

clarification, (2) grant WPPI Energy's request for clarification, (3) accept MISO's compliance filing, subject to condition,³ and (4) grant MISO's request for waiver.

I. Background

A. Customer Coalition Complaint

2. On September 8, 2016, Customer Coalition filed a complaint against MISO.⁴ Customer Coalition asserted that MISO improperly calculated the Sub-Regional Export Constraint⁵ from MISO South to MISO Midwest used in the 2016/17 Planning Resource Auction (Auction).⁶ Customer Coalition, therefore, requested that the Commission direct MISO to recalculate the 2016/17 Auction results and to provide refunds to customers. Customer Coalition also asked the Commission to direct MISO to revise its Tariff prospectively to prevent improper calculation of the Sub-Regional Export Constraint for future Auctions. Customer Coalition also argued that the Commission should audit the approval of offers (i.e., those associated with facility-specific reference levels) made into the 2016/17 Auction, and/or to periodically audit subsequent Auctions to ensure that the mitigation provisions of the Tariff are being applied consistent with an objective function to minimize overall capacity costs.⁷

³ We accept the Tariff sheets in Tab A, effective February 1, 2017, as requested. We reject the Tariff sheets in Tab C as moot, as they contain what had been pending Tariff language that the Commission subsequently rejected. *See Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,128 (2017) (order rejecting tariff filing).

⁴ Customer Coalition, Complaint, Docket No. EL16-112-000 (filed Sept. 8, 2016) (Complaint).

⁵ The Sub-Regional Export Constraint is “[t]he amount of [capacity] modeled in the [Auction] within an applicable [sub-region] that can be cleared in excess of the total individual [capacity requirement of the Local Resource Zones (Zones)] comprising the [sub-region] in accordance with applicable seams agreements, coordination agreements, or transmission service agreements.” MISO, FERC Electric Tariff, Module A, § 1.S (45.0.0). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Tariff.

⁶ MISO has two sub-regions: MISO Midwest (Zones 1-7) and MISO South (Zones 8-10). Therefore, the Sub-Regional Export Constraint for MISO South equals the Sub-Regional Import Constraint for MISO Midwest, and vice versa.

⁷ Complaint at 11-12, 19-23.

B. December 6 Order

3. In the December 6 Order, the Commission denied in part and granted in part Customer Coalition's Complaint. The Commission found that MISO's approach for calculating the Sub-Regional Export Constraint for the 2016/17 Auction was consistent with its Tariff and was just and reasonable. Accordingly, the Commission declined to require refunds. The Commission also found, however, that, going forward, the method used to calculate the Sub-Regional Export Constraints and Sub-Regional Import Constraints (together, Sub-Regional Constraints) for future Auctions must be included in the filed Tariff. Accordingly, the Commission directed MISO to submit a compliance filing proposing Tariff revisions to set forth the methodology MISO intends to use to calculate Sub-Regional Constraints for future Planning Years.⁸

4. The Commission also denied Customer Coalition's request for Commission audits of offers into the 2016/17 Auction and/or periodic audits for subsequent Auctions, but determined that facility-specific reference levels and their underlying going-forward costs have the potential to directly and significantly affect rates. Accordingly, the Commission directed MISO to revise its Tariff to include a formulaic definition of going-forward costs, including an amortization schedule for mandatory capital expenditures included in going-forward costs.⁹

II. Notice of Compliance Filing and Responsive Pleadings

5. Notice of the compliance filing was published in the *Federal Register*, 82 Fed. Reg. 9210 (2017), with protests and interventions due on or before February 21, 2017.

6. Timely motions to intervene were filed by: Southwest Power Pool, Inc. (SPP), Cooperative Energy, Entergy Services, Inc. (Entergy),¹⁰ American Municipal Power, Inc., and Wabash Valley Power Association, Inc.

7. The Council of the City of New Orleans, Louisiana, the Mississippi Public Service Commission, the Arkansas Public Service Commission, and the Louisiana Public Service Commission filed notices of intervention.

⁸ December 6 Order, 157 FERC ¶ 61,182 at PP 48-54.

⁹ *Id.* PP 64-65.

¹⁰ Entergy filed its motion to intervene on behalf of: Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

8. Timely motions to intervene and protests were filed by: Coalition of MISO Transmission Customers, WPPI Energy and Madison Gas and Electric Company (together, Wisconsin TDUs), and Occidental Energy Ventures LLC (Occidental). NRG Companies,¹¹ Potomac Economics, Ltd. (Market Monitor), and MISO South Regulators¹² each filed timely protests.

9. The Missouri Public Service Commission, Exelon Corporation, Wisconsin Electric Power Company and Wisconsin Public Service Corporation, and American Electric Power Service Corporation each filed motions to intervene out-of-time.

10. Entergy, MISO South Regulators, MISO, Wisconsin TDUs, and Customer Coalition each filed motions for leave to answer and answers.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), notices of intervention and timely, unopposed motions to intervene in Docket No. ER17-892-000 serve to make the entities that filed them parties to that proceeding.

12. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), the Commission will grant the unopposed, late-filed motions to intervene submitted by the Missouri Public Service Commission, Exelon Corporation, Wisconsin Electric Power Company and Wisconsin Public Service Corporation, and American Electric Power Service Corporation given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Entergy, MISO South Regulators, MISO, Wisconsin TDUs, and Customer Coalition because they have provided information that assisted us in our decision-making process.

¹¹ For purposes of this filing, NRG Companies are: NRG Power Marketing LLC and GenOn Energy Management, LLC.

¹² MISO South Regulators consist of: the Arkansas Public Service Commission, Louisiana Public Service Commission, Mississippi Public Service Commission, Public Utility Commission of Texas, and the Council of the City of New Orleans.

B. Substantive Matters**1. Compliance Issues****a. Sub-Regional Constraints****i. December 6 Order**

14. The Commission directed MISO to revise its Tariff to include the methodology MISO intends to use to calculate Sub-Regional Constraints for future Planning Years. The Commission clarified that the methodology MISO used for the 2016/17 Auction is not necessarily the only just and reasonable methodology for future Planning Years.¹³

ii. MISO's Compliance Filing

15. MISO states that it has complied with the Commission's directive by revising section 68A.3.1 of the Tariff as follows:

The Transmission Provider will establish and publish, on the Transmission Provider's public website, [Sub-Regional Resource Zones], [Sub-Regional Export Constraints] and [Sub-Regional Import Constraints] as soon as practical but no later than the first business day of March for the following Planning Year. To calculate the [Sub-Regional Export Constraints] and [Sub-Regional Import Constraints], the Transmission Provider will determine the transfer limit between [Sub-Regional Resource Zones] in accordance with applicable seams agreements, coordination agreements, or transmission service agreements. Next, the Transmission Provider will then complete a feasibility analysis in accordance with the Business Practices Manuals to review operational events from previous Planning Year's Summer peak to determine if a further reduction to the transfer limit is warranted for reliability. If such a reduction is necessary, the Transmission Provider will reduce the transfer limit, as appropriate. The Transmission Provider will then subtract the sum of Firm Transmission Service Reservations on the MISO OASIS that utilize the contract path between [Sub-Regional Resource Zones] and are exporting from or wheeling through the Transmission Provider's Balancing Authority for the applicable Planning Year. This difference determines the [Sub-Regional Export Constraint] and [Sub-Regional Import Constraint] to be utilized for the applicable Planning Year.

¹³ December 6 Order, 157 FERC ¶ 61,182 at P 54 & n.87.

MISO states that its proposed methodology is the same methodology it used for the 2016/17 Auction, and notes that the Commission found it to be just and reasonable.¹⁴

16. MISO explains that the regional directional transfer limits established in the settlement agreement between MISO and SPP serve as the starting point for the calculation of Sub-Regional Constraints.¹⁵ MISO states that, after reviewing the feasibility of the regional directional transfer limit based on the past Planning Year, it proposes to subtract the firm transmission service reservations in the applicable direction that utilize the contract path subject to the Settlement Agreement. MISO contends that this subtraction is reasonable because it aligns with economic expectations under peak conditions.¹⁶

17. MISO argues that it cannot assume counterflow will be scheduled under peak conditions because doing so would increase operational risk. MISO explains that it is most likely that transactions will flow in the constrained direction during a capacity emergency. MISO states that price signals will incentivize flows in the constrained direction, and that accounting for counterflow that is economically unlikely to occur is inappropriate, unreasonable, and would degrade reliability.¹⁷ MISO adds that Sub-Regional Constraints do not need to be calculated in the same manner as Capacity Import Limits and Capacity Export Limits. MISO explains that Capacity Import Limits and Capacity Export Limits represent physical limitations, while sub-regional constraints are based on negotiated agreements with other parties.¹⁸

iii. Protests

18. Customer Coalition, NRG Companies, Occidental, and the Market Monitor argue that MISO's proposed Sub-Regional Constraint calculation methodology is flawed and/or

¹⁴ MISO Compliance Filing at 2-3 (citing December 6 Order, 157 FERC ¶ 61,182 at PP 48, 51). MISO asserts that the existence of alternative methodologies does not demonstrate that MISO's proposal is unjust and unreasonable. *Id.* at 4.

¹⁵ *Id.* at 3 (citing SPP, Offer of Settlement, Docket No. EL14-21-000, *et al.*, (Settlement Agreement)).

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 4. MISO contends that, even if there was excess generation in MISO Midwest that did not clear the Auction, those resources would not have a must-offer obligation and MISO therefore cannot reasonably rely on them to create counterflow. *Id.*

¹⁸ *Id.*

unjust and unreasonable.¹⁹ Occidental asserts that MISO provides no data regarding the amount of firm transmission service reservations being used to support underlying transactions during peak periods.²⁰ Wisconsin TDUs agree with MISO that it is appropriate to start with the regional directional transfer limit established in the Settlement Agreement.²¹ Wisconsin TDUs argue, however, that MISO's proposal to subtract all firm transmission service reservations incorrectly assumes that those holding the reservations will use them all the time, even when it would be counter to their economic interest.²² Wisconsin TDUs also assert that MISO's proposed methodology is inconsistent with its modeling of imports and exports when it conducts its loss of load expectation studies.²³

19. The Market Monitor argues that MISO's proposed methodology is too conservative, and is inconsistent with the operation of the system.²⁴ The Market Monitor questions the relevance of the contract path, contending that, regardless of whether MISO identifies certain firm transmission reservations as utilizing the contract path, the scheduling of such reservations should not impact the regional direction transfer constraint during actual operations. The Market Monitor notes that holders of firm transmission reservations only have the right to schedule from the MISO control area to the external control area, and states that MISO effectively increases its aggregate load when there is an export so that its generation dispatch increases by the amount of the export. The Market Monitor asserts, however, that the source of an external transaction has no bearing on what generation is used to meet Net Scheduled Interchange obligations, and therefore the reservation does not specify or mandate the use of the regional directional transfer limit.²⁵

¹⁹ Customer Coalition Protest at 6; NRG Companies Protest at 1; Occidental Protest at 3; Market Monitor Protest at 2.

²⁰ Occidental Protest at 5.

²¹ Wisconsin TDUs Protest at 6.

²² *Id.* at 11. Wisconsin TDUs argue that it is reasonable to expect that a market participant would not schedule flows out of MISO in peak load conditions. *Id.* at 13.

²³ *Id.* at 8.

²⁴ Market Monitor Protest at 2.

²⁵ *Id.* at 3-4.

20. Customer Coalition asserts that MISO's proposed methodology artificially constrains the level of interregional power transfers that may occur and, as a result, would produce higher capacity prices.²⁶ NRG Companies state that the subtraction of firm transmission reservations that may not be utilized causes significant price separation between MISO Midwest and MISO South.²⁷ Wisconsin TDUs argue that MISO's proposed methodology will likely result in elevated prices in MISO Midwest and depressed prices in MISO South, thereby producing unjust and unreasonable rates throughout MISO.²⁸ Occidental also contends that MISO's proposed methodology does not reflect the actual amount of transfer capability between the regions. Occidental adds that the transmission operator will make many dispatch decisions that will enable the full use of the regional directional transfer limit notwithstanding the amount of firm transmission service reservations.²⁹

21. While Wisconsin TDUs state that MISO's proposal to review the feasibility of the regional directional transfer limit is sound, Occidental and MISO South Regulators argue that MISO should add details regarding the proposed feasibility analysis to the Tariff.³⁰ NRG Companies contend that the proposed Tariff language is unnecessarily vague and provides little transparency.³¹ MISO South Regulators note that MISO's proposed Tariff language does not refer to any particular business practices manual.³² Occidental asserts that any assumptions used to develop the models should be made available to stakeholders and subject to a review process, and notes that MISO has not committed to make reductions to the regional directional transfer limits for reliability purposes only.³³ NRG Companies and Occidental argue that rather than using a historical feasibility study, MISO should use a forward-looking analysis based on expected system conditions for the

²⁶ Customer Coalition Protest at 6.

²⁷ NRG Companies Protest at 8.

²⁸ Wisconsin TDUs Protest at 13-14.

²⁹ Occidental Protest at 3-4.

³⁰ Wisconsin TDUs Protest at 6; Occidental Protest at 5; MISO South Regulators Protest at 3-4.

³¹ NRG Companies Protest at 7.

³² MISO South Regulators Protest at 4.

³³ Occidental Protest at 5.

relevant Planning Year.³⁴ MISO South Regulators request that the Commission direct MISO to make annual reports, or annual presentations, that explain whether it reduced Sub-Regional Constraints because of the feasibility analysis and, if so, how and why.³⁵ Occidental adds that MISO has neither created a process to review the models used in the feasibility study, nor has it identified a process for conducting the study or reviewing its results.³⁶

22. The Market Monitor recommends an alternative proposal that adjusts the regional directional transfer limit downward to reflect the probability that MISO neighbors request a de-rating, and further subtracts the firm transmission reservations that support a capacity transaction. The Market Monitor explains that a capacity export is essentially an additional load that MISO must serve, in addition to its own planning requirements, and that the location of the exported resource is as important as the locations of all of MISO's own capacity resources.³⁷ Customer Coalition asserts that, even though the Commission stated that MISO's approach is not necessarily the only reasonable methodology, MISO ignored the Market Monitor's recommendation from the 2015 State of the Market Report.³⁸ Customer Coalition supports the Market Monitor's recommendation, and argues that the Commission should direct MISO to submit a further compliance filing with proposed Tariff language that is consistent with that recommendation.³⁹

23. NRG Companies and Occidental similarly propose deducting only firm transmission service reservations that are associated with capacity sales (pseudo-tied and non-pseudo-tied).⁴⁰ Occidental explains that these transaction types have non-recall provisions that could limit the ability of the grid operator to manage flows across the

³⁴ NRG Companies Protest at 6-7; Occidental Protest at 6.

³⁵ MISO South Regulators Protest at 5.

³⁶ Occidental Protest at 5.

³⁷ Market Monitor Protest at 4-5.

³⁸ Customer Coalition Protest at 4-5 (citing Potomac Economics, *2015 State of the Market Report for the MISO Electricity Markets* (June 2016), https://www.potomaceconomics.com/uploads/midwest_reports/2015_SOM_Main_Body_Final_Rev.pdf (2015 State of the Market Report)).

³⁹ *Id.* at 6.

⁴⁰ NRG Companies Protest at 8-9; Occidental Protest at 4.

interface.⁴¹ Wisconsin TDUs argue that MISO should only subtract transmission reservations that support pseudo-tied resources because MISO can utilize least-cost dispatch to dispatch a resource in MISO Midwest to fulfill the export schedule for a non-pseudo-tied resource in MISO South that would otherwise utilize its transmission service reservation.⁴²

24. NRG Companies add that, if the Commission accepts MISO's proposal, the Commission should direct MISO to adopt a market mechanism to alleviate price separation between MISO South and MISO Midwest and enable excess capacity located in MISO South to provide capacity to MISO Midwest. NRG Companies propose two possible mechanisms: (1) allow firm transmission holders' resources physically located in MISO South to qualify as MISO Midwest resources; and (2) allow firm transmission holders to effectively loan any unutilized firm transmission service reservations at a price determined by MISO.⁴³

iv. Answers

25. MISO states that "[t]he Commission's focus in reviewing a compliance filing is to determine whether the changes proposed comply with the Commission's previously stated directives."⁴⁴ MISO asserts that the arguments raised by Customer Coalition, the Market Monitor, NRG Companies, Occidental, and Wisconsin TDUs that MISO's proposed Sub-Regional Constraint calculation is unjust and unreasonable should be rejected because they are beyond the scope of MISO's compliance filing and amount to a collateral attack on the December 6 Order. MISO argues that the protestors have not shown that MISO's proposed methodology is unjust and unreasonable.⁴⁵

26. MISO states that the Commission found that MISO's proposed methodology was just and reasonable for the 2016/17 Auction and nothing has occurred since that time that would warrant a change in the Commission's findings.⁴⁶ MISO acknowledges that the

⁴¹ Occidental Protest at 4-5.

⁴² Wisconsin TDUs Protest at 11.

⁴³ NRG Companies Protest at 9-11.

⁴⁴ MISO Answer at 4 (citing *N.Y. Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,042, at P 28 (2009)).

⁴⁵ *Id.* at 4-5.

⁴⁶ *Id.* at 12 (citing December 6 Order, 157 FERC ¶ 61,182 at P 51).

Commission stated in a footnote that “[a]lthough we determine the methodology used by MISO for the 2016/17 Auction was just and reasonable, we recognize that the current methodology is not necessarily the only just and reasonable methodology.”⁴⁷ MISO asserts that the sole issue is whether MISO complied with the Commission’s directives, and therefore any alternative proposals are wholly irrelevant to whether MISO’s proposed methodology continues to be just and reasonable.⁴⁸ MISO states that the Commission did not require MISO to adopt or even address the Market Monitor’s recommendation, and that MISO’s proposed methodology “need not be the only reasonable methodology, or even the most accurate,” so long as it is just and reasonable.⁴⁹

27. Entergy takes no position on whether the full amount of the firm transmission reservations should be subtracted from the regional directional transfer limit, but agrees that, at a minimum, firm transmission reservations that support pseudo-tied generation should be subtracted from the regional directional transfer limit.⁵⁰ Entergy argues, however, that NRG Companies have not sufficiently explained how MISO would identify capacity-backed transactions and why they should be subtracted from the regional directional transfer limit.⁵¹

28. MISO acknowledges that the Market Monitor is correct that MISO supplies exports from its entire fleet of resources, but argues that the Market Monitor does not present any evidence that additional capability will be available on a peak day. MISO asserts that it cannot rely on potential excess capacity in MISO South that may not be deliverable in real time to load in MISO Midwest due to existing firm commitments and that MISO cannot rely on potential excess capacity in MISO Midwest that does not clear the Auction.⁵² In response to the Market Monitor’s comments regarding the relevance of the contract path to the regional directional transfer limit, MISO states that it has posted a

⁴⁷ *Id.* at 10 (citing December 6 Order, 157 FERC ¶ 61,182 at P 54 n.87).

⁴⁸ *Id.* at 12.

⁴⁹ *Id.* at 11-12 (citing *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995)).

⁵⁰ Entergy Answer at 10. Entergy supports a Tariff requirement for the relevant firm transmission reservation holders to have their pseudo-tie registrations approved by MISO two months prior to the March 1 deadline for publication of the Sub-Regional Export Constraint. *Id.*

⁵¹ *Id.* at 10.

⁵² MISO Answer at 6-7.

description of the contract paths it intends to use on its Open Access Same-Time Information System.⁵³ MISO argues that further detail in the Tariff would be unnecessary and hinder MISO's ability to respond to changing circumstances.⁵⁴

29. MISO disagrees with Occidental's assertion that MISO's methodology provides no reliability benefits to the system operator. MISO also disagrees with Wisconsin TDUs' claim that MISO's methodology is illogical and based on a faulty assumption that the export schedule will be used during peak conditions and MISO will be unable to fulfill it. MISO asserts that it "must consider peak days both at the local and/or system-wide level when determining its market parameters."⁵⁵

30. MISO reiterates that: (1) available transmission is impacted by firm transmission rights regardless of the probability of the flows, (2) it is most likely that transactions will flow in the constrained direction during a capacity emergency, and (3) accounting for counterflows that are economically unlikely to occur is inappropriate, unreasonable, and degrades reliability.⁵⁶ MISO notes that the Commission found in the December 6 Order that "it was reasonable for MISO to have excluded potential counterflows from the calculation of the Sub-Regional Export Constraint."⁵⁷

31. MISO dismisses Wisconsin TDUs' assertion that MISO's proposed methodology is inconsistent with its loss of load expectation study. MISO explains that its loss of load expectation study creates local and regional resource requirements that are paired with measures of the transmission system (i.e., Capacity Import Limits and Capacity Export Limits) that include expected firm transfer and exclude unlikely summer peak counterflows. MISO contends that this is consistent with its proposed Sub-Regional Constraints methodology. MISO explains that it tests and validates Capacity Import Limits and Capacity Export Limits using its Simultaneous Feasibility Test. MISO points

⁵³ *Id.* at 13 (citing MISO, *MISO Sub-Regional Firm Transmission Service Interface Limit* (Feb. 2016), https://www.oasis.oati.com/woa/docs/MISO/MISOdocs/MISO_Subregional_Interface_Limit.pdf).

⁵⁴ *Id.*

⁵⁵ *Id.* at 7 (citing December 6 Order, 157 FERC ¶ 61,182 at P 51).

⁵⁶ *Id.* at 7-8.

⁵⁷ *Id.* at 8-10 (citing December 6 Order, 157 FERC ¶ 61,182 at P 52).

out, however, that the Simultaneous Feasibility Test does not consider the simultaneous feasibility of flows on contract limits (e.g., Sub-Regional Export Constraints).⁵⁸

32. In response to concerns raised by Occidental, NRG Companies, and MISO South Regulators regarding MISO's proposed simultaneous feasibility study, MISO explains that a clear description of the study is available in section 5.2.1.4.2 of MISO's business practices manual for resource adequacy:

On an annual basis, prior to administrating the [Auction], MISO will review operational data from the previous Summer peak season to determine if operational events experienced in the past and forecasted expected conditions

for the Planning Year warrant a reduction in the initial [regional directional transfer limit] between the MISO South and Midwest Regions.

The following data sources are considered for the feasibility analysis:

- Studies that assess MISO transfer capability between Regions
- Studies that assess load diversity between Balancing Authorities
- Transmission system constraints
- Congestion history on relevant transmission constraints
- Capacity or Transmission Emergency alerts, warnings, or events

MISO states that, although further description is not necessary, it is willing to amend its Tariff language to clarify that it will perform the feasibility analysis in accordance with the business practices manual for resource adequacy.⁵⁹ MISO adds that it is willing to review its business practices manual with stakeholders to identify opportunities to improve the feasibility analysis. MISO clarifies that the feasibility study will only reduce the regional directional transfer limits for reliability purposes. MISO states that an annual presentation, originally proposed by MISO South Regulators, is appropriate. MISO adds that it is willing to revise section 68A.3.1 of its Tariff to state: "Prior to publishing the [Sub-Regional Reliability Zones, Sub-Regional Export Constraints, and Sub-Regional Import Constraints] on its public website, Transmission Provider will present the feasibility analysis and resulting [Sub-Regional Export Constraint and Sub-Regional Import Constraint] calculation to stakeholders."⁶⁰ Entergy supports MISO South Regulators' request that the Commission direct MISO to add specificity

⁵⁸ *Id.* at 8-9.

⁵⁹ *Id.* at 14-15 (citing MISO, Resource Adequacy Business Practices Manual, BPM-011-r16, § 5.2.1.4.2).

⁶⁰ *Id.* at 15.

to its Tariff regarding the feasibility analysis and to provide annual reports describing and providing support for all adjustments to the Sub-Regional Constraint calculations.⁶¹

33. MISO South Regulators assert, and MISO agrees, that MISO should not address capacity price divergence between MISO South and MISO Midwest through its Sub-Regional Constraint calculations, and that Wisconsin TDUs' and NRG Companies' arguments that MISO should work to achieve price convergence between MISO's two sub-regions are beyond the scope of MISO's efforts to ensure deliverability of resources during contingent periods.⁶² Entergy states that capacity price separation is not unusual among RTOs, and notes that MISO operates a single, coordinated energy and ancillary services market. Entergy adds, and MISO agrees, that MISO's estimated \$143 million in savings for MISO Midwest members is comprised of reduced administrative fees and a share of region-wide improvements in market commitment and dispatch, footprint diversity, and generator availability.⁶³

34. MISO argues that NRG Companies' proposal to create a new requirement that MISO adopt a market mechanism to alleviate price separation and enable excess capacity located in MISO South to provide capacity to MISO Midwest, which is not mentioned in the December 6 Order, is wholly inappropriate.⁶⁴ MISO South Regulators assert, and MISO agrees, that any attempt to equalize prices between sub-regions through a market mechanism is not the goal of MISO's Sub-Regional Constraint calculations.⁶⁵ Entergy argues that the Commission should reject NRG Companies' request for a new mechanism to alleviate price separation between MISO South and MISO Midwest because it: (1) treats capacity within an RTO as import capacity, (2) is unnecessary because firm transmission reservation holders already have the ability to resell unused transmission rights, (3) would unreasonably provide firm transmission reservation holders with payments from load for their unutilized firm transmission rights, and (4) would be burdensome to establish.⁶⁶

⁶¹ Entergy Answer at 3.

⁶² MISO South Regulators Answer at 4-5; MISO Answer at 12-13.

⁶³ Entergy Answer at 3-6; MISO Answer at 13.

⁶⁴ MISO Answer at 12.

⁶⁵ MISO South Regulators Answer at 5-6; MISO Answer at 12.

⁶⁶ Entergy Answer at 11-13. Entergy notes that NRG Companies are the holders of the firm transmission reservations used to lower the Sub-Regional Export Constraint for the 2016/17 Auction. *Id.* at 8.

v. **Responses**

35. Wisconsin TDUs reiterate many of the same arguments in their protest, including: (1) MISO failed to meet its burden under section 205 of the FPA, (2) there is no reason to assume that market participants will export out of MISO during peak conditions, (3) MISO has dispatch control over non-pseudo-tied exports, (4) MISO's proposed methodology will result in elevated prices in MISO Midwest and depressed revenues in MISO South, and (5) MISO's proposed methodology is inconsistent with its loss of load expectation studies, which assume that exports will be zero during peak conditions.⁶⁷ Customer Coalition adopts the arguments in Wisconsin TDUs' response.⁶⁸

vi. **Commission Determination**

36. We accept MISO's compliance filing subject to condition, as discussed below. As an initial matter, as the Commission stated in the December 6 Order, there may be more than one just and reasonable methodology that MISO can use to calculate Sub-Regional Constraints.⁶⁹ We need not analyze whether the various alternative proposals are also just and reasonable (including NRG Companies' requested market mechanisms); rather, our analysis herein focuses on whether MISO's proposed methodology is just and reasonable and in compliance with the December 6 Order.⁷⁰ As discussed below, with the conditions described herein, we find that MISO's proposal is just and reasonable and in compliance with the December 6 Order.

⁶⁷ Wisconsin TDUs Response at 3-9 (citing MISO, *Loss of Load Expectation (LOLE) Fundamentals*, at 62 (Mar. 2015), <https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/LOLEWG/2015/20150>).

⁶⁸ Customer Coalition Response at 3.

⁶⁹ December 6 Order, 157 FERC ¶ 61,182 at P 54 n.87.

⁷⁰ See *New England Power Co.*, 52 FERC ¶ 61,090, at 61,336 (1990), *reh'g denied*, 54 FERC ¶ 61,055 (1991), *aff'd*, *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992); *City of Bethany v. FERC*, 727 F.2d 1131, 1136, *cert. denied*, 469 U.S. 917 (1984) (utility need establish that its proposed rate design is reasonable, not that it is superior to alternatives); *accord OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (Commission may approve methodology proposed in settlement agreement if it is "just and reasonable;" it need not be the only reasonable methodology, or even the most accurate).

37. All parties appear to agree that the regional directional transfer limits established in the Settlement Agreement are a reasonable starting point for the calculations. We agree. It is MISO's responsibility to adhere to the provisions of the Commission-approved Settlement Agreement, and it is reasonable for the calculation of Sub-Regional Constraints to accommodate that obligation. MISO's proposal requires it to make two reductions, when applicable, to the regional directional transfer limits: (1) a reduction, based on a feasibility analysis, for reliability purposes; and (2) a reduction by the amount of firm transmission service reservations in the prevailing direction.

38. First, while several parties protested the details (or lack thereof) regarding the feasibility analysis, none appear to oppose the inclusion of such an analysis. We disagree that MISO must include more detail in its Tariff to describe the methodology it will use to perform the feasibility analysis. We find that MISO's proposed Tariff language is sufficiently detailed to provide interested parties with the framework necessary to understand the feasibility analysis, and that additional information regarding the feasibility analysis is correctly provided in MISO's business practices manual for resource adequacy.⁷¹ The existing simultaneous feasibility test used to validate Capacity Import Limits and Capacity Export Limits is appropriately described in the Tariff with additional information provided in the business practices manual for resource adequacy, and no party has demonstrated why the feasibility analysis used to validate Sub-Regional Constraints should be treated differently. We agree, however, with MISO South Regulators that the proposed Tariff language should identify the business practices manual in which that detail can be found. Accordingly, we direct MISO to revise section 68A.3.1 of its Tariff to provide this clarification.⁷²

39. Although NRG Companies and Occidental argue that the feasibility analysis should be forward-looking, it appears that MISO already considers future conditions in addition to historical data. MISO's business practices manual for resource adequacy states that it will "review operational data from the previous Summer peak season to determine if operational events experienced in the past *and forecasted expected conditions* for the Planning Year warrant a reduction in the initial [regional directional transfer limits] between the MISO South and Midwest Regions."⁷³ However, the proposed Tariff language only references operational events from the previous Planning Year. Accordingly, we direct MISO to further revise section 68A.3.1 of its Tariff to

⁷¹ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 65 (2013).

⁷² MISO clarified that it is willing to make this revision. See MISO Answer at 15.

⁷³ MISO, Resource Adequacy Business Practices Manual, BPM-011-r16, § 5.2.1.4.2) (emphasis added).

recognize that its feasibility analysis will also consider forecasted expected conditions, as already clarified in the business practices manual.

40. To implement these two directives, we require MISO to make the below changes to one sentence in section 68A.3.1 of its Tariff:

Next, the Transmission Provider will then complete a feasibility analysis in accordance with the Resource Adequacy Business Practices Manuals to review operational events from previous Planning Year's Summer peak and forecasted expected conditions for the upcoming Planning Year to determine if a further reduction to the transfer limit is warranted for reliability.

41. Furthermore, in response to MISO South Regulators' request for a report or presentation of these market parameters prior to the Auction, MISO agrees to add the following sentence to section 68A.3.1 of its Tariff:

Prior to publishing the [Sub-Regional Reliability Zones, Sub-Regional Export Constraints, and Sub-Regional Import Constraints] on its public website, Transmission Provider will present the feasibility analysis and resulting [Sub-Regional Export Constraint and Sub-Regional Import Constraint] calculation to stakeholders.

We agree with MISO's proposed addition to its Tariff, as it provides stakeholders with additional transparency – which we conclude is particularly important should the results of the feasibility analysis require MISO to reduce any of the Sub-Regional Constraints.⁷⁴

42. Second, protestors make various arguments as to why MISO's proposal to reduce the regional directional transfer limits by the amount of firm transmission service reservations in the prevailing direction is flawed or otherwise not just and reasonable. As discussed in detail below, we disagree with these arguments and find that MISO's proposal to subtract all firm transmission service reservations in the prevailing direction is just and reasonable.

⁷⁴ We also note that MISO, in its answer, has agreed to review its business practices manual for resource adequacy with stakeholders to identify improvement opportunities regarding its feasibility analysis. *See supra* P 32.

43. For instance, we disagree with Wisconsin TDUs' assertion that MISO South resources will not export energy to another region (e.g., PJM) during MISO Midwest peak conditions.⁷⁵ PJM and MISO Midwest might experience peak conditions at the same time, and PJM could actually experience higher prices in real-time. Moreover, market participants with non-committed excess supply in MISO South that is deliverable to PJM can submit offers into whichever region's day-ahead market they expect to clear at the highest prices (less any transmission costs). This will not necessarily correspond with prices in real-time and, therefore, it is not unreasonable to assume that MISO South resources will have export commitments to PJM regardless of whether the real-time prices in MISO Midwest are higher than those in PJM. Finally, excess generation in MISO Midwest may be unavailable during peak conditions in MISO Midwest to fulfill the export commitments of resources in MISO South.

44. The same analysis is relevant to determining whether and to what extent MISO can expect a supplier to utilize its firm transmission reservations when that supplier does not have a capacity commitment. MISO's proposal establishes an inverse relationship between the amount of firm transmission reservations over the contract path and the applicable Sub-Regional Constraints.⁷⁶ Furthermore, in the 2014/15, 2015/16, and 2016/17 Auctions, the Sub-Regional Export Constraint for MISO South caused price separation between the two sub-regions, resulting in higher prices in MISO Midwest and lower prices in MISO South.⁷⁷ Nevertheless, NRG Companies have firm transmission reservations even though such reservations reduce the Sub-Regional Export Constraint for MISO South, and thus could reduce the price and quantity of capacity it is able to sell in the Auction.⁷⁸ The potential benefit to NRG Companies of retaining the transmission reservations is to enable them to sell energy to another region that would require it to

⁷⁵ Wisconsin TDUs also argue that MISO's proposed methodology is inconsistent with MISO's loss of load expectation study. However, as MISO explains in its answer, it is MISO's transmission system measures – not resource requirements determined by the loss of load expectation study – that consider firm transfers and exclude unlikely summer peak counterflows. *See* MISO Answer at 8-9.

⁷⁶ For instance, for every additional MW of firm transmission reservation, the applicable Sub-Regional Constraints will decrease by that same MW.

⁷⁷ *See, e.g.,* MISO, *2016/2017 Planning Resource Auction Results* (Apr. 2016), [https://www.misoenergy.org/Library/Repository/Report/Resource%20Adequacy/Auction Results/2016-2017%20PRA%20Summary.pdf](https://www.misoenergy.org/Library/Repository/Report/Resource%20Adequacy/Auction%20Results/2016-2017%20PRA%20Summary.pdf).

⁷⁸ *See supra* note 66. The parties to the Settlement Agreement, including MISO, agreed “to not dispute the validity or effectiveness of the firm transmission service provided to NRG under the [identified transmission service reservations] for the [2015/16-2018/19 Planning Years].” *See* Settlement Agreement at 18-19.

utilize the contract path associated with the regional directional transfer limit. Accordingly, we find that the amount of firm transmission reservations in the prevailing direction are reasonable indicators of the amount of exports to be expected from MISO South during peak conditions in MISO Midwest that utilize the contract path relevant to the regional directional transfer limit.

45. It is possible that NRG Companies will not use all of its firm transmission reservations to make energy sales to other regions during each of MISO's peak days. However, MISO's approach is appropriately conservative and reasonable because NRG Companies *could* use all of their firm transmission reservations during any or all of those peak days. Additionally, energy sales could vary day-to-day and year-to-year depending on prevailing market prices such that it is not appropriate to attempt to extrapolate how much of their firm transmission reservations NRG Companies will use.

46. Several parties contend that MISO's proposal unnecessarily constrains deliverability between sub-regions, thereby producing unreasonably high capacity prices in MISO Midwest and unreasonably low capacity prices in MISO South. However, as explained above, MISO correctly considered peak demand conditions in MISO Midwest – when flows from MISO South to MISO Midwest are expected to approach the regional directional transfer limit – in its calculation of the Sub-Regional Export Constraint for MISO South and the Sub-Regional Import Constraint for MISO Midwest.⁷⁹ MISO concluded that the owner of firm transmission service reservations in the prevailing direction are likely to utilize those reservations during peak conditions in MISO Midwest, and therefore determined that any alternative proposal that would reduce the regional directional transfer limit by less than that firm transmission service reservation total would degrade reliability. We, therefore, disagree that MISO's proposal unreasonably constrains deliverability between sub-regions.

b. Going-Forward Costs

i. December 6 Order

47. The Commission directed MISO to revise its Tariff to add a formulaic definition of going-forward costs, including an amortization schedule for mandatory capital expenditures included in going-forward costs. The Commission explained that its directive would provide market participants with a sufficient level of transparency into

⁷⁹ Likewise, MISO correctly considers peak demand conditions in MISO South in its calculation of the Sub-Regional Export Constraint for MISO Midwest and the Sub-Regional Import Constraint for MISO South.

the types of costs that can be included in going-forward costs, facility-specific reference levels, and ultimately offers made into upcoming Auctions.⁸⁰

ii. Compliance Filing

48. MISO states that it has complied with the Commission's directive by revising section 64.1.4 of the Tariff to add a formula for going-forward costs and descriptions of the types of avoidable costs. MISO explains that its proposal adopts portions of PJM's Attachment DD, modified by MISO and the Market Monitor for use in the MISO footprint.⁸¹

49. MISO states that its proposal to determine going-forward costs will allow the Market Monitor to collect information to capture the specific costs required to keep a Planning Resource in (or return it to) operation for a specific Planning Year. MISO proposes to add the following definition of going-forward costs to section 64.1.4 of the Tariff:

Going-Forward Costs = Case 1 – Case 2

Where:

Case 1 = Costs incurred to continue operating or return a Planning Resource from suspension, as applicable, and then retiring or suspending the Planning Resource at the end of the Planning Year, as applicable

Case 2 = Costs incurred to retire, suspend, or keep a Planning Resource in suspension at the beginning of the Planning Year, as applicable

MISO states that market participants may utilize the following eight types of costs in the development of Cases 1 and 2: (1) Operations and Maintenance Labor; (2) Administrative Expenses; (3) Fuel Availability Expenses; (4) Maintenance Expenses;

⁸⁰ December 6 Order, 157 FERC ¶ 61,182 at P 65. By way of example, the Commission cited to Attachment DD of PJM's tariff. *Id.* at n.104.

⁸¹ MISO Compliance Filing at 5. Going-forward costs of keeping a Planning Resource in operation or returning a Planning Resource from suspension are either: (1) certain annual costs, including but not limited to mandatory capital expenditures, that could be avoided if a supplier otherwise capable of providing capacity ceases providing capacity or energy for at least one year or retires permanently; or (2) the net opportunity costs of forgone sales outside of MISO. MISO, FERC Electric Tariff, Module D, § 64.1.4 (44.0.0).

(5) Operating Expenses; (6) Taxes, Fees, and Insurance; (7) Corporate Level Expenses; and (8) Capital Costs.⁸² MISO explains that these eight cost types are similar to those in the PJM tariff, and that it did not adopt several cost types that are either inapplicable to the MISO footprint or incongruous with the amortization approach that MISO and the Market Monitor propose. MISO adds that the Market Monitor proposes language that allows it to consider costs that are not specifically described in the descriptions of these cost types. MISO states that the Market Monitor requests that market participants provide historic costs, in addition to a 24-month forecast, to support and justify future cost projections.⁸³

50. MISO acknowledges that the Commission directed it to provide an amortization schedule, but notes that the Market Monitor believes that cash basis accounting is more appropriate.⁸⁴ The Market Monitor argues that a rational supplier in MISO may not be willing to make an investment if it is amortized over three or four years. The Market Monitor asserts that, because MISO uses a vertical demand curve, the Auction price in a given year provides little assurance of continued adequate prices in subsequent years. The Market Monitor also argues that capital expenditures are sunk costs after the first year, so a rational competitive supplier would not submit offers into the Auction in the second year (or thereafter) that would require recovery of a substantial portion of that expenditure.⁸⁵

⁸² MISO Compliance Filing at 5-6.

⁸³ *Id.* at 6 & n.17. There is a discrepancy between the case definitions in the transmittal and in the proposed Tariff language. The definitions in the transmittal refer to costs incurred during the 24-month forecast, while the definitions in the proposed Tariff language (provided above) that we accept do not explicitly provide the period during which costs must be incurred in order for them to be considered in the calculation of going-forward costs. The proposed Tariff language applicable to these costs does, however, require market participants requesting going-forward costs based on suspension or retirement to provide at least two years of historic costs and at least 24 months of forecast costs. *Id.* at 6, Tab A (Redline Tariff Sheets) at § 64.1.4 (46.0.0).

⁸⁴ *Id.* at 6.

⁸⁵ *Id.*, Tab D (Affidavit of David B. Patton) at PP 6-11.

51. MISO notes that its proposed Tariff sheets contain language pending before the Commission in Docket Nos. ER16-833-004 and ER17-806-000. MISO requests that the Commission accept this filing subject to the outcomes of those pending proceedings.⁸⁶

52. MISO requests waiver of section 64.1.4 of the Tariff to allow market participants additional time to compile and format the required information in accordance with the new requirements proposed by MISO. MISO and the Market Monitor propose to allow market participants until March 1, 2017 to submit the newly-required information so long as the market participants submit their requests for facility-specific reference levels along with the currently-required information by the existing deadline of February 14, 2017. MISO states that good cause exists to grant this waiver because MISO is acting in good faith and the waiver: (1) is limited in scope – from February 14, 2017 to March 1, 2017, (2) will remedy the concrete problem of market participants needing additional time to compile information not previously required, and (3) will not have undesirable consequences, such as harming third parties, because the Market Monitor will still have over 20 days to calculate facility-specific reference levels.⁸⁷

iii. Protests

53. Customer Coalition argues that the amortization schedule proposed for going-forward capital costs is not just and reasonable, is contrary to Commission precedent, and would result in excessive prices. According to Customer Coalition, neither MISO nor the Market Monitor support the claim that all generation owners will only make capital investment commitments if recovery of such capital costs is assured within one year. Customer Coalition adds that it is incorrect to assume that capital costs can only be recovered through MISO capacity markets, and contends that locational market prices such as those in MISO's energy markets produce infra-marginal revenues that will contribute to fixed cost recovery. Customer Coalition notes that, when the Commission directed MISO to provide an amortization schedule, it cited to PJM's tariff, which includes a multi-year amortization schedule. Customer Coalition explains that PJM applies a one-year amortization period to a very limited class of facilities, while all other

⁸⁶ *Id.* at 7 & n.18. The Commission has accepted this Tariff language, effective February 1, 2017, rendering this request moot. *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER16-833-004 (Mar. 8, 2017) (delegated letter order); *Midcontinent Indep. Sys. Operator, Inc.*, 160 FERC ¶ 61,005 (2017) (accepting revisions to Auction market monitoring and mitigation proposed in Docket No. ER17-806-000).

⁸⁷ MISO Compliance Filing at 7-8.

facilities are subject to an amortization schedule ranging from four years to 30 years based on their age.⁸⁸

iv. Answers

54. MISO asserts that Customer Coalition's claim that a one-year amortization schedule does not take into account revenues from the energy market is incorrect. MISO explains that a facility-specific reference level for a Planning Resource already takes into consideration the Planning Resource's expected annual revenues, including those from the energy market. MISO also asserts that its proposed one-year amortization schedule is not precluded from being just and reasonable because the Commission has found other amortization schedules to be just and reasonable.⁸⁹

v. Commission Determination

55. We accept MISO's compliance filing as it pertains to going-forward costs used to determine facility-specific reference levels, as discussed below.

56. First, we find MISO's proposed formulaic definition of going-forward costs to be just and reasonable and in compliance with the Commission's directive in the December 6 Order, noting the inconsistency between the Tariff language and MISO's transmittal.⁹⁰ Case 1 assumes that the Planning Resource will continue to operate until it suspends or retires at the end of the Planning Year, while Case 2 assumes that the Planning Resource will suspend or retire at the beginning of the Planning Year. Even though the vast majority of the costs avoided in Case 2 (compared to Case 1) will be incurred during that Planning Year, there may be additional avoidable costs incurred *after* the Planning Year. MISO's proposal captures those potential costs by requiring the market participant to submit its forecasts for at least 24 months. To the extent that any additional costs can be avoided in Case 2 that cannot be avoided in Case 1, the market participant requesting the facility-specific reference levels can submit cost forecasts beyond 24 months. We conclude that the proposed formulaic definition of going-forward costs provides transparency to market participants and reasonably considers any costs that can be avoided by suspending or retiring a Planning Resource at the beginning of the Planning Year.

⁸⁸ Customer Coalition Protest at 6-8 (citing PJM, Intra-PJM Tariffs, OATT, Attachment DD, § 6.8 (13.0.0)).

⁸⁹ MISO Answer at 16-17.

⁹⁰ See *supra* note 83.

57. Second, we find MISO's proposed cost types that can be considered in going-forward costs are just and reasonable, and in compliance with the Commission's directive in the December 6 Order. MISO largely adopted the cost types that the Commission previously accepted for parallel use in PJM. MISO reasonably proposed deviations from PJM's cost types to tailor them for application in the context of MISO's going-forward costs. MISO's proposed Tariff language provides a substantial amount of detail regarding each cost type, thereby providing market participants with a sufficient level of transparency.

58. Third, we find MISO's proposed one-year amortization schedule to be just and reasonable, and in compliance with the Commission's directive in the December 6 Order. As an initial matter, the Commission cited to PJM's tariff section that includes a multi-year amortization schedule by way of example.⁹¹ The Commission has provided RTOs with substantial latitude in determining their reliability requirements and shaping their markets.⁹² The fact that MISO's proposal differs from the multi-year amortization schedule the Commission previously accepted for PJM does not necessarily mean that MISO's proposal is not just and reasonable.⁹³ We also disagree with Customer Coalition's assertion that MISO's proposal will necessarily result in excessive prices. There is an inherent risk in requiring a supplier to amortize its mandatory capital expenditures over multiple years: even if its resource clears in the immediate Auction, there is no certainty that the supplier will be able to clear subsequent Auctions and recover the costs associated with its mandatory capital expenditures.⁹⁴ A supplier unwilling to subject itself to this risk may choose to suspend or retire its resource rather than make further investments. MISO's proposal avoids this risk by allowing a supplier to include all costs associated with mandatory capital expenditures in its resource's

⁹¹ See PJM, Intra-PJM Tariffs, OATT, Attachment DD, § 6 (13.0.0).

⁹² *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199, at P 245 (2012).

⁹³ Indeed, MISO's capacity construct differs from PJM's capacity construct. In contrast to PJM's three-year forward auction (and incremental auctions) with a sloped demand curve, MISO employs a single prompt Auction with a vertical demand curve.

⁹⁴ Furthermore, after they are made, mandatory capital expenditures are sunk costs that are not avoidable. A rational competitive supplier only considers avoidable costs when determining the price at which it offers a resource into the Auction.

going-forward costs and, by extension, its facility-specific reference level.⁹⁵ This allows the supplier the option to submit offers into the Auction up to the price needed to recover its going-forward costs should it clear. Offers submitted up to that price are not excessively high; rather they are submitted at the price that a rational supplier would require when participating in a competitive market.⁹⁶

59. For the reasons discussed below, we grant MISO's request for waiver. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁹⁷

60. We find that MISO's request for waiver satisfies these criteria. First, we find that MISO acted in good faith by seeking additional time for market participants to comply with the new Tariff provisions proposed in this compliance filing. Second, we find that the request for waiver is limited in scope, as it is a one-time waiver that will only delay a procedural deadline by approximately two weeks. Third, we find that granting the request for waiver will remedy a concrete problem by providing market participants with additional time to compile specific information that was not previously required. Fourth, we find that granting the request for waiver will not create undesirable consequences, such as harming third parties, because the Market Monitor will still have sufficient time to calculate facility-specific reference levels.

⁹⁵ The Commission's regulations require a seller to provide accurate and factual information and not submit false or misleading information to Commission-approved market monitors. 18 C.F.R. § 35.41(b) (2017).

⁹⁶ Contrary to Customer Coalition's assertions, a facility-specific reference level is calculated by subtracting net energy and ancillary services revenues from a resource's going-forward costs. MISO, FERC Electric Tariff, Module D, § 64.1.4 (44.0.0).

⁹⁷ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

2. Rehearing Issues

a. Requests for Rehearing and/or Clarification

61. Customer Coalition seeks rehearing of the Commission's decision in the December 6 Order to deny refunds for the 2016/17 Auction,⁹⁸ and requests clarification that MISO must recognize some level of counterflow in calculating Sub-Regional Constraints for future Auctions on compliance.⁹⁹ WPPI Energy seeks clarification or, in the alternative, rehearing to establish that MISO cannot rely on the findings in the December 6 Order regarding the 2016/17 Auction as proof that the rates resulting from its current methodology will be just and reasonable in future Auctions.¹⁰⁰

b. Commission Determination

62. As described in further detail in the December 6 Order, MISO calculated the Sub-Regional Export Constraint from MISO South to MISO Midwest for the 2016/17 Auction by taking the regional directional transfer limit established in the Settlement Agreement (2,500 MW), and subtracting the full amount of NRG Companies' transmission reservations in that direction for the 2016/17 Planning Year (1,624 MW).¹⁰¹ The resulting Sub-Regional Export Constraint (876 MW) yielded a clearing price of \$72.00/MW-day for Zones 2-7 that was higher than the clearing prices for other MISO Zones.¹⁰²

63. Customer Coalition's Complaint took issue with MISO's decision to deduct NRG Companies' entire firm transmission reservation from MISO South to MISO Midwest, alleging that MISO failed to show that NRG Companies are using their full reservation during the 2016/17 Planning Year.¹⁰³ According to Customer Coalition, MISO at least should have offset this deduction by the 206 MW of firm transmission reservations approved in the opposite direction (i.e., from MISO Midwest to MISO South). Customer

⁹⁸ Customer Coalition Rehearing Request at 9-15.

⁹⁹ *Id.* at 15-17.

¹⁰⁰ WPPI Energy Clarification Request at 6-9.

¹⁰¹ *See* December 6 Order, 157 FERC ¶ 61,182 at PP 5, 12.

¹⁰² *See id.* P 12. Zone 1 cleared at \$19.72/MW-day, and Zones 8-10 cleared at \$2.99/MW-day. *Id.* P 4.

¹⁰³ Complaint at 16.

Coalition thus requested that the Commission direct MISO to refund customers in Zones 2-7 the difference between the \$72.00/MW-day price used in the 2016/17 Auction and the \$20.00/MW-day price that would have resulted if MISO had accounted for these counterflows.¹⁰⁴

64. In the December 6 Order, the Commission rejected Customer Coalition's request for refunds, finding that MISO's calculation of the Sub-Regional Export Constraint both did not violate its Tariff and was just and reasonable.¹⁰⁵ Customer Coalition continues to advocate its preferred method of calculating the Sub-Regional Export Constraint in its request for rehearing. We remain unpersuaded that refunds are appropriate in this situation, and affirm that MISO's calculation of the Sub-Regional Export Constraint or the 2016/17 Auction was just and reasonable and consistent with MISO's Tariff.

65. Customer Coalition's primary argument¹⁰⁶ focuses on what it views as "contradictory determinations" in the December 6 Order.¹⁰⁷ Specifically, Customer Coalition alleges that the Commission cannot reconcile its finding that "[Customer Coalition's] refund requests should be denied because MISO's approach during the 2016/2017 Auction was just and reasonable" with its determination that MISO must file Tariff revisions to include the method for calculating Sub-Regional Import and Export Constraints in MISO's Tariff for future Planning Years.¹⁰⁸ Put differently, Customer Coalition contends that the 2016/17 Auction results cannot be just and reasonable if the same rules would no longer be just and reasonable if applied to future Auctions.¹⁰⁹

¹⁰⁴ *Id.* at 17.

¹⁰⁵ December 6 Order, 157 FERC ¶ 61,182 at P 48.

¹⁰⁶ At pages 13-15 of its rehearing request, Customer Coalition reiterates the arguments in its Complaint and asserts that the Commission erred and acted arbitrarily and capriciously by failing to require MISO to recognize some level of counterflow in setting the Sub-Regional Export Constraint used in the 2016/17 Auction. The Commission fully addressed these arguments in the December 6 Order and they do not warrant further discussion on rehearing. *See* December 6 Order, 157 FERC ¶ 61,182 at PP 49, 51-52. We disagree with Customer Coalition's assertions that the Commission was arbitrary and capricious in denying its Complaint.

¹⁰⁷ Customer Coalition Rehearing Request at 8, 9-12.

¹⁰⁸ *Id.* at 10.

¹⁰⁹ *Id.*

66. Customer Coalition misunderstands the Commission’s finding with respect to the methodology MISO intends to use to calculate Sub-Regional Constraints for future Planning Years. The Commission did not find, as Customer Coalition asserts, that “*MISO’s rules during the 2016/2017 Auction* were unjust and [un]reasonable and therefore must be modified in time for future Auctions.”¹¹⁰ Rather, the Commission held that it was no longer just and reasonable “for the Sub-Regional Export Constraint calculation *to be omitted from the Tariff.*”¹¹¹ In other words, the Commission determined that, going forward, the methodology for calculating Sub-Regional Constraints to be used in future Auctions must be included in the filed Tariff. This holding in no way contradicts the Commission’s conclusion that MISO did not violate its Tariff in conducting the 2016/17 Auction and that the calculation of the Sub-Regional Export Constraint for the 2016/17 Auction was just and reasonable.¹¹²

67. The applicable provisions in MISO’s current Tariff require only that MISO calculate Sub-Regional Constraints “in accordance with applicable seams agreements, coordination agreements, or transmission service agreements,” and publish its values by the first business day of March prior to the Planning Year.¹¹³ As the Commission found in the December 6 Order, MISO plainly complied with these requirements.¹¹⁴ When MISO introduced Sub-Regional Constraints to its capacity construct in 2015, the Commission initially found that this Tariff language provided an appropriate amount of discretion to allow MISO to manage its resource adequacy plan effectively.¹¹⁵ The Commission subsequently reconsidered this finding in the December 6 Order in connection with considering Customer Coalition’s request to direct MISO to clarify its Tariff prospectively. Thus, while finding that MISO calculated the Sub-Regional Export Constraint for the 2016/17 Auction consistent with its Tariff and the Sub-Regional Constraint Order, the Commission determined that “the Sub-Regional Export Constraint materially affects rates, as demonstrated by the 2015/16 and 2016/17 Auction results,”

¹¹⁰ *Id.* (emphasis added).

¹¹¹ December 6 Order, 157 FERC ¶ 61,182 at P 54 (emphasis added).

¹¹² *Id.* P 48.

¹¹³ MISO, FERC Electric Tariff, Module A, § 1.S (45.0.0) and Module E-1, § 68A.3.1 (31.0.0).

¹¹⁴ *See* December 6 Order, 157 FERC ¶ 61,182 at PP 49-50.

¹¹⁵ *See id.* P 11 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,144, at P 20 (2015) (Sub-Regional Constraint Order)).

and directed that the methods for calculating these constraints be incorporated into the Tariff, rather than business practice manuals, for future Planning Years.¹¹⁶

68. Customer Coalition is further mistaken that the Commission must evaluate its request for refunds “more comprehensively” in light of the Commission’s holding with respect to the methodology MISO intends to use to calculate Sub-Regional Constraints for future Planning Years.¹¹⁷ As explained above, the Commission’s finding with respect to future Auctions was not prompted by any finding that there were defects in the 2016/17 Auction, and Customer Coalition has presented no support for its suggestion that its request should have been afforded additional weight. Nor do we agree that the Commission’s reasoning in the December 6 Order¹¹⁸ could permit an unjust and unreasonable rate to stand on the basis of ambiguous tariff language.

69. Contrary to Customer Coalition’s assertions, *Public Citizen v. Midcontinent Indep. Sys. Operator, Inc.*¹¹⁹ does not compel a different result.¹²⁰ Customer Coalition contends that “[t]he recognition of counter-flows resulting from capacity exports to neighboring regions (i.e., from MISO to PJM) is the same as the recognition of counter-flows between regions in MISO (i.e., from MISO Midwest to MISO South).”¹²¹ Customer Coalition, however, fails to recognize the distinction between capacity exports and transmission reservations. In *Public Citizen*, the Commission held that MISO’s calculation of Capacity Import Limits should accurately reflect counterflows resulting from *capacity exports committed* to neighboring regions.¹²² By contrast, the Commission explained in the December 6 Order that “Customer Coalition . . . has not demonstrated that there is a generation resource in MISO Midwest that is committed to sell energy from MISO Midwest to a neighboring region outside of MISO that would utilize the 206 MW of

¹¹⁶ *Id.* P 54.

¹¹⁷ Customer Coalition Rehearing Request at 10.

¹¹⁸ December 6 Order, 157 FERC ¶ 61,182 at P 54.

¹¹⁹ *Public Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,385 (2015), *order on reh’g and compliance*, 154 FERC ¶ 61,224, *order on compliance*, 156 FERC ¶ 61,075, *order on compliance*, 157 FERC ¶ 61,242 (2016) (*Public Citizen*).

¹²⁰ Customer Coalition Rehearing Request at 8, 16-17.

¹²¹ *Id.* at 17.

¹²² *Public Citizen*, 153 FERC ¶ 61,385 at PP 145-147.

transmission reservations.”¹²³ The Commission added that “[t]he mere existence of transmission reservations is not demonstrative of actual power flows from MISO Midwest to MISO South during peak periods of the Planning Year.”¹²⁴ As explained in the December 6 Order, MISO acted reasonably and consistent with its goal of ensuring reliability by excluding counterflows that may not be present on peak load days from its calculation of the Sub-Regional Export Constraint for the 2016/17 Auction.¹²⁵

70. For the reasons enunciated in the December 6 Order, we also deny Customer Coalition’s request for clarification.¹²⁶ While the Commission noted in the December 6 Order that the methodology that MISO used to calculate the Sub-Regional Export Constraint for the 2016/17 Auction “is not necessarily the only just and reasonable methodology,”¹²⁷ Customer Coalition has not shown that MISO should be required to recognize counterflows in the calculation of Sub-Regional Constraints in future Auctions. However, we grant WPPI Energy’s request for clarification, to the extent that WPPI Energy seeks to confirm that the Commission will not rely solely on its finding in the December 6 Order that the methodology used in the 2016/17 Auction was just and reasonable with respect to that Auction as conclusive proof that this methodology would be just and reasonable for future Auctions.¹²⁸ As discussed above, we considered MISO’s proposed Sub-Regional Constraints methodology based on the record in this proceeding, and found it to be just and reasonable.¹²⁹ Given that we grant WPPI Energy’s request for clarification, we need not address its request for rehearing.

The Commission orders:

(A) MISO’s compliance filing is hereby accepted, subject to condition, 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.

¹²³ December 6 Order, 157 FERC ¶ 61,182 at P 52.

¹²⁴ *Id.*

¹²⁵ *Id.* PP 51-52.

¹²⁶ Customer Coalition Rehearing Request at 15-16.

¹²⁷ *See supra* P 36 and note 70.

¹²⁸ WPPI Energy Clarification Request at 7-9.

¹²⁹ *See supra* PP 36-46.

(C) MISO's request for waiver is hereby granted, as discussed in the body of this order.

(D) Customer Coalition's request for rehearing and clarification is hereby denied, as discussed in the body of this order.

(E) WPPI Energy's request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.