

140 FERC 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-1663-000

ORDER ON COMPLIANCE FILING

(Issued August 8, 2012)

1. On April 30, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) proposed tariff revisions in response to the directives in Order Nos. 741 and 741-A.¹ Specifically, MISO submitted revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to enhance its ability to offset market obligations in bankruptcy. As discussed in this order, the Commission finds that MISO's proposed revisions comply with the requirements set forth in Order Nos. 741 and 741-A. Accordingly, we accept MISO's proposed tariff revisions, which will become effective January 1, 2013, as discussed herein.

I. Background

2. In Order No. 741, the Commission adopted reforms to strengthen the credit policies used in organized wholesale electric power markets. Citing its statutory responsibility to ensure that all rates charged for the transmission or sale of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential,² the Commission directed regional transmission organizations (RTO) and

¹ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

² 16 U.S.C. §§ 824d, 824e (2006).

independent system operators (ISO) to revise their tariffs to reflect the following reforms: implementation of shortened settlement timeframes, restrictions on the use of unsecured credit, elimination of unsecured credit in all financial transmission rights (FTR) or equivalent markets, clarification of legal status to continue the netting and set-off of transactions in the event of bankruptcy, establishment of minimum criteria for market participation, clarification regarding the organized markets' administrators' ability to invoke "material adverse change" clauses to demand additional collateral from market participants, and adoption of a two-day grace period for "curing" collateral calls. The Commission directed each RTO and ISO to submit tariff changes by June 30, 2011, with an effective date of October 1, 2011. In Order No. 741-A, the Commission extended the deadline for complying with the requirement regarding the ability to offset market obligations to September 30, 2011, with the relevant tariff revisions to take effect January 1, 2012. The Commission subsequently extended the deadline for complying with that requirement to April 30, 2012.

3. On February 3, 2011, in Docket No. ER11-2831-000, MISO submitted its first compliance filing pursuant to Order No. 741. In its first compliance filing, MISO proposed to eliminate the use of unsecured credit in its financial transmission rights (FTR) market. On April 6, 2011, the Commission accepted MISO's first compliance filing by delegated letter order.³

4. On June 30, 2011, in Docket No. ER11-3970-000, MISO submitted its second compliance filing addressing the credit reform requirements directed by the Commission in Order No. 741. On September 15, 2011, the Commission issued an order conditionally accepting the second compliance filing and requested further compliance.⁴ In the September 15 Order, the Commission found that MISO failed to submit revisions to its tariff to comply with Order No. 741's requirement that each RTO and ISO propose tariff revisions to establish billing periods that are, at most, weekly.⁵ In particular, the Commission noted that, while MISO stated in its transmittal letter that it was proposing revisions to its tariff to provide that it will issue invoices based on a seven-day market settlement cycle, MISO's market settlement cycle and applicable billing were detailed in

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER11-2831-000 (April 6, 2011) (delegated letter order).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,188 (2011) (September 15 Order).

⁵ September 15 Order, 136 FERC ¶ 61,188 at P 10 (citing Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 32).

its Business Practice Manuals rather than in its tariff. Accordingly, the Commission directed MISO to submit a compliance filing to include appropriate language in the tariff.⁶

5. The Commission also conditionally accepted MISO's minimum participation criteria as consistent with the Commission's directive in Order No. 741, and as just and reasonable and not unduly discriminatory or preferential. However, the Commission found that MISO's proposal was insufficient to ensure the protection of the market, and required it to engage in independent periodic compliance verification to minimize risk to the market.⁷ Specifically, the Commission required MISO to develop a compliance verification process to independently verify that risk management policies and procedures are actually being implemented and that adequate capitalization is being maintained.⁸

6. On December 14, 2011, MISO submitted a filing to comply with the directives in the September 15 Order to specify that the issuance of invoices is based on a seven-day billing period and develop a periodic verification compliance process that will allow MISO to independently verify that risk management policies and procedures are actually being maintained, which was accepted on March 15, 2012.⁹

7. On April 30, 2012, MISO submitted the compliance filing at issue in this proceeding.

II. Notice of Filing and Responsive Pleadings

8. Notice of MISO's April 30, 2012 compliance filing was published in the *Federal Register*, 77 Fed. Reg. 27,046 (2012), with protests and interventions due on or before May 14, 2012.¹⁰ Motions to intervene were timely filed by American Municipal Power, Inc., Consumers Energy Company, DC Energy Midwest, LLC, Detroit Edison Company, EEI, EPSA, and Xcel Energy Services Inc. A motion to intervene and protest was timely

⁶ *Id.*

⁷ *Id.* P 41 (citing Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131).

⁸ *Id.*

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,184 (2012).

¹⁰ On May 11, 2012, Edison Electric Institute (EEI) and Electric Power Supply Association (EPSA) jointly filed a motion requesting an extension of the comment deadline to May 29, 2012. In a notice issued on May 14, 2012, the deadline for comments was extended to May 21, 2012.

filed by Exelon Corporation (Exelon). On May 29, 2012, NYISO, ISO New England Inc. (ISO-NE), and MISO (collectively, Joint ISOs) filed a joint answer.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Joint ISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Ability to Offset Market Obligations

11. Order No. 741 directed each RTO and ISO to adopt steps to address the risk that it may not be allowed to use netting and set-offs if a market participants enters bankruptcy.¹¹ The Commission required each RTO and ISO to submit a compliance filing that includes tariff revisions to include one of the following options: (1) establish a central counterparty; (2) require market participants to provide a security interest in their transactions in order to establish collateral requirements based on net exposure; (3) propose another alternative, which provides the same degree of protection as options 1 and 2; or (4) establish credit requirements for market participants based on their gross obligations.¹²

a. Filing

12. To comply with the Commission's directives to enhance its ability to offset market obligations in bankruptcy, MISO proposes to add a new Legal Capacity Section 6A to Module A as well as new definitions to clarify that MISO proposes to act as the counterparty with respect to market and transmission related transactions. In developing the revisions to Module A, MISO states that it is important to distinguish between transactions where MISO is not the counterparty from transactions where MISO the

¹¹ Order No. 741, FERC Stats & Regs. ¶ 31,317 at P 117.

¹² *Id.*

counterparty. MISO proposes to become the counterparty for market related transactions, and has added a new definition, Energy Market Counterparty,¹³ to Module A. However, MISO does not propose to be the counterparty to financial schedule¹⁴ and generator self-supply¹⁵ transactions. MISO explains that it does not propose to be the counterparty for financial schedule transactions because market participants are themselves the counterparties to the financial schedule transactions. As for generator self-supply transactions, MISO states that these transactions do not have a counterparty for the sale of energy since the market participant is supplying itself, and has proposed a new definition of generator self supply in Module A.¹⁶ However, MISO would act in its capacity as counterparty with regard to the associated transmission usage charges.¹⁷

¹³ MISO proposes to define Energy Market Counterparty as: “The Transmission Provider as the contracting counterparty to Market Participants for all Market Activities contemplated by this Tariff, solely in the Transmission Provider’s capacity as a principal and not as an agent for any other party, consistent with the provisions of Section 6A.”

¹⁴ A financial schedule is a financial arrangement between two Market Participants designating a source point, sink point, and delivery point establishing the obligations of the buyer and seller for the payment of Cost of Congestion and Cost of Losses.

¹⁵ MISO proposes to define generator self-supply as: “For any given period of time, the total Energy taken out of the Transmission System by the Loads designated as Self-Supply by a Market Participant which is a Generation Owner up to an amount equal to the total Energy placed into the Transmission System by the Generators designated as Self-Supply by the same Market Participant and owned by it.”

¹⁶ MISO states that this clarification is desirable to rural electric cooperatives that must comply with limits on non-member income to retain their tax exempt status.

¹⁷ The transmission usage charge is the per unit charge to support a through schedule, a financial schedule, or generator self-supply and is equal to the difference in the locational marginal price at the sink and the locational marginal price as the source (in dollars per MWh) for the cost of congestion and cost of losses.

13. MISO also does not propose to become the counterparty to transmission related transactions.¹⁸ MISO states that it receives revenues for transmission service under the Tariff in “a custodial trust relationship” to the transmission owners pursuant to MISO’s Transmission Owners’ Agreement¹⁹ and in the Funds Trust Agreement.²⁰ MISO explains that the proposed Tariff revisions recognize this relationship in the new definition of transmission charges collection agent.²¹ MISO further explains that, because it will be acting in different capacities for market and transmission related transactions, transmission charges will not be netted against other market related charges unless a security interest is provided, as discussed below.

14. Additionally, MISO proposes changes to two aspects of its Credit Policy in Attachment L to reflect the revisions to Module A. First, MISO proposes to clarify in the Credit Policy the continued applicability of a security interest in accounts receivable for those market participants that wish to have their transmission charges netted with their market related charges. MISO states that it deems it appropriate to give market participants the option to provide a security interest in accounts receivable to permit netting between transmission and market services, except FTR services.²² In addition, MISO proposes to revise the Security Interest Agreement in Exhibit IV to Attachment L to address the difference between MISO’s legal capacity with respect to market and transmission related service categories. Specifically, MISO proposes to add language to clarify MISO’s legal capacity.

¹⁸ Transmission related transactions refers to transactions included in the definition of Transmission Charges, which is a new definition in Module A. MISO proposes to define Transmission Charges as: “The revenue collected by the Transmission Provider under this Tariff related to Transmission Service, including the revenue collected for amounts billed under Module B, Schedule 26-A, and Part I of Module F. Schedule 31.”

¹⁹ Agreement of Transmission Facility Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation.

²⁰ The Funds Trust Agreement among the Trustee, MISO, and the Beneficiaries named therein, as amended from time to time.

²¹ MISO proposes to define transmission charges collection agent as: “The Transmission Provider in its capacity as custodial agent for the collection of Transmission Charges, consistent with the provisions of Section 6A.”

²² MISO states that FTR services must be covered by financial security.

b. Protests

15. Exelon requests that the Commission condition acceptance of the proposed tariff revisions on MISO providing more transparency regarding its methods of assessing and modeling the creditworthiness of MISO members.²³ Exelon states that MISO's decision to act as the counterparty in all transactions settled in its market, rather than creating an affiliate as PJM did, potentially poses a risk to MISO's solvency and, by extension, to its members. Exelon contends that MISO's proposed tariff revisions do not reflect the methods or models MISO will use to manage the above-mentioned risk to MISO's insolvency. Further, Exelon argues that the proposed revisions do not explain how MISO will manage cash and credit facilities to ensure its solvency in a stress case where a significant payment default by one of more MISO members triggers demands by non-defaulting member counterparties for payment from MISO.

16. To provide transparency and establish processes to ensure adequate liquidity and RTO/ISO solvency under a variety of stress conditions, Exelon requests that MISO be required to disclose to its members the models and model inputs it uses to evaluate members' creditworthiness. It further proposes that MISO be required to demonstrate its ability to remain solvent in stress test cases. Specifically, Exelon wants MISO to: (1) perform and publish verifiable stress tests specifically targeting forward financial products to ensure collateral adequacy; (2) release quarterly data on MISO's working capital and backup credit facilities available to demonstrate to its members that its liquidity is sufficient to meet an adverse credit event under various stress tests; and (3) create a process whereby MISO's Credit Practices Working Group ensures that MISO members are aligned with MISO's credit policy and that undue credit risks are mitigated. As examples, Exelon submits two credit exposure reports from MISO and PJM that it deems appropriate to meet the aforementioned transparency goals.

c. Joint ISOs' Answer

17. The Joint ISOs argue that the tariff revisions requested by Exelon are beyond the scope of the central counterparty compliance filings because the requested revisions do not pertain to clarifying the legal status of the Joint ISOs to act as the single counterparty to market participant transactions. They also argue that Exelon is wrong to assert that the Joint ISOs are exposing their respective market participants to additional risks that warrant additional protections by not creating an affiliate to serve as the central counterparty. They state that PJM and PJM Settlement, its affiliate, mutually guarantee

²³ Exelon's comments are directed to the Midwest Independent Transmission System Operator, Inc. (MISO) and ISO New England Inc., as well as NYISO.

the responsibilities, activities, assets, and liabilities of each other so that this solvency risk is equally borne by PJM as guarantor.²⁴

18. The Joint ISOs also state that they protect themselves against any such solvency risk by explicitly limiting their obligations to make payments to market participants to the amount of money received from market participants through charges, drawdowns, and other recovery mechanisms.²⁵ Moreover, the Joint ISOs state that the risk of insolvency is further minimized because each of the RTO/ISOs has the explicit right under its tariff to recover any market participant payment default/bad debt loss and related costs from its other market participants.²⁶

19. The Joint ISOs also assert that the protections that Exelon seeks are redundant because each of the RTO/ISO's tariffs sets forth the methods they use to assess and model the creditworthiness of their market participants and the collateral requirements imposed prior to a market participants participating in the market.²⁷ The Joint ISOs also argue that Exelon has not explained what it would do with information such as models and the inputs thereto, nor how such information would safeguard the markets.

d. Commission Determination

20. We find MISO's proposal to establish itself as the counterparty to market related transactions complies with the requirements set forth in Order Nos. 741 and 741-A. The establishment of MISO as counterparty addresses ambiguity regarding the identity of contracting parties in market related transactions by clarifying that there is a single,

²⁴ Joint ISO Answer at 4 citing (*PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,277, at P 10 (2010)).

²⁵ *Id.* 4, n.11 (citing Section 1.1 of the ISO-NE Billing Policy (Exhibit 1D to Section I of the ISO-NE Transmission, Markets and Services Tariff (the "ISO-NE Tariff")) filed as part of ISO-NE's central counterparty compliance filing; *see also* new Section 2.7.1.4 of NYISO's Open Access Transmission Tariff ("NYISO OATT") and new Section 7.1.4 of NYISO's Market Administration and Control Area Services Tariff ("NYISO Services Tariff") filed as part of NYISO's central counterparty compliance filing; Section 7 of the MISO Tariff).

²⁶ *Id.* 5, n.12 (citing Sections 3.3 and 3.4 of the ISO-NE Billing Policy; NYISO OATT Section 27; Section 7 of the MISO Tariff).

²⁷ *Id.* 5, n.14 (citing Section II and III of the ISO-NE Financial Assurance Policy; NYISO Services Tariff Section 26.4-26.5; Attachment L of the MISO Tariff).

specified counterparty to market participants. Furthermore, MISO's proposal to not be the counterparty to financial schedule and generator self-supply transactions is reasonable given that there is no ambiguity regarding the counterparty for those transactions. As for transmission related transactions, we find that giving market participants the option to provide a security interest in accounts receivable to permit netting between transmission and market services is consistent with Order Nos. 741 and 741-A. Accordingly, MISO's proposal represents a reasonable solution to address a potential mutuality risk, and we also note that it received substantial support from stakeholders. We will therefore accept MISO's proposed tariff revisions.

21. We do not find persuasive Exelon's arguments that MISO must adopt additional protections to improve transparency and establish processes to ensure adequate liquidity and ISO solvency under stress conditions. First, we disagree with Exelon that MISO's proposal to act as the central counterparty instead of establishing a separate affiliate to perform this function as PJM did potentially poses a risk to MISO's solvency. As the Joint ISOs note, PJM is guarantor of PJM Settlement, its separate affiliate, and therefore is exposed to the same risks as PJM Settlement.²⁸ Further, MISO protects itself against insolvency risk by explicitly limiting its obligations to make payments to market participants through charges, drawdowns, and other recovery mechanisms. MISO's risk of insolvency is additionally minimized because MISO has the explicit right under its tariff to recover any market participant payment default/bad debt loss and related costs from its other market participants.

22. We also disagree with Exelon that MISO's market participants are exposed to new risks by MISO becoming the central counterparty. Instead of creating a new or greater risk, MISO is reducing market participant risk by having the ability to offset amounts that a market participant might avoid paying through bankruptcy, with amounts owed to it by becoming the central counterparty and thereby clarifying its legal status to net.

23. Accordingly, we will not require MISO to adopt the protocols and processes recommended by Exelon. In addition, we agree with the Joint ISOs that the additional disclosures that Exelon seeks are for the most part redundant of those already in MISO's tariff, and it is unclear how the transparency protocols that Exelon requests would strengthen MISO's market. Although we decline to require MISO to adopt Exelon's proposed protocols and processes, we will consider subsequent efforts by market participants and MISO to further strengthen its credit practices.

²⁸ *PJM Interconnection*, 132 FERC ¶ 61,207, *order on compliance*, 133 FERC ¶ 61,277, at P 10 (2010).

The Commission orders:

The Commission hereby accepts MISO's proposed tariff revisions, effective January 1, 2013, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.