151 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. Docket No. ES15-13-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued May 18, 2015)

1. On March 17, 2015, Midcontinent Independent System Operator, Inc. (MISO), filed an application pursuant to section 204 of the Federal Power Act (FPA)[1] seeking Commission authorization to issue debt securities in the form of bank loans or letters of credit issued under an unsecured revolving credit agreement with PNC Bank, National Association (Credit Agreement) in an amount not to exceed $50 million (Application). We will grant the authorization as discussed below.

I. Application

2. MISO requests authorization to continue to incur indebtedness for an additional two year period in an amount not to exceed $50 million under the Credit Agreement.[2] MISO's current authorization to issue securities under the Credit Agreement expires on June 1, 2015.[3]

3. MISO states that the interest rate pricing on the debt securities will consist of two types of borrowing permitted under the Credit Agreement, fixed rate and floating rate. MISO states that the interest rate for fixed rate borrowing will be based on the one-month, two-month, three-month, or six-month London Interbank Offered Rate (LIBOR) plus a credit spread, which ranges between 90 basis points if MISO's credit rating is A+

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[1] 16 U.S.C. § 824c (2012).

[2] In the Application, MISO recognizes that its request to extend its current issuance authority is actually for two years and twelve days, rather than two years. Application at n.2.

[3] *See Midwest Independent Transmission System Operator, Inc.*, 143 FERC ¶ 62,119 (2013).

or higher, to 110 basis points if its credit rating is A- or less.[4] MISO states that the interest rate for floating rate borrowing will be set by the highest of: (1) the Prime Rate; (2) the Federal Funds Rate plus 50 basis points; or (3) the daily LIBOR rate plus 100 basis points. MISO also states that, for purposes of the floating interest rate, the daily LIBOR rate shall mean, for any day, the rate per annum determined by the bank by dividing the one month LIBOR rate published each business day in the Wall Street Journal[5] by a number equal to 1.00 minus the percentage prescribed by the Federal Reserve for determining the maximum reserve requirements with respect to any Eurocurrency funding by banks on such day.

4. According to MISO, the proceeds from the Credit Agreement will be used to provide working capital for MISO's operations and for any other lawful and proper purposes of MISO in fulfillment of its obligations as a regional transmission organization (RTO). MISO requests authorization to incur indebtedness through June 13, 2017. MISO also states that it will abide by the conditions established in *Westar Energy, Inc.*[6]

5. MISO requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2,[7] arguing that the costs associated with the competitive bidding process to establish a similar line of credit would far outweigh any benefits to be realized by the process.[8] MISO also seeks waiver of the requirement to file the *pro forma* information required by 18 C.F.R. § 34.4.[9]

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[4] MISO notes that its current debt rating is A+, and that therefore the credit spread is 90 basis points. Application at 4.

[5] MISO states if no such rate is published, it will use the Eurodollar rate for a one month period as published in another publication. *Id.*

[6] *Id.* at 9 (citing *Westar Energy, Inc.*, 102 FERC ¶ 61,186, *order on reh'g*, 104 FERC ¶ 61,018 (2003) (*Westar*)).

[7] Section 34.2 sets forth the Commission's requirements regarding the method of issuance. It states, in part, that utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers or underwriters, or negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters. *See* 18 C.F.R. § 34.2(a) (2014).

[8] Application at 8.

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

II. Notice of Filing, Interventions, and Protests

6. Notice of the Application was published in the *Federal Register*, 80 Fed. Reg. 15,592 (2015), with interventions and protests due on or before April 7, 2015. None was filed.

III. Discussion

7. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.[10]

8. The Commission has explained that, in reviewing filings under FPA section 204, "the Commission evaluates a utility's financial viability based on a review of the financial statements submitted in the application and the utility's interest coverage ratio. An interest coverage ratio is a measure of the utility's ability to meet future debt and interest payments."[11] The interest coverage ratio is the sum of net income before interest and income taxes divided by total interest expense.[12] The Commission generally requires that FPA section 204 applicants demonstrate, on a *pro forma* basis in accordance with its regulations, that net income will equal or exceed twice total interest expense. This is a screening test used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.[13] Nevertheless, the Commission has stated that whether or not an applicant meets this interest coverage screen does not by itself determine whether the Commission will authorize or deny the application,[14] and the Commission has approved section 204 applications that have not met this threshold.

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[10] 16 U.S.C. § 824c(a) (2012).

[11] *Westar*, 102 FERC ¶ 61,186 at P 15.

[12] *Id.* n.15.

[13] *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*)).

[14] *Startrans*, 122 FERC ¶ 61,253 at n.7.

9. MISO has filed, as Exhibits C, D, and E to the Application, financial statements for the 12-month period ended December 2014. As MISO notes, its interest coverage ratio is below the Commission's traditional 2.0 interest coverage guideline. MISO argues, however, that the authorization requested in the Application will not impair its ability to meet its financial and public service obligations. MISO explains that, as a not-for-profit RTO, it does not have traditional earnings; rather, all of MISO's costs are recovered through a formula rate resulting in zero net earnings. MISO states that its interest coverage ratio is 1.0, since the amount of revenue earned to cover interest expenses is equal to interest expense.[15] MISO further explains that it currently provides open access transmission and energy market services under the terms and conditions of its Commission-accepted Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff).[16] MISO states that a portion of the financing costs associated with the proposed issuance will be recovered by MISO under Schedule 10 of the MISO Tariff,[17] and that the balance of the financing costs associated with the proposed issuance will be recovered under Schedules 16 and 17 of the MISO Tariff.[18]

10. As noted above, in FPA section 204 filings, the Commission utilizes an interest coverage ratio calculation in its evaluation of a public utility's financial viability, and generally requires applicants filing under FPA section 204 to demonstrate, on a *pro forma* basis, that net income will equal or exceed twice total interest expense.[19] As MISO notes, its interest coverage ratio will always be only 1.0 because it is a non-profit RTO and only receives revenue equal to its costs. However, the MISO Tariff provides for the recovery of all of the financing costs associated with the proposed issuance.[20] Therefore, we have an alternative basis to conclude that MISO may reasonably be expected to

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[15] Application at 7.

[16] *Id.* at 6.

[17] Schedule 10 of the MISO Tariff establishes the ISO Cost Recovery Adder. MISO, MISO FERC Electric Tariff, Schedule 10, ISO Recovery Adder (31.0.0).

[18] Schedules 16 and 17 of the MISO Tariff establish the Financial Transmission Rights Administrative Service Cost Recovery Adder and the Energy and Operating Reserve Markets Support Administrative Service Cost Recovery Adder, respectively. MISO, MISO FERC Electric Tariff, Schedule 16, FTR Administrative Service Cost Recovery Adder (32.0.0); MISO, MISO FERC Electric Tariff, Schedule 17, Energy Market Support Administrative Service Cost Recovery (31.0.0).

[19] *See, e.g., Startrans*, 122 FERC ¶ 61,253 at P 18.

[20] *See* Application at 6.

service its debt and interest expenses without impairing its ability to provide service as a public utility.[21]

11. We find, based on the facts set forth in the Application, that MISO has demonstrated that the proposed issuance of securities and assumptions of obligations or liabilities sought in the Application: (1) is for a lawful object, within MISO's corporate purposes, necessary or appropriate for MISO's providing service as a public utility, and will not impair MISO's ability to perform such services; and (2) is reasonably necessary or appropriate for such purposes. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[22] First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility assets. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. MISO states it will comply with the *Westar* conditions, and we will condition our authorization on MISO abiding by these restrictions.[23]

12. We will grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements applicable to long-term debt, and the requested waiver of the Commission's requirement to provide the *pro forma* financial information required by the Commission's regulations.

The Commission orders:

(A) MISO is hereby authorized to issue debt securities in the form of bank loans or letters of credit issued under the Credit Agreement in an amount not to exceed $50 million, at the interest rates stated in the body of this order.

(B) The authorization granted to MISO will become effective as of June 1, 2015 and will terminate on June 13, 2017.

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[21] *See, e.g., ITC Great Plains, LLC*, 147 FERC ¶ 61,005, at P 12 (2014); *Transource Missouri*, 145 FERC ¶ 61,146 (2013).

[22] *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

[23] Application at 9.

(C) The authorization granted to MISO in this order is subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(D) The waivers requested by MISO of the Commission's competitive bidding and negotiated placement requirements as applicable to long-term debt under 18 C.F.R. §§ 34.2(a) and 34.2(c)(1) (2014) are hereby granted.

(E) The waiver requested by MISO of the *pro forma* information required by the Commission's regulation at 18 C.F.R. § 34.4 (2014) is hereby granted.

(F) MSIO must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2014), no later than 30 days after the sale or placement of the long-term debt securities or the entry into guarantees or assumption of liabilities.

(G) The authorization granted to MISO in Ordering Paragraph (A) above is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(H) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.