specifically, Wind Generation Developers argue that EDF offered evidence in the EDF Complaint demonstrating that several interconnection studies (the East (ATC) August 2017 study, the East (ITC) August 2017 study, the West February 2017 study, and the West August 2017 study) are projected to be completed after the time frames listed in MISO’s Tariff,

¹⁰ *EDF Renewable Energy, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,085 (2018) (February 2018 Technical Conference Order). *See* April 2018 Order, 163 FERC ¶ 61,003 at P 50.

¹¹ Wind Generation Developers’ Rehearing Request at 7-10.

¹² *Id.* at 5-7.

¹³ *Id.* at 10-11.

¹⁴ *Id.* at 11-13.

¹⁵ *Id.* at 13-14.

¹⁶ *Id.* at 7.

and after June 2019.¹⁷ Other study clusters may also be delayed, contend Wind Generation Developers, if MISO does not timely process studies related to these interconnection requests.¹⁸ Wind Generation Developers argue that the Commission did not address the significance of these delays and how they relate to the finding that MISO is applying reasonable efforts to meet its interconnection queue deadlines.¹⁹

9. Wind Generation Developers also argue that the Commission erred by finding that MISO is performing its Tariff obligations with “reasonable efforts.”²⁰ Wind Generation Developers argue that for MISO to have used reasonable efforts it would have needed to enter into course corrections to save PTC benefits for consumers in the MISO region.²¹ Wind Generation Developers reiterate that there is extensive and consistent evidence that MISO is not taking reasonable steps as required by its Tariff to meet its projected deadlines, and that MISO is consistently missing applicable study deadlines.²² Wind Generation Developers argue that MISO has not proposed or adopted changes in its GIP to meet study and GIA deadlines.²³

10. Further, Wind Generation Developers point to continued delays to suggest that the problem is worse than the Commission recognized. For example, Wind Generation Developers argue that since the issuance of the April 2018 Order, two more clusters have been delayed or are projected to be completed after June 2019.²⁴ Wind Generation Developers contend that the Commission did not explain how this delay squares with its conclusion that MISO is applying reasonable efforts to meet its interconnection queue

¹⁷ *Id.* See also EDF Complaint at 2, where EDF argues that June 2019 is the practical date when interconnection studies must be completed with a signed GIA if a wind generation project is going to achieve commercial operation by December 31, 2020, as is required to obtain the full benefits of the PTC.

¹⁸ Wind Generation Developers’ Rehearing Request at 8.

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 5-6.

²¹ *Id.*

²² *Id.* at 5.

²³ *Id.* at 6.

²⁴ *Id.* at 8.

deadlines.²⁵ Wind Generation Developers request that the Commission accept this new evidence because it bears directly on whether the relief sought in the EDF Complaint is needed.²⁶ To ensure they do not miss the PTC deadline, Wind Generation Developers argue that MISO should apply its GIP in a just and reasonable manner.²⁷

2. Commission Determination

11. Under section 206 of the FPA, the party that lodges a complaint has “the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential.”²⁸ In the April 2018 Order, the Commission found that EDF did not meet its burden and was unable to demonstrate that MISO’s implementation of the interconnection queue violates its Tariff or that its Tariff is unjust and unreasonable.²⁹ On rehearing, we affirm this finding from the April 2018 Order.

12. Delays in the interconnection process can be due to actions outside of MISO’s control, such as customer withdrawals and actions of affected systems. For example, the record contains information suggesting that some delays in the February 2017 cycle were due to project withdrawals from cycles that were completed prior to the adoption of the new procedures resulting from the interconnection queue reforms accepted in 2017.³⁰ We also note that the DPP process was not established on the presumption that queue delays would never occur under the new procedures, or that MISO’s proposed transition study timelines under the new procedures would never be delayed.³¹ Moreover, the

²⁵ *Id.* at 7-8.

²⁶ *Id.* at 9 n.34.

²⁷ *Id.* at 9.

²⁸ 16 U.S.C. § 824e(a) (2012).

²⁹ April 2018 Order, 163 FERC ¶ 61,003 at P 50.

³⁰ MISO, Answer, Docket No. EL18-55-000, at 28, Attachment A (filed Jan. 24, 2018) (MISO Answer).

³¹ *See Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 83 Fed. Reg. 21,342 (May 9, 2018), 163 FERC ¶ 61,043, at PP 51-54 (2018); April 2018 Order, 163 FERC ¶ 61,003 at P 47 (“While we understand that MISO’s revised queue process is intended to minimize delays, interconnection customers are not guaranteed that MISO will meet its projected deadlines.”).

record reflects concerns that some of EDF's claims about queue delays were overstated, as MISO explained that most interconnection customers included in the transition study clusters will be eligible for GIAs in time to qualify for the PTC.³² Regardless, the existence of queue delays that may prevent some interconnection customers from receiving the full advantage of a tax credit before its scheduled expiration does not amount to MISO's failure to make reasonable efforts under its Tariff.³³ Thus, we find that the Commission's decision to deny the EDF Complaint was supported by substantial record evidence and we affirm the finding that EDF did not meet its burden of demonstrating that MISO's current GIP or its performance thereunder is unjust and unreasonable.

13. Last, we dismiss Wind Generation Developers' attempt to supplement the record with additional information about the status of queue delays from the period after the issuance of the April 2018 Order. We find that Wind Generation Developers have not raised any persuasive reasons nor have they made a showing of good cause for the Commission to act in a manner contrary to well-settled Commission precedent and accept their late-filed supplemental evidence during the rehearing phase of this proceeding. As the Commission previously has explained, the Commission adheres to the general rule that the record once closed will not be reopened.³⁴ Moreover, it is improper to introduce such evidence at the rehearing stage; "parties are not permitted to introduce new evidence for the first time on rehearing since such practice would allow an impermissible moving target, and would frustrate needed administrative finality."³⁵ In any event, however, we

³² April 2018 Order, 163 FERC ¶ 61,003 at P 48 (citing MISO Answer at 14).

³³ We note that "reasonable efforts" are akin to Good Utility Practice. See MISO, MISO FERC Tariff, Attachment X, § 1 Definitions; see also Order No. 845, 163 FERC ¶ 61,043 at P 290. See also, e.g., *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-B, 123 FERC ¶ 61,299, at Appendix B, *pro forma* tariff (2008) (explaining that Good Utility Practice is not limited to "optimum" practices, but rather includes "acceptable" practices).

³⁴ See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Servs.*, 133 FERC ¶ 61,014, at P 24 (2010) (citing *Transwestern Pipeline Co.*, Opinion No. 238, 32 FERC ¶ 61,009 (1985), *reh'g denied*, Opinion No. 238-A, 36 FERC ¶ 61,175, at 61,453 (1986)).

³⁵ *PaTu Wind Farm, LLC v. Portland General Electric Company*, 151 FERC ¶ 61,223, at P 42 (2015). See also *Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, at P 15 (2010).

find that Wind Generation Developers' new evidence, suggesting delays similar to those discussed in the EDF Complaint, is unpersuasive for the same reasons as the evidence presented with the EDF Complaint.

B. The Commission Appropriately Addressed the Alleged Customer Impacts

1. Rehearing Arguments

14. Wind Generation Developers contend that the Commission did not meaningfully address the harm that significant delays will cause to consumers.³⁶ For example, Wind Generation Developers contend that the Commission failed to consider or undertake an analysis of the harm that would result if MISO continues to experience queue delays and GIAs are not achieved in time to meet PTC requirements.³⁷ Wind Generation Developers argue that the Commission stated that it was not persuaded that the existing queue process will result in the commercial harms claimed by EDF, but the Commission provided no analysis or rationale why it was persuaded the process will not result in the commercial harm identified, or how the harms identified in the EDF Complaint could be managed within the current process.³⁸ Wind Generation Developers claim that MISO has projected that it is unable to meet study and GIA completion deadlines in time for PTC needs, demonstrating that MISO is unable to manage these needs.³⁹ Wind Generation Developers claim that Congress provided for the PTC financial benefits to be realized by developers of wind generation and that the Commission should not interfere with this intention.⁴⁰

2. Commission Determination

15. We disagree and find that the Commission appropriately addressed the concern of commercial harm claimed by EDF.⁴¹ As the record states, many of the transition plan

³⁶ Wind Generation Developers' Rehearing Request at 10.

³⁷ *Id.*

³⁸ *Id.* at 10-11.

³⁹ *Id.*

⁴⁰ *Id.* at 11.

⁴¹ April 2018 Order, 163 FERC ¶ 61,003 at P 48.

interconnection customers will be eligible for GIAs in time to qualify for the PTC.⁴² We also reaffirm that the use of a provisional GIA option⁴³ could allow for some wind generation developers to commence operation before completion of the study process to advance their projects. Moreover, some of EDF's claims were found to be overstated, and thus the Commission did not find that EDF's assertions of harm were likely to occur as presented.⁴⁴ Finally, to the extent that some customers may not receive GIAs in time to qualify for the PTC, the Commission explained that while MISO's process is intended to minimize delays, customers are not guaranteed that MISO will meet its projected deadlines.⁴⁵

C. Review of the “Fast Track” Mechanism Was Unnecessary Because the Burden of Proof Was Not Met

1. Rehearing Arguments

16. Wind Generation Developers assert that the EDF Complaint included a proposed “fast track” mechanism and provided ample evidence that the GIP was unjust, unreasonable, and discriminatory,⁴⁶ but the Commission erred in finding that the EDF Complaint did not show MISO's queue processing or GIP was unjust and unreasonable.⁴⁷ For example, Wind Generation Developers argue that the EDF Complaint and supporting pleadings provided evidence that a “fast track” mechanism was necessary to ensure the efficient processing of the queue in a manner that allowed pending projects to attain commercial operation by the time necessary to remain eligible for PTCs.⁴⁸ Wind

⁴² MISO Answer at 14 and n.49. In its answer, MISO provides a link to its current DPP schedule. As of October 1, 2018, the Central, South and East regions practically meet the June 2019 deadline EDF describes in its complaint, while the West region does not. The West region makes up 27 of the 52 projects in the February 2017 DPP and nearly 47 percent of the total megawatts.

⁴³ Provisional GIAs provide for limited operation, based primarily on the availability of existing capacity, by an interconnection customer that has demonstrated a higher level of readiness to complete the GIP and that seeks to interconnect prior to completion of the interconnection study process.

⁴⁴ April 2018 Order, 163 FERC ¶ 61,003 at P 48.

⁴⁵ *Id.* P 47.

⁴⁶ Wind Generation Developers' Rehearing Request at 11.

⁴⁷ *Id.*

Generation Developers argue that the Commission did not conduct any analysis of the need for a one-time variance from MISO's GIP.⁴⁹

17. Wind Generation Developers contend that there was ample record evidence that showed numerous clusters and cycles were projected to not have a GIA by June 2019, and that the scope of the problem was more pervasive than the Commission stated in the April 2018 Order.⁵⁰ Wind Generation Developers assert that EDF showed that the record did not identify a single interconnection customer with projects in the August 2016, February 2017, or August 2017 study cycles that had obtained a provisional GIA as means to secure PTC benefits.⁵¹ Wind Generation Developers also contend that EDF demonstrated that a wind generation project without utility backing was not financeable with a provisional GIA and that the vast majority of interconnection customers in MISO's queue are not utilities but are independent generation developers that must look to the market for financing, showing the need for the "fast track" DPP mechanism.⁵²

18. Moreover, Wind Generation Developers argue that even if MISO were performing in accordance with its Tariff, this factor has no bearing on whether there is a basis and need to allow a one-time variance to protect the assurance of PTC benefits.⁵³

2. Commission Determination

19. The Commission need not review a "fast track" mechanism to bypass the current DPP process because EDF did not meet the burden of proof demonstrating that MISO's actions and the current DPP process are unjust and unreasonable.⁵⁴

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 12.

⁵¹ *Id.*

⁵² *Id.* at 12-13.

⁵³ *Id.* at 7.

⁵⁴ *Supra* P 11. See, e.g., *New England Power Generators Ass'n, Inc. v. ISO New England Inc.*, 150 FERC ¶ 61,053, at P 37 (2015) (finding that there need not be a further analysis because the complainant has not proven the existing tariff is unjust and unreasonable); *Cal. Mun. Util. Ass'n v. Cal. Indep. System Operator Corp.*, 126 FERC ¶ 61,315, at P 2 (2009) (noting that the Commission is not required to consider a

D. The DPP “Fast Track” Mechanism Was Outside the Scope of the Technical Conference

1. Rehearing Arguments

20. Wind Generation Developers argue that the technical conference referenced in the April 2018 Order did not address the issues raised by the EDF Complaint.⁵⁵ Wind Generation Developers argue that the technical conference did not include a discussion about the sufficiency of MISO’s queue process to meet expiring PTC needs, nor a discussion about the benefits or drawbacks from instituting a one-time “fast track” DPP mechanism.⁵⁶ Wind Generation Developers contend that the Commission’s reference to the technical conference has no meaningful and immediate benefit for the relief sought in the EDF Complaint (i.e., some form of “fast track” DPP mechanism to quickly obtain studies to meet PTC needs).

2. Commission Determination

21. As the Commission stated in the April 2018 Order, the intent of the technical conference was to address only “one facet” of MISO’s ongoing problem with interconnection queue processing delays, which is interconnection issues related to coordination with affected systems.⁵⁷ We find that the technical conference parameters were clearly stated in the April 2018 Order,⁵⁸ the February 2018 Technical Conference

complainant’s proposed relief because the tariff has not been proven to be unjust and unreasonable).

⁵⁵ Wind Generation Developers’ Rehearing Request at 13.

⁵⁶ *Id.*

⁵⁷ April 2018 Order, 163 FERC ¶ 61,003 at P 50. *See also Notice of Technical Conference*, AD18-8-000 at 1 (“The purpose of this conference is to discuss issues related to the coordination of Affected Systems raised in (1) the complaint filed by EDF Renewable Energy, Inc. against Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc., and PJM Interconnection, L.L.C. in Docket No. EL18-26-000 and (2) the Commission’s Notice of Proposed Rulemaking on the generator interconnection process in Docket No. RM17-8-000.”).

⁵⁸ April 2018 Order, 163 FERC ¶ 61,003 at P 50.

Order,⁵⁹ and the Notice of Technical Conference.⁶⁰ The Commission did not state or imply that the issues rejected in the EDF Complaint would be further addressed in the technical conference. As such, EDF's request for a "fast track" DPP mechanism was not within the scope of issues to be discussed at the technical conference. In any event, as discussed above, EDF did not meet its burden of showing that the lack of a "fast track" DPP mechanism renders MISO's Tariff unjust and unreasonable.

22. As stated in the April 2018 Order, we strongly urge MISO, along with its stakeholders, to make addressing MISO's interconnection queue processing delays a priority. We urge MISO to look to the other RTOs for best practices, closely examine the resources it is dedicating to the interconnection study process, and consider whether additional resources would alleviate queue delays, as well as fully consider other approaches for improvement.⁶¹

The Commission orders:

The request for rehearing is denied, 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.

⁵⁹ February 2018 Technical Conference Order, 162 FERC ¶ 61,085.

⁶⁰ *Notice of Technical Conference*, AD18-8-000 and EL18-26-000 (Feb. 2, 2018).

⁶¹ April 2018 Order, 163 FERC ¶ 61,003 at P 50.