150 FERC ¶ 61,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. — Docket No. ER15-945-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING TARIFF FILING

(Issued March 31, 2015)

1. On January 30, 2015, pursuant to sections 205 and 219 of the Federal Power Act (FPA)[1] and section 35.13 of the Commission's regulations,[2] ITC Midwest LLC (ITC Midwest) submitted revisions to the ITC Midwest formula rate in Attachment O of the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to implement an incentive adder (Transco Adder) of 100-basis points to the authorized rate of return on equity (ROE) for independent transmission ownership.[3]

2. In this order, we conditionally accept ITC Midwest's request to implement the Transco Adder, subject to it being reduced to 50-basis points and applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash-flow (DCF) analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, as those may be determined in the pending complaint proceeding in Docket No. EL14-12-000 (Complaint Proceeding).[4] We conditionally accept the proposed revisions for filing and suspend them for a nominal period, to become effective April 1, 2015, subject to refund, and subject to the outcome

[1] 16 U.S.C. §§ 824e, 824s (2012).

[2] 18 C.F.R. § 35.13 (2014).

[3] MISO is also a party to the filing but states that it joins the filing solely as the administrator of its Tariff.

[4] *See Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014) (Complaint Hearing Order).

of the Complaint Proceeding. We also accept ITC Midwest's request to defer collection of the Transco Adder pending the outcome of the Complaint Proceeding.

I. Background

3. On November 12, 2013, a group of large industrial customers (Complainants) filed a complaint against MISO and certain of its transmission-owning members (including ITC Midwest) in the Complaint Proceeding.[5] Complainants contended that the current 12.38 percent base ROE allowed for MISO Transmission Owners is unjust and unreasonable. Complainants also contended that the ROE incentive adders received by ITC Transmission (ITC) for being a member of an RTO and by both ITC and Michigan Electric Transmission Company, LLC (METC) for being independent transmission owners are unjust and unreasonable and should be eliminated.

4. In the Complaint Hearing Order, the Commission granted in part the complaint with respect to the ROE and established hearing and settlement judge procedures.[6] The Commission denied Complainants' challenges to ITC's and METC's incentive adders.[7] In the Complaint Hearing Order, the Commission established a refund effective date of November 12, 2013 for MISO Transmission Owners' base ROE.

5. On November 6, 2014, MISO Transmission Owners[8] and MISO submitted in Docket No. ER15-358-000 revisions to the Attachment O formula rate template of the

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[5] Complainants are: Association of Businesses Advocating Tariff Equity (ABATE); Coalition of MISO Transmission Customers; Illinois Industrial Energy Consumers; Indiana Industrial Energy Consumers, Inc.; Minnesota Large Industrial Group; and Wisconsin Industrial Energy Group.

[6] Complaint Hearing Order, 149 FERC ¶ 61,049 at P 183.

[7] *Id.* P 200.

[8] The MISO Transmission Owners for the filing in Docket No. ER15-358-000 consist of the following: ALLETE, Inc. for its operating division Minnesota Power (and its subsidiary Superior Water, L&P); 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; Cleco Power LLC; Duke Energy Corporation for Duke Energy Indiana, Inc.; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Indianapolis Power & Light Company; ITC; ITC Midwest; METC; MidAmerican Energy Company; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company;

(continued ...)

Tariff to implement a 50-basis point adder (RTO Adder) to the Commission-approved ROE for MISO Transmission Owners' participation in MISO.[9] For purposes of that filing, MISO Transmission Owners proposed to rely on the zone of reasonableness to be established by the Commission in the Complaint Proceeding and committed to restrict their total ROE in accordance with any new range of reasonable returns adopted by the Commission in the Complaint Proceeding. MISO Transmission Owners requested waiver of the portion of the Commission's rules that requires cost of service information and statements regarding the tariff changes, testimony, and exhibits to support the tariff changes, because the information would duplicate the exhibits and testimony that have been or may be filed in the Complaint Proceeding.[10] In addition, MISO Transmission Owners requested to defer collection, but not the effectiveness, of the RTO Adder until after the outcome of the Complaint Proceeding.[11]

6. On January 5, 2015, the Commission accepted MISO Transmission Owners' request to implement the RTO Adder and the proposed Tariff revisions for filing and suspended them for a nominal period, to become effective January 6, 2015, subject to refund. The Commission granted the RTO Adder subject to it being applied to a base ROE that has been shown to be just and reasonable based on an updated DCF analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, as those elements may be determined in the Complaint Proceeding.[12] The Commission also granted MISO Transmission Owners' request for

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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 Wolverine Power Supply Cooperative, Inc.

[9] The MISO Transmission Owners' filing consisted of a revision to Note P of Attachment O of the Tariff, which describes how the base ROE is established, and provides notice that the RTO Adder may be added to the base ROE up to the upper end of the zone of reasonableness approved by the Commission. The filing also contained company-specific Attachment O formulas for each MISO Transmission Owner that has a company-specific formula rate.

[10] MISO Transmission Owners, Transmittal Letter, Docket No. ER15-358-000, at 11 (filed Nov. 6, 2014).

[11] *Id.* at 10-11.

[12] *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004, at P 39 (2015) (RTO Incentive Order).

waiver of the portions of the Commission's section 35.13 requirements that require the submission of cost of service information, statements, testimony, and exhibits to support the requested tariff changes, including the required DCF analysis.[13] The Commission also accepted MISO Transmission Owners' request to defer collection of the RTO Adder pending the outcome of the Complaint Proceeding.[14]

7. On February 12, 2015, Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency and its two members, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi; and Hoosier Energy Rural Electric Cooperative, Inc. filed a complaint against certain MISO Transmission Owners (including ITC Midwest) in Docket No. EL15-45-000 alleging that the MISO Transmission Owners' base ROE is unjust and unreasonable and should be reduced.

II. Filing

8. On January 30, 2015, ITC Midwest submitted revisions to its formula rate in Attachment O of the Tariff to allow the Transco Adder in addition to the Commission-approved base ROE.[15] ITC Midwest requests a 100-basis point adder as an incentive for independent transmission ownership, which it states is consistent with FPA section 219 and Order No. 679.[16] ITC Midwest states that Order No. 679 determined that independent transmission companies (Transcos) satisfy section 219 of the FPA because the transmission-only business model promotes increased investment in new transmission, which in turn reduces cost and increases competition.[17] ITC Midwest states

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[13] *Id.* P 45.

[14] *Id.* P 48.

[15] The proposed Tariff revisions consist of a revision to Note P of ITC Midwest's formula rate template in Attachment O of the Tariff, which describes how the base ROE is established, and provides notice that the Transco Adder may be added to the base ROE up to the upper end of the zone of reasonableness approved by the Commission.

[16] ITC Midwest Transmittal Letter at 4-6 (citing *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at PP 221-223, 231 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 77, *order on reh'g*, 119 FERC ¶ 61,062 (2007)).

[17] *Id.* at 4-5 (citing *N.Y. Regional Interconnect, Inc.*, 124 FERC ¶ 61,259, at P 41 (2008)).

that the Commission's additional guidance in the November 2012 policy statement demonstrated the Commission's continuing obligation to provide transmission incentives.[18]

9. ITC Midwest states that it understands that the overall ROE, including any incentives, must remain within the zone of reasonable returns for rates to be just and reasonable.[19] ITC Midwest states that the requested Transco Adder will be added to the MISO-wide base ROE to be determined in the Complaint Proceeding and that it understands that its ROE, including the Transco Adder requested here, will be bound by the upper end of the zone of reasonableness as determined in the Complaint Proceeding and commits to the ROE being bound as such.[20]

10. ITC Midwest states that in 2007 it sought authorization for the Transco Adder based on its status as an independent transmission company. ITC Midwest notes that the Commission declined to award the incentive, based on its finding that ITC Midwest had not demonstrated that its proposed ROE, including the 100-basis point Transco Adder, fell within the range of reasonable returns due to "a number of difficulties" with ITC Midwest's analysis.[21] ITC Midwest further states that the Commission denied ITC Midwest's proposal without prejudice to ITC Midwest making a new section 205 filing seeking to change its ROE supported by a DCF analysis of a proxy group of companies with comparable risks. However, ITC Midwest states that the Commission confirmed ITC Midwest's independence, based on ITC Midwest's showing that it would not be

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[18] *Id.* at 5-6 (citing *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012)).

[19] *Id.* at 8 (citing *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana, Inc.*, 119 FERC ¶ 61,238, at P 77 (2007); *So. Cal. Edison Co.*, 121 FERC ¶ 61,168, at P 158 (2007), *reh'g denied*, 123 FERC ¶ 61,293 (2008); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 28 (2008)).

[20] *Id.* at 8-10.

[21] *Id.* at 7 (citing *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at PP 42-44 (2007) (2007 Order)). ITC Midwest also notes that the Complaint Hearing Order confirmed that the earlier denial of ITC Midwest's request for the Transco Adder was not a substantive rejection, but rather based on "ITC Midwest's failure to demonstrate that the resulting ROE, including the incentives, would be within the zone of reasonableness, and not because ITC Midwest was ineligible for such incentives or that such incentives would provide less value to consumers than their costs." *Id.* (citing Complaint Hearing Order, 149 FERC ¶ 61,049 at P 202).

affiliated with a traditional public utility company that engages in sales and distribution of electric power to captive retail customers, or with a traditional public utility company that owns and operates generation assets. Thus, ITC Midwest asserts that the Commission's denial of the Transco Adder in 2007 is not a bar to the Commission authorizing the incentive in this proceeding.[22]

11. ITC Midwest states that, in connection with its commitment to restrict its total ROE in accordance with any new range of reasonable returns adopted by the Commission in a final order in the Complaint Proceeding, ITC Midwest requests a waiver of the portions of the Commission's section 35.13 rules that require the submission of cost of service information and statements, and testimony and exhibits to support the requested tariff changes, including the required DCF analysis.[23] ITC Midwest argues that it is unnecessary to submit this information at this time because it would merely duplicate the exhibits and testimony that have been or may be filed in the Complaint Proceeding, given that ITC Midwest has agreed, for the purpose of implementing the Transco Adder, to adhere to any range of reasonable returns that the Commission may establish in the Complaint Proceeding.[24] Thus, ITC Midwest requests a waiver of section 35.13(a), (c), (d), (e), and (h), and any other portions of 18 C.F.R. § 35.13 necessary to allow the Commission to accept ITC Midwest's addition of the Transco Adder to its formula rate template contained in Attachment O of the Tariff based on the final outcome of the Complaint Proceeding.[25] ITC Midwest also notes that the Commission recently granted a comparable waiver to the MISO Transmission Owners in connection with their proposal to implement the RTO Adder.[26]

12. ITC Midwest also requests Commission approval to defer collection of the Transco Adder until the Commission issues an order on the Complaint Proceeding, in which the Commission will establish a zone of reasonableness for ITC Midwest's ROE.[27] ITC Midwest states that, as proposed, the deferral would not modify the effective date of the Transco Adder, but would merely impact the timing of collection of the Transco

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[22] *Id.* at 7-8.

[23] *Id.* at 9-10.

[24] *Id.* at 10.

[25] *Id.* (citing 18 C.F.R. § 35.13(a), (c), (d), (e), (h) (2014)).

[26] *Id.* (citing RTO Incentive Order, 150 FERC ¶ 61,004 at P 44).

[27] *Id.* at 9.

Adder.[28] ITC Midwest states that deferring the collection, from the effective date, of the Transco Adder until the outcome of the Complaint Proceeding will avoid unnecessary rate volatility that would result if the incentive is collected now but then the base ROE is modified by the outcome of the Complaint Proceeding.[29] Further, ITC Midwest argues that deferring collection of the Transco Adder would also avoid the potential for increased refund liability, should the current MISO base ROE be reduced. ITC Midwest also argues that the Commission approved a similar request for deferral of collection of an approved ROE incentive in the RTO Incentive Order in the interests of administrative efficiency.[30]

III. Notice and Responsive Pleadings

13. Notice of ITC Midwest's filing was published in the *Federal Register*, 80 Fed. Reg. 7452 (2015), with interventions and protests due on or before February 20, 2015.

14. Timely motions to intervene were filed by: American Transmission Company LLC; Midcontinent MCN, LLC; Great River Energy; Great Lakes Utilities; and Midwest TDUs.[31] The Mississippi Public Service Commission (Mississippi Commission) filed a notice of intervention. Timely motions to intervene and protests were filed by: the Iowa Utilities Board and Iowa Consumer Advocate (together, the Iowa Parties); Jo-Carroll Energy, Inc. (Jo-Carroll Energy); the Iowa Consumers Coalition; Resale Power Group of Iowa; the Minnesota Department of Commerce, Division of Energy Resources (Minnesota Department of Commerce)[32]; and Interstate Power and Light Company (Interstate). The Mississippi Commission and Midwest TDUs filed a joint protest. On

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[28] *Id.*

[29] *Id.*

[30] *Id.* (citing RTO Incentive Order, 150 FERC ¶ 61,004 at P 47).

[31] For purposes of this filing, the City of Columbia, Missouri; Midwest Municipal Transmission Group; Missouri River Energy Services; WPPI Energy; and the Missouri Joint Municipal Electric Utility Commission collectively (and in conjunction with Great Lakes Utilities, which intervening separately through its own counsel) constitute "Midwest TDUs." On February 23, 2015, the Missouri Joint Municipal Electric Utility Commission filed an errata explaining that it was inadvertently omitted from the joint protest filed by the Mississippi Commission and Midwest TDUs.

[32] The Minnesota Department of Commerce states it agrees with and supports the Iowa Parties' Protest.

March 9, 2015, ITC Midwest filed an answer. On March 24, 2015, the Mississippi Commission and Midwest TDUs, and Resale Power Group of Iowa each filed an answer.

A. Appropriateness of Transco Adder

15. A number of commenters argue that the proposed Transco Adder lacks sufficient justification. The Iowa Parties state that they recognize that ITC Midwest makes the same arguments in its request for a 100-basis point Transco Adder that the MISO Transmission Owners made in their recently approved request for the 50-basis point RTO Adder.[33] However, the Iowa Parties contend that in approving the RTO Adder, the Commission found that membership in MISO is an "objective criterion" that is beneficial to ratepayers and, since membership is voluntary, a 50-basis point adder for that membership was determined to be reasonable.[34] The Iowa Parties argue that approval of a 100-basis point Transco Adder is not based on a region-wide objective standard such as continuing membership in MISO and should require a determination by the Commission that the individual company is eligible for a Transco Adder and has provided evidentiary support for that adder.[35]

16. The Iowa Parties also contend that, although the Commission found that a cost-benefit analysis is not necessary to grant MISO-wide adders for RTO membership because the consumer benefits provided by RTO membership in MISO are well-documented, this justification does not extend to the Transco Adder.[36] They contend that the Commission has had few opportunities to consider the validity of the policy underpinnings for the Transco Adder in part because very few independent transmission companies have requested an independence adder, and that ITC Midwest does not offer any evidence that such an adder would provide additional value to customers.[37]

17. Resale Power Group of Iowa also contends that the outcome in the Complaint Hearing Order is not dispositive of ITC Midwest's proposal. According to Resale Power Group of Iowa, the two proceedings are distinct because in the Complaint Hearing Order the Commission confirmed the continued effectiveness of independence adders for two

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[33] Iowa Parties Protest at 5-6.

[34] *Id*. at 6.

[35] *Id*.

[36] *Id*. at 9.

[37] *Id*.

MISO Transmission Owners that had been authorized when the companies were formed, whereas here ITC Midwest seeks the Transco Adder for a Transco that has successfully financed a large transmission modernization program for seven years.[38]

18. The Mississippi Commission and Midwest TDUs contend that approval of the Transco Adder requires a case-specific, evidentiary showing and that ITC Midwest can neither waive such requirements nor rely on the Complaint Proceeding to meet those requirements. In the Complaint Proceeding, the burden of proof to show that the 100-basis point adders previously granted to ITC Midwest's affiliates should be eliminated was on Complainants, and the Commission held that Complainants had failed to carry it. However, the Mississippi Commission and Midwest TDUs argue that this case is a section 205 case, in which the burden of proof resides with the filing utility.[39]

19. Further, Interstate argues that simply granting an incentive adder because another Transco with different circumstances was granted the incentive in a prior proceeding is in direct contradiction to the Commission's policy of examining incentive adder requests on a case-by-case basis.[40]

20. Protesters further contend that ITC Midwest presents no evidence in this case that demonstrates that, without the Transco Adder, ITC Midwest has limited ability to attract capital to meet customer demands or to comply with the requirements for expansion of the MISO transmission system in the MISO Transmission Expansion Plans.[41] The Iowa Parties assert that ITC Midwest has the burden to show that, without this adder, it is not able to attract investors or that any inability to get capital investment is impacting reliability of the grid or ITC Midwest's ability to meet MISO transmission expansion requirements.[42] The Iowa Parties state that they do not believe that ITC Midwest can meet this burden because the dramatic increase in ITC Midwest's rate base since it acquired Interstate's transmission facilities in 2006, accomplished without a Transco

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[38] Resale Power Group of Iowa Protest at 22-24.

[39] Mississippi Commission and Midwest TDUs Protest at 3-4.

[40] Interstate Protest at 8 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 43 ("The Commission will, on a case-by-case basis, require each applicant to justify the incentive it requests.")).

[41] Iowa Parties Protest at 8-9; *see also* Interstate Protest at 8; Mississippi Commission and Midwest TDUs Protest at 2-4.

[42] Iowa Parties Protest at 10-11.

Adder, shows that the lack of that adder has not negatively impacted ITC Midwest's access to capital or grid reliability.[43]

21. Similarly, Resale Power Group of Iowa argues that ITC Midwest has not provided any specific evidence of how the incentive would encourage transmission investment or lead to an ROE that attracts transmission investment. Resale Power Group of Iowa also argues that, given the 275 percent increase in ITC Midwest's Network Integration Transmission Service Rates since 2008, ITC Midwest has not met its section 205 burden to show the justness and reasonableness of the Transco Adder.[44] Other parties argue that the Commission should consider incentives' effects on customer rates.[45] Jo-Carroll Energy also notes that increasing the ROE in ITC Midwest's rates has a particularly large effect on the rates paid by ITC Midwest's customers due to ITC Holdings' practice of using double leverage, i.e., using holding company debt to fund the equity of the new ITC operating companies such as ITC Midwest.[46]

22. The Iowa Consumers Coalition contends that, based on ITC Midwest's rate base and a 60 percent equity ratio in ITC Midwest's capital structure, the overall impact on ITC Midwest's rates from the 100-basis point Transco Adder requested here is about an $18 million annual increase, which, when passed through in retail rates by Interstate to its retail customers, represents about 1.4 percent of a typical large end user's bill.[47] The Iowa Consumers Coalition further contends that the impact on retail customers' rates from the requested Transco Adder is compounded by ITC Midwest's growing rate base.[48] The Iowa Consumers Coalition asserts that the cost increases that result from any such adders, which are ultimately borne by load, must be justified by a corresponding increase in benefits. Protesters, including the Iowa Consumers Coalition, argue that ITC Midwest has not demonstrated any net benefit from its capital investments in transmission or a

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[43] *Id*. at 11. According to Resale Power Group of Iowa, the value of ITC Midwest's projected gross plant has grown from $698.7 million in January 2008 to $2.39 billion in 2015, exceeding the percentage increase of all other MISO Transmission Owners over that period. Retail Power Group of Iowa Protest at 8.

[44] Retail Power Group of Iowa Protest at 19-21.

[45] Interstate Protest at 10; *see also* Iowa Consumers Coalition at 3-4.

[46] Jo-Carroll Energy Protest at 6.

[47] Iowa Consumers Coalition Protest at 3.

[48] *Id*.

need for the Transco Adder to attract capital investment or to maintain or improve its current level of service.[49]

23. The Iowa Parties assert that the Iowa Utilities Board has approved a transmission rider for Interstate that allows a direct pass-through of the Commission approved transmission costs charged by ITC Midwest.[50] The Iowa Parties further assert that Interstate is ITC Midwest's largest customer and most of any rate increase approved by the Commission for the 100-basis point Transco Adder will be flowed directly to Iowa customers.[51] The Iowa Parties contend that this regulatory treatment reduces the uncertainty of revenue flow and cost recovery for ITC Midwest and should be taken into account by the Commission in its own decision as to how much equity return to allow given the risks faced by ITC Midwest.[52]

24. Jo-Carroll Energy and the Iowa Parties assert that ITC Midwest files for rate increases using the forward-looking formula rates, under which ROE is treated as a guaranteed expense. They assert that this approach removes much of the risk associated with equity investment and, therefore, much of the traditional rationale for an ROE in excess of the return on debt.[53] The Iowa Parties further assert that granting ITC Midwest another 100 basis points just because of its business structure takes the reward allowance well beyond the risk incurred and well beyond what is needed in order to incentivize ITC Midwest to invest in additional transmission.[54] The Iowa Parties argue that such an excessive reward would be a windfall to ITC Midwest and translate into customer rates that would no longer be just and reasonable.[55]

25. The Iowa Parties assert that, while the Commission has rejected theoretical concerns about increased transmission company prices, biases in grid investment, and the

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[49] *Id*. at 4; Interstate Protest at 8; Jo-Carroll Energy Protest at 6.

[50] Iowa Parties Protest at 9 (citing *In re Interstate Power and Light Company*, No. RPU-2010-0001, 2011 WL 121159 (Iowa U.B. Jan. 11, 2011)).

[51] *Id*. at 9-10.

[52] *Id*.

[53] Jo-Carroll Energy Protest at 3; Iowa Parties Protest at 10.

[54] Iowa Parties Protest at 10.

[55] *Id.*

absence of risk analysis for adder returns for transmission companies, the Commission has left open the door to consider these issues in section 205 processes. The Iowa Parties contend that "it is not clear that ITC Midwest's business and financial risk justifies ITC Midwest's ROE and adder falling in the upper end of the proxy group distribution zone of reasonableness."[56] Further, they assert that, arguably, ITC Midwest's business and financial risk justify an ROE in the lower end of risk comparability because ITC Midwest's operating subsidiaries are not exposed to generation investment risk like that faced by pure play generation investment and fully integrated utilities. The Iowa Parties continue that fully integrated utilities have more capital intensive generation asset investment and are exposed to significant environmental compliance, fuel price volatility, and other exogenous investment risks not germane to transmission-only investment, and that transmission companies such as ITC Midwest are of lower financial risk than typical fully integrated utilities. The Iowa Parties argue that higher equity ratios, such as ITC Midwest's 60 percent, increase the probability of meeting fixed charge obligation, reduce the possibility of insolvency risk, reduce the volatility in residual earnings, and lower the risk of meeting earning targets.[57] The Iowa Parties contend that ITC Midwest's lower risk criteria would justify a total ROE that is well below the upper end of the distribution of comparable risk companies and that an independence adder should not be granted without fully investigating these issues in a section 205 proceeding.[58]

26. Jo-Carroll Energy also questions the completeness of ITC Midwest's adherence to the independence model. Jo-Carroll Energy asserts that, while ITC Midwest states that ITC Holdings adheres to "rigorous provisions to secure its independence, including restrictions on Market Participants holding 5 percent or more of the common stock of ITC Holdings," ITC Holdings' ownership is indirectly at least partly in the hands of entities with investments in market participants, some of which own more than 5 percent of the outstanding shares of ITC Holding's common stock. Specifically, Jo-Carroll Energy states that Baron Capital Group, Inc. owns 7.3 percent of ITC Midwest, and Black Rock and Vanguard own more than 5 percent of ITC Midwest and also have more than 5 percent ownership of other MISO transmission owners.[59]

27. The Iowa Parties assert that ITC Midwest's reliance on anticipated analysis in the Complaint Proceeding is presumptuous since the Commission has no information in this

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[56] *Id*. at 13.

[57] *Id*.

[58] *Id*. at 13-14.

[59] Jo-Carroll Energy Protest at 3-4 (citing ITC Midwest Transmittal at 8).

docket on which it can support a decision to grant ITC Midwest's request.[60] The Iowa Parties assert that, since the effective date of April 1, 2015 for the Transco Adder precedes the filing date for MISO Transmission Owners' testimony in the Complaint Proceeding, there is no assurance that the testimony and analysis in the Complaint Proceeding will contain the evidentiary support necessary for ITC Midwest to be granted the 100-basis point Transco Adder in this docket.[61]

28. Resale Power Group of Iowa also argues that ITC Midwest's application for the Transco Adder is premature. Resale Power Group of Iowa argues that the Commission has determined that the rate incentives must encourage new transmission investment and not just serve as a "bonus for good behavior."[62] Resale Power Group of Iowa contends that, given this rationale for incentives and ITC Midwest's success in financing transmission projects with only its base ROE, the Commission cannot rationally tailor the Transco Adder incentive in this case without knowing what ITC Midwest's base ROE will be on a going forward basis. Resale Power Group of Iowa asserts that the base ROE may end up being sufficient on its own to provide an incentive to develop transmission.[63]

29. The Iowa Parties consider it unreasonable and unlawful to allow rates to be retroactively charged to ITC Midwest customers without any evidentiary support.[64] In addition, the Iowa Parties argue that approval of the independence adder before the new ROE is determined in the Complaint Proceeding reverses the correct order of reviewing these issues and renders the determination of a reasonable ROE meaningless.[65] The Iowa Parties also argue that, if the Transco Adder is allowed without the supporting DCF analysis and other information, ITC Midwest's ROE could end up at the upper end of the zone of reasonableness and thus, in effect, make the upper end of the zone the ROE for ITC Midwest without an evidentiary finding that ITC Midwest's ROE is just and reasonable.

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[60] Iowa Parties Protest at 7.

[61] *Id.*

[62] Resale Power Group of Iowa Protest at 17 (citing *Trans-Elect, Inc.*, 98 FERC ¶ 61,368 (2002)).

[63] *Id.* at 19.

[64] Iowa Parties Protest at 12.

[65] *Id.*

30. As a threshold matter, the Mississippi Commission and Midwest TDUs contend that ITC Midwest's commitment to be bound by the upper end of the ROE zone determined in the Complaint Proceeding is insufficient and likely tied to the wrong docket. The Mississippi Commission and Midwest TDUs assert that a subsequent MISO ROE complaint case was filed on February 12, 2015 in Docket No. EL15-45-000 and that ITC Midwest should be directed to clarify that, with respect to the zone of reasonableness, it also agrees to be bound by the outcome of the MISO ROE complaint case in Docket No. EL15-45-000.[66]

31. Further, while the Mississippi Commission and Midwest TDUs believe such clarification is necessary, they do not feel it is sufficient to resolve another matter that could result from the interaction of this filing on both of the MISO ROE complaint proceedings. They argue that ITC Midwest's request for a 100-basis point Transco Adder made effective now but with delayed collection could distort upwards the to-be-determined ROE zone ceiling on which ITC Midwest relies to justify its proposal. They explain that, if ITC Midwest's delayed billing is approved, analyst projections published during 2015 for ITC Holdings' long-term earnings growth would likely rest on a comparison of ITC Holdings' actual 2014 earnings to its projected 2017 earnings, and that ITC Holdings' 2017 earnings projection would likely include earnings from both billing and back-billing of ITC Midwest's 100-basis point Transco Adder, atop billing and back-billing of the 50-basis point RTO Adder for all three MISO-area ITC operating companies, atop recovery of the cost-based revenue requirement. According to the Mississippi Commission and Midwest TDUs, ITC Midwest proposes a feedback loop under which the nominal ceiling on its requested incentives would lift itself upwards, which would be unjust and unreasonable.[67]

32. Resale Power Group of Iowa disputes the use of a 100-basis point Transco Adder and contends that 25 or 50 basis points may be sufficient for ITC Midwest, depending on the overall context of the risks and challenges ITC Midwest faces in constructing new transmission.[68]

33. Interstate requests that the Commission reevaluate its overall transmission ROE incentives policies to ensure the policies are meeting the intended goals of encouraging transmission investment in a manner that is efficient and which considers cost impacts to customers, before considering the instant proceeding. In the alternative, Interstate

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[66] Mississippi Commission and Midwest TDUs Protest at 11-12.

[67] *Id.* at 11-13.

[68] Resale Power Group of Iowa Protest at 22-24.

requests consolidation of the instant proceeding with the Complaint Proceeding as the most efficient, holistic, and expeditious means to resolve the ITC Midwest ROE matter.[69]

B. Procedures for Implementation and Request for Waivers

34. Some protesters assert that the ITC Midwest application raises issues of material fact regarding ITC Midwest's demonstration of the reasonableness of the proposed incentive and the weight of business and consumer interests that require the Commission to set the proceeding for hearing and be suspended for five months.[70]

35. The Iowa Parties assert that ITC Midwest's filing is a premature attempt to circumvent the Commission's requirements by attempting to tie the 100-basis point Transco Adder to the Complaint Proceeding and should be rejected as not compliant with section 35.13 and the Commission's 2007 Order.[71] The Iowa Parties assert that once a just and reasonable base ROE is determined in the Complaint Proceeding, then ITC Midwest can file for the 100-basis point Transco Adder and, if evidence in the Complaint Proceeding supports the 100-basis point Transco Adder as alleged by ITC Midwest, the Commission can decide whether to waive the filing requirements in section 35.13 at that time.[72]

36. The Iowa Parties assert that the Commission in the 2007 Order previously denied the 100-basis point Transco Adder because the DCF analysis presented by ITC Midwest failed to show that the resulting ROE would result in just and reasonable rates.[73] The Iowa Parties further assert that the Commission stated that it would permit adders only if the adders resulted in just and reasonable rates and if ITC Midwest filed an updated DCF analysis to support the adder.[74]

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[69] Interstate Protest at 1-2.

[70] Resale Power Group of Iowa Protest at 22-24; Mississippi Commission and Midwest TDUs Protest at 11.

[71] Iowa Parties Protest at 12.

[72] *Id*. at 12-13.

[73] *Id*. at 6 (citing 2007 Order, 121 FERC ¶ 61,229 at P 15).

[74] *Id*. (citing 2007 Order, 121 FERC ¶ 61,229 at P 15; Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 2, 93).

37. The Iowa Parties also contend that the 100-basis point Transco Adder is a company-specific adder and ITC Midwest should be required to comply with the filing requirements in section 35.13 before the request is considered. The Iowa Parties contend that the Commission's rejection of ITC Midwest's Transco Adder in 2007 shows that ITC Midwest must do more than just file for approval of the adder; it must file evidentiary support for the adder.[75]

38. The Iowa Parties argue that the Commission has approved a capital structure for ITC Midwest of 60 percent equity and 40 percent debt, unlike some other transmission owners in MISO, and that this distinction demonstrates the importance of the Commission not approving an independence adder for ITC Midwest until the Commission has determined the base ROE in the Complaint Proceeding and after ITC Midwest has filed the evidence required by section 35.13 to support approval of the adder.[76]

IV. Discussion

A. Procedural Matters

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

40. 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 are not persuaded to accept the answers filed by ITC Midwest, the Mississippi Commission and Midwest TDUs, and Resale Power Group of Iowa and will, therefore, reject them.

B. Substantive Matters

1. ITC Midwest's Request for the Transco Adder

41. We grant ITC Midwest's request for a Transco Adder to its base ROE, subject to it being reduced to 50-basis points for forming a Transco, consistent with section 219 of the FPA. Additionally, we grant the Transco Adder, consistent with Commission

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[75] *Id*. at 8.

[76] *Id*.

precedent,[77] subject to it being applied to a base ROE that has been shown to be just and reasonable based on an updated DCF analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, subject to the outcome of the Complaint Proceeding.

42. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.[78] The purpose of section 219 is, *inter alia*, to promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in electric transmission infrastructure.[79] The Commission subsequently issued Order No. 679,[80] which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA, including the incentives requested here by ITC Midwest.

43. As a preliminary matter, we continue to find that ITC Midwest is a fully independent, stand-alone transmission company member of MISO pursuant to Appendix I of MISO's Tariff. In the 2007 Order, the Commission found that ITC Holdings' ownership structure would prevent market participants from being able to influence or control ITC Holdings and thus undermine ITC Midwest's independence. As a result, the Commission found that ITC Midwest, as proposed, would be a fully independent, stand-alone transmission company eligible for an Appendix I relationship with MISO.[81] While Jo-Carroll Energy observes that several large investors control more than five percent of ITC Holdings, we find that Jo-Carroll Energy has not demonstrated how such control could undermine or influence ITC Holdings' independence or how any issue related to ITC Midwest's independence would cause us to deviate from our previous findings. We also note that there are protections to ensure the independence of transmission companies such as ITC Midwest. For example, ITC Holdings notifies the Commission whenever

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[77] *See, e.g.*, *N.Y. Regional Interconnect Inc.*, 124 FERC ¶ 61,259 (2008); *Green Power Express LP*, 127 FERC ¶ 61,031 (2009), *order denying clarification and reh'g*, 135 FERC ¶ 61,141 (2011).

[78] 16 U.S.C. § 824s(a), (b) (2012).

[79] *Id.*

[80] Order No. 679, FERC Stats. & Regs. ¶ 31,222.

[81] *See* 2007 Order, 121 FERC ¶ 61,229 at P 87.

any shareholder owns five percent or more of ITC Holdings' common stock and initiates an investigation to determine if that entity is a market participant and takes actions if necessary to remediate any conflicts by purchasing back stock.[82]

44. In Order No. 679, the Commission observed that the Transco business model responds more rapidly and precisely to market signals. Accordingly, the Commission determined that Transcos satisfy section 219 of the FPA because this business model promotes increased investment in new transmission, which in turn reduces costs and increases competition.[83] Thus, in Order No. 679, the Commission concluded that ROE incentives are appropriate to encourage Transco formation and new transmission infrastructure investment.[84] Indeed, the Commission has previously granted ROE transmission incentives to Transcos to encourage their formation and in recognition of the benefits of their business model to customers.[85]

45. We continue to find that the Transco business model provides the benefits that the Commission recognized in Order No. 679.[86] However, we note that the Commission did not specify the size of the Transco Adder in Order No. 679. In previous instances where the Commission granted a 100-basis point adder,[87] the Commission found 100-basis points to be the appropriate size adder based on the specific circumstances of the applicants and market conditions at the time of their applications. In the Complaint Hearing Order, the Commission dismissed requests that it eliminate the Transco Adder for ITC and METC. However, upon review, we find 100-basis points to be excessive for the Transco Adder at this time. We conclude that 50-basis points is an appropriate size for the Transco Adder, taking into account the interests of consumers and applicants, as well as current market conditions. Granting this 50-basis point adder strikes the right balance by appropriately encouraging independent transmission consistent with Order

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[82] *See ITC Holdings Corp. and International Transmission Company*, 111 FERC ¶ 61,149, at PP 23-27 (2005).

[83] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 224.

[84] *Id.* PP 221, 224.

[85] *See, e.g.*, *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 68, *reh'g denied*, 104 FERC ¶ 61,033 (2003); *Michigan Elec. Transmission Co., LLC*, 113 FERC ¶ 61,343, at P 17 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006).

[86] *See supra* note 84.

[87] *See supra* note 77.

No. 679, while acknowledging protestors' concerns regarding the rate impacts of such adders. Therefore, we grant ITC Midwest a 50-basis point adder for forming a Transco, subject to it being applied to a base ROE that has been shown to be just and reasonable based on an updated DCF analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, as those may be determined in the Complaint Proceeding. Accordingly, we direct ITC Midwest to revise its proposed Tariff provisions to modify the Transco Adder from 100 to 50 basis points. We direct ITC Midwest to revise Note P of its proposed formula rate in its compliance filing due within 30 days of the date of this order.

46. We reject protestors' arguments that the Transco Adder is not *needed* for ITC Midwest, for reasons including ITC Midwest's increasing rate base, capital structure, or seven-year status as a Transco. Similar to the Commission's recent finding with respect to the RTO Adder for the MISO Transmission Owners,[88] we find that utilities are eligible for the Transco Adder if they can demonstrate their status as Transcos. Applicants need not provide additional justification as to the necessity or benefits of the incentive or pass a cost-benefit analysis.[89] Specifically, as the Commission found in Order No. 679, applicants need not demonstrate that they would not make investments but for the Transco Adder or that the adder will ultimately serve to reduce rates or improve reliability.[90]

47. We disagree with protestor arguments that the Transco Adder is held to a different standard than the RTO Adder, which the Commission grants based on "objective criterion." We also disagree with protestors' arguments that the relatively small number of instances of utilities receiving the Transco Adder somehow undermines this standard. As the Commission found in Order No. 679, Transcos are appropriate structures for investment in infrastructure and accomplishment of the objectives of section 219. The Commission stated in Order No. 679 that Transcos are entitled to transmission incentives based on their independent status.[91] We find that ITC Holdings' business model and independence safeguards have adequately protected the independence of ITC Holdings, and its subsidiary ITC Midwest. As discussed above, we find that ITC Midwest qualifies as an independent Transco.

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[88] RTO Incentive Order, 150 FERC ¶ 61,004 at P 41.

[89] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 65.

[90] *See id*. n.63.

[91] *See id*. PP 221-226.

48. We also disagree with concerns about the appropriateness of reliance on the anticipated analysis in the Complaint Proceeding. The Commission has already found that the Complaint Proceeding is an appropriate vehicle for determining the base ROE and zone of reasonableness.[92]

49. We disagree with the Iowa Parties' concern that approving the Transco Adder before approving the base ROE and zone of reasonableness could result in a premature determination that the ITC Midwest ROE and adder are within the zone of reasonableness and are just and reasonable. The Commission has, in the past, approved transmission incentives prior to the determination of the base ROE and zone of reasonableness and recently did so in response to the MISO Transmission Owners' request for the RTO Adder.[93] Additionally, the Commission first considers where the *base* ROE is within the zone of reasonableness, provided the total ROE is within the zone of reasonableness.

50. Regarding Mississippi Commission and Midwest TDUs' request that the Commission clarify that the zone of reasonableness should be bound by the outcome of the Docket No. EL15-45-000 complaint proceeding, the Commission has not ruled on the complaint. However, we note that if that proceeding results in an updated zone of reasonableness, ITC Midwest's ROE will be bound by the zone of reasonableness established in that proceeding.

51. With respect to the Mississippi Commission and Midwest TDUs' contention that granting ITC Midwest the Transco Adder in this proceeding could influence the DCF analysis in the Complaint Proceeding, we find that such concerns can be addressed in the Complaint Proceeding. Participants in that proceeding can raise concerns about the appropriateness of DCF model proxy group members or propose adjustments to the DCF analysis. This proceeding relates solely to the determination of the appropriateness of the Transco Adder for ITC Midwest and not the determination of the base ROE or the zone of reasonableness.

52. Finally, with respect to Interstate's request that the Commission reevaluate its overall transmission ROE incentive policies to ensure the policies are meeting the intended goals of encouraging transmission investment in a manner that is efficient and which considers cost impacts to customers, as noted above, this proceeding relates solely to the determination of the appropriateness of the Transco Adder for ITC Midwest. Such requests are beyond the scope of this proceeding.

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[92] RTO Incentive Order, 150 FERC ¶ 61,004 at P 44.

[93] *Id*.

2. Procedures for Implementation and Request for Waivers

53. We disagree with protestors who contend that ITC Midwest's request for the Transco Adder should be set for hearing and settlement procedures. This proceeding pertains to the independence incentive and not to the total ROE. As discussed above, we find that ITC Midwest merits the 50-basis point Transco Adder and disagree with arguments that it must show that the incentive is needed to encourage investment or passes a cost-benefit test. Consequently, we find that there are no material issues of fact in this proceeding that are not being addressed in the Complaint Proceeding, such that this matter should be set for hearing and settlement procedures or formally consolidated with the Complaint Proceeding.

54. Based upon a review of the filing and the comments, our preliminary analysis indicates that the overall ROE resulting from application of the 50-basis point Transco Adder has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful (i.e., it has not been shown that the overall ROE resulting from the application of the 50-basis point Transco Adder is just and reasonable). Accordingly, we conditionally accept the revisions to Attachment O of the Tariff, suspend them for a nominal period to become effective April 1, 2015, subject to refund, and subject to the 50-basis point Transco Adder being applied to a base ROE that has been shown to be just and reasonable based on an updated DCF analysis and the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, as those may be determined in the Complaint Proceeding, and make the proposed revisions subject to the outcome of the Complaint Proceeding. Because we are accepting the proposed revisions subject to the outcome of the Complaint Proceeding for the purpose of determining the just and reasonable base ROE and the zone of reasonableness, we grant ITC Midwest's request for waiver of the portions of the Commission's section 35.13 requirements that require the submission of cost of service information, statements, testimony, and exhibits to support the requested tariff changes, including the required DCF analysis.

3. ITC Midwest's Request to Defer Collection of the Transco Adder

55. We accept ITC Midwest's commitment to defer collection of the Transco Adder pending the outcome of the Complaint Proceeding, noting that the Transco Adder will be effective as of April 1, 2015. We believe this will promote administrative efficiency.

The Commission orders:

(A) The proposed Tariff revisions are hereby conditionally accepted for filing, subject to the Transco Adder being reduced to 50-basis points, subject to refund, and suspended for a nominal period to become effective April 1, 2015, subject to the proposed Transco Adder being applied to a base ROE that has been shown to be just and

reasonable based on an updated DCF analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, as those may be determined in the Complaint Proceeding, and subject to the outcome of the Complaint Proceeding, as discussed in the body of this order.

(B) Note P of the proposed formula rate must be revised to reflect a 50-basis point Transco Adder in a compliance filing due within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioners Moeller and Clark are dissenting with a joint separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc. Docket No. ER15-945-000

(Issued March 31, 2015)

CLARK, Commissioner, and MOELLER, Commissioner, *dissenting*:

This order marks the first time that the Commission has reduced a requested ROE Transco Adder, in this case from 100-basis points to 50-basis points. We cannot support this order because the majority has not based their decision to reduce the ROE Transco Adder for ITC Midwest on an adequate record.

Although this order notes that ITC Midwest is a fully independent, stand-alone transmission company member of MISO and provides all of the benefits contemplated in Order No. 679, it nonetheless determines that ITC Midwest is not entitled to its requested 100-basis point Transco Adder. Transco incentives went unaddressed in the Policy Statement on Transmission Incentives,[1] and the majority has not provided any guidance as to what showing is necessary to support a100-basis point adder moving forward.

This order also sends the wrong message at a time when new regulations, such as the Clean Power Plan, will likely drive the need for more transmission investment. We also find it puzzling that the Commission would reduce transmission incentives for a Transco business model when it is just beginning to see the effects of competitive solicitation under Order No. 1000. These mixed messages from the Commission on the value of innovative business models and transmission investment decrease regulatory certainty at a time when it is most needed.

Accordingly, we respectfully dissent.

Tony Clark Commissioner	Philip D. Moeller Commissioner

[1] "In Order No. 679 and subsequent cases applying incentives policies, the Commission has addressed the granting of incentive ROEs that are not based on the risks and challenges of a project, such as incentive ROEs for RTO membership or Transco formation. With respect to aspects of the Commission's incentives policies not addressed in this policy statement, we decline to provide additional guidance at this time." *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129, at P 5 (2012).