

151 FERC ¶ 61,166
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

May 20, 2015

In Reply Refer To:
Midcontinent Independent System
Operator, Inc.
Docket No. ER15-1345-000

Midcontinent Independent System Operator, Inc.
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Attention: Robert Weinberg
Matthew R. Rudolphi

Dear Messrs. Krouse, Brown, Bellville, Weinberg, and Rudolphi:

1. On March 20, 2015, pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2012), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2014), Midcontinent Independent System Operator, Inc. (MISO), on behalf of South

Mississippi Electric Power Association (SMEPA),¹ filed proposed revisions to Attachment O-SMEPA Rate Formula Template of the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) to implement a 50-basis point adder (RTO Adder) to the authorized rate of return on equity (ROE) for SMEPA's participation in MISO, a regional transmission organization (RTO) (March 20 Filing).² We conditionally accept the proposed tariff revision, effective June 1, 2015, subject to the conditions discussed below. We also accept SMEPA's request to defer collection of the RTO Adder pending the outcome of the complaint proceeding in Docket No. EL14-12-000 (Complaint Proceeding),³ as discussed below.

2. On November 6, 2014, a group of MISO transmission owners (MISO Transmission Owners)⁴ submitted revisions to their Attachment O formula rate templates

¹ SMEPA states that it is an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. § 901 *et seq.*) and as such, is a non-jurisdictional entity. We note that the Commission has the statutory authority to consider whether the rates of a non-jurisdictional entity are just and reasonable to the extent necessary to determine that jurisdictional rates are just and reasonable. *Transmission Agency of N. Cal.*, 495 F.3d 663, 671-672 (D.C. Cir. 2007) (citing *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1114 (D.C. Cir. 2002)).

² MISO states that it joins the filing solely as the administrator of its Tariff.

³ *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014) (Complaint Hearing Order). The Complaint Hearing Order granted in part a complaint that alleged that the current 12.38 percent base ROE allowed for MISO Transmission Owners is unjust and unreasonable. The Commission established hearing and settlement judge procedures with respect to the MISO Transmission Owners' base ROE, and set a refund effective date of November 12, 2013, for the MISO Transmission Owners' base ROE.

⁴ The MISO Transmission Owners for the November 6, 2014 filing consisted of the following: ALLETE, Inc. for its operating division Minnesota Power (and its subsidiary Superior Water, L&P); Ameren Services Company, as agent for Ameren Missouri, 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 Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a
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of the Tariff to implement a 50-basis point RTO Adder to the authorized ROE based on the MISO Transmission Owners' participation as members in an RTO.

3. On January 5, 2015, the Commission accepted and nominally suspended the MISO Transmission Owners' proposed RTO Adder to become effective January 6, 2015, subject to refund.⁵ Acceptance of the RTO Adder was conditioned on it being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash-flow analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash-flow analysis, as those may be determined in the pending Complaint Proceeding in Docket No. EL14-12-000. The Commission also accepted the MISO Transmission Owners' request to defer collection of the RTO Adder pending the outcome of the Complaint Proceeding.

4. In the January 5 Order, the Commission affirmed that the RTO Adder would be available for use by any transmission-owning members of MISO that have turned operational control of their transmission system over to MISO and use the generally applicable MISO ROE, subject to the conditions concerning the base ROE and zone of reasonableness discussed above.⁶ However, the Commission determined that those entities utilizing an Attachment O formula that had not been revised to reflect the RTO Adder in that proceeding would need to make a filing under section 205 of the FPA to reflect the RTO Adder in their formula in order to be able to include the RTO Adder in rates that are calculated pursuant to their formula.⁷

5. SMEPA states that it qualifies for the RTO Adder consistent with the January 5 Order because it is a transmission-owning member of MISO, having turned over

Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Vectren Energy Delivery of Indiana; and Wolverine Power Supply Cooperative, Inc.

⁵ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004 (2015) (January 5 Order).

⁶ Complaint Hearing Order, 149 FERC ¶ 61,049 at P 48 (citing *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 83 (2012) (explaining that transmission-owning members of MISO are currently authorized to use a 12.38 percent ROE for calculating their annual transmission revenue requirement, and that if DATC becomes a transmission-owning member of MISO, it will also be entitled to receive the then-current ROE that the Commission has approved for MISO transmission owners, as long as it remains a member of MISO)).

⁷ *Id.*

operational control of its transmission system to MISO, using the generally applicable MISO ROE and continues as a transmission-owning member of MISO on an on-going, voluntary basis.⁸ SMEPA requests that the same terms govern its collection of the RTO Adder as were granted in the January 5 Order. Specifically, SMEPA requests the following: (1) approval of its ability to apply the RTO Adder in its MISO Tariff Attachment O filing in accordance with the January 5 Order; (2) authorization to defer collection of the RTO Adder (but not the effectiveness) until after the issuance of a final order addressing the Complaint Proceeding (at which point the RTO Adder will be applied back to the effective date of this filing); and (3) an effective date of June 1, 2015, which is the first day after the next rate year under Attachment O-SMEPA Rate Formula Template, and is more than 60 days after the filing date, for the addition of the RTO Adder to the MISO Transmission Owners' formula rates.⁹

6. Upon the effectiveness of this filing, SMEPA voluntarily commits itself to be bound by: (1) the base ROE established in the Complaint Proceeding; (2) the zone of reasonableness established in the Complaint Proceeding; (3) any subsequent proceeding in which the MISO transmission owners' base ROE is adjusted; and (4) providing refund protection consistent with the refund effective date established in the Complaint Proceeding and any subsequent proceedings which adjust the MISO transmission owners' base ROE requiring refunds to be made by the MISO transmission owners.¹⁰

7. SMEPA requests Commission approval to defer collection of the RTO Adder (but not the effectiveness) until the Commission issues an order on the Complaint Proceeding, in which the Commission will establish a zone of reasonableness for the MISO transmission owners' ROEs. SMEPA states that the RTO Adder would be effective as accepted by the Commission in this filing, and once the Complaint Proceeding is resolved, SMEPA would apply the RTO Adder, subject to the Commission's established zone of reasonableness limitation, back to the permitted effective date in calculating any refunds or surcharges resulting from the resolution of the Complaint Proceeding.¹¹

8. SMEPA also requests a waiver of the portions of the Commission's rules that require the submission of cost of service information and statements in connection with the requested tariff changes, testimony, and exhibits to support the requested tariff changes (including the required discounted cash flow analysis). SMEPA states that this

⁸ March 20 Filing, Transmittal Letter at 4-5.

⁹ *Id.* at 2.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 5.

information would merely duplicate the exhibits and testimony that have been or may be filed in the Complaint Proceeding, given that SMEPA has agreed, for the purpose of implementing the RTO Adder, to adhere to any range of reasonable returns that the Commission may establish in the Complaint Proceeding.¹²

9. Notice of the March 20 Filing was published in the *Federal Register*, 80 Fed. Reg. 16,000 (2015), with interventions or protests due on or before April 10, 2015. A group of MISO transmission owners (TO Intervenors)¹³ filed a timely motion to intervene. No protests were filed. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motion to intervene of TO Intervenors serves to make them parties to this proceeding.

10. 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.¹⁴ The purpose of this rule is, *inter alia*, to promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in electric transmission infrastructure.¹⁵ The Commission

¹² *Id.*

¹³ The TO Intervenors consist of the following: Ameren Services Company, as agent for Ameren Missouri, 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 Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; 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; Vectren Energy Delivery of Indiana; and Wolverine Power Supply Cooperative, Inc.

¹⁴ 16 U.S.C. § 824s(a), (b) (2012).

¹⁵ *Id.*

subsequently issued Order No. 679,¹⁶ 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 SMEPA.

11. We conditionally grant SMEPA's request for a 50-basis point adder to its base ROE for its participation in MISO, consistent with section 219 of the FPA and Commission precedent,¹⁷ subject to the conditions discussed below. We find that SMEPA has demonstrated that it is qualified to receive the requested 50-basis point adder. Our approval of this incentive is based on SMEPA's commitment to continue being a member of MISO.

12. Additionally, our acceptance of the RTO Adder is conditioned upon SMEPA's voluntary commitments to (1) provide refunds to the extent that the ROE or zone of reasonableness established in the Complaint Proceeding when applied as of the refund effective date in the Complaint Proceeding, consistent with SMEPA's voluntary commitment in the instant filing, would result in a lower revenue requirement than that charged by SMEPA, and (2) provide refunds consistent with any refund effective date established in any subsequent proceedings resulting in a new base ROE or a new zone of reasonableness for the MISO transmission owners' base ROE,¹⁸ to the extent that the ROE or zone of reasonableness established in such proceedings, when applied as of the refund effective date established in such proceedings, would result in a lower revenue requirement than that charged by SMEPA.¹⁹ Such refunds must include interest at

¹⁶ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 61,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

¹⁷ *See, e.g., Pacific Gas and Electric Co.*, 148 FERC ¶ 61,245, at P 30 (2014) (granting 50-basis point adder for continued RTO participation); *Valley Elec. Ass'n, Inc.* 141 FERC ¶ 61,238, at P 26 (2012) (granting 50-basis point adder for RTO participation); *Pacific Gas and Electric Co.*, 141 FERC ¶ 61,168, at P 25 (2012).

¹⁸ We note that such proceedings would include the complaint filed on February 12, 2015 in Docket No. EL15-45-000 by 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. against certain MISO transmission owners alleging that the MISO transmission owners' base ROE is unjust and unreasonable and should be reduced.

¹⁹ *See Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,050, at P 24 (2015). These voluntary refund commitments are necessary because SMEPA states that
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Commission refund interest rates. Accordingly, we direct MISO to submit a compliance filing within 30 days of the date of this order with revisions to Attachment O–SMEPA Rate Formula Template reflecting that applicability of the RTO Adder is conditioned on SMEPA making the two voluntary refund commitments discussed above, or in the alternative, to eliminate the tariff revisions conditionally accepted herein if SMEPA does not make such a commitment.

13. Based upon a review of the filing, our preliminary analysis indicates that the overall ROE resulting from application of the RTO 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 to be just and reasonable to apply the RTO Adder to the current base ROE). Accordingly, we accept the revisions to Attachment O of the Tariff to become effective June 1, 2015, as requested, subject to MISO submitting a compliance filing discussed *supra*, and subject to it being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash-flow analysis, subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash-flow analysis, as those may be determined in the Complaint Proceeding.

14. 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 to be applied to the RTO Adder requested in the instant filing, we grant SMEPA'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 discounted cash-flow analysis.

15. We accept SMEPA's commitment to defer collection of the RTO Adder pending the outcome of the Complaint Proceeding, noting that the RTO Adder will be effective on June 1, 2015. This should promote administrative efficiency.

16. The proposed Tariff revisions in the March 20 Filing are hereby conditionally accepted for filing, subject to refund, effective June 1, 2015, as discussed in the body of

it is not a Commission-jurisdictional transmission owner, which means that it would not be subject to refund requirements in sections 205 and 206 of the FPA.

this order. MISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.