

168 FERC ¶ 61,060  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER19-915-001

ORDER ON COMPLIANCE FILING

(Issued July 29, 2019)

1. On April 26, 2019, Midcontinent Independent System Operator, Inc. (MISO) filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to comply with the directives in the Commission's March 29, 2019 order.<sup>1</sup> As discussed below, we accept the Tariff revisions proposed in MISO's compliance filing, effective April 1, 2019, as requested.

**I. Background**

2. In the March 29 Order, the Commission accepted, subject to condition, MISO's proposed revisions to its Tariff to enhance Generator Planned Outage scheduling (January Filing).<sup>2</sup> MISO had indicated that, due in part to base load generation retirements, the MISO region was operating with actual capacity margins approaching its minimum Planning Reserve Margin Requirements, which exposed MISO to greater impacts from risks such as extreme weather events.<sup>3</sup> MISO had stated that these risks were exacerbated by increasing Generator Forced Outage rates and significant correlation

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<sup>1</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,236, at P 71 (2019) (March 29 Order).

<sup>2</sup> *Id.* P 59. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Tariff.

<sup>3</sup> *Id.* P 1.

in the timing of Generator Planned Outages and Generator derates, which was contributing to an increase in the number of Maximum Generation Emergencies.<sup>4</sup>

3. The Commission accepted MISO's proposed accreditation penalty that would apply to Generator owners with Planned Outages and derates that occur during low margin/high risk periods, while also providing a safe harbor from such penalties for requests made (1) at least 120 days in advance or (2) between 14 and 119 days in advance if planned to occur entirely during a period of "adequate projected margin," as determined by MISO's maintenance margin tool.<sup>5</sup>

4. The Commission accepted MISO's proposal to provide enhanced Generator Planned Outage information and sub-regional forecasts of Generator Planned Outages and derates through its existing maintenance margin tool, which was described in its Business Practices Manual for Outage Operations (BPM-008).<sup>6</sup> The Commission also accepted MISO's proposals to increase the frequency of posting maintenance margin information to twice a week (from once a month) and to provide information on a regional and sub-regional basis. However, the Commission found that the term "maintenance margin" should be defined in the Tariff.<sup>7</sup> The Commission reasoned that the maintenance margin is the sole factor in determining whether a Generator Planned Outage scheduled with between 14 and 119 days' advanced notice is subject to an accreditation penalty, and therefore that term can have a significant impact on rates, terms, and conditions of service. The Commission required MISO to submit a

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<sup>4</sup> *Id.* P 2.

<sup>5</sup> *Id.* PP 5, 61-69. The safe harbor exemption is automatic when the Generator provides at least 120 days' notice for the first outage or derate submitted during that same 120-day period. Any subsequent outage or derate requests made during that same period will only be exempt from the accreditation penalty if they are scheduled to occur during a period when MISO is projecting an adequate margin. *Id.* P 7. Generators that seek to schedule a Planned Outage with less than 14 days' notice cannot qualify for a safe harbor exemption but will have access to MISO's maintenance margin tool to consider the risk of a potential Emergency during the outage and thus the risk of being assessed the accreditation penalty. *Id.* P 63.

<sup>6</sup> *Id.* PP 10-11, 70.

<sup>7</sup> *Id.* P 71.

compliance filing “to include in its Tariff the definition of maintenance margin that it instead only intends to include in its [BPM-008].”<sup>8</sup>

## **II. Filing**

5. In the instant compliance filing, MISO proposes to add the following definition for “Maintenance Margin” to Module A of the Tariff:

Projected megawatts of additional generation that can be taken out of service for planned maintenance within MISO during a given time period without impacting adequacy of generation supply. The projection will be based on a forward looking Loss of Load Expectation (LOLE) analysis with known Proposed Generator Planned Outages of entire units. The LOLE analysis will include, but not [sic] limited to, considerations of the following: seasonal components, Generator Forced Outage rates of Capacity Resources, load forecast uncertainty, and unit derates.<sup>9</sup>

MISO also proposes revisions to Section 38.2.g.viii of its Tariff to capitalize the term Maintenance Margin. MISO requests that the Commission accept its filing effective April 1, 2019, consistent with the effective date granted by the March 29 Order.<sup>10</sup>

## **III. Notice and Responsive Pleadings**

6. Notice of MISO’s compliance filing was published in the *Federal Register*, 84 Fed. Reg. 18,837 (2019), with interventions and protests due on or before May 17, 2019. American Municipal Power, Inc. (AMP), the Mississippi Public Service Commission, and DTE Electric Company (together, Protesters) filed a timely protest. On June 3, 2019, the Coalition of Midwest Power Producers (Power Producers) submitted an answer in support of the protest. On June 4, 2019, MISO filed an answer to the protest. On June 14, 2019, Power Producers, DTE Electric Company, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff (together, Answering Parties) filed an answer to MISO’s answer. On June 14, 2019, AMP filed an answer to MISO’s answer.

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<sup>8</sup> *Id.* P 71.

<sup>9</sup> MISO Compliance Filing at 2; MISO, FERC Electric Tariff, Module A, § 1.M (65.0.0).

<sup>10</sup> MISO Compliance Filing at 2.

**A. Protest**

7. Protesters urge the Commission to reject MISO's compliance filing and direct MISO to file the Maintenance Margin definition that MISO proposed for Revision 15 of its BPM-008, which MISO presented at the January 31, 2019 and February 27, 2019 Reliability Subcommittee meetings, and which reads:

Maintenance Limit = Installed Capacity – (Reserve Requirement – Import Capability)

Where:

Installed Capacity is the megawatt amount of generation expected to be available for the time period. Reserve Requirement is the megawatt amount of generation required to be in service and available plus an allowance for unplanned events (e.g. planning reserve margin and operating reserves). Import Limit is the megawatt amount of energy that can reliably transferred to MISO or sub-region.

Maintenance Margin is the difference of Maintenance Limit and the Planned Generation Outages for a given time period.

*Maintenance Margin = Maintenance Limit – Planned Out of Service Generator Outages*<sup>4</sup>

<sup>4</sup>Planned Out of Service Generator Outages use the associated Generator Verification Test Capacity value when available, if not available the Pmax of the unit listed in the OS.<sup>11</sup>

Protesters argue that this formally presented definition of Maintenance Margin is the one that the March 29 Order specifically directed MISO to file and the one that stakeholders reviewed, commented on, and relied upon in their pleadings. Protesters state that MISO provided no explanation for filing a new definition.<sup>12</sup>

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<sup>11</sup> Protest at 2-3.

<sup>12</sup> *Id.* at 1, 4-5.

8. Protesters argue that MISO's proposed definition is "fatally flawed and unreasonably vague," and therefore is unjust and unreasonable.<sup>13</sup> Protesters allege that MISO fails to specify its criteria for determining the maintenance margin or the LOLE analysis. They contend that the vagueness of MISO's definition will preclude market participants from verifying that MISO's maintenance margin calculations are consistent and non-discriminatory, and will give MISO unfettered discretion over the inputs and calculation of the maintenance margin, effectively circumventing the Commission's March 29 Order.<sup>14</sup>

**B. Answers**

9. Power Producers support the protest, arguing that MISO's filing does not comply with the March 29 Order and should be rejected.<sup>15</sup> Power Producers argue that MISO should have filed the Maintenance Margin definition in Revision 15 of MISO's BPM-008, as MISO had presented that language to stakeholders on two occasions, rather than inexplicably filing a new and vague definition.<sup>16</sup> While Power Producers acknowledge that MISO's internal policy precludes it from vetting compliance filings with stakeholders, Power Producers argue that this filing should be "an exception to the general rule" and speculate that stakeholders would have found the proposed definition insufficient.<sup>17</sup>

10. Power Producers urge the Commission to reject MISO's proposed definition as inadequate because the maintenance margin calculation is effectively used in determining a rate, and Commission process requires impacted parties to be afforded the opportunity to adjudicate the determination of a rate. As such, Power Producers request that the Commission require MISO to amend its Tariff to include a properly detailed definition of the calculation of the maintenance margin that has been vetted by stakeholders.<sup>18</sup>

11. MISO argues that its proposed definition of Maintenance Margin is just and reasonable and, pursuant to the Federal Power Act (FPA) and Commission precedent, is

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<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> Power Producers Answer at 2.

<sup>16</sup> *Id.* at 3-4.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 4-5.

the only language that the Commission should consider in making such a determination.<sup>19</sup> MISO urges the Commission to dismiss as unfounded the argument that MISO's filing should be rejected because MISO did not file a specific definition that was proposed in Revision 15 of MISO's BPM-008. MISO explains that the Commission could not accept any specific Maintenance Margin definition in its January Filing, as that definition was not before the Commission for consideration.<sup>20</sup> MISO adds that the Commission is not obligated to review the alternative definition forwarded by Protesters. As such, MISO contends, the only proposal before the Commission for consideration is the Maintenance Margin definition submitted in MISO's compliance filing.<sup>21</sup>

12. MISO further states that the Maintenance Margin definition contains the appropriate information and level of detail for the Tariff.<sup>22</sup> In response to arguments that MISO's proposed definition of Maintenance Margin is "fatally flawed and unreasonably vague," MISO states that Attachment F to BPM-008 specifically provides the criteria used to determine the maintenance margin, and that these implementation details are appropriately maintained in a Business Practices Manual rather than in the Tariff.<sup>23</sup> MISO also states that, despite Protesters' argument to the contrary, the Tariff defines LOLE, stating that the requirement is set such that the loss of Load is no greater than 0.1 day in one year, and that other LOLE assumptions are appropriately listed in BPM-008. Lastly, in response to arguments that MISO's proposed definition gives it "unfettered discretion," MISO argues that the components of the Maintenance Margin definition are consistent with the Commission-accepted Tariff language regarding Planning Reserve Margin Analysis.<sup>24</sup>

13. In response to MISO's assertion that FPA section 205 requires the Commission to determine only whether MISO's filing is just and reasonable, Answering Parties contend that compliance filings are reviewed under FPA section 206 and thus require the Commission to determine whether the filed proposal is exactly what the Commission

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<sup>19</sup> MISO Answer at 2.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 4-5.

<sup>24</sup> *Id.* at 5-6 (referring to MISO, FERC Electric Tariff, Module E-1, § 68A.2 (32.0.0)).

directed MISO to file.<sup>25</sup> Answering Parties argue that the Commission directed MISO to include the definition MISO had proposed for BPM-008 because that definition contained the necessary level of detail to satisfy the Commission's "rule of reason" policy, whereas the different definition MISO filed is generalized and vague. Answering Parties state that MISO's compliance filing disregards both the Commission's directive in the March 29 Order and the stakeholder process, and as such, should be rejected.<sup>26</sup>

14. AMP argues that the March 29 Order unambiguously directed MISO to file Revision 15 of BPM-008 as part of its Tariff.<sup>27</sup> According to AMP, the Commission's authority under FPA section 205 to conditionally accept MISO's January Filing is limited by *NRG Power Mktg., LLC v. FERC*, which requires the resulting compliance requirement to constitute a "minor deviation" from MISO's January Filing.<sup>28</sup> AMP contends that MISO, however, interprets the March 29 Order as permitting MISO to contrive a wholly new definition that was not known to the parties during the litigation preceding the March 29 Order, or known to the Commission when it issued the March 29 Order. AMP argues that, because the Commission found that the maintenance margin can have a significant impact on rates, terms, and conditions of service, the Commission cannot accept a wholly new definition as a "minor deviation" from the Commission's directive in the March 29 Order.<sup>29</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

15. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by Power Producers, MISO, Answering Parties, and AMP because they have provided information that assisted us in our decision-making process.

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<sup>25</sup> Answering Parties at 2.

<sup>26</sup> *Id.* at 1-4.

<sup>27</sup> AMP Answer at 2-3.

<sup>28</sup> *Id.* at 3 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (*NRG*)).

<sup>29</sup> *Id.* at 3-5.

**B. Substantive Matters**

16. We find that MISO's proposed Tariff definition is consistent with the Commission's directive in the March 29 Order.<sup>30</sup> We disagree with Protesters' argument that, in the March 29 Order, the Commission directed MISO to file a specific Maintenance Margin definition that copied wording in Revision 15 of MISO's BPM-008. Although MISO referenced in its January Filing an update to BPM-008 that reflected the revised maintenance margin determination process,<sup>31</sup> MISO did not propose a definition of Maintenance Margin, and the specific BPM-008 language was not filed with the Commission for consideration. The Tariff language MISO filed that was conditionally accepted by the Commission in the March 29 Order, in describing when the accreditation penalty would be applied, states that "[t]here is adequate projected margin when the maintenance margin, defined in [BPM-008], is at or above zero (0) MW after subtracting the MW of the requested Proposed Generator Planned Outage."<sup>32</sup> The Commission agreed with protesters that the definition of Maintenance Margin should be included in the Tariff, and directed MISO "to include in its Tariff the definition of maintenance margin that it instead only intends to include in its [BPM-008]."<sup>33</sup> However, the Commission also explicitly agreed with AMP's statement in its protest that many of the details regarding the maintenance margin are appropriately included in the BPM. We clarify that it was not the Commission's intent to require MISO to include in the definition specific language that was in Revision 15 of BPM-008, which was not before the Commission.

17. MISO's proposed definition of Maintenance Margin states in part that Maintenance Margin is "Projected megawatts of additional generation that can be taken out of service for planned maintenance within MISO during a given time period without impacting adequacy of generation supply." This is consistent with language contained in Section 4.4.1 of

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<sup>30</sup> Answering Parties' contention that compliance filings are reviewed under section 206 of the FPA is not relevant to the standard of review applicable here, which is whether the filing complies with the directives of the March 29 Order. *See PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,277, at P 34 (2010). Answering Parties appear to agree with this standard of review. Answering Parties at 2.

<sup>31</sup> January Filing, Transmittal Letter at 6-7 ("MISO's Outage Operations Business Practices Manuals (BPM-008) has been updated to reflect the revised maintenance margin determination process ...").

<sup>32</sup> *Id.*, Tab A, MISO, FERC Electric Tariff, § 38.2.5(viii) (41.0.0).

<sup>33</sup> March 29 Order, 166 FERC ¶ 61,236 at P 71.



BPM-008.<sup>34</sup> MISO's proposed definition then gives further detail about how the projection will be calculated based on a forward-looking LOLE analysis, and provides examples of the considerations to be included in the LOLE analysis. We disagree with the argument that MISO's proposed Maintenance Margin definition is vague. As MISO notes in its answer, the definition is supported by implementation details in BPM-008, such as LOLE assumptions, descriptions of input data, and calculation details, including the calculation proposed by MISO in Revision 15.<sup>35</sup> Further, as noted above, MISO's Tariff language at Section 38.2.5(viii) that was accepted by the March 29 Order explicitly links the reference to Maintenance Margin to the BPM. MISO's proposed Tariff definition provides a reasonably articulated framework, and it is consistent with the direction provided in the March 29 Order for MISO to leave the more granular implementation details in BPM-008. Having found that MISO's proposed definition of Maintenance Margin satisfies the compliance requirements of the March 29 Order, we need not consider the alternative proposals.

18. We reject AMP's argument that *NRG* prevents the Commission from accepting MISO's proposed definition. Our acceptance of MISO's proposal does not raise *NRG* concerns, as MISO's proposal is consistent with the Commission's directive in the March 29 Order and the Commission is accepting MISO's proposal with no changes.

The Commission orders:

MISO's compliance filing is hereby accepted, effective April 1, 2019, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>34</sup> This language was present in Revision 15 of BPM-008. *See* BPM-008-r15, § 4.4.1 (effective Mar. 21, 2019).

<sup>35</sup> MISO Answer at 4-6. The calculation proposed by MISO in Revision 15 of BPM-008 remains in Attachment F of the current version, which is Revision 16. *See* BPM-008-r16, Att. F, § 3 (effective Apr. 1, 2019).