

172 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

Midcontinent Independent System Operator, Inc.

Docket Nos. ER19-1823-003
ER19-1960-003

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued September 17, 2020)

1. On June 18, 2020, the Commission issued an order¹ accepting Midcontinent Independent System Operator, Inc.'s (MISO) proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to comply with the requirements of Order Nos. 845 and 845-A² and the Commission's December 20, 2019 order on compliance.³ On July 20, 2020, MISO filed a request for rehearing or, in the alternative, clarification of the June 2020 Order.

2. Pursuant to *Allegheny Defense Project v. FERC*,⁴ the rehearing request filed in this proceeding may be deemed denied by operation of law. As permitted by section 313(a)

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,236 (2020) (June 2020 Order).

² *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *errata notice*, 167 FERC ¶ 61,123, *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, *errata notice*, 167 FERC ¶ 61,124, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

³ *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,221 (2019) (December 2019 Order).

⁴ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

of the Federal Power Act (FPA),⁵ however, we are modifying the discussion in the June 2020 Order and continue to reach the same result in this proceeding, as discussed below.⁶

I. Background

3. Order Nos. 845 and 845-A amended the Commission's *pro forma* Large Generator Interconnection Agreement (LGIA) and *pro forma* Large Generator Interconnection Procedures (LGIP) to improve certainty for interconnection customers, promote more informed interconnection decisions, and enhance the interconnection process. In Order Nos. 845 and 845-A, the Commission adopted 10 different reforms to improve the interconnection process and required transmission providers to submit compliance filings to incorporate those reforms into their tariffs.

4. One of the reforms adopted by Order Nos. 845 and 845-A requires transmission providers to assess, and study if necessary, technological advancements proposed by an interconnection customer to determine if such advances can be incorporated into previously-submitted interconnection requests without being considered material modifications.⁷ Order Nos. 845 and 845-A directed transmission providers to include in their tariffs: (1) a definition of "permissible technological advancement" that, by definition, would not constitute a material modification; and (2) a technological change procedure that allows an interconnection customer to demonstrate that a technological advancement would result in electrical performance that is "equal to or better than" the electrical performance expected prior to the technological change and would not cause any reliability concerns.⁸ If the transmission provider cannot accommodate a proposed

⁵ 16 U.S.C. § 825l(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

⁶ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the June 2020 Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁷ Order No. 845, 163 FERC ¶ 61,043 at P 518. Material modifications are "those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date." *Pro forma* LGIA Art. 1. If a transmission provider determines that a proposed modification is material, the interconnection customer can choose to abandon the proposed modification or proceed and lose its queue position. Order No. 845, 163 FERC ¶ 61,043 at P 510.

⁸ *Id.* PP 518, 520; Order No. 845-A, 166 FERC ¶ 61,137 at P 155.

technological advancement, it must make such a determination no more than 30 days after an interconnection customer submits a formal technological advancement request.⁹

5. The Commission in Order No. 845 stated that changes between wind and solar technologies should not automatically be treated as non-material modifications because “such changes involve a change in the electrical characteristics of an interconnection request, and the transmission provider would likely need to evaluate the impacts of such changes.”¹⁰ The Commission also found that the definition of “permissible technological advancement” must not include changes in generation technology or fuel type because they involve a change in the electrical characteristics of an interconnection request.

6. In the December 2019 Order, the Commission found that MISO’s proposed technological change procedure in its Generator Interconnection Procedures (GIP) partially complied with the requirements of Order Nos. 845 and 845-A.¹¹ However, the Commission found that: (1) MISO had not justified a proposed 60-day timeline for performing additional studies on proposed permissible technological advancements; and (2) MISO’s proposed Tariff revisions did not specify how MISO would evaluate a technological advancement request to determine if it was a material modification.¹² The Commission directed MISO to make a further compliance filing addressing these two issues.

7. In the June 2020 Order, the Commission again found that MISO’s proposed technological change procedure in its GIP partially complied with the requirements of Order Nos. 845 and 845-A.¹³ The Commission accepted MISO’s more detailed explanation of the studies that it will conduct to determine whether the technological advancement request may be a material modification. The Commission directed MISO to submit a further compliance filing to revise its Tariff to provide that MISO will determine whether a technological advancement is a material modification within 30 calendar days of receipt of the initial technological advancement request.

8. In the June 2020 Order, the Commission also responded to a protest filed by Leeward Renewable Energy Development, LLC (Leeward) arguing, in part, that MISO

⁹ Order No. 845, 163 FERC ¶ 61,043 at P 535; Order No. 845-A, 166 FERC ¶ 61,137 at P 155.

¹⁰ Order No. 845, 163 FERC ¶ 61,043 at P 530.

¹¹ December 2019 Order, 169 FERC ¶ 61,221 at P 140.

¹² *Id.* PP 141, 142.

¹³ June 2020 Order, 171 FERC ¶ 61,236 at P 88.

was disregarding the language it proposed for material modifications.¹⁴ Leeward stated that it had a wind project in the Definitive Planning Phase (DPP) of MISO's interconnection queue¹⁵ and that MISO had refused to perform an analysis to determine whether converting the project to a solar resource would trigger the material modification standard, despite Leeward's offer to demonstrate that such conversion would result in "equal to or better" electrical performance and have no material adverse impact on the interconnection or on system reliability.¹⁶ In response, the Commission found that Order Nos. 845 and 845-A allow an interconnection customer to provide evidence that a requested technological change results in "equal to or better" performance and require MISO to evaluate such a demonstration.¹⁷ The Commission agreed with Leeward that MISO's Tariff allows Leeward to submit evidence that shows that its proposed technological change results in "equal to or better" electrical performance and does not constitute a material modification. The Commission further stated that, should Leeward fail to make such a demonstration, the proposed change should proceed through the material modification procedures.

9. On July 20, 2020, MISO filed a request for rehearing or, in the alternative, clarification of the June 2020 Order. On July 31, 2020, Leeward filed a motion for leave to answer and answer to MISO's request for rehearing or clarification. On August 17, 2020, MISO filed an answer to Leeward's answer.

II. MISO's Tariff Language

10. The Tariff provisions relevant to MISO's request for rehearing are contained in sections 1, 4.4.1, and 4.4.1.1 of MISO's GIP. MISO proposed these provisions on compliance with Order Nos. 845 and 845-A and the Commission accepted these provisions in the December 2019 Order and June 2020 Order. Section 4.4.1 states that:

During the [DPP] and prior to the issuance of draft GIA, the modifications permitted shall include: (a) a change in the technical parameters associated with the Generating Facility or MHVDC Connection Customer technology other than a

¹⁴ *Id.* P 81.

¹⁵ The DPP is the final phase of MISO's generator interconnection study process, during which MISO conducts reliability and deliverability studies that determine whether there is available transmission capacity to accommodate the interconnection of a new, proposed generating facility or whether network upgrades are needed.

¹⁶ June 2020 Order, 171 FERC ¶ 61,236 at P 81.

¹⁷ *Id.* P 92.

Permissible Technological Advancement; (b) a change to the Point of Interconnection or Point of Connection permitted under Section 4.4; and (c) a Permissible Technological Advancement for the Generating Facility or MHVDC Connection Customer ... Section 4.4.1.1 specifies a separate technological change procedure including the requisite information and process that will be followed to assess whether the Interconnection Customer's proposed technological advancement under Section 4.4.1(c) is a Material Modification.¹⁸

MISO's separate technological change procedure, contained in section 4.4.1.1 of the GIP, states that:

For permitted modification proposed by Interconnection Customer or MHVDC Connection Customer, Interconnection Customer or MHVDC Connection Customer shall submit a technological advancement request demonstrating that the proposed change is a Permissible Technological Advancement or submitting a detailed analysis to demonstrate that the proposed change is not a Material Modification

1. Upon receipt of a technological advancement request, the Transmission Provider shall review such request and supporting documentation to determine if the proposed change is a Permissible Technological Advancement or otherwise not a Material Modification within 30 days.¹⁹

MISO's definition of Permissible Technological Advancement states that such an advancement does not, among other things, "change the fuel source of the proposed Generating Facility."²⁰

¹⁸ MISO Tariff, Attach. X (Generator Interconnection Procedures), § 4.4.1 (Modifications) (125.0.0). Capitalized terms that are not defined in this order have the meaning specified in the MISO Tariff.

¹⁹ *Id.* § 4.4.1.1 (Technological Change Procedure) (125.0.0).

²⁰ *Id.* § 1.P (Definitions) (125.0.0).

III. Rehearing Request

11. MISO requests rehearing of the Commission's statement in the June 2020 Order that MISO's Tariff allows Leeward to submit evidence that shows that its proposed technological change (from wind to solar) results in "equal to or better" electrical performance and does not constitute a material modification.²¹ MISO contends that this statement could be interpreted as requiring MISO to evaluate mid-DPP fuel change requests. MISO argues that its Tariff does not permit fuel changes after entering the DPP and that MISO should not be required to evaluate mid-DPP fuel change requests under the technological change procedure adopted in Order No. 845.²²

12. MISO states that section 4.4.1 of its GIP permits three types of modifications after an interconnection request enters the DPP: (a) a change in the technical parameters associated with the generating facility; (b) a change in the point of interconnection; and (c) a Permissible Technological Advancement.²³ MISO notes that its definition of Permissible Technological Advancement expressly excludes fuel changes;²⁴ therefore, MISO states that a fuel change could only be considered after the interconnection request enters the DPP if it qualifies as a "change in the technical parameters associated with the Generating Facility." However, MISO asserts that this category of modifications, adopted in 2012 as part of its third major queue reform, was meant by MISO, and understood by the Commission, to exclude fuel source changes. To support this point, MISO cites its testimony in that proceeding, which states:

once a project enters the [DPP], it needs to be a "definitive" project. Thus, there are only two types of changes that MISO will consider after a project enters the [DPP]. Those two changes are a turbine change and certain changes in the Point of Interconnection.²⁵

²¹ MISO Rehearing Request at 2 (citing June 2020 Order, 171 FERC ¶ 61,236 at P 92).

²² *Id.* at 2-3.

²³ *Id.* at 8 (citing MISO Tariff, Attach. X, § 4.4.1 (125.0.0)).

²⁴ *Id.* at 9 (citing MISO Tariff, Attach. X, § 1.P (125.0.0); Order No. 845, 163 FERC ¶ 61,043 at P 530).

²⁵ *Id.* at 10 (citing Filing in Docket No. ER12-309-000, Ex. 1 (Lavery Test.) at 32-33 (filed Nov. 1, 2011)). MISO's testimony indicates that a turbine change is a request to change turbine manufacturers, such as switching from a General Electric unit to a similarly sized Suzlon unit. *Id.* at 33.

13. MISO contends that the Commission acknowledged this intended limitation when it accepted this Tariff language and found that “MISO’s proposal to limit the types of change permissible in the [DPP] is consistent with the need to ensure that a project that enters the [DPP] is ‘definitive.’”²⁶ MISO states that, consistent with the Commission’s findings, MISO has not allowed fuel change requests to be made during the DPP, and MISO asserts that neither its Tariff nor Business Practices Manuals provide a process for such a change.²⁷ MISO argues that the Commission would have to disregard the distinct regulatory context of GIP section 4.4.1(a) if it reads this provision to permit fuel changes.²⁸ MISO contends that Order No. 845 neither changed MISO’s existing requirements in this regard nor required MISO to develop a process to consider fuel change requests.

14. While MISO acknowledges that Order No. 845 required transmission providers to develop a separate technological change procedure for determining whether a proposed technological change is a material modification, it argues that this procedure only applies to Permissible Technological Advancements, which by definition do not include fuel changes.²⁹ MISO states that its Tariff language incorporates this requirement in GIP section 4.4.1.1 by including a technological change procedure for assessing Permissible Technological Advancements, while changes “in the technical parameters associated with the Generating Facility” are assessed under the pre-existing material modification procedure (which permits only turbine changes after entering the DPP).

15. MISO argues that the Commission’s interpretation of the Tariff will impose an unreasonable burden on MISO and could negatively affect MISO’s coordination with affected systems.³⁰ MISO explains that evaluating a proposed fuel change is an involved process that would require longer than the 30-day evaluation window given to transmission providers under Order No. 845. In particular, MISO states that evaluating fuel changes in the technological change procedure would require full re-evaluation of

²⁶ *Id.* at 10 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at P 223, *order on reh’g*, 139 FERC ¶ 61,253, at P 109 (2012)).

²⁷ *Id.* at 11.

²⁸ *Id.* at 11-12, 19.

²⁹ *Id.* at 12 (citing *Pro Forma LGIP*, § 4.4.2 (“Section 4.4.4 specifies a separate technological change procedure including the requisite information and process that will be followed to assess whether the Interconnection Customer’s proposed technological advancement under Section 4.4.2(c) [i.e., Permissible Technological Advancement] is a Material Modification”).

³⁰ *Id.* at 19.

DPP base case models using different dispatch assumptions (because each fuel type is dispatched differently in study cases).³¹ MISO states that it would also need to revisit or re-perform its system impact study and seek input from affected systems on the impact of such a proposed change.³² MISO further contends that the performance of a full fuel change request during the DPP would create uncertainty about the amount of the interconnection customer's network upgrade cost responsibility and the appropriate amount of the milestone payment during the same time period that this information is needed by other interconnection customers to make their business decisions.³³ MISO asserts that the requirement to evaluate fuel change requests during the course of the DPP creates numerous study and queue administration incongruities that would drive delay and run contrary to the transparency goals of Order Nos. 845 and 845-A.³⁴

16. MISO asserts that there will be detrimental effects to allowing an interconnection customer to change the fuel source for its proposed generating facility without having to go through the material modification process, such as: (1) providing an incentive for the interconnection customer to game site control provisions by choosing the least burdensome fuel type at the outset of the DPP process and then switching to a different fuel source during the DPP; and (2) encouraging premature or speculative interconnection requests, thereby increasing the risk of late-stage withdrawal and cost shifts to other interconnection customers.³⁵

17. MISO does not question the Commission's authority to initiate or entertain a proceeding to examine whether fuel changes should be allowed during the DPP, but MISO argues that its filings made in compliance with Order No. 845 are not the appropriate proceeding.³⁶ MISO asks that, if the Commission denies rehearing, the Commission should clarify that nothing in the June 2020 Order interpreted any pre-existing Tariff requirement and, if any interconnection customer disagrees with MISO's application of the Tariff or believes any Tariff provision to be unjust and unreasonable, it may file an FPA section 206 complaint.³⁷ MISO also requests that the Commission make

³¹ *Id.* at 19-20.

³² *Id.* at 20.

³³ *Id.* at 20-22.

³⁴ *Id.* at 23.

³⁵ *Id.* at 13-18.

³⁶ *Id.* at 24.

³⁷ *Id.* at 25.

clear that its decision is without prejudice to MISO's future FPA section 205 filings to further address the permissibility of, and requirements for, fuel change requests.

IV. Discussion

A. Procedural Matters

18. Rule 713(d) of the Commission's Rules of Practice and Procedure³⁸ prohibits an answer to a rehearing request. Accordingly, we deny Leeward's motion to answer and reject Leeward's answer to MISO's rehearing request. We find MISO's answer to Leeward's answer moot.

B. Substantive Matters

19. We agree with MISO that Order Nos. 845 and 845-A did not require transmission providers to assess fuel change requests pursuant to their technological change procedures. However, as discussed below, we find that MISO's technological change procedure in GIP section 4.4.1.1, which MISO proposed on compliance with Order No. 845 and 845-A, does not currently preclude fuel change requests from consideration under that process. We therefore sustain the result of the June 2020 Order.

20. As MISO notes, GIP section 4.4.1.1 contains the separate technological change procedure required by Order Nos. 845 and 845-A. Section 4.4.1 of MISO's Tariff states that the technological change procedure in GIP section 4.4.1.1 applies when determining if a proposed Permissible Technological Advancement (which excludes fuel change requests) is a material modification. However, the language in GIP section 4.4.1.1 states that "[u]pon receipt of a technological advancement request, the Transmission Provider shall review such request and supporting documentation to determine if the proposed change is a Permissible Technological Advancement *or otherwise not a Material Modification* within 30 days."³⁹ In addition, GIP section 4.4.1.1 states that an "Interconnection Customer or MHVDC Connection Customer shall submit a technological advancement request demonstrating that the proposed change is a Permissible Technological Advancement *or submitting a detailed analysis to demonstrate that the proposed change is not a Material Modification.*"⁴⁰

21. We find that this Tariff language in GIP section 4.4.1.1, which was proposed by MISO on compliance with Order Nos. 845 and 845-A, does not limit the technological

³⁸ 18 C.F.R. § 385.713(d)(1) (2019).

³⁹ MISO Tariff, Attach. X, § 4.4.1.1 (125.0.0) (emphasis added).

⁴⁰ *Id.* (emphasis added).

change procedure to determining whether a proposed technological advancement that falls within the definition of Permissible Technological Advancement is a material modification. Instead, we find that this Tariff language permits an interconnection customer to submit a technological advancement request that does not fall within the definition of Permissible Technological Advancement (such as a fuel change) along with a detailed analysis and demonstrate that such technological advancement is not a material modification.⁴¹

22. We agree with MISO that Order Nos. 845 and 845-A did not make changes to transmission providers' existing material modification procedures. In MISO's case, as MISO has explained, the existing material modification procedures in GIP section 4.4.1 apply to "a change in the technical parameters associated with the Generating Facility" and "a change to the Point of Interconnection." We grant MISO's request for clarification and clarify that nothing in the June 2020 Order interpreted the pre-existing material modification Tariff provisions in GIP section 4.4.1 – provisions which MISO has not changed as part of its Order No. 845 compliance filings. We find that the question of whether these pre-existing Tariff provisions allow an interconnection customer to submit a fuel change request after its project enters the DPP is therefore outside the scope of MISO's Order No. 845 compliance filing. We also grant MISO's request for clarification that our decision is without prejudice to MISO making any future FPA section 205 filings to further address the permissibility of, and requirements for, fuel change requests.

23. Last, in response to MISO's discussion of the alleged detrimental effects from allowing an interconnection customer to change the fuel source for its proposed generating facility during the DPP without having to go through the material modification process, we note that the June 2020 Order did not require MISO to approve fuel change requests that an interconnection customer may submit under MISO's technological change procedure during the DPP. Instead, the Commission found, and we affirm here, that MISO's technological change procedure in GIP section 4.4.1.1 does not prohibit an interconnection customer from submitting a technological advancement request, including a fuel change, along with an analysis to demonstrate that the proposed change is not a material modification. If MISO determines as part of its technological change

⁴¹ We find that MISO's arguments regarding the burden of being required to evaluate fuel change requests within the 30-day time period provided in the technological change procedure are misplaced because Order No. 845 does not require a transmission provider to evaluate fuel change requests in the technological change procedure. Instead, we find that the Tariff language MISO itself proposed to comply with the Order No. 845 requirement to include a technological change procedure in its Tariff does not prohibit an interconnection customer from submitting a technological advancement request that attempts to demonstrate that a fuel change is not a material modification.

procedure that a technological advancement request is a material modification, MISO's material modification provisions would then apply.

The Commission orders:

In response to MISO's request for rehearing, the June 2020 Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.