

161 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Midcontinent Independent System Operator, Inc. Docket Nos. ER16-1817-003
ER16-1346-002

ORDER ON COMPLIANCE

(Issued October 19, 2017)

1. On February 2, 2017, in Docket No. ER16-1817-003, Midcontinent Independent System Operator, Inc. (MISO) submitted a filing proposing revisions to its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) to comply with the Commission's January 3, 2017 order¹ to modify certain provisions in MISO's Generator Interconnection Procedures (GIP) relating to the provision of interconnection service to two classes of interconnection customers, as explained more fully below. Also in response to the January 3 Order, on February 2, 2017, in Docket No. ER16-1346-002, MISO submitted a filing to revise certain provisions of an interconnection service agreement for an external generating facility between MISO and the Louisiana Energy and Power Authority (LEPA), as explained more fully below.

2. In this order, we accept the Tariff revisions filed in Docket No. ER16-1817-003, subject to condition, make them effective April 5, 2016, as requested, and direct a further compliance filing to be made within 30 days of the date of this order, as discussed below. We also accept the service agreement filed in Docket No. ER16-1346-002, to be effective April 6, 2016, as requested, subject to the outcome of Docket No. ER16-1817.

I. January 3 Order

3. The January 3 Order modified certain provisions in MISO's GIP relating to the provision of interconnection service to two classes of interconnection customers: (1) generating facilities that are external to MISO's transmission system that are in-service, under construction, or have an unsuspended GIA with another transmission

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,004 (2017) (January 3 Order).

provider, but are seeking Network Resource Interconnection Service (NRIS)² with MISO (E-NRIS);³ and (2) generating facilities located within MISO that already have Energy Resource Interconnection Service (ERIS)⁴ with MISO but seek to upgrade that service to NRIS (NRIS-only). Specifically, in the January 3 Order, the Commission accepted revisions made by MISO to the *pro forma* E-NRIS Service Agreement, subject to condition, and made it effective as of April 5, 2016.⁵ The Commission directed MISO to submit a further compliance filing to: (1) change the termination clause to match that of the existing termination clause in the *pro forma* Generator Interconnection Agreement (GIA);⁶ and (2) provide an Appendix B to the *pro forma* E-NRIS Service Agreement that (a) included all milestones from Appendix B to the *pro forma* GIA (or an explanation for why certain milestones did not apply), and (b) included section B (transmission owner's milestones) to Appendix B.⁷ Also in the January 3 Order, the Commission accepted, subject to condition, a revised LEPA E-NRIS Service Agreement filed in Docket No. ER16-1346-001, to be effective as of April 6, 2016.⁸ The Commission directed MISO to submit with its compliance filing revisions to the LEPA E-NRIS Service Agreement to conform it to the *pro forma* E-NRIS Service Agreement, as revised according to the January 3 Order.

² NRIS allows an interconnection customer to interconnect its Generating Facility to the MISO transmission system or distribution system, as applicable, and integrate its Generating Facility with the transmission system to deliver its output over that system in the same manner as for any Generating Facility designated as a network resource. MISO, FERC Electric Tariff, Attachment X (70.0.0), § 1. Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the MISO Tariff.

³ E-NRIS is External NRIS.

⁴ ERIS allows an interconnection customer to connect its Generating Facility to the MISO transmission system or distribution system, as applicable, and to be eligible to deliver the Generating Facility's electric output using the existing firm or non-firm capacity of the transmission system on an as-available basis. MISO, FERC Electric Tariff, Attachment X (70.0.0), § 1.

⁵ January 3 Order, 158 FERC ¶ 61,004 at P 26.

⁶ *Id.* P 27.

⁷ *Id.* P 28.

⁸ *Id.* PP 26-28.

II. Filings

A. E-NRIS Filing, Docket No. ER16-1817-003

4. MISO states that it has revised Article 8.0 of the E-NRIS Service Agreement to comply with the Commission's directives in the January 3 Order.⁹ Specifically, MISO proposes changes to the termination provision to match the termination provision in the *pro forma* GIA. MISO further proposes to retain the milestones currently listed in Appendix B of the *pro forma* E-NRIS Service Agreement, asserting that the additional milestones in Appendix B of the *pro forma* GIA do not apply to E-NRIS customers.¹⁰ MISO explains that the E-NRIS Service Agreement is not a construction document like the GIA and does not contain provisions that trigger the milestones found in MISO's *pro forma* GIA. Furthermore, MISO argues that an interconnection customer's execution of an E-NRIS Service Agreement is necessarily preceded by the execution of a GIA by the interconnection customer with a transmission provider other than MISO. MISO asserts that many of the milestones listed in Appendix B of the MISO *pro forma* GIA

⁹ MISO, E-NRIS Compliance Filing, Docket No. ER16-1817-003, Transmittal Letter at 3 (filed Feb. 2, 2017) (E-NRIS Filing).

¹⁰ *Id.* at 4. According to MISO, the additional milestones in Appendix B of the *pro forma* GIA that do not apply to E-NRIS customers are: (1) Milestone 2a – Provide Certificate of Insurance; (2) Milestone 3 – Provide to Transmission Provider reasonable evidence of continued site control; (3) Milestone 3 – Provide evidence of one of several milestones having been achieved, pursuant to GIP 11.3; (4) Milestone 4 – Provide security deposit to Transmission Owner to commence design, equipment procurement and construction for Interconnection Facilities pursuant to GIP 5.5 and 5.6; (5) Milestone 5 – Hold a pre-construction meeting; (6) Milestone 6 – Provide initial design and specifications for Interconnection Customer's Interconnection Facilities to Transmission Owner and Transmission Provider, pursuant to GIA 5.10.1; (7) Milestone 7 – Provide final design and specifications for Interconnection Customer's Interconnection Facilities to Transmission Owner and Transmission Provider, pursuant to GIA 5.10.1; (8) Milestone 8 – Deliver to Transmission Owner and Transmission Provider "as-built" drawings, information and documents regarding Interconnection Customer's Interconnection Facilities, pursuant to GIA 5.10.3; (9) Milestone 9 – Notify Transmission Provider and Transmission Owner in writing of Local Balancing Authority where Generating Facility is located, pursuant to GIA 9.2; (10) Milestone 10 – Hold a pre-energization meeting; (11) Milestone 11 – Establish an initial Synchronization Date; (12) Milestone 13 – Provide notice on the status of the Generating Facility; and (13) Milestone 14 – Provide notice of a test plan in advance of conducting tests for the Generating Facility.

are more appropriately addressed in the interconnection customer's GIA with the host transmission provider.

5. MISO further argues that, because the transmission owner is not a party to the E-NRIS Service Agreement, inclusion of the transmission owner's milestone obligations is not appropriate in the *pro forma* E-NRIS Service Agreement.¹¹ MISO states that any transmission owner milestones would be contemplated in a Facilities Construction Agreement between MISO, the transmission owner, and the interconnection customer. In order to provide clarity, MISO includes new language in section B of Appendix B to the *pro forma* E-NRIS Service Agreement, as follows:

Transmission Owner is not a party to this Service Agreement and has no milestone obligations under this Service Agreement. Any Transmission Owner obligations will be contemplated by a Facilities Construction Agreement, if applicable.

6. MISO requests that the proposed Tariff revisions become effective April 5, 2016, as set forth in the January 3 Order.¹²

B. LEPA E-NRIS Service Agreement, Docket No. ER16-1346-002

7. MISO states that it revised the LEPA E-NRIS Service Agreement filed in Docket No. ER16-1346-001 to conform that agreement to the *pro forma* E-NRIS Service Agreement, in accordance with the January 3 Order.¹³ MISO requests that the proposed revisions become effective April 6, 2016, as set forth in the January 3 Order.¹⁴

III. Notice and Responsive Pleadings

8. On February 2, 2017, notice of the compliance filings in Docket Nos. ER16-1817-003 and ER16-1346-002 was published in the *Federal Register*, 82 Fed. Reg. 9735 (2017), with interventions and protests due on or before February 23, 2017. None was filed in Docket No. ER16-1346-002. The American Wind Energy Association and Wind

¹¹ *Id.* at 5.

¹² *Id.*

¹³ MISO, LEPA E-NRIS Service Agreement Compliance Filing, Docket No. ER16-1346-002, Transmittal Letter at 1 (filed Feb. 2, 2017).

¹⁴ E-NRIS Filing, Transmittal Letter at 5.

on the Wires (together, AWEA/WOW) filed a timely protest in Docket No. ER16-1817-003.

9. On March 31, 2017, in Docket No. ER16-1817-003, MISO filed a motion for leave to answer and answer to AWEA/WOW's protest.

10. AWEA/WOW argue that MISO's proposed *pro forma* E-NRIS Service Agreement filed in Docket No. ER16-1817-003 has not provided the necessary clarity required by the Commission, as MISO has not specified that the E-NRIS customer will be subject to the same level of milestone commitments and detail that apply to the interconnection customer under a GIA.¹⁵ AWEA/WOW assert that there is a need to ensure that the construction portion of *pro forma* E-NRIS is commensurate with the construction portion of the *pro forma* GIA, and that, for generation external to MISO, this is done under two agreements (the *pro forma* E-NRIS Service Agreement and a *pro forma* Facilities Construction Agreement).¹⁶ In its answer, MISO responds that parity between the *pro forma* GIA and the *pro forma* E-NRIS Service Agreement is neither necessary nor attainable because: (1) the *pro forma* E-NRIS Service Agreement does not contemplate the construction of new interconnection facilities, as it addresses the interconnection of facilities already in-service; and (2) where construction upgrades may be necessary, any construction obligations will be addressed by the interconnection customer's GIA with a transmission provider external to MISO or Facilities Construction Agreement with a transmission owner and MISO.¹⁷

11. AWEA/WOW argue that MISO's proposed addition of language clarifying that the transmission owner is not a party to the E-NRIS Service Agreement is incomplete, as it does not address the issue of any construction agreement. Thus, AWEA/WOW suggest that, in order to ensure all milestone costs and timely completion obligations are transparent, MISO should specify, in the *pro forma* E-NRIS Service Agreement, that “[a]ny Transmission Owner and E-NRIS Customer obligations will be contemplated by completing the information in Appendix A to Transmission Provider's ~~a~~-pro forma Facilities Construction Agreement, or Multi-Party Facilities Construction Agreement, as ~~if~~-applicable.”¹⁸ In its answer, MISO does not oppose the additional references to the

¹⁵ AWEA/WOW Protest, Docket No. ER16-1817-003, at 2 (filed Feb. 23, 2017).

¹⁶ *Id.* at 2-3.

¹⁷ MISO Answer, Docket No. ER16-1817-003, at 3-4 (filed Mar. 31, 2017).

¹⁸ AWEA/WOW Protest at 3.

E-NRIS customer and the Multi-Party Facilities Construction Agreement.¹⁹ However, MISO opposes the inclusion of the additional phrase “completing the information in Appendix A to Transmission Provider’s a *pro forma* Facilities Construction Agreement, or Multi-Party Facilities Construction Agreement, as if applicable.” MISO states that a reference directly to Appendix A is overly specific and unnecessary because transmission owner obligations are contemplated throughout each construction agreement and not only in Appendix A.

12. In its answer, MISO states that the proposed *pro forma* E-NRIS Service Agreement wholly complies with the January 3 Order and that the revisions suggested by AWEA/WOW do not achieve any additional level compliance with the specific directives of the January 3 Order and are beyond the scope of this compliance proceeding.²⁰

IV. Commission Determination

A. Procedural Matters

13. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 185.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO’s answer because it has provided information that has assisted us in our decision-making process.

B. Substantive Matters

14. We accept MISO’s proposed Tariff revisions in Docket No. ER16-1817-003, subject to condition, to be effective April 5, 2016, as requested, and direct a further compliance filing to be made within 30 days of the date of this order, as discussed below.²¹ We find that MISO’s proposed E-NRIS provisions are just and reasonable and in compliance with the Commission’s directives in the January 3 Order, with the exceptions noted below. The Tariff changes will ensure comparable treatment for all interconnection customers, external or internal, existing or new. We also accept MISO’s revised LEPA E-NRIS Service Agreement in Docket No. ER16-1346-002, subject to the

¹⁹ MISO Answer at 5.

²⁰ *Id.* at 3.

²¹ MISO states that the E-NRIS Filing is being made pursuant to the January 3 Order and also pursuant to section 205 of the FPA (16 U.S.C. § 824d (2012)). *See* E-NRIS Filing, Transmittal Letter at 1. We disagree and find that the filing is made in compliance with the January 3 Order, which was issued according to the Commission’s authority under section 206 of the FPA.

outcome of Docket No. ER16-1817, to be effective April 6, 2016, as requested. We direct MISO to submit with its compliance filing revisions to the LEPA E-NRIS Service Agreement to conform that agreement with the *pro forma* E-NRIS Service Agreement, as revised according to the directives in this order.

15. In the January 3 Order, the Commission directed MISO to “submit a new Appendix B to the *pro forma* E-NRIS Service Agreement and the LEPA E-NRIS Service Agreement that (1) either includes all milestones from Appendix B to the *pro forma* GIA or explains why certain milestones do not apply, and (2) includes section B (transmission owner’s milestones).”²² With regard to the first directive, MISO, in its compliance filings, proposes to retain the milestones currently listed in Appendix B of the *pro forma* E-NRIS Service Agreement, stating that the additional milestones in Appendix B of the *pro forma* GIA do not apply to E-NRIS customers and that an E-NRIS customer already has a GIA with its home transmission provider. We agree that in cases where the E-NRIS customer is already in-service and has a GIA with its home transmission provider, the additional milestones, which focus largely on the implementation of interconnection facilities, would not apply, as those facilities would already be in place for a generator that is in-service. Accordingly, such E-NRIS customers should be permitted in the E-NRIS Service Agreement to simply indicate that the milestones do not apply to them, as they are already in-service.

16. However, MISO indicates that an E-NRIS customer could also be a generator that is still under construction or subject to an unsuspended GIA.²³ In this case, we find that comparability requires that such E-NRIS customers abide by similar milestones in MISO that are applied to internal generators seeking to interconnect in MISO. The Commission has stated, “Tariff provisions should ensure that all interconnection customers, internal and external, and new and existing, are treated comparably.”²⁴ We find that MISO’s reliance on the milestones contained in an external transmission provider’s GIA does not provide assurance that those milestones are comparable to the milestones required in a GIA for an internal customer, which could lead to non-comparable treatment between customers internal and external to MISO. For this reason, as well as to increase the transparency of the interconnection process, we direct MISO to add, in a compliance filing to be made within 30 days of the date of this order, milestones to Appendix B of the *pro forma* E-NRIS Service Agreement that ensure that generators whose projects are under development in another transmission provider’s interconnection process and are seeking E-NRIS with MISO are making adequate progress toward interconnection with their home transmission provider. These milestones should also provide reassurance to

²² January 3 Order, 158 FERC ¶ 61,004 at P 28.

²³ *Internal MISO Generation v. MISO*, 154 FERC ¶ 61,248, at P 15 (2016).

²⁴ *Id.* P 34.

both MISO and other interconnection customers that any customer seeking E-NRIS, whose generating facility is not yet in-service and has another home transmission provider, is making progress toward interconnection. We note that the milestones listed in MISO's *pro forma* GIA provide the types of information that indicate whether adequate progress is being made on an interconnection request. We acknowledge, however, that these milestones will need to be adjusted for external generators seeking E-NRIS to allow them, in some cases, to simply indicate that they have complied with a given milestone requirement in their home transmission provider's interconnection process (instead of duplicating such efforts with MISO). MISO may also, on compliance, explain why a given milestone should not apply to an E-NRIS Service Agreement, either because it does not provide useful information to MISO and other interconnection customers or otherwise.

17. With regard to the second compliance directive in the January 3 Order, with the changes discussed below, we agree with MISO's proposal to add text to the *pro forma* E-NRIS Service Agreement to make clear that any MISO transmission owner milestone obligations triggered by a request for E-NRIS would be contemplated by a Facilities Construction Agreement rather than the E-NRIS Service Agreement, as the transmission owner would not be a party to an E-NRIS Service Agreement. We find, however, that MISO's proposed additional text to the *pro forma* E-NRIS Service Agreement does not provide adequate clarity to ensure that E-NRIS customers are being treated comparably with other similarly-situated interconnection customers, as the proposed additional text does not include the use of a Multi-Party Facilities Construction Agreement. However, we reject AWEA/WOW's suggestion that the *pro forma* E-NRIS Service Agreement should refer specifically to Appendix A of the Facilities Construction Agreement and the Multi-Party Facilities Construction Agreement, as the body of those agreements may also include obligations for the transmission owner. Accordingly, we direct MISO, in a compliance filing to be submitted within 30 days of the date of this order, to alter its proposed revisions to the *pro forma* E-NRIS Service Agreement as follows:

Transmission Owner is not a party to this Service Agreement and has no milestone obligations under this Service Agreement. Any Transmission Owner obligations related to the service established in this Service Agreement will be contemplated by a *pro forma* Facilities Construction Agreement, or Multi-Party Facilities Construction Agreement, as if applicable.

The Commission orders:

(A) MISO's proposed Tariff revisions in Docket No. ER16-1817-003 are hereby accepted, subject to condition, to be effective April 5, 2016, as discussed in the body of this order.

(B) MISO's proposed revisions to the LEPA E-NRIS Service Agreement filed in Docket No. ER16-1346-002 are hereby accepted, subject to the outcome of Docket No. ER16-1817, to be effective April 6, 2016, as discussed in the body of this order.

(C) MISO is hereby directed to submit a compliance filing within 30 days of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.