

148 FERC ¶ 61,204
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-1194-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued September 18, 2014)

1. On March 1, 2012 (March 1 Filing), pursuant to section 205 of the Federal Power Act (FPA),¹ Midwest Independent Transmission System Operator, Inc. (MISO)² filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)³ to provide for Multi-Value Project Auction Revenue Rights (MVP ARR). In this order, the Commission conditionally accepts MISO's proposed MVP ARR allocation mechanism, subject to a compliance filing, as discussed further below.

¹ 16 U.S.C. § 824d (2012).

² Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

³ MISO, FERC Electric Tariff, [1.12, Annual ARR Allocation:, 1.0.0](#); [1.13, Annual ARR Registration:, 1.0.0](#); [1.19, ARR Entitlement\(s\):, 1.0.0](#); [1.20, ARR Holder\(s\):, 1.0.0](#); [1.30, Auction Revenue Rights \(ARR\):, 1.0.0](#); [1.65a, Candidate MVP ARR, 0.0.0](#); [1.429a, Multi-Value Project \(MVP\), 1.0.0](#); [1.429b, MVP ARR, 0.0.0](#); [1.429c, MVP ARR Entitlements, 0.0.0](#); [42, Types of FTRs and ARRs, 1.0.0](#); [43.2.4, Nomination and Allocation of ARRs and MVP ARRs, 1.0.0](#); [43.2.4A, Stage 2 – ARR Allocation, 1.0.0](#); [47, Multi-Value Project Upgrades, 1.0.0](#); [47.1, MVP ARR Entitlements, 0.0.0](#); [47.2, MVP ARRs, 0.0.0](#); and [47.3, MVP ARR Settlement, 0.0.0](#).

I. Background

2. In Docket No. ER10-1791-000, MISO and the MISO Transmission Owners⁴ submitted proposed revisions to the Tariff that provided a cost allocation methodology for Multi-Value Projects (MVPs). On December 16, 2010, the Commission conditionally accepted the proposed Tariff revisions for filing, to be effective July 16, 2010, subject to further compliance filings.⁵ On October 21, 2011, the Commission denied in part and granted in part rehearing of the MVP Order, conditionally accepted the compliance filing of MISO and the MISO Transmission Owners, and directed further compliance filings.⁶

3. In the MVP Order and MVP Rehearing Order, the Commission stated that the Tariff's existing financial transmission right (FTR) and auction revenue right (ARR) allocation processes may need to be modified to be consistent with the allocation of MVP costs. The Commission required MISO to submit a compliance filing that addresses "what changes to its allocation of congestion rights are necessary to reflect the allocation of MVP costs being accepted here" and explains how its compliance filing produces just

⁴ For purposes of the filing submitted on July 15, 2010 in Docket No. ER10-1791-000, the MISO Transmission Owners include: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a Ameren CILCO, and Illinois Power Company d/b/a Ameren IP; American Transmission Company LLC; Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; 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; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Southern Minnesota Municipal Power Agency.

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (MVP Order), *order on reh'g*, 137 FERC ¶ 61,074 (2011) (MVP Rehearing Order), *aff'd in part and remanded in part sub nom. Illinois Commerce Commission v. FERC*, 721 F.3d 764 (7th Cir. 2013), *cert. denied*, *Shutte v. FERC*, 82 USLW 3240 (U.S. Feb. 24, 2014) (Nos. 13-443), *Hoosier Energy Rural Elec. Co-Op., Inc. v. FERC*, 82 USLW 3240 (U.S. Feb. 24, 2014) (No. 13-445).

⁶ MVP Rehearing Order, 137 FERC ¶ 61,074.

and reasonable and not unduly discriminatory results.⁷ The Commission also required MISO to revise its Tariff to include periodic review, at least every three years, to monitor the costs and benefits of the cumulative effects of all MVPs.⁸

II. March 1 Filing

4. Under MISO's current Tariff, long term transmission rights (LTTRs) and other ARR are allocated each year through a process that includes a registration phase, followed by nominations and allocations in three stages, called Stages 1A, 1B and 2. In Stage 1A, market participants representing load-serving entities with service obligations can nominate eligible ARR entitlements of up to 50 percent of peak load to be LTTRs, which will be allocated to the extent the LTTRs pass the Simultaneous Feasibility Test. The LTTR nominations that were not granted because they initially failed the Simultaneous Feasibility Test will undergo a "restoration" step where they can be allocated if they are made feasible through the assignment of counterflows. In Stage 1B, market participants may renominate ARR entitlements that were nominated but were not allocated LTTRs in Stage 1A, as well as ARR entitlements that are eligible only for short-term ARRs. Nominations that pass the Simultaneous Feasibility Test will be allocated ARRs. In Stage 2, all market participants that nominated ARR entitlements for LTTRs in Stage 1A and for ARRs in Stage 1B will be allocated any remaining ARR revenues (i.e., the system capability sold in the Annual FTR Auction that was not otherwise disbursed to holders of LTTRs and ARRs allocated in Stages 1A and 1B) pro rata based on the difference between each Market Participant's Stage 1 nomination cap and its actual allocations.⁹

5. In late 2010, MISO began stakeholder discussions about the implications of MVP regional cost allocation on the Tariff's ARR and FTR provisions. Initially, the FTR Working Group reviewed three alternative approaches: Proposal 1 - to make no tariff changes; Proposal 2 - to use MVP ARRs to monetize the value of the incremental capacity created by MVPs, and to distribute the associated revenues pro rata to entities to which MVP costs are allocated regionally; and Proposal 3 - to allow the incremental

⁷ MVP Order, 133 FERC ¶ 61,221 at P 395; MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 298-299.

⁸ MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 30 and 191. MISO's compliance with this requirement is addressed in the Commission's order issued on March 7, 2014. *Midwest Independent Transmission System Operator, Inc. and the Midwest ISO Transmission Owners*, 146 FERC ¶ 61,163 (2014).

⁹ March 1 Filing, Mr. Todd Ramey Test. at 5.

capacity created by MVPs to be used to make ARR and LTTRs feasible, before making such MVP capacity available for MVP ARRs. MISO opposed Proposal 1 and favored Proposal 2, while the MISO stakeholders preferred Proposal 3. The majority of stakeholders voted in favor of Proposal 3. MISO therefore recommended, and the stakeholders accepted, a compromise combination of Proposals 2 and 3, under which the Tariff would remain unchanged with regard to the allocation of LTTRs in Stage 1A of the ARR allocation process and the MVP ARR mechanism will be applied only to Stage 1B of that process. MISO states that the proposal aligns the allocation of MVP-associated revenues with the regional allocation of costs and enhances the feasibility of LTTRs.¹⁰

6. MISO states that changes to the FTR and ARR provisions of its Tariff are necessary because the existing FTR and ARR provisions are primarily based on the concept of local transmission facilities being built for local needs, while MVP portfolios need to be addressed in light of the scope of MVP benefits and the regional allocation of their cost.¹¹

7. MISO proposes to allow the incremental capacity arising from MVPs to increase the overall feasibility of LTTRs. This incremental capacity will be made available for nomination and allocation of LTTRs in Stage 1A of the ARR allocation process. MISO states that this approach provides a regional benefit to all LTTR holders, as the cost of infeasible LTTRs would otherwise be uplifted to all LTTR holders.¹²

8. The remaining MVP incremental capacity will then be used as a basis for MVP ARR nominations and allocations in Stage 1B.¹³ MISO will hold the MVP ARRs that pass the Simultaneous Feasibility Test in Stage 1B, and determine their value based on the annual FTR auction clearing prices.¹⁴ MISO will credit to transmission customers, pro rata, the revenues associated with MVP ARRs in Stage 1B, based on the MVP

¹⁰ March 1 Filing at 2-3.

¹¹ *Id.* at 4.

¹² *Id.* at 4-5.

¹³ *Id.* at 5. MISO states that MVP ARRs will not receive Stage 2 allocations.

¹⁴ *Id.* MISO states that MVP ARRs will be valued only when the auction clearing price at the ARR receipt point is greater than that of the ARR delivery point. As such, MVP ARRs can only have positive values. In this sense, MVP ARRs are in the nature of “options” because unlike non-MVP ARRs, which are of the “obligation” variety, MVP ARRs can only result in a credit to transmission customers. *Id.*

charges assessed on those customers in accordance with the MVP-related rate schedules. MVP ARR entitlements, and allocated MVP ARRs, shall be coterminous with the operating life of the associated MVP which, MISO states, is consistent with tariff provisions accepted by the Commission for other Regional Transmission Organizations.¹⁵

9. MISO witness Mr. Todd Ramey states that only a small percentage of incremental capacity created by MVPs can potentially be used to increase the feasibility of LTTRs because historically LTTRs in MISO have had a very high level of feasibility. For example, states Mr. Ramey, 97 percent of LTTRs were allocated in the 2011-2012 planning year, which indicates that only three percent of LTTRs were deemed infeasible.¹⁶ In addition, asserts Mr. Ramey, considering that ARR entitlements in Stage 1A are capped at fifty percent of peak load, it is highly unlikely that all incremental capacity created by MVPs could be exhausted by the allocation of LTTRs in Stage 1A.¹⁷

10. MISO requests that the proposed Tariff revisions be made effective on September 1, 2012.

III. Notice of Filing and Responsive Pleadings

11. Notice of the March 1 Filing was published in the *Federal Register*, 77 Fed. Reg. 14,513 (2012), with interventions and protests due on or before March 22, 2012.

12. Notices of intervention were filed by Illinois Commerce Commission (Illinois Commission) and Michigan Public Service Commission (Michigan Commission). Timely motions to intervene were filed by: American Municipal Power, Inc. (AMP); Consumers Energy Company (Consumers Energy); Detroit Edison Company (Detroit Edison); Duke Energy Corporation (Duke); FirstEnergy Service Company (FirstEnergy);

¹⁵ *Id.* at 5-6 (citing *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,277 (2003), *reh'g denied*, 109 FERC ¶ 61,233 (2004) (accepting tariff revisions defining term of PJM's Transmission Injection Rights, Transmission Withdrawal Rights, and Incremental Deliverability Rights, as life of associated facilities); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,083, at PP 6 and 22 (2009) (term of PJM's Incremental Auction Revenue Rights and Incremental Capacity Transfer Rights is lesser of 30 years or life of upgrade); *New York Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,029, at PP 11 and 25 (2009) (term of NYISO's long-term firm transmission rights for incremental expansions or upgrades is 20 to 50 years, not exceeding operating life of upgrades)).

¹⁶ March 1 Filing, Mr. Todd Ramey Test. at 12.

¹⁷ *Id.*

Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative (collectively, Hoosier and SIPC); MidAmerican Energy Company (MidAmerican); Madison Gas and Electric Company, Missouri Energy Services, WPPI Energy and Missouri Joint Municipal Electric Utility Commission (collectively, Midwest TDUs); Integrys Energy Group, Inc.; Exelon Corporation; Michigan Public Power Agency and Michigan South Central Power Agency; Wisconsin Electric Power Company; Ameren Services Company; Alliant Energy Corporate Services, Inc.; and NRG Companies. Xcel Energy Services Inc. filed a motion to intervene out of time.

13. AMP; Consumers Energy and Detroit Edison (collectively, Joint Protestors); Duke; FirstEnergy; Hoosier and SIPC; Illinois Commission; MidAmerican; Midwest TDUs; and Michigan Commission filed protests and comments. MISO filed an answer to the protests and comments.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

15. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant Xcel Energy Services Inc.'s late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014),¹⁸ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Responsive Pleadings

17. Midwest TDUs and MidAmerican generally support MISO's proposal. Midwest TDUs state that the proposal is a reasonable compromise that attempts to balance stakeholders' preference not to change the existing ARR allocation process against MISO's belief that a different ARR allocation process should be used for the incremental

¹⁸ 18 C.F.R. § 385.213(a)(2) (2014).

capacity created by MVPs. According to MidAmerican, MISO's proposal preserves the priority of baseload service, complies with the Energy Policy Act of 2005 (EPA 2005)¹⁹ by meeting load-serving entities' reasonable needs to satisfy their service obligations, complies with Order No. 681²⁰ by providing a hedge against day-ahead locational marginal pricing (LMP) charges, and allows those who pay MVP costs to receive ARR.²¹

18. MidAmerican elaborates that the Tariff's ongoing philosophy has been to allocate ARRs to those who pay for transmission service and to give priority to baseload users. It states that Stage 1A is meant to protect existing LTTRs and allocate new LTTRs as load incrementally increases, and this proposal protects existing LTTRs by increasing the likelihood that the LTTRs will remain feasible, and thus able to convert to FTRs. This is important, according to MidAmerican, because many market participants want a congestion hedge from their baseload generation to their load and are more interested in a direct congestion hedge than in the cash available from the revenues associated with selling the FTRs. MidAmerican states that by allocating MVP ARRs in Stage 1B, MISO does not disrupt baseload LTTRs issued in Stage 1A.²²

19. In contrast, as further discussed below, AMP, Duke, FirstEnergy, Hoosier and SIPC, Illinois Commission, Joint Protestors, MidAmerican, Midwest TDUs, and

¹⁹ Pub. L. No. 109-58, 119 Stat. 594 (2005).

²⁰ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g*, Order No. 681-B, 126 FERC ¶ 61,254 (2009). In Order No. 681, the Commission required transmission organizations that are public utilities with organized electricity markets to make available long-term firm transmission rights that satisfy certain guidelines. Guideline 3 and Guideline 5 are relevant to the instant filing. Guideline 3 states, "Long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions," and Guideline 5 states, "Load serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing capacity; The transmission organization may propose reasonable limits on the amount of existing capacity used to support long-term firm transmission rights."

²¹ MidAmerican Comments at 6.

²² *Id.* at 7-8.

Michigan Commission filed protests or comments raising concerns with the March 1 Filing.

a. **Relegating MVP ARR to Stage 1B Does Not Follow the MVP Order's Directive**

20. AMP, Hoosier and SIPC, Illinois Commission, Joint Protestors, and Michigan Commission argue that MISO's proposal does not satisfy the MVP Order's compliance requirement to allocate MVP ARRs the same way that MVP costs were allocated.²³ Hoosier and SIPC and Joint Protestors argue that under MISO's proposal, there is no assurance that any ARR benefits would remain after Stage 1A. AMP contends that some entities that could be required to share in MVP costs, such as entities located in withdrawing transmission owners' zones, will not receive benefits from the incremental capacity created by MVPs until Stage 1B.²⁴ It also argues that there will be less FTR auction revenue to credit back to the pool of entities that pay MVP costs because a portion of incremental MVP capacity will already have been used to restore the feasibility of existing LTTRs in Stage 1A. Michigan Commission, arguing that the benefits associated with MVPs must follow the burdens, contends that if certain load-serving entities are granted preferential allocation of LTTRs and related ARRs, then such load-serving entities should also be held proportionately responsible for the transmission cost burden associated with the incremental capacity provided by MVPs.

21. In response to MISO's argument that it is unlikely that all incremental capacity created by MVPs could be exhausted by the allocation of LTTRs in Stage 1A, Illinois Commission asserts that there is nothing to ensure that significant ARR benefits would remain after the Stage 1A allocation.²⁵

²³ AMP Protest at 6-7; Hoosier and SIPC Protest at 4-5; Illinois Commission Comments at 3-4; Consumers Energy and Detroit Edison Protest at 2-5; Michigan Commission Protest at 3-4.

²⁴ AMP Protest at 5 (citing *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)).

²⁵ Illinois Commission Comments at 5.

22. MISO responds that section 217(b)(4) of the FPA²⁶ requires the facilitation of transmission expansion and planning to meet load-serving entities' needs for load service obligations and securing firm, long-term transmission rights.²⁷ MISO also notes that the Commission required MISO to state in its Tariff that it would "identify, evaluate, and analyze" expansions designed to support simultaneous feasibility.²⁸ MISO states that contrary to Illinois Commission's claim, these policy goals are statutory parameters that MISO had to consider in developing the MVP ARR proposal, and that "circumscribe the Commission's exercise of its authority in resolving MISO's proposed Tariff revisions regarding the planning and expansion of transmission facilities."²⁹ MISO argues that it has complied with the MVP Order in proposing that MVP ARRs be allocated based on the regional allocation of MVP costs in Stage 1B, and that Stage 1A conforms to the requirement of the FPA and other LTTR-related orders to maintain feasibility of LTTRs through transmission planning and expansion.³⁰

23. As to the impact of initially increasing the feasibility of LTTRs, MISO states that the level of infeasibility of LTTRs in MISO is three percent, evidence of which is not disputed by protestors. Given this low level of infeasibility, as well as the limitation of LTTR allocation levels to baseload usage of 50 percent of peak load, MISO argues that the concern that all incremental capacity created by MVPs will be used up in Stage 1A is unfounded.³¹

b. **Compliance Filing Is Unduly Discriminatory or Preferential Against Certain Load-Serving Entities Based on Their Regulatory Model, Business Structure and Locations**

24. Illinois Commission contends that the instant proposal unduly discriminates against load-serving entities operating in the retail open-access environment and is

²⁶ 16 U.S.C. § 824q(b)(4) (2012).

²⁷ MISO Answer at 4 (citing Order Nos. 681, FERC Stats. & Regs. ¶ 31,226; Order No. 681-A, 117 FERC ¶ 61,201).

²⁸ *Id.* at 4-5 (citing Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006)).

²⁹ *Id.*

³⁰ *Id.* (citing MVP Order, 133 FERC ¶ 61,221 at PP 4, 395).

³¹ *Id.* at 9.

unduly preferential toward load-serving entities in more traditional retail environments, particularly those engaged in long-term contracts with supply sources outside the local zone. Illinois Commission states that Illinois is a retail open-access state where suppliers lack incentive to enter into long-term supply arrangements. Illinois Commission states that without long-term supply arrangements, Illinois suppliers' ability to extract value from the Stage 1A opportunity proposed in MISO's filing would be reduced.³²

25. Joint Protestors, Hoosier and SIPC, and Illinois Commission state that because all candidate LTTRs must pass the Simultaneous Feasibility Test, the proposal would benefit entities located near MVP transmission upgrades, most of which are to be sited in the western portion of MISO's footprint.³³ They state that the proposal to monetize the value of MVPs (Proposal 2 from the stakeholder discussions noted above) would have created an even alignment between entities bearing the costs of MVPs and the entities benefiting from the congestion rights allocation. Hoosier and SIPC and Illinois Commission, state that the record of votes cast in favor of the compromise proposal (Proposal 3) by the stakeholders representing the western portion of MISO during an FTR Working Group meeting on January 19, 2012 underscores this fact.³⁴

26. MISO responds that the "due" preference that load-serving entities obtain long-term firm transmission service was established in Order No. 681. MISO disagrees with Illinois Commission's argument that MISO's proposal unduly discriminates against load-serving entities that are located in retail open access states. MISO states that the statutory requirement is to meet the "reasonable needs" of load-serving entities, particularly those with long-term supply arrangements, through transmission expansions and that the proposal satisfies that requirement with regard to entities that need the help of transmission expansion to reduce the infeasibility of their LTTRs.³⁵

³² Illinois Commission Protest at 5-6.

³³ Hoosier and SIPC Protest at 4-5; Illinois Commission Protest at 5; Joint Protestors Protest at 6.

³⁴ Hoosier and SIPC Protest at 5: "The minutes of that meeting reflect that virtually all of the votes against the 'compromise' were cast by entities serving load in the eastern reaches of MISO – Illinois, Indiana, and Michigan." Illinois Commission Comments at 5.

³⁵ MISO Answer at 7-8.

27. MISO further argues that the fact that entities with transmission paths closer to new transmission facilities will have a better opportunity to increase the feasibility of their LTTRs is an inherent and well-known characteristic of any transmission upgrade. MISO states that Order Nos. 681 and 681-A could not have intended for the ability of *some* load-serving entities close to transmission upgrades to increase the feasibility of their LTTRs to be a basis for denying *all* load-serving entities the opportunity to increase LTTR feasibility. So, while certain entities may have a better opportunity to increase LTTR feasibility, it does not constitute undue discrimination, according to MISO.³⁶

c. **Compliance Filing Is Unduly Discriminatory or Preferential Against Withdrawn Entities**

28. FirstEnergy contends that ATSI should be treated similarly to other entities with load inside MISO with regard to receiving LTTRs made feasible by MVPs because MISO forced ATSI and other departed utilities to pay for MVP costs even though they no longer remain in MISO. FirstEnergy argues that customers located within a withdrawn transmission owner's zone that incurred MVP costs should receive equal benefits associated with MVPs as MISO LSEs and therefore LSEs that are located within a withdrawn transmission owner's zone should receive the same preference for LTTRs as do LSEs located within the MISO footprint.³⁷ Duke disputes that it should pay any costs associated with MVPs in light of its withdrawal. If it is required to pay, however, Duke contends that the filing is unjust and unreasonable, and that it unduly discriminates against non-LTTR holders, because it provides the benefit of increased feasibility to LTTR holders at the expense of non-LTTR holders.³⁸ Duke argues that all payers of MVP costs should be entitled to all of the benefits associated with the MVP incremental capacity.

29. MISO responds that the Commission has determined that the overall thrust of FPA section 217 is the protection of transmission rights used to satisfy native load service obligations, and that the Commission has clarified that FPA section 217 "provides a general 'due' preference for load serving entities to obtain long-term firm transmission service."³⁹ In addition, MISO adds that by providing that the Commission may make

³⁶ *Id.*

³⁷ FirstEnergy Protest at 6-8.

³⁸ Duke Protest at 3.

³⁹ MISO Answer at 14 (quoting Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 320).

transmission rights that are not used to meet a load-serving entity's service obligations available to other entities, FPA section 217(d) "strongly indicates that Congress intended for load serving entities to be 'first in line' for long-term firm transmission rights that are made available."⁴⁰

30. MISO further answers that LTTRs are transmission rights intended only for market participants that continue to engage in market transactions within MISO; they constitute means of hedging congestion in the day-ahead market, where only market participants can participate. Thus, according to MISO, former transmission owners and their customers are ineligible to obtain LTTRs.⁴¹

d. Compliance Filing Violates Guideline 3 of Order No. 681

31. Guideline 3 of Order No. 681 states that "long-term transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions."⁴²

32. FirstEnergy, Joint Protestors and Duke argue that MISO's proposal deviates from the intent of Guideline 3, because not all market participants funding the MVP upgrades can make LTTR nominations commensurate with the allocation to those parties of costs from MVPs.⁴³ Duke states that if it is required to pay a share of MVP costs, it should receive the full benefits associated with those costs, as per Commission policy.⁴⁴ FirstEnergy argues that even the most generous reading of MISO's proposal limits departed transmission owners or load-serving entities to any residual right that may exist after Stage 1A, which denies them the opportunity to receive incremental ARRs commensurate with MVP expanded capacity.⁴⁵

⁴⁰ *Id.*

⁴¹ *Id.* at 14-15 (citing Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 16).

⁴² Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 210.

⁴³ FirstEnergy Protest at 9-10; Joint Protestors Protest at 5-6; Duke Protest at 3-5.

⁴⁴ Duke Protest at 4 (citing Order No. 681, FERC Stats. & Regs. ¶ 31,226, Order No. 681-A, 117 FERC ¶ 61,201).

⁴⁵ FirstEnergy Protest at 9 (citing *PJM Interconnection, LLC*, 121 FERC ¶ 61,073, at P 22 (2007)).

33. MISO responds that Guideline 3 expressly applies to participant funding of projects.⁴⁶ Thus, argues MISO, Guideline 3 is inapplicable to MVPs, whose costs are not directly assigned to any particular market participant, but rather on a regional basis through usage-based rates.

e. **MISO Incorrectly Uses Guideline 5 of Order No. 681 to Justify Its Proposal**

34. Guideline 5 of Order No. 681 states that “load serving entities must have priority over non-load serving entities in the allocation of long-term transmission rights that are supported by existing capacity.”⁴⁷

35. Duke and FirstEnergy contend that because Guideline 5 deals with existing capacity, it does not support MISO’s proposal to allocate LTTRs made feasible by MVP incremental capacity. Duke argues that Guideline 5 “relates to load serving entities having priority to *existing* transmission capacity that supports long-term firm transmission rights. MVPs are not existing transmission capacity, as considered ‘existing’ at the time of Order No. 681, to be divided up among historical customers, but are future capacity with the ability to create new ARR.”⁴⁸ Duke concludes that Order No. 681 provides no justification for LTTR holders to receive a discriminatory benefit flowing from the incremental capacity made available by MVPs at the expense of non-LTTR holders.⁴⁹ FirstEnergy adds that Guideline 5 does not allow a Regional Transmission Organization to discriminate against utilities based on those utilities’ location outside of the region and that any entity that incurs costs related to MVPs should benefit from the resulting LTTRs.⁵⁰

36. MISO responds that Guideline 5 states that the LTTR priority of load-serving entities also applies to incremental transmission capacity created by future transmission upgrades, and asserts that Guideline 5 would include MVPs.⁵¹ Specifically, MISO states

⁴⁶ MISO Answer at 12 (citing Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 211).

⁴⁷ Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 325.

⁴⁸ Duke Protest at 4 (citing Order No. 681-A, 117 FERC ¶ 61,201 at P 15).

⁴⁹ *Id.* at 4-5.

⁵⁰ FirstEnergy Protest at 10.

⁵¹ MISO Answer at 12-13.

that when transmission upgrades with costs that are rolled into transmission rates, such as MVPs, come into service, they will be deemed “existing” upgrades and governed by the “general preference for load serving entities vis-a-vis non-load serving entities” enunciated in Guideline 5, from that point onwards.⁵² Therefore, MISO states, it would be contrary to the intent of Order No. 681 to preclude the use of incremental capacity for the increase the feasibility of LTTRs.

f. Suggested Clarifications to the Proposed Tariff Revisions

37. MidAmerican requests two “editorial” changes to MISO’s Tariff. First, MidAmerican notes that proposed new sections 47.1 (MVP ARR Entitlements) and 47.2 (MVP ARRs) mention the Simultaneous Feasibility Test with regard to ARR allocations. But, the Simultaneous Feasibility Test, as defined in section 1.614, refers only to FTRs rather than ARRs. MidAmerican suggests that existing section 1.614 be revised to address the relevance of the Simultaneous Feasibility Test to the allocation of ARRs, not only FTRs. Second, MidAmerican notes that proposed section 47.3 (MVP ARR Settlement) would provide for MISO to distribute the “value of all MVP ARRs, *pro rata*, based on MVP allocation charges pursuant to the MVP-related schedules of this Tariff.” MidAmerican requests that the proposed language be revised to more specifically identify the “MVP-related schedules of this Tariff.” MISO responds that if so required by the Commission, as part of a compliance filing, it is amenable to clarifying the definition of Simultaneous Feasibility Test by including a reference to ARRs therein; and supplementing Section 47.3 by listing the “MVP-related schedules,” i.e., Schedules 26-a and 39.⁵³

38. Duke requests clarification that all MISO schedules and mechanisms that charge MVP costs to entities, such as Schedule 39, Schedule 26, and Attachment FF, are included in the “MVP-related schedules.” Duke notes that MISO’s proposal to charge MVP costs to Duke has been set for hearing,⁵⁴ and Duke states that the outcome of that proceeding is unpredictable but that, if there is a settlement in that proceeding, it could be of a “black box” nature such that any payment by Duke might not be pursuant to MISO’s Tariff schedule.⁵⁵ Duke asks the Commission to require that any payment of charges

⁵² *Id.* at 13 (quoting Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 318).

⁵³ *Id.* at 17.

⁵⁴ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,140 (2012).

⁵⁵ Duke Protest at 6.

stemming from MVPs qualifies for credits, not just those under “MVP-related schedules.”

2. Commission Determination

39. We find that MISO has adequately addressed the Commission’s directive in the MVP Order to establish “what changes to its allocation of congestion rights are necessary to reflect the allocation of MVP costs being accepted.”⁵⁶ MISO has proposed a specific mechanism for the allocation of benefits associated with the incremental capacity resulting from the construction of MVPs that is just and reasonable and not unduly discriminatory or preferential. We conditionally accept the proposed Tariff revisions subject to a compliance filing to be submitted within 60 days, as discussed further below.

40. MISO’s proposal to allocate MVP ARR’s on a regional basis in Stage 1B after prioritizing the feasibility of LTTRs in Stage 1A complies with the Commission’s direction in the MVP Order. The record indicates that only a small percentage of LTTRs are infeasible, and no party has presented evidence to the contrary or otherwise rebutted the record. On this basis, and because LTTR allocation in Stage 1A is limited to 50 percent of peak usage, we find unsupported the concern that a significant amount, let alone all or most, of the benefits associated with the incremental capacity resulting from the construction of MVPs will be used up before Stage 1B. We conclude, based on the record before us, that prioritizing the feasibility of LTTRs in Stage 1A before allocating the remainder of the incremental benefits associated with the construction of MVPs produces a roughly commensurate allocation of costs and benefits that is just and reasonable, and is not unduly discriminatory or preferential.⁵⁷

41. We disagree with Illinois Commission, Joint Protestors, and Hoosier and SIPC that MISO’s filing is unjust and unreasonable, or unduly discriminatory or preferential, because entities near MVPs are likely to benefit from the incremental capacity created by the construction of MVPs more than entities situated further away. In the MVP Rehearing Order, the Commission stated “that the aggregation of MVPs into a portfolio will occur in [MISO’s] MTEP process in a manner that benefits will accrue throughout

⁵⁶ MVP Order, 133 FERC ¶ 61,221 at P 395; MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 298-299.

⁵⁷ We note, however, that an entity may file a complaint under section 206 of the Federal Power Act if implementation of MISO’s proposal results in a significant deviation from the evidence in the record.

the entire [MISO] region.”⁵⁸ While congestion-related benefits associated with a specific MVP may be more accessible to load-serving entities closer to that MVP, MISO’s portfolio approach is designed to ensure that the benefits created by MVPs, including congestion-related benefits, are appropriately allocated throughout the MISO footprint. Moreover, we believe the assertions of Illinois Commission, Joint Protestors, and Hoosier and SIPC are unavailing because they depend on (1) a granular analysis of benefits, and (2) a static view of the transmission system, and therefore fail to take into account that MVPs will be situated throughout the MISO footprint, and that the potential for increasing the feasibility of LTTRs arising from MVPs will accrue throughout the MISO footprint.⁵⁹ Further, as the Commission has noted, “[a]lthough the benefits of integrated regional planning may be more appreciated to greater or lesser degrees at different times by different customers with respect to different groups of transmission projects, these benefits are nevertheless experienced by all [MISO] members and accrue over time.”⁶⁰ Therefore, we reject the assertions of Illinois Commission, Joint Protestors, and Hoosier and SIPC that it is unduly discriminatory or preferential that entities near MVPs are more likely to benefit in Stage 1A than entities located farther away as these assertions fail to take into account that MVPs will be situated throughout the MISO footprint, and that MVP benefits will accrue throughout the MISO footprint.

42. In response to Illinois Commission’s argument that MISO’s proposal discriminates against load-serving entities that operate in retail open access states, we acknowledge that entities that use short-term transmission contracts which permit short-term hedging instruments are, as per the requirements of LTTR eligibility, ineligible to receive an allocation of LTTRs in Stage 1A. The entities will, however, be credited, *pro rata*, the revenues associated with MVP ARRs in Stage 1B. Based on the record before us, we find that MISO’s proposed allocation of LTTRs in Stage 1A is acceptable because it balances the interests of market participants that use short-term transmission contracts with those of the load-serving entities that use long-term contracts, where the latter do not benefit from short-term hedging, but who may receive LTTRs. Therefore, we find that

⁵⁸ MVP Rehearing Order, 137 FERC ¶ 61,074 at P 367 (quoting Order No. 681, FERC Stats. & Regs. 31,226 at PP 211 and 318).

⁵⁹ As discussed in P 40, however, we find unfounded the concern that all or most of the benefits associated with the incremental capacity of MVPs will be used up before Stage 1B.

⁶⁰ MVP Rehearing Order, 137 FERC ¶ 61,074 at P 126 (explaining that too granular a focus would undermine the benefits and advantages provided by membership in MISO) (footnote omitted).

MISO's proposal is not unduly discriminatory or preferential with respect to entities located in states with retail open access environments.⁶¹

43. We disagree with AMP, Duke, and FirstEnergy that MISO's proposal is unjust and unreasonable because withdrawn entities will be unable to share in the benefits that are allocated towards the increased feasibility of LTTRs in Stage 1A. As stated above, the record indicates that only a small percentage of LTTRs are infeasible; and no party has presented evidence to the contrary or otherwise rebutted the record. Additionally, LTTR allocation in Stage 1A is limited to 50 percent of peak usage. Thus, we find unfounded the concern that all or most of the benefits associated with the incremental capacity of MVPs will be used up before Stage 1B. However, on August 8, 2013, the Commission accepted revisions to MISO's Tariff that permit LSEs with load external to the MISO footprint to obtain LTTRs if they secure the proper transmission service.⁶² Therefore, we find that MISO's proposal provides an opportunity for all entities that incurred MVP costs to realize MVP-related benefits in Stage 1A. Moreover, the Commission has previously addressed arguments that a withdrawn transmission owner may no longer benefit as much from the network upgrades paid for through its withdrawal obligation, compared to if it had remained a member, by explaining that the purpose of the financial obligation placed on a withdrawing transmission owner for the costs of transmission facilities allocated to it under Attachment FF prior to withdrawal is to ensure that such costs are not inappropriately shifted to the remaining members.⁶³

44. With regard to Duke's request for clarification of MVP-related costs for which it may be charged, we find that this request is beyond the scope of this proceeding. As Duke notes, the allocation of MVP costs to itself and to ATSI is at issue in Docket Nos.

⁶¹ See generally *ISO-New England Inc.*, 122 FERC ¶ 61,173 (2008); see also *Entergy Services, Inc.*, 105 FERC ¶ 61,318, at P 24 (2003) ("recogniz[ing] that, as between different classes of customers, there will be some differences that are necessary to implement an open access retail program. But these differences do not rise to the level of undue discrimination"), *reh'g denied in relevant part*, 109 FERC ¶ 61,216, at P 22 (2004).

⁶² *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER13-1515-000 (Aug. 8, 2013) (delegated letter order) transmittal at 4 (Allowing external Loads to request ARR entitlements pursuant to Sections 43.2.1(a), 43.6.1, and 43.6.2 if they have existing agreement with MISO to pay a share of the embedded costs of the Transmission System on a long term basis to support loads out of the Transmission Provider Region.)

⁶³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,140, at P 63 (2012).

ER12-715 and EL11-56, which are currently pending before the Commission. However, we find that any costs incurred under Schedule 39 or other “MVP-related schedules,” qualify for associated credits in Stage 1B, but that Duke’s request that the Commission clarify that credits be awarded for charges other than those under “MVP-related schedules,” is beyond the scope of this proceeding.

45. We direct MISO to make a compliance filing clarifying its proposed Tariff language to note that the Simultaneous Feasibility Test is used with regard to the allocation of ARRs, and not only FTRs. We also direct MISO to more specifically identify the “MVP-related schedules.” We direct MISO to submit a compliance filing, within 60 days of the issuance of this order, making these clarifications.

46. Finally, we grant MISO’s request for waiver of the Commission’s 120-day maximum notice requirement in section 35.3 of the Commission’s regulations⁶⁴ to allow the proposed revisions in the March 1 Filing to become effective on September 1, 2012, as requested, as MISO has demonstrated good cause for its requested effective date.

The Commission orders:

(A) MISO’s March 1 Filing is hereby conditionally accepted, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁴ 18 C.F.R. § 35.3 (2014).