

155 FERC ¶ 61,274
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-2302-004

ORDER ON COMPLIANCE

(Issued June 16, 2016)

1. On February 1, 2016, Midwest Independent Transmission System Operator, Inc. (MISO)¹ submitted, pursuant to section 205 of the Federal Power Act (FPA),² proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) regarding its System Support Resource (SSR)³ procedures in compliance with the Commission's December 17, 2015 order⁴ (February 2016 Compliance Filing). As discussed below, we will accept in part, and reject in part, the February 2016 Compliance Filing, effective September 24, 2012, subject to the outcome of Docket No ER16-521.

¹ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

² 16 U.S.C. § 824d (2012).

³ MISO's Tariff defines SSRs as "Generation Resources or [SCUs] that have been identified in Attachment Y – Notification to this Tariff and are required by the Transmission Provider for reliability purposes, to be operated in accordance with the procedures described in Section 38.2.7 of this Tariff." MISO, FERC Electric Tariff, Module A, § 1.S "System Support Resource (SSR)" (39.0.0).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,313 (2015) (December 2015 Order).

I. MISO's SSR Procedures

2. Under MISO's SSR procedures, market participants that decide to suspend or retire a generation resource or Synchronous Condenser Unit (SCU) must submit an Attachment Y Notice to suspend or retire.⁵ MISO then conducts a reliability study to determine whether all or a portion of the resource's capacity is needed to maintain system reliability. If MISO finds that the resource is needed to maintain system reliability and that no feasible alternatives exist, MISO designates the resource as an SSR Unit and enters into an SSR agreement with the market participant that owns or operates the SSR Unit to ensure that the resource continues to operate, as needed.

3. On July 25, 2012, MISO submitted proposed Tariff revisions to its SSR procedures that, among other things, revised the treatment of resources that submit Attachment Y Notices to retire or suspend.⁶ On September 21, 2012, the Commission accepted, subject to condition, MISO's proposed Tariff revisions effective September 24, 2012, subject to two compliance filings due within 90 and 180 days of the date of the order.⁷ On July 22, 2014, the Commission accepted MISO's compliance filing, subject to condition.⁸ In the December 2015 Order, the Commission issued an order on rehearing and accepted MISO's further compliance filing, subject to condition. As noted above, MISO made the February 2016 Compliance Filing to address the conditions in the December 2015 Order, which is the subject of the instant order.

II. Notice of Filing

4. Notice of the February 2016 Compliance Filing was published in the *Federal Register*, 81 Fed. Reg. 6256 (2016), with interventions and protests due on or before February 22, 2016. None was filed.

⁵ MISO, FERC Electric Tariff, Attachment Y, Notification of Potential Resource/SCU Change of Status (30.0.0).

⁶ MISO, Filing, Docket No. ER12-2302-000 (filed July 25, 2012) (July 2012 Filing).

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (September 2012 Order).

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,056 (2014) (July 2014 Order).

III. Discussion

5. We accept in part, and reject in part, the February 2016 Compliance Filing, effective September 24, 2012, subject to the outcome of Docket No ER16-521, as discussed below.⁹

A. Comparable Firmness of Commitment Provision

1. Background

6. In the September 2012 Order¹⁰ and July 2014 Order,¹¹ the Commission accepted, subject to condition, MISO's proposed Tariff revisions that allow MISO to evaluate SSR alternatives with its stakeholders pursuant to the open and transparent planning provisions of Attachment FF¹² of its Tariff. In the December 2015 Order, the Commission accepted, subject to condition, MISO's proposed revisions made in compliance with the July 2014 Order that provide, in regard to evaluating SSR alternatives, specific guidance about the contractual commitments required of generation and demand-side resource alternatives, and general guidance about how MISO will evaluate whether contractual commitments required for additional types of resources are comparable to the commitments that apply to transmission solutions.¹³ The Commission stated that, in light of the unique characteristics of MISO's SSR program, MISO's proposed revisions demonstrate that the required contractual commitments that apply to generation and demand-side resources are comparable to the commitments that apply to transmission solutions. However, the Commission explained that MISO's proposed revisions do not address the situation where an existing generator, which is not available at the time of SSR designation and is subsequently made available, can be selected as an

⁹ MISO states that its filing includes language that is pending before the Commission in Docket Nos. ER14-2605-002, ER16-521-000, and ER16-815-000, and as such, requests that the Commission accept its filing subject to the outcomes of those pending proceedings. *See* MISO February 2016 Compliance Filing at n.17. We note, however, that the proceedings in Docket Nos. ER14-2605 and ER16-815 are no longer pending.

¹⁰ September 2012 Order, 140 FERC ¶ 61,237 at P 36.

¹¹ July 2014 Order, 148 FERC ¶ 61,056 at PP 33-34.

¹² MISO, FERC Electric Tariff, Attachment FF, Transmission Expansion Planning Protocol (47.0.0).

¹³ December 2015 Order, 153 FERC ¶ 61,313 at P 35.

alternative solution. The Commission, therefore, directed MISO to revise Tariff section 38.2.7.c (Evaluation of SSR Unit Application) to provide that an existing generator, which is not available at the time of SSR designation and is subsequently made available, can be considered as an alternative solution.¹⁴

2. February 2016 Compliance Filing

7. In response to the Commission's directive, MISO proposes revisions to Tariff section 38.2.7.c. Specifically, MISO proposes to revise the provision that a "Generator alternative may be a new Generator, or an increase to existing Generator capacity" to include "an existing Generator that is made available after the Attachment Y Reliability Study is completed."¹⁵

3. Commission Determination

8. We accept MISO's proposed revisions in Tariff section 38.2.7.c. We find that MISO complied with the directive in the December 2015 Order to address the situation where an existing generator, which is not available at the time of SSR designation and is subsequently made available, can be selected as an alternative solution because MISO provides that a generator alternative may be a new generator, an existing generator that is made available after the Attachment Y reliability study is completed, or an increase to existing generator capacity.

B. Retain and Transfer Interconnection Service Provision

1. Background

9. In the September 2012 Order, the Commission accepted, subject to condition, MISO's proposed Tariff revisions that permit owners and operators of retiring facilities to retain and transfer interconnection service and directed that MISO, on compliance, modify its proposal to ensure that it will be implemented in a just and reasonable and not unduly discriminatory manner.¹⁶ The Commission explained that it recognized the benefits to an owner or operator of a retiring resource to retain and transfer the retiring unit's interconnection service, but raised several issues with MISO's proposal allowing an owner or operator of an SSR Unit planning to retire a facility to transfer its interconnection service to a new facility. The Commission stated that MISO did not

¹⁴ *Id.*

¹⁵ MISO February 2016 Compliance Filing at 3-4.

¹⁶ September 2012 Order, 140 FERC ¶ 61,237 at P 47.

illustrate how its proposal is consistent with its Tariff, indicate how it will evaluate a transfer of interconnection service, describe the nature of interconnection service being transferred, address potential competitive implications of its proposal, or provide sufficient transparency for transfers to occur.¹⁷ Given these concerns, the Commission directed MISO to submit a compliance filing revising its Tariff to implement additional procedures that ensure that the proposed transfer of interconnection service is offered on a fair, transparent, and nondiscriminatory basis and that comply with the filing requirements of section 205 of the FPA.¹⁸

10. In the July 2014 Order, the Commission accepted, subject to condition, MISO's proposed Tariff revisions on compliance¹⁹ that sought to use existing provisions of its Tariff to address the Commission's concerns related to the transfer of interconnection service.²⁰ The Commission stated that MISO did not fully comply with the directive in the September 2012 Order because MISO's assertions in its December 2012 Compliance Filing that existing provisions of its Tariff already allow for the transfer of interconnection service and, therefore, MISO need not address the Commission's directive amount to an untimely request for rehearing, and in any case, are incorrect.²¹ In addressing MISO's assertions, the Commission stated that MISO's Generator Interconnection Procedures (GIP) section 4.3²² and *pro forma* Generator Interconnection Agreement (GIA) article 19.1²³ address the transfer and reassignment, respectively, of interconnection service for a specific generating facility from one party to another, and do not address a change in the underlying generating facility. The Commission continued that although MISO GIP section 2.1(a)(iv)²⁴ addresses the application of the GIP to any

¹⁷ *Id.* PP 48-52.

¹⁸ *Id.* P 52.

¹⁹ MISO, Compliance Filing, Docket No. ER12-2302-001 (filed Dec. 18, 2012) (December 2012 Compliance Filing).

²⁰ July 2014 Order, 148 FERC ¶ 61,056 at P 1.

²¹ *Id.* P 50.

²² MISO, FERC Electric Tariff, Attachment X, Generator Interconnection Procedures (40.0.0), § 4.3.

²³ MISO, FERC Electric Tariff, Attachment X, Generator Interconnection Procedures, Appendix 6, Generator Interconnection Agreement (31.0.0), art. 19.1.

²⁴ MISO, FERC Electric Tariff, Attachment X, Generator Interconnection Procedures (40.0.0), § 2.1.

substantive modification to the operating characteristics of an existing generating facility, it does not address the replacement of a retiring unit with new generation.²⁵ Given these concerns, the Commission directed MISO to submit a compliance filing revising its Tariff to implement additional procedures to ensure that the transfer of interconnection service to a new generator, or to increase the capacity of an existing facility at the identical point of interconnection, is offered in a just and reasonable and not unduly discriminatory manner.²⁶

11. In the December 2015 Order, the Commission accepted, subject to condition, MISO's proposed Tariff revisions on compliance that allow an owner or operator of an SSR Unit to retain interconnection service for its facility if the owner submits an Attachment Y Notice with an Attachment X²⁷ request for substantive modifications to replace or increase the capacity of the retiring facility.²⁸ The Commission stated that although it agreed with MISO's Tariff revisions allowing MISO to evaluate requests to transfer interconnection service to a new owner according to the provisions of Attachment X, the Commission explained that it continues to have concerns with MISO's proposal allowing the retention and transfer of interconnection service to another generator.²⁹ The Commission stated that it interprets MISO's proposal as allowing the replacement of the retiring facility with capacity of another facility, including replacement with more capacity than the capacity of the retiring facility, through a substantive modification request, and such an interpretation is inconsistent with the Commission's previous findings that MISO GIP section 2.1(a)(iv) does not address the replacement of a retiring unit with new generation.³⁰

12. The Commission explained that if MISO intends to allow the replacement of the retiring facility with capacity of another facility, including replacement with more capacity than the capacity of the retiring facility, MISO must propose procedures as part of its Tariff to ensure that the opportunity to replace or increase the capacity of the retiring facility is offered on a fair, transparent, and nondiscriminatory basis. The

²⁵ July 2014 Order, 148 FERC ¶ 61,056 at P 50, n.111.

²⁶ *Id.* P 50, Requirement 6.

²⁷ MISO, FERC Electric Tariff, Attachment X, Generator Interconnection Procedures (42.0.0).

²⁸ December 2015 Order, 153 FERC ¶ 61,313 at P 24.

²⁹ *Id.* PP 25-26.

³⁰ *Id.* P 26.

Commission stated that, as noted in previous orders, the procedures should allow for a clear and consistent way in which generators seeking a transfer of interconnection service from a retiring generator may identify opportunities and how such a generator would be chosen for such service. The Commission continued that any resulting rates, terms, and conditions related to the transfer of interconnection service must be filed pursuant to section 205 of the FPA.³¹ The Commission also stated that MISO's proposal creates a distinction between an owner of a retiring resource that is allowed to retire and one that is designated as an SSR Unit, which raises undue discrimination concerns, and that MISO did not provide sufficient justification for such a distinction.³²

13. Given these concerns, the Commission directed MISO to submit a compliance filing revising its SSR procedures, specifically Tariff section 38.2.7.k (Termination of Interconnection Rights), with additional procedures to ensure that the retention and transfer of interconnection service to another generator occurs in a manner that is just and reasonable and not unduly discriminatory or preferential. The Commission also directed MISO to eliminate the distinction between an owner of a retiring resource that is allowed to retire and one that is designated as an SSR Unit and to use the term "interconnection service" instead of "interconnection rights."³³

2. February 2016 Compliance Filing

14. In response to the Commission's directive, MISO proposes that its SSR procedures address the termination of interconnection service, but that only Attachment X addresses the transfer of interconnection service. MISO states that, according to its proposed revisions in Tariff section 38.2.7.a (SSR Unit Notification Procedures), its SSR procedures do not apply to "Generation Resources that are replaced by Generation Resources having equal or higher Capacity at the identical Point of Interconnection that are the subject of [a] request in accordance with Attachment X regarding such replacement." MISO states that only reductions in capacity of an existing generation resource will be subject to the provisions in its SSR procedures, permitting MISO to terminate part of the interconnection service for a reduction in capacity.³⁴

³¹ *Id.* P 27.

³² *Id.* P 28.

³³ *Id.* PP 28-29.

³⁴ MISO February 2016 Compliance Filing at 2.

15. MISO states that it proposes to eliminate all mention of the transfer of interconnection service from Tariff section 38.2.7.k, which MISO renames as “Termination of Interconnection Service” and proposes to use the term “interconnection service” throughout. MISO explains that the evaluation of transfers of interconnection service will take place under Attachment X of the Tariff. MISO explains that its proposed revisions carry with it the elimination of the former distinction that involved an SSR Unit and resolves any possible conflict between the provisions contained in its SSR procedures and Attachment X of the Tariff.³⁵

16. MISO states that the evaluation of requests for the continuation of interconnection service is addressed in its proposed revisions to Attachment X. MISO states that it revises GIP section 2.1(a) to specifically provide that its GIP apply to the “replacement of an existing Generating Facility with a new Generating Facility having the same electrical Point of Interconnection”³⁶

17. MISO states that the transfer of interconnection service can be accomplished according to the requirements stated in its proposed revisions to new GIP section 2.1(f). MISO explains that the transfer of interconnection service is dependent upon determining that the replacement “is not a Material Modification.” MISO states that, therefore, according to the definition of “Material Modification,” non-discriminatory transfers would be permitted that do not have “a material impact on the cost or timing of any Interconnection Request with a later queue priority date.” MISO continues that new GIP section 2.1(f) provides that MISO studies can be limited to “stability and short circuit analyses” for a new generation facility having the “same electrical Point of Interconnection” because the same geographic and electrical circumstances limit the downstream modeling concerns that would otherwise exist. MISO states that new GIP section 2.1(f) provides that the transfer of interconnection service will be “memorialized in a *pro forma* GIA.”³⁷

3. Commission Determination

18. First, we accept MISO’s proposed revisions in Tariff section 38.2.7.k that change the term “interconnection rights” to “interconnection service.” We find that MISO

³⁵ *Id.*

³⁶ *Id.* at 3.

³⁷ *Id.*

complied with the directive in the December 2015 Order to use the term “interconnection service,” which is consistent with its usage throughout MISO’s Tariff.³⁸

19. Second, we reject MISO’s proposal regarding the ability to retain and transfer interconnection service.³⁹ Since the September 2012 Order, the Commission stated that in order to implement MISO’s proposal allowing the retention and transfer of interconnection service for retiring generators, MISO must propose additional procedures that ensure that the retention and transfer of interconnection service is offered on a fair, transparent, and nondiscriminatory basis and that comply with the filing requirements of section 205 of the FPA.⁴⁰ The Commission detailed its various concerns related to MISO’s proposal and explained that MISO is required to propose additional procedures, which should, among other things, allow a clear and consistent way in which generators seeking a transfer of interconnection service from a retiring generator may identify opportunities and address how such a generator would be chosen for such service.⁴¹

20. We find that MISO has not complied with the directive in the December 2015 Order to revise its Tariff to include procedures to ensure that the retention and transfer of interconnection service to another generator occurs in a manner that is just and reasonable and not unduly discriminatory or preferential.⁴² MISO’s proposed Tariff revisions do not include additional procedures as required by the Commission; rather, MISO’s proposed Tariff revisions eliminate the ability to retain and transfer interconnection service from its SSR procedures and insert this ability into Attachment X, which merely moves this provision from one Tariff section to another without providing the requisite additional procedures.

³⁸ December 2015 Order, 153 FERC ¶ 61,313 at P 29.

³⁹ Because we reject MISO’s proposal regarding the ability to retain and transfer interconnection service, we do not address whether the proposal in the February 2016 Compliance Filing eliminates the distinction between an owner of a retiring resource that is allowed to retire and one that is designated as an SSR Unit as required by the December 2015 Order.

⁴⁰ September 2012 Order, 140 FERC ¶ 61,237 at P 52.

⁴¹ *See id.* PP 47-52; July 2014 Order 148 FERC ¶ 61,056 at P 50, n.111; December 2015 Order, 153 FERC ¶ 61,313 at PP 26-29.

⁴² December 2015 Order, 153 FERC ¶ 61,313 at P 29.

21. In each of the Commission's previous orders, the Commission accepted, subject to condition, MISO's proposed Tariff revisions addressing the ability to retain and transfer interconnection service, and directed further compliance in order to implement this proposal. As discussed above, MISO has not complied with the Commission's previous directives and did not comply with the Commission's directive in the December 2015 Order. Therefore, we reject MISO's proposal to allow the retention and transfer of interconnection service.⁴³ We direct MISO to submit a compliance filing within 30 days of the date of this order that reflects only the provisions of its SSR procedures that have been accepted by the Commission herein and in the underlying Commission orders, which does not include language related to the retention and transfer of interconnection service.

The Commission orders:

(A) MISO's proposed Tariff revisions are accepted in part and rejected in part, as discussed in the body of this order, subject to the outcome of Docket No. ER16-521.

(B) MISO is directed to submit a compliance filing within 30 days of the date of this order that reflects only the provisions of its SSR procedures that have been accepted by the Commission herein and in the underlying Commission orders, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴³ Our rejection here is without prejudice to MISO submitting a new proposal to provide for the retention and transfer of interconnection service to another generator pursuant to section 205 of the FPA. However, any such proposal should address the concerns that the Commission has repeatedly expressed.