

167 FERC ¶ 61,224
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

June 14, 2019

In Reply Refer To:
Midcontinent Independent System
Operator, Inc.
Docket No. ER19-1541-000

Midcontinent Independent System Operator, Inc.
720 City Center Drive
Carmel, IN 46032

Attention: Michael Kessler

Dear Mr. Kessler:

1. On April 9, 2019 (April 9 Filing), as supplemented on April 10, 2019 and April 30, 2019 and clarified on May 23, 2019, Midcontinent Independent System Operator, Inc. (MISO) filed a petition (Petition) for Commission approval of a settlement agreement (Settlement Agreement) between East Texas Electric Cooperative, Inc. (East Texas), MISO Transmission Owners¹ and MISO (together, the Parties) regarding the

¹ The MISO Transmission Owners for this Settlement Agreement are: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; 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.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; 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

withdrawal and transfer of 38 MW of load and related transmission assets of East Texas and Deep East Texas Electric Cooperative, Inc. (Deep East Texas)² from MISO to Southwest Power Pool, Inc. (SPP) (East Texas Transaction). The Petition also includes a related request for limited waiver of a provision of the MISO Transmission Owners' Agreement and a provision of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). MISO explains that the Settlement Agreement implements the East Texas Transaction, and requires East Texas to pay a black box settlement fee in the amount of \$217,126 within 30 calendar days following the date of a Commission order approving the Settlement Agreement.

2. MISO states that the settlement fee resolves all of East Texas' obligations, or potential obligations, under Schedules 10, 16, and 17, Section 43.7.4, and Attachment FF, Section III.2.1 of the Tariff and Article Five of the MISO Transmission Owners' Agreement related to the East Texas Transaction.³ MISO further explains that East Texas will continue to honor all financial obligations incurred and payments applicable to time periods prior to the effective date of the transaction.⁴ Article 10 of the Settlement Agreement provides that, absent mutual agreement of the Parties to a proposed change to the Settlement Agreement, "the standard for review for unilateral changes to this Settlement Agreement proposed by a Party shall be the 'public interest' standard. [Citations omitted.]" Article 10 also provides that "the standard of review of any changes proposed by a non-Party, or the Commission acting *sua sponte*, shall be the ordinary just and reasonable standard of review, not the public interest standard of review. [Citations omitted.]"

3. According to MISO, in 2017, East Texas initially sought to make the East Texas Transaction effective January 1, 2018. However, MISO states there was a disagreement among the Parties regarding whether Article Five, Section I of the MISO Transmission Owners' Agreement, which stipulates that the withdrawal of a transmission owner from MISO cannot become effective until December 31 of the calendar year following the calendar year in which notice of the withdrawal is given, applied to the East Texas Transaction.⁵ MISO states that due to this disagreement, East Texas did not provide

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

² Deep East Texas is one of ten East Texas distribution cooperative members.

³ April 9 Filing, Explanatory Statement at 4.

⁴ *Id.*

⁵ *Id.* at 6.

formal notice until June 7, 2018, which would make December 31, 2019 the earliest possible effective date for the East Texas Transaction. However, MISO states that MISO, the MISO Transmission Owners, and East Texas engaged in negotiations to determine whether agreement on an earlier effective date could be reached.⁶ In accordance with the terms of the Settlement Agreement, MISO requests a limited, one-time waiver of the notice requirement under Article Five, Section I of the MISO Transmission Owners' Agreement, in order to make the transaction effective June 1, 2019.⁷ MISO states that absent this waiver, there would be economic harm to East Texas and its retail customers.⁸

4. MISO additionally requests a one-time waiver of Section 43.7.4 of Module C of MISO's Tariff, which requires MISO to: (1) perform a Long Term Transmission Rights assessment (LTTR Assessment) of the annual net impact of the transmission owner's withdrawal on the infeasibility uplift of the existing Long Term Transmission Rights (LTTRs) of the Stage 1A Auction Revenue Right (ARR) Holders that will remain after the withdrawal; and (2) impose an annual gross charge on the withdrawing transmission owner for up to ten years if the LTTR Assessment shows an overall negative impact on the infeasibility uplift. MISO states that the LTTR Assessment is costly (approximately \$100,000) and time-consuming,⁹ while a preliminary assessment indicated that the East Texas Transaction is expected to have a *de minimis* impact, if any, on the infeasibility uplift. Specifically, MISO states that the preliminary assessment indicated a range from a positive impact of approximately \$75,000 to a negative impact of approximately \$40,000.¹⁰ MISO further explains that if a negative impact were determined, the annual gross charge to be assessed in the first year would equate to a 0.03 percent increase to the actual LTTR infeasibility uplift charge for the 2018-2019 Planning Year. MISO also notes that approximately one-third of the estimated uplift charge would be allocated to LTTR holders that are not a party to this Settlement Agreement.¹¹

⁶ *Id.*

⁷ As discussed further below, MISO subsequently filed a letter requesting a July 1, 2019 effective date.

⁸ April 9 Filing, Explanatory Statement at 10.

⁹ *Id.*, Petition at 7, n.6 (citing Casto Aff. at ¶ 10).

¹⁰ *Id.* at 7, n.7 and n.8 (citing Casto Aff. at ¶¶ 7 and 8).

¹¹ *Id.* at 8, n.10 and n.11 (citing Casto Aff. at ¶ 9).

5. MISO notes that the Commission has previously granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹² According to MISO, the requested waivers meet these criteria. MISO explains that following the disagreement over the applicability of Article Five to the East Texas Transaction, the parties acted in good faith to negotiate a resolution and submit the waiver requests in a reasonable amount of time after executing their Settlement Agreement. MISO additionally states that the requested waivers are limited in scope because they are one-time waivers that are narrowly focused on the East Texas Transaction. According to MISO, the waivers remedy a concrete problem by resolving the parties' disagreement over the applicability of Article Five of the Transmission Owners' Agreement to the East Texas Transaction. MISO states that it also allows the transaction which East Texas sought to initiate in 2017, to take effect June 1, 2019, rather than December 2019, avoiding the economic harm to East Texas of this later effective date. Further, MISO states that granting the waiver of Section 43.7.4 of Module C of the Tariff will remedy the potential problem of requiring East Texas to pay for LTTR Assessment costs that could potentially exceed any potential resulting annual gross charge. MISO also states that the requested waivers will have no undesirable consequences, since the Settlement Agreement resolves all of East Texas' obligations or potential obligations under the Tariff and MISO Transmission Owners' Agreement for its withdrawal of the 38 MW of load and related transmission assets to be transferred. Last, regarding the LTTR Assessment, MISO states that the Settlement Agreement will have a potentially positive impact, or else only a potentially *de minimis* negative impact, on the infeasibility uplift of existing LTTRs of the Stage 1A ARR Holders that will remain after withdrawal.¹³

6. Notice of the April 9 Filing was published in the *Federal Register*, 84 Fed. Reg. 15,206 (2019), with interventions or protests due on or before April 30, 2019. Notice of the supplement filed on April 10, 2019 was published in the *Federal Register*, 84 Fed. Reg. 16,255 (2019), with interventions or protests due on or before May 1, 2019. Notice of the second supplement filed on April 30, 2019 was published in the *Federal Register*, 84 Fed. Reg. 19,920 (2019), with interventions or protests due on or before May 6, 2019. The Public Utility Commission of Texas filed a notice of intervention. East Texas and the MISO Transmission Owners filed timely motions to intervene. SPP filed a timely motion to intervene and comments.

¹² *Id.* at 8 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016)).

¹³ *Id.* at 8-11.

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. In its comments, SPP states its support for the proposed Settlement Agreement, and requests that the Commission issue an order approving the Settlement Agreement on or before May 15, 2019 if the Commission grants a June 1, 2019 effective date. SPP explains that its modeling processes require a minimum of two weeks prior to the effective date of the transfer in order to include the East Texas load and associated facilities in models.¹⁴ In the event the Commission does not issue an order on or before May 15, 2019, SPP requests that the Commission issue an order accepting the Settlement Agreement effective July 1, 2019, or the first of the month following two weeks subsequent to the Commission's order date.

9. Consistent with SPP's comments, MISO filed a letter on May 23, 2019, clarifying that MISO and SPP now intend to implement the East Texas Transaction on July 1, 2019 if the Commission issues an order approving the Settlement Agreement on or before June 14, 2019.¹⁵ MISO explains that SPP's modeling processes require a minimum of two weeks prior to the effective date of the transfer to include the East Texas load and associated transmission facilities in its models. Therefore, MISO requests the Commission issue an order accepting the Settlement Agreement on or before June 14, 2019 to allow the East Texas Transaction to become effective on July 1, 2019.¹⁶ MISO

¹⁴ In Docket No. ER19-1137, SPP filed to revise the stated revenue requirements of East Texas and Deep East Texas in the SPP tariff to reflect the cost of facilities that East Texas and Deep East Texas propose to transfer to SPP's functional control. SPP also requested a June 1, 2019 effective date. On May 14, 2019, SPP's filing was accepted by delegated letter order and made effective June 1, 2019. *Sw. Power Pool, Inc.*, Docket No. ER19-1137-002 (2019) (delegated order).

¹⁵ On May 21, 2019, in Docket No. ER19-1137-003, SPP filed a request for deferral of the effective date (i.e., June 1, 2019) for SPP's tariff changes accepted by the Commission in Docket No. ER19-1137-002. SPP requests a new effective date of whichever date is later, July 1, 2019, or the first of the month following two weeks subsequent to the Commission's issuance of an order approving the Settlement Agreement.

¹⁶ MISO's May 23, 2019 letter at 2. MISO additionally states that if the Commission issues an order after June 14, 2019, then SPP and MISO will plan on implementing the East Texas Transaction on August 1, 2019 if the Commission issues an order accepting the Settlement Agreement on or before July 15, 2019.

states that it is authorized to state that East Texas and the MISO Transmission Owners support this request.¹⁷

10. As discussed below, we approve the Settlement Agreement and grant the requested waivers, effective July 1, 2019, as requested. The Settlement Agreement resolves all issues in dispute in this proceeding and is uncontested. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is hereby approved. Commission approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

11. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁸ We find that the requested waivers satisfy these conditions, as discussed below.

12. With respect to the Parties' request for waiver of Article Five, Section 1 of the MISO Transmission Owners' Agreement, first, East Texas notified MISO of its intent to withdraw in 2017, and the Parties to the Settlement Agreement acted in good faith by negotiating and resolving their differences. Second, the waiver is of limited scope because it is a one-time waiver of one provision of the MISO Transmission Owner's Agreement to allow the East Texas Transaction to go into effect July 1, 2019. Third, the waiver addresses a concrete problem of avoiding a December 2019 effective date, which would cause economic harm to East Texas. Finally, the waiver does not have undesirable consequences because, as discussed below, allowing a July 1, 2019 effective date will have only *de minimis* or no consequences for other customers, and, as noted above, MISO has known of East Texas' intent to withdraw since East Texas initiated the transaction in 2017.

13. With respect to Section 43.7.4 of Module C of MISO's Tariff related to the LTTR Assessment, first, we find that MISO has acted in good faith by performing a preliminary assessment to determine the likely impact on infeasibility uplift. Second, the waiver is limited in scope as it is a one-time waiver and applies only to the Tariff provision governing the LTTR Assessment. Third, granting the waiver will remedy the concrete problem of requiring East Texas to pay for an assessment whose costs would likely exceed any potential resulting negative impact on infeasibility uplift. Fourth, the waiver would likely have *de minimis* or no undesirable consequences based on MISO's preliminary assessment. Under the Settlement Agreement, East Texas will pay \$217,126 plus any remaining obligations of East Texas under Article Five, Section II.B of the

¹⁷ *Id.*

¹⁸ *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059 at P 13.

MISO Transmission Owners' Agreement, which will be determined and billed separately to East Texas and not be paid by remaining customers.

14. Accordingly, we approve the Settlement Agreement and grant the requested waivers, effective July 1, 2019, as discussed above.¹⁹

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁹ The Commission is concurrently issuing an order in related Docket No. ER19-1137-003, granting SPP's request in that proceeding for a July 1, 2019 effective date. *Sw. Power Pool, Inc.*, 167 FERC ¶ 61,223 (2019).