

170 FERC ¶ 61,216  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER11-4081-006

ORDER DISMISSING REQUEST FOR REHEARING

(Issued March 20, 2020)

1. On February 28, 2018, the Commission issued an Order on Remand,<sup>1</sup> which reversed the Commission's prior acceptance<sup>2</sup> of Midcontinent Independent System Operator, Inc.'s (MISO) July 20, 2011 filing (MISO's 2011 filing) of proposed revisions to its resource adequacy construct as set forth in Module E of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). On March 30, 2018, in combination with their request for rehearing of the Commission's order in Docket No. ER18-462-000 accepting MISO's revised resource adequacy construct,<sup>3</sup>

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<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 162 FERC ¶ 61,173 (2018) (Order on Remand).

<sup>2</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012) (June 2012 Order), *order on reh'g*, 153 FERC ¶ 61,229 (2015) (Rehearing Order). Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

<sup>3</sup> MISO refiled its resource adequacy construct in Docket No. ER18-462-000. On February 28, 2018, concurrently with the Order on Remand, the Commission issued an order accepting MISO's filing in that docket. *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,176 (2018) (February 2018 Order). Concurrently with the instant order, the Commission is issuing in Docket No. ER18-462-001 an order denying rehearing of the February 2018 Order. *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,215 (2020).

Midwest TDUs<sup>4</sup> “conditionally” sought rehearing of the Order on Remand. In this order, we dismiss as moot Midwest TDUs’ request for rehearing of the Order on Remand.

## **I. Background**

2. Certain parties to this proceeding filed petitions for review in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), challenging aspects of the Commission’s June 2012 Order and the Rehearing Order. On January 6, 2017, the D.C. Circuit granted the Commission’s unopposed motion for partial voluntary remand of the record to further consider issues related to section 217 of the Federal Power Act (FPA).<sup>5</sup> On October 30, 2017, the D.C. Circuit granted the Commission’s unopposed motion for remand of the entire record in those petitions to permit the Commission to consider the effect that the D.C. Circuit’s July 7, 2017 decision in *NRG Power Marketing, LLC. v. FERC*<sup>6</sup> might have on those cases.

3. In the Order on Remand, in light of *NRG*, the Commission found that the conditions required in the June 2012 Order and the Rehearing Order could be considered to be major modifications to MISO’s 2011 filing.<sup>7</sup> Accordingly, because the Commission could not find MISO’s 2011 filing to be just and reasonable without these modifications, the Commission reversed its conditional acceptance of MISO’s 2011 filing and rejected MISO’s 2011 filing in its entirety.<sup>8</sup>

4. As relevant here, the Commission explained that its rejection of MISO’s 2011 filing was based on the court’s issuance of *NRG*, and observed that because *NRG* was issued subsequent to the court granting the Commission’s request for voluntary remand to

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<sup>4</sup> Midwest TDUs are Conway Corporation, Great Lakes Utilities, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utilities Commission, Missouri River Energy Services, Municipal Energy Agency of Nebraska, City of North Little Rock, Southern Minnesota Municipal Power Agency, and WPPI Energy.

<sup>5</sup> 16 U.S.C. § 824q (2018).

<sup>6</sup> 862 F.3d 108 (D.C. Cir. 2017) (*NRG*). In *NRG*, the D.C. Circuit addressed limitations on the Commission’s authority to condition acceptance of filings made pursuant to section 205 of the FPA. 16 U.S.C. § 824d.

<sup>7</sup> Order on Remand, 162 FERC ¶ 61,173 at PP 3, 14.

<sup>8</sup> *Id.* PP 3, 15.

further consider issues raised on appeal related to the interpretation of FPA section 217, it would not further consider the FPA section 217 issues on remand.<sup>9</sup>

## **II. Request for Rehearing**

5. Midwest TDUs state that they conditionally seek rehearing of the Order on Remand, if and to the extent that it “were read as making merits findings related to” FPA section 217 issues.<sup>10</sup>

## **III. Discussion**

6. The Order on Remand did not make a ruling on the merits of any issues related to FPA section 217 or the substance of MISO’s resource adequacy filing. Accordingly, we dismiss Midwest TDUs’ request for rehearing as moot.

The Commission orders:

Midwest TDUs’ request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>9</sup> *Id.* P 16.

<sup>10</sup> Midwest TDUs Request for Rehearing at 7.