

139 FERC ¶ 61,018
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 Nos. ER12-1020-000
AC12-27-000

ORDER ON TARIFF REVISIONS AND COST DEFERRAL

(Issued April 6, 2012)

1. On February 7, 2012, in Docket No. ER12-1020-000, Midwest Independent Transmission System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² a proposal seeking authorization to defer for future recovery certain costs associated with the integration of the Entergy Operating Companies³ (collectively, Entergy) into MISO and record these costs as a regulatory asset until such time as at least one of the Entergy Operating Companies integrates into MISO. In addition, MISO proposes revisions to Schedules 10, 16 and 17 of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to reflect the deferral of these costs. On December 27, 2011, in Docket No. AC12-27-000, MISO filed for deferral of the costs associated with Entergy's integration.⁴

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. Part 35 (2011).

³ The Entergy Operating Companies include: Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy Texas, Inc.; and Entergy New Orleans, Inc.

⁴ The substance of the cost deferral filed in Docket No. AC12-27-000 is the same as MISO filed in Docket No. ER12-1020-000.

2. In this order, we grant MISO's request for authorization to defer for future recovery those operating expenditures and associated interest charges related to the integration of Entergy into MISO, and to record the costs in Account No. 182.3 (Other Regulatory Assets) beginning July 1, 2011,⁵ and authorize a five-year amortization period beginning on the integration date of the first Entergy Operating Company. We also accept MISO's proposed Tariff revisions, effective April 8, 2012, as discussed below.

I. Filings

3. In its filings in Docket Nos. ER12-1020-000 and AC12-27-000, MISO states that, in May of 2011, Entergy announced its intent to integrate into MISO. MISO also states that it has entered into a Memorandum of Understanding (MOU) with Entergy that details the cost responsibility of Entergy with regard to integration efforts in the event that Entergy does not integrate into MISO. MISO states that, pursuant to the MOU, Entergy would be required to reimburse MISO the actual cost to prepare for integrated operations should Entergy not integrate one or more of its Operating Companies by the end of 2013.⁶

4. In Docket Nos. ER12-1020-000 and AC12-27-000, MISO requests that the Commission permit the deferral of costs associated with the integration of Entergy to Account No. 182.3, consistent with the manner in which costs were permitted to be deferred by the Commission in Docket No. ER02-2595-000.⁷ MISO asserts that its proposal will align the recovery of costs associated with the integration effort with those who benefit from the Entergy integration. By deferring the costs, MISO states that the costs will be borne by new and existing customers resulting from the integration as

⁵ While MISO's transmittal letter indicates that the requested effective date is July 1, 2011, MISO's submittal in eTariff includes a requested effective date of June 1, 2011. We note that July 1, 2011 from MISO's transmittal letter is in accord with the transmittal letter in Docket No. AC12-27-000 and will use this date.

⁶ MISO February 7, 2012 Transmittal Letter at 4; MISO December 27, 2011 Transmittal Letter at 4.

⁷ MISO February 7, 2012 Transmittal Letter at 3; MISO December 27, 2011 Transmittal Letter at 2. In Docket No. ER02-2595-000, the Commission granted authorization to MISO to defer costs associated with MISO's establishment of Financial Transmission Rights and development of standardized Energy Markets, to be recovered through Schedules 16 and 17 upon the commencement of market services. *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,221 (2002).

opposed to requiring current Tariff customers to fund the integration devoid of Entergy's sharing in the costs. Thus, MISO argues that cost deferral is the most equitable manner in which the integration costs can be recovered.⁸ MISO states that it projects the cost of integration will be \$21.5 million, which includes \$2.2 million in capital expenditures for hardware and software and \$18.4 million in operating expenditures for internal and external operational staff, travel, and training. MISO states that the remaining \$0.9 million is associated with interest on funds used to achieve integration.⁹

5. MISO states that it will record operating expenses associated with the integration of Entergy to Account No. 182.3.¹⁰ These operating expenses and associated interest charges will be assessed monthly. MISO explains that the interest each month will be calculated by multiplying the cumulative project costs by the average cost of capital. MISO states that the interest will not be compounded. MISO also states that it used an average cost of capital of 5.07 percent, which is based on the average cost of outstanding long-term debt.¹¹

6. MISO states that it "has appropriate controls and procedures in place to ensure that past and future operating expenses that are deferred as a regulatory asset have not been in past rates and will not be included in future rates until integration prior to receiving [Commission] authorization to include such costs in rates."¹²

7. In an effort to provide the Commission with up-to-date information related to the cost of Entergy's integration, in Docket Nos. ER12-1020-000 and AC12-27-000, MISO

⁸ MISO February 7, 2012 Transmittal Letter at 4; MISO December 27, 2011 Transmittal Letter at 4.

⁹ MISO February 7, 2012 Transmittal Letter at 2-3; MISO December 27, 2011 Transmittal Letter at 2.

¹⁰ MISO February 7, 2012 Transmittal Letter at 3-4; MISO December 27, 2011 Transmittal Letter at 2-3. As to capital expenditures associated with the integration of Entergy, MISO states that the associated interest charges will be assessed monthly and recorded in Account No. 107 (Construction Work in Progress). MISO February 7, 2012 Transmittal Letter at 3; MISO December 27, 2011 Transmittal Letter at 3.

¹¹ MISO February 7, 2012 Transmittal Letter at 3; MISO December 27, 2011 Transmittal Letter at 3.

¹² MISO February 7, 2012 Transmittal Letter at 3-4; MISO December 27, 2011 Transmittal Letter at 3.

commits to report to the Commission any updates of the actual project costs as compared to the forecasted project costs 45 days after the end of each quarter beginning the first quarter after the date of this filing up until the integration of the first Entergy Operating Company.¹³

8. Consistent with its request for authorization to defer the cost of Entergy's integration, filed in Docket Nos. ER12-1020-000 and AC12-27-000, MISO filed proposed Tariff revisions in Docket No. ER12-1020-000 to Schedules 10 (ISO Cost Recovery Adder), 16 (FTR Administrative Service Cost Recovery), and 17 (Market Support Administrative Service Cost Recovery).¹⁴ MISO states that the proposed revisions include language relating to the deferral, as well as a footnote that provides recovery of the deferred costs over a five-year period beginning on the integration date of the first Entergy Operating Company.¹⁵

9. MISO requests an effective date of July 1, 2011 to begin the deferral of integration costs, in Docket Nos. ER12-1020-000 and AC12-27-000, and seeks waiver of the 60-day prior notice requirement in Docket No. ER12-1020-000.

II. Notice of Filing and Responsive Pleadings

10. Notice of MISO's December 27, 2011 filing in Docket No. AC12-27-000 was published in the *Federal Register*, 77 Fed. Reg. 2056 (2012), with protests and

¹³ MISO February 7, 2012 Transmittal Letter at 4; MISO December 27, 2011 Transmittal Letter at 3.

¹⁴ MISO February 7, 2012 Transmittal Letter at 5. MISO states that it plans to recover these costs in rates under Schedules 10; 10-A (Midwest ISO Alternate Administrative Cost Adder); 10-B (Interim ISO Cost Recovery Adder); 10-C (LGE KU Cost Recovery Adder); 10-D (ATSI and Eligible Customer Alternative Schedule 10 Administrative Cost Adder); 16; 16-A (LGE, KU FTR Administrative Service Cost Recovery); 16-B (ATSI and Eligible Customer Alternative Schedule 16 Administrative Cost Adder); 17; 17-A (LGE, KU Energy Market Support Cost Recovery); and 17-B (ATSI and Eligible Customer Alternative Schedule 17 Administrative Cost Adder). MISO further states that it plans to recover these costs in rates under Schedules 23 (Recovery of Schedule 10 and Schedule 17 Costs from GFAs), and 31 (Reliability Coordination Service Cost Recovery Adder) of its Tariff, plus any other future schedules associated with administrative cost recovery. *Id.* at 3; MISO December 27, 2011 Transmittal Letter at 3.

¹⁵ MISO February 7, 2012 Transmittal Letter at 5.

interventions due on or before January 20, 2012. Arkansas Public Service Commission and the Organization of MISO States filed notices of intervention. Alliant Energy Corporate Services, Inc., The Detroit Edison Company, Duke Energy Corporation, South Mississippi Electric Power Association, and Wisconsin Electric Power Company filed timely motions to intervene. Arkansas Electric Cooperative Corporation (Arkansas Electric) and the MISO Transmission Owners¹⁶ filed timely motions to intervene and comments.

11. Notice of MISO's February 7, 2012 filing in Docket No. ER12-1020-000 was published in the *Federal Register*, 77 Fed. Reg. 9222 (2012), with protests and interventions due on or before February 28, 2012. Alliant Energy Corporate Services, Inc., Consumers Energy Company, The Detroit Edison Company, Entergy Services, Inc., Duke Energy Corporation, South Mississippi Electric Power Association, and Wisconsin Electric Power Company filed timely motions to intervene. Arkansas Electric and the MISO Transmission Owners filed timely motions to intervene and comments. In addition, American Municipal Power, Inc. (AMP) filed a timely motion to intervene and conditional protest. On February 29, 2012, Louisiana Energy and Power Authority, Lafayette Utilities System, Mississippi Delta Energy Agency, and Municipal Energy Agency of Mississippi (Joint Intervenors) filed a motion to intervene out-of-time.

12. The MISO Transmission Owners support MISO's December 27, 2011 and February 7, 2012 filings. The MISO Transmission Owners agree with MISO's assertion

¹⁶ The MISO Transmission Owners for Docket Nos. AC12-27-000 and ER12-1020-000 consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois 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); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; MidAmerican Energy Company; 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 Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

that authorizing the deferral of the recovery of these costs until the first Entergy Operating Company integrates into MISO will ensure the costs are recovered from those who benefit from this integration, including Entergy and the transmission customers on the Entergy system. The MISO Transmission Owners state this better aligns cost recovery with those who benefit and is consistent with Commission precedent.¹⁷ The MISO Transmission Owners also state that MISO has shown that it has sufficient controls and procedures in place to avoid any double recovery of costs. The MISO Transmission Owners further state that MISO's filing of quarterly reports will allow the Commission to monitor the amounts spent and, thus, ensure just, reasonable and appropriate cost recovery.¹⁸

13. AMP conditionally protests MISO's request for waiver of the 60-day prior notice requirement, in Docket No. ER12-1020-000, to begin deferral of the Entergy integration costs beginning on July 1, 2011. AMP argues that it would be unjust and unreasonable for MISO to seek recovery of the deferred costs from entities that are no longer members of MISO at the time of the Entergy integration. In particular, AMP states that Duke Energy Kentucky and Duke Energy Ohio (collectively, Duke) withdrew from MISO effective January 1, 2012. AMP argues that it would be inappropriate for MISO to charge Duke for the Entergy integration costs because Duke's load will not be located in MISO at the time the first Entergy Operating Company integrates into MISO. Further, AMP argues that neither Duke nor its load will benefit from the integration and, thus, should not be allocated any of the associated costs with integration. AMP maintains that allocation of the integration cost to entities no longer a part of MISO at the time of Entergy's integration would be contrary to MISO's stated purpose that the deferral is meant to "align the recovery of costs associated with the integration effort with those who benefit from the integration of Entergy."¹⁹

14. AMP filed a conditional protest in Docket No. ER12-1020-000 raising concerns with MISO's requested effective date of July 1, 2011. In particular, AMP desires an

¹⁷ MISO Transmission Owners January 20, 2012 Comments at 4 (citing *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Cities of Riverside and Colton, Cal. v. FERC*, 765 F.2d 1434, 1438-39 (9th Cir. 1985); *Va. Elec. & Power Co.*, 128 FERC ¶ 61,026, at PP 21, 25 (2009)); MISO Transmission Owners February 28, 2012 Comments at 4 (citations omitted).

¹⁸ MISO Transmission Owners January 20, 2012 Comments at 4; MISO Transmission Owners February 28, 2012 Comments at 4.

¹⁹ AMP February 28, 2012 Conditional Protest at 6 (quoting MISO February 7, 2012 Transmittal Letter at 2).

assurance that MISO's requested effective date will not facilitate a broader assignment of cost responsibility than MISO described in its filing. AMP acknowledges that, if MISO adheres to its stated plans to recover the Entergy integration costs "from utilities that receive benefits from the services that caused the costs,"²⁰ namely "new and existing customers resulting from the integration," and if MISO provides confirmation of such, then AMP does not object to MISO's proposal. However, AMP argues, if the July 1, 2011 effective date would serve to allow MISO to recover costs from withdrawn transmission owners or any entity that is not a MISO customer when the first Entergy Operating Company is integrated into MISO, then MISO's request for waiver of the 60-day prior notice requirement should be rejected.²¹

15. Arkansas Electric expresses concern with MISO's reference of the MOU that it has entered into with Entergy, pursuant to which Entergy would be required to reimburse MISO the actual cost to prepare for integration if Entergy does not integrate one or more of its Operating Companies into MISO by the end of 2013. Arkansas Electric asserts that MISO does not expressly request that the Commission approve the MOU or the cost arrangement pursuant to the MOU, and argues that its inclusion in the filing should not be construed as an implicit request for approval of the MOU. Arkansas Electric requests that, to avoid any ambiguity related to the MOU, the Commission clarify that any approval of MISO's proposal: (1) "would not constitute approval of the MOU (which is merely referenced but not included as part of the request)"; and (2) "would not constitute approval of any particular allocation of costs associated with integrating Entergy into MISO, including, for example, allocation of costs associated with integrating certain Entergy Operating Companies into MISO to other Operating Companies which do not integrate into MISO."²²

III. Discussion

A. Procedural Matters

16. 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. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), we will

²⁰ *Id.* at 4.

²¹ *Id.* at 5-6.

²² Arkansas Electric January 20, 2012 Comments at 3; Arkansas Electric February 28, 2012 Comments at 3-4.

grant Joint Intervenors' 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.

B. Commission Determination

17. We grant MISO's request for authorization filed in Docket Nos. ER12-1020-000 and AC12-27-000 to defer for future recovery those operating expenditures and associated interest charges related to the integration of Entergy into MISO, and to record the costs in Account No. 182.3 beginning July 1, 2011, and authorize a five-year amortization period beginning on the integration date of the first Entergy Operating Company. We also accept MISO's Tariff revisions proposed in Docket No. ER12-1020-000, effective April 8, 2012, following 60 days' notice from the date of filing. MISO requests an effective date of July 1, 2011 for the proposed Tariff revisions. MISO appears to believe that the proposed Tariff revisions need to be effective on the date that it began incurring costs associated with the Entergy integration. For purposes of recording these costs in Account No. 182.3, the effective date of the proposed Tariff revisions is irrelevant.²³ Thus, we deny MISO's requested effective date of July 1, 2011 for the Tariff revisions for lack of good cause shown²⁴ and accept MISO's tariff sheets with an effective date of April 8, 2012. This order makes no findings regarding future recovery of those costs related to the integration of Entergy into MISO in the event that none of the Entergy Operating Companies integrate into MISO.

18. We accept MISO's commitment to report to the Commission any updates of the actual project costs as compared to the forecasted project costs 45 days after the end of each quarter beginning the first quarter after the date of this filing up until the integration of the first Entergy Operating Company.²⁵ Also, it appears that MISO has appropriate controls and procedures in place to ensure that past and future operating expenses that are deferred as a regulatory asset have not been in past rates and will not be included in future rates unless and until integration.

²³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,021 (2012) (authorizing Central Minnesota Municipal Power Agency to record costs beginning on January 1, 2007 in its regulatory asset account, while making the proposed Tariff revisions effective on January 16, 2012).

²⁴ *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

²⁵ MISO February 7, 2012 Transmittal Letter at 4. We note that these filings will be for informational purposes only. They will not be noticed nor require Commission action.

19. In its conditional protest, AMP raises a concern that MISO may potentially seek to recover deferred costs from entities that are no longer part of MISO as of the date of the integration of the first Entergy Operating Company into MISO. AMP specifically raises a concern that Duke would be charged with a portion of these costs. To the extent MISO seeks to recover deferred costs from entities that are no longer part of MISO as of the date of the integration of the first Energy Operating Company into MISO, MISO would address such situation if it occurs in an exit fee agreement with that withdrawing entity. Moreover, as to Duke specifically, the exit fee agreement between Duke and MISO resolved Duke's obligations to pay Schedules 10, 16, and 17 exit fees under the MISO Tariff.²⁶

20. Our acceptance of MISO's filing does not address Entergy's proposed integration into MISO. Consistent with Arkansas Electric's request, we clarify that our acceptance of MISO's filing does not constitute approval of the MOU. Moreover, we clarify that our acceptance of MISO's filing does not address any particular allocation of costs associated with integrating Entergy into MISO in the event that one or more of the Entergy Operating Companies are not integrated into MISO.

The Commission orders:

(A) MISO's request for authorization filed in Docket Nos. ER12-1020-000 and AC12-27-000 to defer for future recovery those operating expenditures and associated interest charges related to the integration of Entergy into MISO, to record the costs in Account No. 182.3 beginning July 1, 2011, and to amortize those costs over a five-year amortization period beginning on the integration date of the first Entergy Operating Company is hereby granted, as discussed in the body of this order.

(B) MISO's proposed Tariff revisions filed in Docket No. ER12-1020-000 are hereby accepted for filing, effective April 8, 2012, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,198 (2011).