

169 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER18-1899-004

ORDER DENYING REHEARING

(Issued October 17, 2019)

1. On June 29, 2018, as amended on September 26, 2018 and October 3, 2018, Midcontinent Independent System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² two *pro forma* pseudo-tie agreements (Agreement or Agreements) as new Attachments FFF-1 and FFF-2 to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), as well as certain associated modifications to Tariff Modules A and C (together, Filing). On November 30, 2018, the Commission accepted MISO's Filing, subject to condition, effective August 29, 2018, as requested.³ American Municipal Power Inc. (AMP) filed a request for rehearing of the November 2018 Order on December 31, 2018. As discussed below, we deny rehearing.

I. Background

2. A pseudo-tie involves the real-time transfer of control of a generating resource or load from the Native Balancing Authority, in whose area that resource or load is physically located, to an Attaining Balancing Authority in a different geographic

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ *Midcontinent Indep. Sys. Operator Inc.*, 165 FERC ¶ 61,190 (2018) (November 2018 Order).

location.⁴ Because PJM Interconnection, L.L.C. (PJM) requires that an external generator be pseudo-tied to PJM in order to participate in the PJM capacity market, there has been a significant increase in the number of resources that have sought to pseudo-tie from MISO into PJM.⁵

3. On November 17, 2017, the Commission accepted tariff revisions from PJM to establish pseudo-tie requirements for new external resources that wish to participate in PJM's forward capacity auctions, and a transition period to allow for existing pseudo-tied resources that had previously cleared a forward capacity auction to comply with the new pseudo-tie requirements.⁶

4. On December 29, 2017, the Commission issued an order accepting revisions proposed by MISO and PJM to the Joint Operating Agreement (JOA) between MISO and PJM (MISO-PJM JOA) to better coordinate responsibilities for pseudo-ties between the two regional transmission organizations (RTOs).⁷ The MISO-PJM JOA revisions specify, *inter alia*, that each RTO has the right to terminate or suspend pseudo-tied resources under certain circumstances.

5. On February 26, 2018, the Commission rejected an earlier version of a *pro forma* pseudo-tie agreement that MISO had filed to add to its Tariff.⁸ In that order, the Commission found that, although a *pro forma* pseudo-tie agreement is a beneficial instrument, certain aspects of MISO's proposed *pro forma* pseudo-tie agreement were not shown to be just and reasonable; however, the Commission encouraged MISO to file a revised version.⁹

⁴ *Id.* P 2 (citations omitted) (defining Balancing Authority, Native Balancing Authority, and Attaining Balancing Authority).

⁵ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 97 (2015), *order on reh'g*, 155 FERC ¶ 61,157 (2016).

⁶ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,197 (2017).

⁷ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,313 (2017).

⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,165 (2018).

⁹ *Id.* PP 64-65. The Commission found that MISO's suspension and termination provisions were not shown to be just and reasonable and were inconsistent with previously-accepted revisions to the MISO-PJM JOA.

6. In the instant proceeding, MISO filed the Agreements as new Attachments FFF-1 and FFF-2 to the Tariff, and also submitted certain associated modifications to Modules A and C in the Tariff. The proposed Attachment FFF-1 Agreement sets forth the provisions for implementing and operating pseudo-ties for a pseudo-tie of generation or load into MISO from an external Balancing Authority, and the proposed Attachment FFF-2 Agreement sets forth the provisions for a pseudo-tie of generation or load out of MISO to an external Balancing Authority. MISO stated that the objective of the Filing is to provide a consistent framework to support and to clarify the relevant requirements for pseudo-ties of generation and load between MISO and an external Balancing Authority.¹⁰ MISO also noted that the proposed Agreements and Tariff revisions promote uniformity among the pseudo-tie requirements and increase the transparency and efficiency of the implementation process.¹¹

7. In the November 2018 Order, the Commission accepted MISO's Filing, subject to condition.¹² The Commission noted that the main purpose of the Agreements is to provide a consistent framework to support and clarify the relevant requirements for pseudo-ties.¹³

8. On December 31, 2018, AMP filed a timely request for rehearing challenging three aspects of the Commission's approval of MISO's Filing: (1) the circumstances under which the Agreements will apply to existing pseudo-ties;¹⁴ (2) MISO's ability to terminate a pseudo-tie in the event of certain inconsistencies in the modeling by MISO and an external Balancing Authority;¹⁵ (3) MISO's ability to terminate a pseudo-tie in the event of an emergency.¹⁶

¹⁰ MISO June 29, 2018 Transmittal at 3 (MISO Transmittal).

¹¹ *Id.* at 25.

¹² November 2018 Order, 165 FERC ¶ 61,190 at P 24.

¹³ *Id.* P 30.

¹⁴ AMP Request for Rehearing at 4-6.

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 7-8.

II. Discussion

A. Application to Existing Pseudo-Ties

9. In its Filing, MISO stated that new pseudo-ties that are implemented on or after September 1, 2018 will be required to execute an Agreement, but that existing pseudo-ties that are in effect prior to September 1, 2018 will not be required to execute an Agreement.¹⁷ In response to a Commission staff deficiency letter, MISO further explained that it proposed to require a pseudo-tie implemented before September 1, 2018 to execute the Agreement if it replaces an expired Transmission Service Reservation (TSR) with a new TSR after September 1, 2018.¹⁸

10. In the November 2018 Order, the Commission found that MISO's proposed application of the new Agreements to new pseudo-ties, and not to existing pseudo-ties (i.e., pseudo-ties in effect prior to September 1, 2018), is just and reasonable.¹⁹ The Commission explained that MISO would not require pseudo-ties in effect prior to September 1, 2018 to execute an Agreement until there is a change to the pseudo-tie, such as when there is a change to source or sink data or when a new TSR is requested.²⁰ The Commission found that this delineation as to whom the new Agreements would apply "strikes an appropriate balance between honoring existing arrangements and ensuring that any new pseudo-ties be subject to the Agreement going forward."²¹

11. On rehearing, AMP claims that the Commission erred by failing to explain how the requirement that an existing pseudo-tie entity that requires a new TSR must execute the new Agreement "strikes an appropriate balance."²² AMP contends that the Commission "relied on MISO's unsupported conclusion that these circumstances were 'an appropriate juncture' to impose the *pro forma* terms and conditions on preexisting

¹⁷ *Id.* at 16-17.

¹⁸ November 2018 Order, 165 FERC ¶ 61,190 at P 45 (citing MISO Sept. 26, 2018 Deficiency Response at 2).

¹⁹ *Id.* P 53.

²⁰ *Id.*

²¹ *Id.*

²² AMP Request for Rehearing at 5.

pseudo-ties and failed to meaningfully consider AMP's concerns."²³ Specifically, AMP asserts that there is no explanation in the record for why "continued grandfathering is acceptable in the event rollover rights are exercised, but not in the case of an identical replacement TSR that yields the same result in all material respects."²⁴

12. We deny rehearing. As the Commission explained in the November 2018 Order, requiring existing pseudo-ties to execute a new Agreement only upon certain changes to the pseudo-tie balances the interest in retaining certainty and stability for existing pseudo-ties, with the purpose of MISO's revisions to its pseudo-tie requirements in this proceeding, which is to enhance the consistency and clarity of those requirements.²⁵ Given that a pseudo-tie is reliant upon obtaining firm transmission service,²⁶ it is reasonable to designate the point at which an existing pseudo-tie obtains a new TSR for firm transmission service as the point to require conformance with the new Agreements, even if such TSR is an identical replacement. Although AMP would prefer that MISO select a different transition point, MISO's choice is reasonable.

B. Termination – Distribution Factor Threshold

13. In its Filing, MISO stated that the suspension and termination procedures are consistent with the termination provisions in the MISO-PJM JOA. As relevant on rehearing, the Agreements incorporate the requirement that MISO's Generation to Load Distribution Factor (Distribution Factor) calculations must align within two percent of the Distribution Factor calculations of the external Balancing Authority, for the duration of the pseudo-tie.²⁷ If the calculations do not align within two percent at any time, "MISO will coordinate with the [e]xternal Balancing Authority to determine if the two percent alignment can be met."²⁸ If that alignment cannot be met, "MISO may take action to

²³ *Id.* at 2.

²⁴ *Id.* at 6.

²⁵ See November 2018 Order, 165 FERC ¶ 61,190 at PP 30, 53-54; see also *id.* P 54 (explaining that the Commission has previously found it "inappropriate and contrary to the *pro forma* [Open Access Transmission Tariff] to grant entities seeking to change point of receipt or point of delivery 'special queue treatment'") (citations omitted).

²⁶ See *id.* P 52 (citing MISO Nov. 7, 2018 Answer at 4).

²⁷ MISO Transmittal at 8.

²⁸ Attachment FFF-1, section 2(k)(i); Attachment FFF-2, section 2(k)(i).

suspend and terminate” the pseudo-tie consistent with the relevant suspension and termination provisions.²⁹

14. In the November 2018 Order, the Commission explained that it had previously accepted the use of the two percent Distribution Factor threshold as just and reasonable in a similar context, and saw no reason to depart from that precedent.³⁰ On rehearing, AMP alleges that the Commission erred in accepting MISO’s proposed right to terminate pseudo-ties in the event that the two percent Distribution Factor threshold is exceeded.³¹ Specifically, AMP contends that the Commission erred because it failed to explain why accepting the termination provision was “appropriate in the specific case of MISO’s *pro forma* agreements.”³² Further, AMP claims that the termination provision “unreasonably shift[s] the burden of the RTOs’ failure to properly model their transmission systems to the pseudo-tied generator.”³³

15. We deny rehearing. As the Commission explained in the November 2018 Order, the Commission has previously accepted the use of the two percent Distribution Factor threshold.³⁴ In that proceeding, concerning revisions to PJM’s pseudo-tie requirements, the Commission addressed AMP’s concern that the Distribution Factor threshold shifts the burden of modeling to the pseudo-tied resource, explaining that the pseudo-tied resource is “not required to do any of the modeling.”³⁵ We further note that, in the event that alignment within the two percent threshold cannot be maintained, MISO will coordinate with the external Balancing Authority, further indicating that the pseudo-tied entity does not bear the burden of these provisions.³⁶

²⁹ *Id.*

³⁰ November 2018 Order, 165 FERC ¶ 61,190 at P 72.

³¹ AMP Request for Rehearing at 6-7.

³² *Id.* at 7.

³³ *Id.* at 6.

³⁴ November 2018 Order, 165 FERC ¶ 61,190 at P 72 (citing *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,197 at P 87).

³⁵ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,197 at P 87.

³⁶ Attachment FFF-1, section 2(k)(i); Attachment FFF-2, section 2(k)(i).

16. Aside from its claim concerning the burden of modeling, AMP generally contends that the November 2018 Order “fails to meaningfully address AMP’s concerns” as articulated in AMP’s prior pleadings in this proceeding.³⁷ But AMP does not identify any specific concerns in its rehearing request, and it may not rely solely on a general reference to its prior pleadings.³⁸ In any event, AMP’s arguments are unpersuasive. As MISO explained in its Filing, if a pseudo-tied resource fails to meet the two percent Distribution Factor threshold, this “could” reflect a modeling error, in which case the Agreements provide for MISO to work with the external Balancing Authority to resolve the issue.³⁹ However, the two percent threshold is ultimately required to ensure reliability,⁴⁰ and failure to stay within the two percent alignment can result in modeling errors and diminished ability to reliably deliver energy between markets.⁴¹ In that event, it is appropriate for MISO, as the entity responsible for ensuring the reliability and integrity of its system, to retain the authority to suspend or terminate pseudo-ties that do not meet MISO’s requirements and may pose a risk to reliability.⁴²

C. Termination in the Event of an Emergency

17. As proposed in MISO’s Filing, section 11 of the Agreements provides that MISO may suspend a pseudo-tie when, as relevant on rehearing, “MISO determines that the Pseudo-Tie poses a risk to system reliability or a risk of violation of established reliability criteria.”⁴³ Section 12 of the Agreements provides that MISO shall have the right to terminate an Agreement upon 60 days’ notice to the pseudo-tied resource and the external Balancing Authority if “MISO experiences an emergency or other condition which may adversely impact the reliability of the transmission system.”⁴⁴

³⁷ AMP Request for Rehearing at 6.

³⁸ See 18 C.F.R. § 385.203(a)(7) (2019) (party submitting a filing or pleading must provide the basis in fact and law for its position).

³⁹ MISO Transmittal at 19.

⁴⁰ *Id.*

⁴¹ See *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,197 at PP 87-88.

⁴² November 2018 Order, 165 FERC ¶ 61,190 at P 69.

⁴³ Attachment FFF-1, section 11(b)(iii); Attachment FFF-2, section 11(b)(iii).

⁴⁴ Attachment FFF-1, section 12(b)(iv); Attachment FFF-2, section 12(b)(d).

18. In the November 2018 Order, the Commission determined that “MISO’s suspension and termination provisions, including procedures and timeframes for notification, and—where appropriate—opportunities to cure breaches to the Agreement, provide a sufficient degree of specificity and clarity regarding the circumstances in which they apply.”⁴⁵ Further, the Commission found that MISO’s proposal to allow termination of a pseudo-tie in the event of an emergency is not unjust and unreasonable.⁴⁶ The Commission noted that MISO had provided assurances that it will attempt to utilize suspension provisions before beginning the process of termination.⁴⁷ Noting MISO’s responsibility to ensure the reliability and integrity of its system, the Commission declined to require MISO to utilize suspension procedures instead of termination in the event of emergency, but encouraged “MISO to utilize its suspension procedures unless it determines that doing so will compromise reliability.”⁴⁸

19. On rehearing, AMP argues that the Commission erred in accepting MISO’s emergency conditions termination provision.⁴⁹ Specifically, AMP claims that there is not a “clear standard by which MISO will determine whether to suspend or terminate in the face of an emergency,” and notes that “the Commission endorsed a potentially reasonable standard (i.e., ‘unless it will compromise reliability’), but failed to provide a rational explanation for not imposing it.”⁵⁰ Further, AMP faults the Commission decision “to encourage, rather than require, MISO to utilize suspension procedures before pursuing termination, except in the even[t] that reliability would be compromised.”⁵¹ AMP claims that the Commission failed to meaningfully consider AMP’s arguments in favor of requiring MISO to utilize suspension before seeking to terminate a pseudo-tie.⁵²

20. We deny rehearing. We continue to find that MISO’s suspension and termination provisions “provide a sufficient degree of specificity and clarity regarding the

⁴⁵ November 2018 Order, 165 FERC ¶ 61,190 at P 69.

⁴⁶ *Id.* P 70.

⁴⁷ *Id.* PP 69-70 (citing MISO Transmittal at 11 n.21; Deficiency Response at 5).

⁴⁸ November 2018 Order, 165 FERC ¶ 61,190 at P 70.

⁴⁹ AMP Request for Rehearing at 3, 7-8.

⁵⁰ *Id.* at 8.

⁵¹ *Id.* at 3.

⁵² *Id.* at 8.

circumstances in which they apply.”⁵³ AMP specifically claims that the Agreements do not adequately define a standard for MISO’s decision to suspend or terminate in the event of an emergency, and that the Commission should impose a reliability threshold. We note that both sections 11 and 12 of the Agreements reference reliability impacts as a basis for suspension or termination, and that section 12, concerning termination, references reliability impacts in the emergency termination provision. As reflected in these provisions, we rely on MISO, in its role as the transmission provider, to appropriately identify risks to its reliable operation of the bulk power system and take necessary actions to safeguard against such risks, including those that may be posed by pseudo-tie arrangements.⁵⁴ The coordination and notification requirements in these provisions also provide important protections to pseudo-tied resources, allowing sufficient time to plan contingencies and, if necessary, seek redress from the Commission related to a planned termination.⁵⁵ Accordingly, as in the November 2018 Order, we emphasize our expectation that suspension or termination of a pseudo-tied resource in the event of an emergency would not occur absent reliability concerns, thereby providing guidance to MISO and parties regarding MISO’s implementation of the suspension and termination provisions.⁵⁶

21. AMP contends that the Agreements reflect a “terminate first” approach,⁵⁷ but there is no support in the Agreements or the record for that assertion. As noted above, both sections 11 and 12 of the Agreements reference reliability impacts as a potential basis for suspension or termination. MISO’s Filing specifically explained that “[s]uspension is a temporary state in which MISO will collaborate with the external Balancing Authority and the Company to resolve an operational issue in an effort to avoid escalation to termination of the pseudo-tie.”⁵⁸ As MISO states, the Commission also understands that

⁵³ November 2018 Order, 165 FERC ¶ 61,190 at P 69.

⁵⁴ We note that MISO also safeguards reliability as a reliability coordinator and balancing authority pursuant to NERC reliability standards.

⁵⁵ We note that MISO cannot terminate a pseudo-tie agreement unilaterally without notifying the Commission, pursuant to section 35.15 of the Commission’s regulations. 18 C.F.R. § 35.15 (2019).

⁵⁶ *See* November 2018 Order, 165 FERC ¶ 61,190 at P 70.

⁵⁷ AMP Request for Rehearing at 8.

⁵⁸ MISO Transmittal at 11 n.21; *see also id.* at 21 (“In all cases, MISO will work with the Company to address any issues resulting in suspension and work to avoid a termination if possible.”).

MISO will ordinarily utilize termination procedures upon escalation from a suspension.⁵⁹ Thus, as the Commission explained in the November 2018 Order, while “we decline to require MISO to utilize suspension procedures instead of termination in such circumstances, thus limiting the system operator’s options in the face of emergency conditions, we encourage MISO to utilize its suspension procedures unless it determines that doing so will compromise reliability.”⁶⁰

22. Moreover, AMP’s request that the Commission require MISO to first suspend a pseudo-tie, before initiating termination procedures, is outside the scope of this proceeding. In acting on a section 205 proposal, the Commission’s role is to consider “whether the proposal before it is just and reasonable and not unduly discriminatory or preferential, not whether an alternative approach might also be just and reasonable.”⁶¹

The Commission orders:

AMP’s request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁹ *See id.*

⁶⁰ November 2018 Order, 165 FERC ¶ 61,190 at P 70.

⁶¹ *See, e.g., California Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009) (“the issue before the Commission is whether the CAISO’s proposal is just and reasonable and not whether the proposal is more or less reasonable than other alternatives”); *see also OXY USA Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology “need not be the only reasonable methodology, or even the most accurate one”); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (when determining whether a rate was just and reasonable, the Commission properly did not consider “whether a proposed rate schedule is more or less reasonable than alternative rate designs”).