

155 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER11-2275-003

ORDER ON COMPLIANCE FILING

(Issued April 21, 2016)

1. On May 2, 2011, Midwest Independent Transmission System Operator, Inc. (MISO) submitted proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (tariff) in order to comply with the March 31, 2011 Order in this proceeding.¹ In this order, we accept in part and reject in part MISO's compliance filing, and require a further compliance filing.

I. Background

2. On December 1, 2010, MISO proposed amendments (December Proposal) to the real-time Revenue Sufficiency Guarantee charge² provisions of its tariff, as follows:

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,264 (2011) (March 31 Order). Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

² Under section 40.2.19 of the MISO tariff, a generation or demand response resource receives a real-time Revenue Sufficiency Guarantee credit if MISO commits it through the Reliability Assessment Commitment process after the close of the day-ahead energy and operating reserve markets and if the resource then receives insufficient real-time energy and operating reserve revenues to cover its as-offered production costs. To fund the Revenue Sufficiency Guarantee credits, pursuant to section 40.3.3 of the tariff, market participants are charged a real-time Revenue Sufficiency Guarantee charge based on their virtual supply offers and real-time load, injection, export, and import deviations from day-ahead schedules.

(1) a proposal to combine the intra-hour demand charge and the Revenue Sufficiency Guarantee day-ahead schedule deviation charge into a single charge, or allocation “bucket” for purposes of rate calculation; (2) a revised definition of headroom; (3) inclusion of self-schedules in the constraint management charge; and (4) revised definitions for economic maximum dispatch and economic minimum dispatch. MISO also proposed to allocate Revenue Sufficiency Guarantee costs to Intermittent Resources.³ Finally, the December Proposal included several new provisions such as an allocation of Revenue Sufficiency Guarantee costs based on operating reserve deviations.

3. On February 15, 2011, MISO amended its proposal to move the effective date for its revised tariff sheets from March 1, 2011 to April 1, 2011. It explained that credit and settlement mechanisms required to implement the proposed revisions would not be in place by March 1, 2011, but would be in place on April 1, 2011. According to MISO, without the new effective date it would have to resettle Revenue Sufficiency Guarantee charges, causing undue uncertainty, and it would be exposed to credit risks.

4. In the March 31 Order, the Commission conditionally accepted MISO’s initial proposal, as amended, and required MISO to submit a compliance filing that: (1) restricts the definition of headroom to headroom committed in the real-time market;⁴ (2) specifies a separate section for the headroom charge and deletes references to headroom in sections pertaining to the deviation charge;⁵ and (3) exempts Intermittent Resources from the allocation of Revenue Sufficiency Guarantee charges when they are responding to MISO instructions to manually curtail their facilities.⁶

³ Intermittent Resources are resources that are not capable of being committed or decommitted by, or following set-point instructions of, the transmission provider in the real-time energy and operating reserve market. See MISO FERC Electric Tariff, Module A, (0.0.0), § 1.329. MISO’s proposal to allocate Revenue Sufficiency Guarantee costs to them was made in response to the Commission’s rejection of an exemption of these resources from an allocation of Revenue Sufficiency Guarantee costs. *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186, at PP 40-41 (2010); *order on reh’g*, 135 FERC ¶ 61,007 (2011).

⁴ March 31 Order, 134 FERC ¶ 61,264 at P 39.

⁵ *Id.* P 59.

⁶ *Id.* P 74.

II. MISO's Filing

5. On May 2, 2011, MISO submitted proposed tariff revisions in response to the instructions in the March 31 Order. MISO requested an effective date 60 days from the date of its filing for the tariff provisions pertaining to the exemption of Intermittent Resources from Revenue Sufficiency Guarantee charges when they are responding to MISO instructions to manually curtail their facilities.

III. Notice of Filing and Responsive Pleadings

6. Notice of the May 2, 2011 compliance filing was published in the *Federal Register*, 76 Fed. Reg. 27,035 (2011), with interventions and protests due on or before May 23, 2011. Comments or protests were filed by E.ON Climate & Renewables North America LLC and NextEra Energy Power Marketing, LLC (jointly, E.ON and NextEra); and MidAmerican Energy Company (MidAmerican). MISO filed an answer to the comments and protests, and E.ON and NextEra filed an answer to MISO's answer.

IV. Discussion

A. Procedural Matters

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers of MISO and E.ON and NextEra because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Effective Date For Proposed Exemption of Intermittent Resources From Revenue Sufficiency Guarantee Charges When They Are Responding To Manual Curtailment Instructions

a. Compliance Filing

8. MISO requests an effective date 60 days after its filing for the tariff provision that exempts Intermittent Resources from Revenue Sufficiency Guarantee charges when they respond to MISO instructions to manually curtail their output.

b. Protest

9. E.ON and NextEra assert that the requested effective date for this provision is inconsistent with the effective date for all other aspects of the MISO proposal.⁷ E.ON and NextEra note that the March 31 Order conditionally accepted the MISO proposal effective April 1, 2011, and MISO requests in its May 2, 2011 compliance filing an effective date of April 1, 2011 for the other aspects of its proposal. E.ON and NextEra argue that a July 2, 2011 effective date for the exemption provision would subject Intermittent Resources to two months of Revenue Sufficiency Guarantee charges for no just reason.⁸ E.ON and NextEra note that in a previous order regarding exemptions from Revenue Sufficiency Guarantee charges, the Commission ordered MISO to submit corresponding revisions to be effective the day following the date of the order.⁹ E.ON and NextEra assert that MISO should be required to refund amounts collected under Revenue Sufficiency Guarantee charges when Intermittent Resources were responding to instructions to curtail since April 1, 2011 with interest.¹⁰

c. Answers

10. MISO states that the March 31 Order stated that the proposed tariff revisions were conditionally accepted to become effective April 1, 2011, and MISO explains that it did not propose the curtailment exemption in its December Proposal. According to MISO, the curtailment exemption should have a later effective date similar to a filing under Federal Power Act section 205,¹¹ or, alternatively, the date of issuance of an order accepting the tariff revisions implementing such an exemption.¹² MISO states that it needs a later effective date in order to have sufficient time to adjust its systems and procedures to implement the new provision.

⁷ E.ON and NextEra May 23, 2011 Protest at 3.

⁸ *Id.* at 3-4.

⁹ *Id.* at 4-5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184, at P 130 (2010)).

¹⁰ *Id.* at 6.

¹¹ 16 U.S.C. § 824d (2012).

¹² MISO Answer at 5 (citing *LFC Gas Co. v. Northwest Pipeline Corp.*, 68 FERC ¶ 61,024, at 61,087-88 (1994) (*LFC Gas Co.*)).

11. E.ON and NextEra answer that neither the Federal Power Act nor Commission precedent provides a basis for MISO's requested effective date. They note that MISO requested an effective date of April 1, 2011 for other Revenue Sufficiency Guarantee charge revisions that the Commission found to be beyond the scope of a prior compliance filing, and therefore the proposed exemption in this proceeding should be treated similarly.¹³

12. E.ON and NextEra also argue that MISO has not provided a basis for an effective date on the date of issuance of a Commission order. They contend that the Commission precedent MISO cites does not address what effective date the Commission can assign. E.ON and NextEra cite examples of the Commission accepting tariff sheets with an effective date earlier than the Commission order, and of MISO proposing an effective date earlier than the date of the compliance filings.¹⁴

13. E.ON and NextEra state that MISO's claim that additional time is needed to adjust its systems and procedures is belied by other proposed Revenue Sufficiency Guarantee charge revisions that MISO is submitting with an April 1, 2011 effective date. They fault MISO for not providing any factual support for its claims that system adjustments are needed.¹⁵

d. Commission Determination

14. We find MISO's request for a July 2, 2011 effective date for the exemption of Intermittent Resources from Revenue Sufficiency Guarantee charges resulting from following dispatch instructions to be reasonable under the circumstances here. We accept MISO's explanation that the exemption requires adjustments to its systems and procedures that are different than those that MISO originally anticipated. A 60-day period for implementing these changes is reasonable.

15. We disagree with E.ON and NextEra that this change is not distinguishable from MISO's other proposed revisions, which have a proposed April 1, 2011 effective date. MISO originally proposed those changes on December 1, 2011, thus providing a reasonable implementation period. In addition, while the Commission required other changes in the March 31 Order, those changes – restricting the definition of headroom and creating a separate section in the tariff for the headroom charge – are amenable to immediate implementation.

¹³ E.ON and NextEra Answer at 3.

¹⁴ *Id.* at 3-4.

¹⁵ E.ON and NextEra June 22, 2011 Answer at 5.

16. E.ON and NextEra cite a previous order regarding exemptions from Revenue Sufficiency Guarantee charges in which the Commission ordered MISO to submit corresponding revisions to be effective the day following the date of the order. However, the revisions in question involved exemptions that had already been proposed by MISO, and which presumably could be implemented without further delay.¹⁶ By comparison, here we are dealing with an exemption that was required by the Commission, not proposed by MISO, and which MISO indicates required additional time to implement. This distinction supports our action here.

17. Since we are accepting MISO's requested effective date, we deny E.ON and NextEra's refund request.

2. Other Issues

18. MidAmerican suggests several tariff revisions, in addition to MISO's proposals to specify a separate section for the headroom charge and to delete references to headroom in the sections pertaining to the calculation of the deviation charge, as required by the March 31 Order.¹⁷ Referring to the MISO statement in the May 2, 2011 filing¹⁸ that the Real-Time Revenue Sufficiency Guarantee Intra-Hour Demand Change Charge does not need to be modified because it was already revised in Docket Nos. EL07-86, *et al.*, MidAmerican requests that MISO verify whether Section 1.538b of the tariff as most recently submitted is in fact accurate.¹⁹

19. In its answer MISO agrees that MidAmerican's proposed changes are appropriate, including the proposed deletion of the superseded term "Intra-Hour Demand Change Charge." MISO indicates that it is willing to make them as part of a compliance filing.²⁰

¹⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184, at P 130 (2010).

¹⁷ March 31 Order, 134 FERC ¶ 61,264 at P 59.

¹⁸ Midwest Independent Transmission System Operator, Inc. May 2, 2011 Compliance Filing at n.8.

¹⁹ MidAmerican May 11, 2011 Comments at 3.

²⁰ MISO June 8, 2011 Answer at 4.

20. The Commission accepts MISO's tariff revisions, subject to condition, as discussed below.²¹

21. We accept the tariff revisions proposed by MISO that provide separate references to the headroom and deviation charges. We also find that the additional revisions proposed by MidAmerican and endorsed by MISO are in compliance with the requirements of the March 31 Order, and therefore we require MISO to submit these revisions in a compliance filing within 30 days of this order.

22. Regarding Section 1.538b of the tariff, we agree with MidAmerican and MISO that the previous Real-Time Revenue Sufficiency Guarantee Intra-Hour Demand Change Charge definition applied to an earlier Revenue Sufficiency Guarantee charge allocation that has been superseded by the allocation accepted in this proceeding. Accordingly, the correct title of this section is the Real-Time RSG Headroom Charge. We require that MISO delete the reference to the earlier definition in this section and submit a revised tariff provision with the correct title in the compliance filing.

23. We accept the revised definition of headroom and the exemption for Intermittent Resources proposed by the MISO to be consistent with the requirements of the March 31 Order.

24. Finally, we note that the Commission's eTariff system does not contain any electronic tariff sheets that correspond to the proposed tariff changes filed in eLibrary in this proceeding. Pursuant to Order No. 714,²² the Commission requires public utilities to file all tariffs, tariff revisions, and rate change applications with the Commission.²³ The Commission specified that no substantive differences should exist between the tariff provisions filed as part of the XML data (in eTariff) and the tariff provisions filed as attachments (in eLibrary).²⁴ We direct MISO to compare its electronic tariff filings (in eTariff) against the proposed tariff changes in its eLibrary filing from this proceeding and, with respect to each inconsistency or omission in eTariff, MISO is required to

²¹ The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

²² *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

²³ *Id.* P 114.

²⁴ *Id.* P 59.

submit appropriate changes to eTariff along with an explanation of each change. The compliance filing is due within 30 days of the issuance of this order.

The Commission orders:

(A) MISO's compliance filing is hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) MISO is hereby directed 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.

(S E A L)

Kimberly D. Bose,
Secretary.