

167 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Midcontinent Independent System Operator, Inc.

Docket Nos. ER19-1156-000
ER16-1969-005

ORDER REJECTING PROPOSED REVISIONS AND COMPLIANCE FILING AND
DIRECTING FURTHER COMPLIANCE

(Issued June 24, 2019)

1. On February 28, 2019, in Docket No. ER19-1156-000, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations,² Midcontinent Independent System Operator, Inc. (MISO) and the MISO Transmission Owners³ (collectively, Filing Parties) filed

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2018).

³ The participating MISO Transmission Owners for purposes of this filing are Ameren Services Company, as agent for Union Electric Company; American Transmission Company LLC; Arkansas Electric Cooperative Corporation; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; East Texas Electric Cooperative; Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; Lafayette Utilities System; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana

proposed revisions to Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), as well as certain conforming revisions to Module A of the MISO Tariff, to provide a cost allocation method for MISO's share of the cost of certain interregional projects with PJM Interconnection, L.L.C. (PJM) and Southwest Power Pool, Inc. (SPP). On the same day, in Docket No. ER16-1969-005, MISO submitted a compliance filing stating that Filing Parties' proposed filing in Docket No. ER19-1156-000 complies with the Commission's January 17, 2017 Order.⁴ In this order, we reject, without prejudice, Filing Parties' proposed revisions, as well as MISO's compliance filing, and direct MISO to submit a new compliance filing within 90 days to fulfill its outstanding compliance obligations as directed by the NIPSCO Compliance Order.

I. Background

2. On September 11, 2013, Northern Indiana Public Service Company (NIPSCO) filed a complaint (NIPSCO Complaint) against MISO and PJM, asking the Commission to require MISO and PJM to reform the MISO-PJM Joint Operating Agreement (MISO-PJM JOA) interregional transmission planning process based, in part, upon allegations of insufficient selection and development of interregional transmission projects between these two regions.⁵ On April 21, 2016, the Commission issued an order granting, in part, and denying, in part, the NIPSCO Complaint, and requiring MISO and PJM to make compliance filings.⁶ Among other things, the NIPSCO Complaint Order directed MISO to revise the Market Efficiency Projects⁷ thresholds that apply to MISO-PJM interregional economic transmission projects by: (1) lowering the minimum voltage

Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.

⁴ *N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,049 (2017) (NIPSCO Compliance Order).

⁵ NIPSCO Complaint, Docket No. EL13-88-000 (Sept. 11, 2013).

⁶ *N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator*, 155 FERC ¶ 61,058 (2016) (NIPSCO Complaint Order) (together with the NIPSCO Compliance Order, the NIPSCO Orders).

⁷ A Market Efficiency Project is a network upgrade that provides market efficiency benefits to one or more Market Participants, but not found by MISO to be a Multi-Value Project (MVP), and that provides sufficient market efficiency benefits to justify inclusion in the MISO Transmission Expansion Plan (MTEP). MISO Tariff, Module A, § 1.M, Definitions – M. *See also* MISO Tariff, Attachment FF, § II.B.

threshold to 100 kilovolts (kV); and (2) removing a \$5 million minimum cost requirement.⁸

3. On January 19, 2017, the Commission issued the NIPSCO Compliance Order, which denied requests for rehearing, granted requests for clarification, in part, and conditionally accepted MISO and PJM's compliance filings, subject to further compliance. Among other things, the NIPSCO Compliance Order found that MISO's proposed revisions complied with the directive to revise the Market Efficiency Project thresholds that apply to qualify as an interregional economic transmission project by lowering the minimum voltage threshold to 100 kV and by removing the \$5 million minimum cost requirement. However, the Commission found that MISO did not address what regional cost allocation method should apply to MISO's share of the cost of an interregional economic transmission project operating above 100 kV but below the original threshold of 345 kV. Accordingly, the Commission directed MISO to submit a further compliance filing "to either confirm that the existing Market Efficiency Project cost allocation method will apply to MISO's share of the cost of interregional economic transmission projects above 100 kV but below 345 kV that qualify as Market Efficiency Projects or to propose tariff revisions to apply a different regional cost allocation for MISO's share of the cost of such projects."⁹ The Commission also stated that, "upon review of MISO's compliance filing, including any supporting evidence, and consideration of any comments filed in response, it will determine the just and reasonable MISO regional cost allocation method for MISO's share of the cost of interregional economic transmission projects above 100 kV but below 345 kV that qualify as Market Efficiency Projects."¹⁰ The compliance filing was originally due in on February 19, 2017, but the filing deadline was ultimately extended to February 28, 2019.¹¹

4. On February 25, 2019, in Docket Nos. ER19-1124-000 and ER19-1125-000, Filing Parties filed proposed Tariff revisions and revisions to the MISO Transmission Owners Agreement, respectively to, among other things, revise how MISO identifies the benefits for and allocates the costs of Market Efficiency Projects, lower the voltage threshold for Market Efficiency Projects, and create a new Local Economic Project category, including benefits metrics and cost allocation for the Local Economic Project category (Regional

⁸ NIPSCO Complaint Order, 155 FERC ¶ 61,058 at P 129.

⁹ NIPSCO Compliance Order, 158 FERC ¶ 61,049 at PP 50-51.

¹⁰ *Id.*

¹¹ *See Notice of Extension of Time*, Docket Nos. ER16-1969-000 and ER16-1969-001 (Dec. 17, 2018).

Cost Allocation Filings).¹² In a concurrent order, the Commission rejects Filing Parties' proposed Tariff modifications.¹³ In that order, the Commission finds that Filing Parties did not demonstrate that their cost allocation proposal for Local Economic Projects is just and reasonable.¹⁴

II. Filings

A. Docket No. ER19-1156-000 (Interregional Cost Allocation Filing)

5. On February 28, 2019, in Docket No. ER19-1156-000, Filing Parties submitted an FPA section 205 filing with proposed revisions to the MISO Tariff to create a new interregional transmission project category with PJM and SPP called an Interregional Economic Project. Filing Parties also proposed a method for allocating MISO's share of the cost of Interregional Economic Projects within MISO.¹⁵

6. Filing Parties state that the proposed revisions to the Tariff contain the following components: (1) a new Interregional Economic Project cost allocation category for MISO's share of costs that applies to both MISO-PJM and MISO-SPP interregional transmission projects; (2) differing cost allocation methods for MISO's share of the costs of Interregional Economic Projects depending on voltage level; and (3) other revisions, including clarification that only Interregional Economic Projects with voltage levels of 230 kV and above are eligible for MISO's Competitive Developer Selection Process, and that Interregional Economic Projects below 230 kV but at or above 100 kV that qualify as Market Efficiency Projects must also meet a local 1.25-to-1 or greater benefit-to-cost ratio.¹⁶

¹² Regional Cost Allocation Filings, Docket Nos. ER19-1124-000 and ER19-1125-000 (February 25, 2019).

¹³ *Midcontinent Indep. Sys. Operator, Inc.* 167 FERC ¶ 61,258 (2019) (Regional Cost Allocation Rejection Order).

¹⁴ *Id.* PP 56-67.

¹⁵ Filing, Docket No. ER19-1156-000 at 3.

¹⁶ *Id.* at 3-4.

7. Filing Parties' proposal defines an Interregional Economic Project as any transmission project that qualifies: (1) as a MISO-PJM interregional economic transmission project under the MISO-PJM JOA¹⁷ that also qualifies as an Market Efficiency Project in the MISO Transmission Expansion Plan (MTEP) process, but does not qualify as an MVP under Attachment FF of MISO's Tariff; or (2) as an Interregional Project primarily addressing economic issues under the MISO-SPP Joint Operating Agreement (MISO-SPP JOA)¹⁸ that also qualifies as an Market Efficiency Project or Local Economic Project in the MTEP, as applicable based on voltage level, but does not qualify as an MVP.¹⁹

8. Filing Parties propose to allocate the cost of MISO's share of Interregional Economic Projects with a voltage level of 230 kV or higher the same way that MISO allocates the cost of Market Efficiency Projects per Attachment FF of the Tariff. Under Attachment FF, MISO allocates Market Efficiency Projects by assigning 20 percent of the cost on a system-wide (postage stamp) basis, and assigning 80 percent of the cost of a Market Efficiency Project to all Cost Allocation Zones based on the relative benefit of the project determined for each Cost Allocation Zone.²⁰ In the Regional Cost Allocation Filings that the Commission is rejecting in the concurrently issued Regional Cost Allocation Rejection Order, MISO proposed to remove the 20 percent postage stamp and allocate 100 percent of the cost of a Market Efficiency Project to the Transmission Pricing Zones that benefit from the project.

9. For Interregional Economic Projects with voltages below 230 kV but at or above 100 kV, Filing Parties propose a cost allocation method similar to the one they proposed in the Regional Cost Allocation Filings for Local Economic Projects.²¹ Specifically, Filing Parties propose that, like Local Economic Projects, 100 percent of MISO's share of the cost of an Interregional Economic Project that is located either partially or wholly within the MISO region be allocated to the Transmission Pricing Zone(s) in which the project is located. For an Interregional Economic Project below 230 kV but at or above 100 kV that is located entirely outside of MISO (i.e., entirely within PJM or SPP),

¹⁷ Under the MISO-PJM JOA, an interregional economic transmission project is called an Interregional Market Efficiency Project. *See* MISO-PJM JOA § 9.4.4.1.3.

¹⁸ SPP-MISO Interregional Projects are defined in the MISO-SPP JOA, § 9.6.3.1.

¹⁹ Filing, Docket No. ER19-1156-000 at 3.

²⁰ MISO Tariff, Attachment FF, § III.A.2.f.

²¹ A more detailed explanation of MISO's cost allocation proposal for Local Economic Projects can be found at Regional Cost Allocation Rejection Order.

MISO's share of the cost of the Interregional Economic Project will be allocated entirely to the most impacted Transmission Pricing Zone as identified by using a Line Outage Distribution Factor (LODF) analysis of Transmission Pricing Zones that have at least a 1.25-to-1 benefit-to-cost ratio.²²

10. Filing Parties also propose certain clarifying revisions to the Tariff. Filing Parties explain that the proposed revisions to the definition of "Eligible Projects" make it clear that MISO-PJM Interregional Economic Projects at or above 100 kV but below 230 kV, that are otherwise classified as Market Efficiency Projects under the MISO Tariff will not be subject to the Competitive Developer Selection Process. Filing Parties state that since Interregional Economic Projects below 230 kV are not selected in the MTEP for purposes of cost allocation and address local issues relevant to a specific Transmission Pricing Zone, these lower-voltage Interregional Economic Projects should not be subject to the Competitive Developer Selection Process.²³

11. Filing Parties assert that, taken together, the proposed revisions are just and reasonable as they address an acknowledged gap in MISO's current cost allocation method for interregional economic projects (i.e., how to allocate the costs within MISO for interregional economic projects between 100 kV and 345 kV with PJM and SPP), improve upon the current rules, and are consistent with the Commission's Order No. 1000 cost allocation principles.²⁴ Further, Filing Parties argue that the proposals will potentially allow for a larger number of Interregional Economic Projects to participate in MISO's Competitive Developer Selection Process, allow for increased certainty and transparency of Interregional Economic Project cost allocation, and support development of future Interregional Economic Projects.²⁵

12. Filing Parties state that MISO commits to a triennial review of cost allocation and will reassess the filed cost allocation method after a three-year period or sooner. Filing Parties assert that this review will inform MISO and stakeholders on the effectiveness of the proposed changes.²⁶

²² Filing, Docket No. ER19-1156-000, at 3-4.

²³ *Id.*

²⁴ *Id.* at 5.

²⁵ *Id.*

²⁶ *Id.* at 17.

B. Docket No. ER16-1969-000 (Compliance Filing)

13. On February 28, 2019, MISO submitted a compliance filing in Docket No. ER16-1969-005 stating that the revisions Filing Parties concurrently submitted in Docket No. ER19-1156-000 (i.e., the Interregional Cost Allocation Filing) fulfill the compliance directive for MISO “to either confirm that the existing Market Efficiency Project cost allocation method will apply to MISO’s share of the cost of interregional economic transmission projects above 100 kV but below 345 kV that qualify as Market Efficiency Projects or to propose tariff revisions to apply a different regional cost allocation method for MISO’s share of the cost of such projects.”²⁷

14. Specifically, MISO states that for higher-voltage Interregional Economic Projects with PJM (i.e., 230 kV and above), the Interregional Cost Allocation Filing proposes to allocate MISO’s share of the cost within the MISO region by using the Market Efficiency Project method, as revised in the Regional Cost Allocation Filings. For lower-voltage Interregional Economic Projects (i.e., below 230 kV but at or above 100 kV) with PJM, the Interregional Cost Allocation Filing proposes the following cost allocation rules: (1) for any Interregional Economic Project that is partially or wholly within the MISO footprint, 100 percent of the cost of MISO’s share will be allocated to the Transmission Pricing Zone(s) where the project is located; and (2) for any Interregional Economic Project that is wholly located in PJM, 100 percent of the cost of MISO’s share will be allocated to the Transmission Pricing Zone that has the largest impact as identified using a LODF methodology of those Transmission Pricing Zones that have at least a 1.25-to-1 benefit-to-cost ratio.²⁸

III. Notice of Filing and Responsive Pleadings**A. Docket No. ER19-1156-000**

15. Notice of the Filing in Docket No. ER19-1156-000 was published in the *Federal Register*, 84 Fed. Reg. 8328-29 (2019), with interventions and protests due on or before April 1, 2019. The Council of the City of New Orleans, Louisiana, the Mississippi Public Service Commission and Mississippi Public Utilities Staff (Mississippi Commission), the Indiana Utility Regulatory Commission (Indiana Commission), the Illinois Commerce Commission (Illinois Commission), the Arkansas Public Service Commission (Arkansas Commission), the Public Service Commission of Wisconsin (Wisconsin Commission), and the Louisiana Public Service Commission (Louisiana Commission) filed notices of

²⁷ Compliance Filing, Docket No. ER16-1969-000, at 5 (citing NIPSCO Compliance Order, 158 FERC ¶ 61,049 at P 51).

²⁸ *Id.* at 5-6.

intervention. Timely motions to intervene were filed by Indiana Municipal Power Agency (IMPA), Midwest TDUs,²⁹ Dairyland Power Cooperative (Dairyland), Alliant Energy Corporate Services, Inc. (Alliant), Texas Industrial Energy Consumers (TIEC), Illinois Industrial Energy Consumers (IIEC), American Municipal Power, Inc., Association of Business Advocating Tariff Equity (ABATE), EDF Renewables, Inc. (EDF), Enel Green Power North America, Inc. (Enel), Louisiana Energy Users Group (LEUG), E.ON Climate & Renewables North America, LLC (E.ON), Ameren Services Company, DTE Electric Company, WEC Energy Group, on behalf of Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Upper Michigan Energy Resources Corporation, Duke Energy Corporation (Duke), NIPSCO, LSP Transmission Holdings II, LLC (LS Power), GridLiance Heartland LLC, ITC Companies,³⁰ Coalition of Midwest Power Producers, Inc., SPP, and Cooperative Energy. Consumers Energy Company (Consumers) filed an out-of-time motion to intervene on April 4, 2019.

16. Entergy Services, LLC (Entergy) and Xcel Energy Services, Inc. (Xcel),³¹ filed timely motions to intervene and comments. Protesting Transmission Owners (Protesting TOs),³² LS Power, American Wind Energy Association and Clean Grid Alliance, Generator Group,³³ Industrial Customers,³⁴ Alliant, and WEC Energy Group filed timely protests. Organization of MISO States (OMS)³⁵ filed a notice of intervention and

²⁹ Midwest TDUs consists of Madison Gas and Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, and WPPI Energy.

³⁰ ITC Companies consist of ITC Transmission, Michigan Electric Transmission Company, LLC, and ITC Midwest LLC.

³¹ Xcel filed on behalf of Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; and Xcel Energy Transmission Development Company.

³² Protesting TOs consist of Dairyland, Duke, IMPA, and NIPSCO.

³³ Generator Group consists of EDF, E.ON and Enel. While Generator Group filed protests in the Regional Cost Allocation Filings as well as the instant filing, the Commission addressed Generator Groups' protests in the Regional Cost Allocation Rejection Order.

³⁴ Industrial Customers consist of IIEC, ABATE, LEUG, and TIEC.

³⁵ OMS is an organization made up of representatives from seventeen jurisdictions with regulatory bodies having jurisdiction over MISO participating entities. The Missouri Public Service Commission (Missouri Commission), the Michigan Public Service

supporting comments. The Public Utility Commission of Texas and the Michigan Commission filed notices of intervention and timely protests. The Missouri Commission filed a notice of intervention and timely comments in support of the Michigan Commission's protest. On April 16, 2019, MISO South Regulators³⁶ filed a motion for leave to respond to comments and protests. On May 15, 2019, Filing Parties filed a motion for leave to answer and answer to protests and comments. On May 31, 2019, Protesting TOs filed a motion for leave and answer to Filing Parties' answer.

B. Docket No. ER16-1969-005

17. Notice of the Compliance Filing in Docket No. ER16-1969-005 was published in the *Federal Register*, 84 Fed. Reg. 8518 (2019), with comments due on March 21, 2019.³⁷ Entergy and Xcel filed timely motions to intervene and comments. LS Power and Protesting TOs filed timely motions to intervene and protests. On May 15, 2019, Filing Parties filed a motion for leave to answer and answer to protests and comments. On May 31, 2019, Protesting TOs filed a motion for leave and answer to Filing Parties' answer.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they sought intervention. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), we grant the late-filed motion to intervene given Consumers' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

Commission (Michigan Commission), the Indiana Commission, the Wisconsin Commission, and the Kentucky Public Service Commission do not join in the OMS statement that all of the tariff revisions are just and reasonable. OMS Comments at n.5. The Illinois Commission does not support MISO's Market Efficiency Project voltage threshold reduction, addition of benefit metrics, creation of the Local Economic Project category, or applying those concepts in the interregional context. *Id.* at n.6.

³⁶ MISO South Regulators consist of the Arkansas Commission, the Louisiana Commission, and the Mississippi Commission.

³⁷ On March 7, 2019, the Office of the Secretary issued an errata notice in Docket No. ER16-1969-005 correcting and extending the comment deadline to April 1, 2019.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answers to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed in this proceeding and, therefore, reject them.

B. Substantive Matters

1. Interregional Cost Allocation Filing

20. Filing Parties' proposal includes references to, and relies upon, provisions that Filing Parties proposed in the Regional Cost Allocation Filings in Docket Nos. ER19-1124-000 and ER19-1125-000. As noted above, the Commission is rejecting the Regional Cost Allocation Filing in the concurrently issued Regional Cost Allocation Rejection Order. Therefore, because the Filing Parties' proposed changes to the Tariff in the instant proceeding rely on definitions and provisions that the Commission is rejecting in Docket Nos. ER19-1124-000 and ER19-1125-000, we must also reject this filing. Because we are rejecting the filing based on its reliance on definitions and provisions that are not currently part of MISO's effective Tariff and that were filed and addressed elsewhere, we will not address the protests that take issue with the filing here.³⁸

2. Compliance Filing

21. MISO submits that its proposal to allocate the cost of MISO's share of Interregional Economic Projects complies with the NIPSCO Compliance Order's directive.³⁹ Because the Commission is rejecting this proposal, as well as the Regional Cost Allocation Filings on which the Interregional Cost Allocation Filing relies, MISO's outstanding compliance requirement, as directed in the NIPSCO Compliance Order, remains unfulfilled. Accordingly, in accordance with the NIPSCO Compliance Order, we direct MISO to submit a further compliance filing within 90 days of the date of this order:

to either confirm that the existing Market Efficiency Project cost allocation method will apply to MISO's share of the cost of interregional economic transmission projects above 100 kV but below 345 kV that qualify as Market Efficiency Projects or to propose tariff revisions to apply a different regional cost

³⁸ To the extent that parties have raised issues in this proceeding with the cost allocation method for lower-voltage projects that Filing Parties proposed in the Regional Cost Allocation Filings, we note that we address those arguments in the Regional Cost Allocation Rejection Order.

³⁹ See Compliance Filing, Docket No. ER16-1969-000 at 5-6.

allocation method for MISO's share of the cost of such projects. Upon review of MISO's compliance filing, including any supporting evidence, and consideration of any comments filed in response, the Commission will determine the just and reasonable MISO regional cost allocation method for MISO's share of the cost of interregional economic transmission projects above 100 kV but below 345 kV that qualify as Market Efficiency Projects.^[40]

The Commission orders:

(A) Filing Parties' filing in Docket No. ER19-1156-000 is hereby rejected without prejudice, as discussed in the body of this order.

(B) MISO's compliance filing in Docket No. ER16-1959-005 is hereby rejected, as discussed in the body of this order.

(C) MISO is hereby directed to submit a compliance filing within 90 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁰ NIPSCO Compliance Order, 158 FERC ¶ 61,049 at P 51.