

138 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER11-3970-002

ORDER ON COMPLIANCE FILING

(Issued March 15, 2012)

1. On December 14, 2011, Midwest Independent Transmission System Operator, Inc. (MISO) submitted a filing in compliance with the Commission's September 15, 2011 order.¹ The Initial Compliance Order accepted the revised tariff sheets subject to a further compliance filing, to be effective October 1, 2011. In this order, we accept MISO's proposed revisions as compliant with the Initial Compliance Order, effective October 1, 2011 and February 13, 2012, as requested, as discussed below.

I. Background

2. In Order No. 741, the Commission adopted reforms to strengthen the credit policies used in organized wholesale electric power markets.² Citing its statutory responsibility to ensure that all rates charged for the transmission or sale of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential,³ the Commission directed regional transmission organizations (RTO) and independent system operators (ISO) to revise their tariffs to reflect the following reforms: implementation of shortened settlement timeframes, restrictions on the use of unsecured credit, elimination of unsecured credit in all financial transmission rights (FTR) or equivalent markets, clarification of legal status to continue the netting and set-off of

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,188 (2011) (Initial Compliance Order).

² *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320, *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

³ 16 U.S.C. §§ 824d, 824e (2006).

transactions in the event of bankruptcy,⁴ establishment of minimum criteria for market participation, clarification regarding the organized markets' administrators' ability to invoke "material adverse change" clauses to demand additional collateral from market participants, and adoption of a two-day grace period for "curing" collateral calls. The Commission directed each RTO and ISO to submit tariff changes by June 30, 2011, with an effective date of October 1, 2011.

3. On June 30, 2011, in Docket No. ER11-3970-000, MISO submitted a compliance filing addressing these credit reform issues, which the Commission conditionally accepted in the Initial Compliance Order. In the Initial Compliance Order, the Commission found that MISO failed to submit revisions to its tariff to comply with Order No. 741's requirement that each RTO and ISO propose tariff revisions to establish billing periods that are, at most, weekly.⁵ In particular, the Commission noted that, while MISO stated in its transmittal letter that it was proposing revisions to its tariff to provide that it will issue invoices based on a seven-day market settlement cycle, MISO's market settlement cycle and applicable billing were detailed in its Business Practice Manuals rather than in its tariff. Accordingly, the Commission directed MISO to submit a compliance filing to include appropriate language in the tariff.⁶

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

⁴ The Commission extended the deadline for complying with this requirement to April 30, 2012. Accordingly, the Commission will address compliance with this requirement in a separate order.

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

⁶ *Id.*

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

⁸ *Id.*

II. Notice of Filing and Responsive Pleadings

5. Notice of MISO's December 14, 2011 compliance filing was published in the *Federal Register*, 76 Fed. Reg. 80,357 (2011), with protests and interventions due on or before January 4, 2012. Motions to intervene and protests were timely filed by: Exelon Corporation; Indiana Municipal Power Agency; Morgan Stanley Capital Group Inc., Macquarie Energy LLC and DB Energy Trading LLC (collectively, Indicated Participants); and Financial Institutions Energy Group.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make those entities that filed them parties to this proceeding.

B. Substantive Matters

1. Risk Management Verification Process

a. Filing

7. To comply with the Commission's directives in the Initial Compliance Order on developing a compliance verification process, MISO proposes to revise its Credit Policy by adding a Part C, for "Risk Management," to the "Minimum Participation Requirement" detailed in section III of Attachment L. The proposed language explains how MISO will conduct verification of risk management policies and procedures on either a random or identified risk basis.

- Random Basis: MISO anticipates that it will randomly request verification from no more than 10 percent of its tariff customers on an annual basis. If random verification is successful, a tariff customer will be excluded from random verification for a period of two years to prevent an undue burden from random verification to any particular tariff customer.
- Identified Risk Basis: MISO will conduct the verification using risk-based criteria distinguishing between hedged and non-hedged transactions to address differing levels of risk that different market participants present to the market. MISO states that, because hedges of physical transactions are likely to present lower risk than non-hedged positions, MISO proposes to implement verification for applicants and tariff customers whose planned or known FTR positions for any calendar month are at least 1,000 MW greater than their obligations to serve load or their rights to generate electricity in the MISO Markets. Historical cleared bids and offers in the

physical day-ahead market will be used to measure a tariff customer's obligation to serve load or its right to generate electricity. MISO states that its review of historical FTR positions using the proposed risk-based criteria shows that up to 95 percent of the MW total of outstanding non-hedged FTR transactions will be subject to review – a clear majority of all FTR transactions. As such, MISO concludes that it is reasonable to focus its verification efforts on the largest holders of non-hedged FTR positions.

8. The following standards will be used, in either the random or risk-based process, for verification of a tariff customer's risk management policies, practices, and procedures: (i) the risk management framework is documented in a risk policy addressing market, credit, and liquidity risks that has been approved by the tariff customer's risk management function; (ii) the tariff customer or applicant maintains an organizational structure with clearly defined roles and responsibilities that clearly segregates trading and risk management functions; (iii) delegations of authority specify the transactions which traders are allowed to enter into; (iv) the tariff customer or applicant has requirements that traders have adequate training relative to their authority in the systems and MISO markets in which they transact; (v) risk limits are in place to control risk exposures; (vi) reporting is in place to ensure risks are adequately communicated throughout the organization; (vii) processes are in place for qualified independent review of trading activities; and (viii) there is periodic valuation or mark-to-market of risk positions.

9. MISO states careful attention was placed on the development of each of the eight standards to assure that they address the primary risks associated with transacting in organized markets. According to MISO, risk tolerance, documented control processes, ensuring proper training, and establishing a clear organizational structure were issues specifically addressed in the collaborative process across the RTOs/ISOs.

10. MISO also proposes in its revisions to require tariff customers, upon written request, to provide their current governing risk management policies, procedures, or controls applicable to the tariff customer's MISO market activities and include written guidance referencing the procedures and controls in their governing risk management policies within 14 calendar days. If the tariff customer fails to provide the requested information or documentation within 14 calendar days, such tariff customer will be subject to default under the tariff. Furthermore, MISO's proposed revisions provide that MISO will send written notice to the tariff customer when MISO is unable to successfully complete the verification process based on the tariff customer's submitted documents. Upon written notification, the tariff customer shall have 14 calendar days to cure the document deficiency. If, however, the tariff customer files an appeal with the Commission during the 14-day cure period to contest MISO's risk management verification determination, the tariff customer shall retain its transaction rights pending the Commission's determination on the tariff customer's appeal.

b. Protests

11. Financial Institutions Energy Group and Indicated Participants argue that the Commission should exempt from verification requirements any market participant whose MISO market-related risk management practices are subject to the regulation, supervision, and audit of certain banking regulators.⁹ They argue that the regulation undertaken by such banking regulators is more sophisticated and comprehensive than that which MISO will conduct and, therefore, should suffice for a determination by MISO that the necessary risk policies and procedures are implemented.¹⁰ Financial Institutions Energy Group and Indicated Participants assert that the risk management processes proposed by MISO would be duplicative, result in unnecessary costs for both MISO and its market participants that outweigh the benefits, and create the possibility of conflicting regulation. Therefore, Financial Institutions Energy Groups and Indicated Participants request that the Commission require MISO to exempt entities that are subject to oversight and audit by such banking regulators from MISO's periodic verification and audit of risk management policies and procedures.¹¹

12. Indicated Participants also request that the Commission direct MISO to adopt certain minimum standards in the compliance verification process to avoid potential duplication and inefficiencies. While Indicated Participants generally support MISO's proposal to exclude for two years those market participants that have been verified, it argues that MISO's proposal should be modified to be consistent with New York Independent System Operator, Inc.'s (NYISO) proposal. Specifically, Indicated Participants request that the Commission direct MISO to adopt the following approach as to the frequency of verification: (1) recognize successful verification by another RTO or ISO that applies substantively similar evaluation criteria as satisfying any applicable

⁹ Financial Institutions Energy Group refers to the Federal Reserve Board as well as the Office of the Comptroller of the Currency as examples of such banking regulators. Financial Institutions Energy Group Protest at 4 & n.8 (citing *UBS AG*, 105 FERC ¶ 61,078, at P 8 n.6 (2003)). Indicated Participants refer to the Federal Reserve Board, or similar foreign regulator, that complies with applicable Basel Standards and/or certain exchange risk requirements. Indicated Participants Protest at 4.

¹⁰ Financial Institutions Energy Group adds that the Commission has granted regulated entities certain limited exemptions from Commission regulations because they are subject to oversight by the Federal Reserve Board and other banking regulators. *Id.* at 6 (citing *Transactions Subject to Section 203 of the FPA*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006)).

¹¹ *Id.* at 4-5; Financial Institutions Energy Group Protest at 7.

verification requirement; and (2) once verified, a market participant will be subject to subsequent verification only if the market participant materially changes its risk management policies or experiences a material adverse change, provided that such market participant must inform MISO of any material change to its risk management policies. Indicated Participants argue that, other than the reasons listed, there is no cognizable reason to require additional verification of a market participant. Furthermore, Indicated Participants assert that the evaluation criteria proposed by each of the RTOs and ISOs are substantially similar so that each RTO and ISO could reasonably rely on a verification determination by another RTO or ISO. They argue that any duplicative verification is unnecessary and inefficient, and should be avoided.

13. While Indicated Participants support MISO's proposal to give market participants 14 days from the receipt of a notice of a request for submission of documentation to submit their risk management policies, they argue that the Commission should require MISO to adopt a 55-day cure period for market participants to fix any deficiencies in their risk management policies submission (similar to ISO New England Inc.'s proposal). They argue that anything less than 55 days unnecessarily compresses the time for market participants to provide substantive responses and documentation and could lead to inadvertent error or unintended tariff violations. They add that many market participants have a multi-layered internal approval process that must be satisfied prior to producing documentation, which would be hindered by an overly and unnecessarily compressed cure period.¹²

14. Indicated Participants contend that MISO should revise its proposal to provide a market participant that receives a negative determination regarding verification with at least an additional 14 days from the date the relevant cure period expires to appeal the negative determination to the Commission. They explain that otherwise a market participant will have to file an appeal with the Commission as soon as it receives an initial negative determination notice, regardless of whether the market participant is confident that it can address the concerns identified and receive its verification prior to expiration of the cure period. To avoid unnecessary appeals and to provide market participants with certainty, Indicated Participants argue that the Commission should direct MISO to modify its proposal to allow for this additional time to file an appeal with the Commission.¹³

¹² Indicated Participants Protest at 9.

¹³ *Id.* at 8, 10.

c. **Commission Determination**

15. In the Initial Compliance Order, the Commission directed MISO to develop a compliance verification process that will allow it to independently verify that risk management policies and procedures are actually being implemented and that adequate capitalization is being maintained. We find that MISO's proposed compliance verification process complies with the Initial Compliance Order and is just and reasonable and not unduly discriminatory or preferential and, therefore, we accept MISO's proposed revisions to Attachment L of its tariff, effective February 13, 2012, as requested.

16. We reject Financial Institutions Energy Group's and Indicated Participants' request for an exemption from MISO's compliance verification policies and procedures for market participants that are regulated by banking regulators, such as the Federal Reserve Board. In Order No. 741, the Commission directed all RTOs and ISOs to adopt minimum participation criteria, but explicitly left it to each RTO and ISO and its stakeholders to develop minimum participation criteria that are applicable to its markets.¹⁴ In this filing, MISO did not propose to wholly exempt any particular class or group of market participants from the compliance verification process based on their being regulated by banking regulators, and we are not persuaded to require it to adopt such an exemption. As we explained in the Initial Compliance Order, RTOs and ISOs are responsible for administering and otherwise overseeing their markets, and therefore we will not require them to delegate their responsibility to verify compliance with minimum participation criteria to another entity.¹⁵

17. Similarly, we decline to require MISO to adopt Indicated Participants' proposal regarding when and how often MISO will verify a market participant's compliance with risk management practices and policies. MISO proposes to randomly request verification from no more than 10 percent of its tariff customers on an annual basis, and to exclude tariff customers that successfully complete verification for two years. In addition, MISO proposes to select market participants based on certain identified risk factors that distinguish between levels of risk that market participants present to the market. We find that MISO's proposal is reasonable, and believe that it strikes an appropriate balance, by periodically verifying that market participants are complying with risk management practices and policies without unduly burdening participants. In addition, Indicated Participants argue that the Commission should direct MISO to recognize successful verification by another RTO or ISO as satisfying its own risk management policies.

¹⁴ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at PP 132-133, *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33.

¹⁵ Initial Compliance Order, 136 FERC ¶ 61,188 at P 38.

Although the compliance verification processes between RTOs and ISOs may be similar, each RTO and ISO has adopted risk management policies and procedures that are appropriate for its particular market. Thus, we will not require MISO to adopt Indicated Participants' proposal.

18. Further, we also will not require MISO to adopt certain practices and time periods as proposed by Indicated Participants. Specifically, we will not require MISO to adopt a 55-day cure period for market participants to cure any deficiency in its risk management policies and procedures. The compliance verification process is to ensure that market participants have implemented the appropriate risk management procedures and remain adequately capitalized. We expect that market participants will be able to cure any deficiencies in the time proposed by MISO, and find that the cure period proposed by MISO is reasonable. In addition, we will not require MISO to revise its proposal to include an additional 14 days from the date the cure period expires to appeal a negative determination to the Commission. If a market participant disagrees with the MISO's determination, it should have sufficient information to appeal to the Commission at that time.

2. Shortening the Settlement Cycle

a. Filing

19. MISO proposes to revise section 7.6 of its tariff to specify that the issuance of invoices is based on a seven-day billing period. MISO states that the proposed tariff language will ensure that invoices are issued on a seven-day market settlement cycle. MISO avers that this additional language provides sufficient clarification to the tariff regarding its billing and settlement periods.

b. Commission Determination

20. We find that MISO's proposed revisions comply with the directives of the Initial Compliance Order and Order No. 741's directive that MISO propose tariff revisions to establish billing periods that are, at most, weekly. Therefore, we accept MISO's proposed tariff revisions to section 7.6 of its tariff, effective October 1, 2011, as requested.

The Commission orders:

MISO's compliance filing is hereby accepted, to become effective October 1, 2011, in part, and February 13, 2012, in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.