

149 FERC ¶ 61,287
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 31, 2014

In Reply Refer To:
Midcontinent Independent System
Operator, Inc.
Docket No. ER15-142-000

Van Ness Feldman, LLP
1050 Thomas Jefferson Street, N.W.
Seventh Floor
Washington, DC 20007

Attention: Mr. David P. Yaffe

Dear Mr. Yaffe:

1. On October 24, 2014, Midcontinent Independent System Operator, Inc. (MISO),¹ Missouri River Energy Services (MRES)² and Marshall Municipal Utilities (MMU) filed, pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d (2012), and Part 35 of the Commission's regulations, 18 C.F.R Part 35 (2014), a proposed formula rate under Attachment O-MMU, which will enable MMU to implement a forward-looking annual transmission revenue requirement under Attachment O of the MISO Tariff. MMU and MRES request an effective date of January 1, 2015.

2. MMU and MRES explain that MMU owns transmission facilities in MISO's footprint but is not a transmission-owning member of MISO.³ Rather, MMU is a

¹ MISO states that it participates in this filing in its role as Administrator of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).

² MRES is a municipal joint action agency formed under Chapter 28E of the Iowa Code and existing under joint action laws of Iowa, Minnesota, North Dakota and South Dakota. MRES is comprised of 61 member municipalities owning distribution electric utilities in four states.

³ MMU owns about 16 miles of 115kV lines and six 115 kV substations that are integrated into the local balancing area of Northern States Power Company (NSP) within MISO.

member of MRES, which acts as the MISO Transmission Owner for MMU. Under a Facility Assignment Agreement which grants MRES functional control of MMU's transmission assets, MRES will sponsor the inclusion of MMU's transmission facilities under the MISO Tariff and recovery of MMU's revenue requirements under the proposed Attachment O-MMU.

3. MMU and MRES explain that on December 31, 2014, MMU's existing TM-1 grandfathered transmission services agreement with NSP will expire and MRES will be forced to obtain MISO network transmission service on behalf of MMU. However, MMU will no longer receive a \$650,000 per year facilities credit from NSP and will instead seek to recover its full costs through the Attachment O formula rate process by implementing a forward-looking Attachment O. MMU and MRES state that the forward-looking formula rate would allow MMU to recover roughly \$2 million annually beginning in January 1, 2015, which would enable MMU to partially offset the new rate for network service that MMU will start paying at that time.

4. The proposed forward-looking Attachment O formula rate uses projected financial and load data to develop the projected MMU annual transmission revenue requirement and also includes a true-up mechanism that reconciles the actual financial and load data for a given year with forward-looking projections used for the formula rates charged during that year. The proposed formula rate contains formula rate protocols that govern the implementation of the projected MMU annual transmission revenue requirement and true-up mechanism. The forward-looking formula rates will be updated and submitted to MISO by October 1 each year, and the forward-looking Attachment O-MMU formula rate will go into effect on the following January 1. MMU will determine the true-up for the previous calendar year by June 1 each year, and any over- or under-collections including interest will be included in the subsequent projected ATRR calculation. In a supplemental filing submitted on November 26, 2014, MMU and MRES agree to amend the formula rate protocols of Attachment O-MMU consistent with the outcome of the ongoing protocols proceeding in Docket No. ER13-2379, *et al.*⁴

5. Notices of the October 24 and November 26 filings were published in the *Federal Register*,⁵ with interventions and protests due on or before November 12 and December 17, 2014, respectively. On October 30, 2014, MMU and MRES filed separate

⁴ The MISO Transmission Owners' most recent filing in Docket No. ER13-2379-003 proposes changes to the generic historical and forward-looking formula rate protocols, along with company-specific protocols, in compliance with previous Commission directives. See *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014).

⁵ 79 Fed. Reg. 64,377 (2014); 79 Fed. Reg. 71,991 (2014).

motions to intervene. On November 12, 2014, Xcel Energy Services, Inc. (XES)⁶ filed a motion to intervene. On November 24, 2014, XES filed supplemental comments noting that the currently effective 12.38 percent return on equity (ROE) for MISO jurisdictional transmission owners, which MMU proposes to use in its formula, is subject to possible reduction in a complaint proceeding pending before the Commission in Docket No. EL14-12-000.⁷ Recognizing that MMU's facilities under Attachment O are not jurisdictional, XES is concerned that the proposed filing does not include language to ensure refunds if the proposed rates go into effect but are later found to be unjust and unreasonable. Thus, XES argues, the effectiveness of the rate should be subject to MMU's voluntary commitment to offer refunds, including interest at the Commission's refund interest rate, for the difference between its proposed rate and the rate ultimately determined by the Commission to be just and reasonable.

6. On December 3, 2014, MMU and MRES filed an answer. MMU and MRES contend that the Commission should deny XES's request for a directive requiring refunds based on the potential outcome of the ABATE Proceeding, arguing that this is beyond the scope of the instant proceeding. They request that the Commission instead limit its evaluation of MMU's proposed formula rate to the materials presented in this docket. MMU and MRES believe that any necessary changes to the just and reasonable ROE of MISO transmission owners should be implemented through the ongoing ABATE Proceeding.

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answer filed by MMU and MRES because it has provided information that has assisted us in our decision-making process.

8. Our analysis indicates that the proposed forward-looking Attachment O-MMU formula rate appears to be just and reasonable, subject to conditions as discussed below.

9. We disagree with MMU and MRES that XES's request for a refund commitment related to the outcome of the ABATE Proceeding is beyond the scope of this proceeding. Based on the populated formula, it is apparent that MMU intends to adopt a 12.38 percent

⁶ XES filed on behalf of Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation.

⁷ *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014) (ABATE Proceeding).

ROE which is currently in dispute in the ABATE Proceeding. We will accept the use of this ROE, subject to the outcome of the ABATE Proceeding. Transmission-owning members of MISO are currently authorized to use a 12.38 percent ROE for calculating their annual transmission revenue requirement. Since MMU will be recovering its revenue requirement under the MISO Tariff through MRES as its sponsoring MISO Transmission Owner, MMU will also be able to receive the then-current ROE that the Commission has approved for MISO Transmission Owners.⁸

10. However, since MMU is non-jurisdictional entity and accordingly has no refund obligations that the Commission could enforce to protect customers from excessive rates, we will conditionally accept the proposed MMU forward-looking formula rate effective January 1, 2015, as requested, subject to MISO submitting on behalf of MMU a compliance filing within 15 days of the date of this order reflecting MMU's commitment to provide for refunds, if required, as of January 1, 2015.⁹ If MMU does not make such a commitment, the effective date will be the date the Commission makes the proposed MMU forward-looking formula rate effective in a future Commission order once it issues an order resolving the issues concerning the MISO region-wide ROE, following the hearing and settlement judge procedures, in the ABATE Proceeding.

11. In addition, our review indicates that the proposed formula rate template does not contain stated values for the ROE or depreciation rates. Therefore we direct MISO, on behalf of MMU, to make a compliance electronic (eTariff) filing of its tariff within 30 days of the issuance of this order to include stated values for the fixed components of the formula. MMU's Attachment O-MMU provides for depreciation expenses and a ROE to be recovered under its formula rate but does not state the values of the depreciation rates and ROE. MISO, on behalf of MMU, is directed to submit revised tariff sheets for its Attachment O-MMU to state the values of all fixed components of its formula rate (e.g., ROE and depreciation).¹⁰

⁸ MRES has a Facility Assignment Agreement with MMU; thus MRES acts as the MISO transmission owner for MMU.

⁹ In other instances the Commission has established a prospective effective date when non-public utilities have submitted their proposals for cost recovery for Commission review without committing to provide refunds. *See Lively Grove Energy Partners, LLC*, 140 FERC ¶ 61,252, at P 2 (2012).

¹⁰ *See Old Dominion Electric Cooperative*, 133 FERC ¶ 61,261, at P 5 (2010) (stating that all fixed components of a rate must be included in tariff or rate schedules for public inspection pursuant to section 205(c) of the Federal Power Act).

12. Finally, as agreed to by MMU and MRES in their November 26 filing, we accept the formula rate protocols subject to the outcome of MISO's formula rate protocols proceedings currently pending in Docket No. ER13-2379, *et al.*

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.