

151 FERC ¶ 61,171
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.
South Mississippi Electric Power Association

Docket No. ER15-1079-000

ORDER REJECTING TARIFF REVISIONS

(Issued May 22, 2015)

1. On February 20, 2015, as supplemented on March 13, 2015, March 20, 2015, and May 12, 2015, pursuant to section 205 of the Federal Power Act (FPA)¹ and part 35 of the Commission's regulations,² Midcontinent Independent System Operator, Inc. (MISO)³ and South Mississippi Electric Power Association (South Mississippi) filed a new South Mississippi Attachment O transmission formula rate based on the *pro forma* United States Department of Agriculture Rural Utilities Service (RUS) Non-Levelized Attachment O of MISO's Tariff with revisions to allow for the inclusion of costs related to South Mississippi's acquisition of the Batesville Generating Station (Batesville) in South Mississippi's formula rate used to calculate its Annual Transmission Revenue Requirement (ATRR). In addition, to comply with recent Commission orders, South Mississippi also proposes ministerial revisions to South Mississippi's Attachment O formula rate protocols and revisions to its Attachment O formula rate to include the stated values for depreciation rates and rate of return. In this order, we reject, without prejudice, the proposed Tariff revisions.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. Pt. 35 (2014).

³ MISO states that it joins the filing as the administrator of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), but takes no position on the substance of the filing.

I. Background

A. Description of South Mississippi and the Batesville Purchase

2. In the February 20, 2015 filing, South Mississippi states that it is an incorporated, non-profit cooperative electric power association, organized and operating under and pursuant to the laws of the State of Mississippi.⁴ South Mississippi explains that it is owned and controlled by its members, which are distribution rural electric power associations serving rural areas in Mississippi at retail, and that it provides all requirements service to its member distribution cooperatives.⁵ South Mississippi states that it is an electric cooperative that receives financing from RUS under the Rural Electrification Act of 1936 (7 U.S.C. § 901 et seq.) and is therefore not subject to the Commission's jurisdiction under sections 205 and 206 of the FPA, as set forth in section 201(f) of the FPA.⁶

3. South Mississippi states that, effective December 19, 2013, it became a MISO transmission owner, integrated its operations into MISO, and became a participant in the wholesale markets administered by MISO; therefore, it now receives transmission service pursuant to the MISO Tariff.⁷ South Mississippi states that, in its capacity as a MISO transmission owner, it has adopted the *pro forma* RUS Non-Levelized version of Attachment O to the MISO Tariff for recovery of its ATRR.

4. South Mississippi states that, on December 19, 2012, it finalized the purchase from LSP Energy of Batesville, a natural gas-fueled plant consisting of three 279 MW combined-cycle units located in Batesville, Mississippi.⁸ South Mississippi notes that the purchase also included the site's 58-acre land parcel and plant support facilities, including pipelines, transmission lines, and an interconnection switchyard. South Mississippi contends that the purchase price of approximately \$326 per kilowatt was well below the cost to construct a new natural gas plant. South Mississippi contends that the

⁴ February 20 Filing, Transmittal Letter at 2.

⁵ *Id.* at 3.

⁶ 16 U.S.C. § 824(f) (2012).

⁷ February 20 Filing, Transmittal Letter at 3. South Mississippi is located in the MISO South region.

⁸ *Id.* Batesville is interconnected with the transmission systems of Entergy Mississippi, Inc. and the Tennessee Valley Authority.

purchase added 558 MW of new capacity, converted 279 MW of capacity from contracted to owned capacity, and further diversified South Mississippi's fuel mix. South Mississippi states that it elected to pursue the purchase following a due-diligence process that determined ownership would best meet South Mississippi's long-term needs.

B. Acquisition Adjustment

5. South Mississippi states that, because it is an RUS borrower, it is required to follow RUS accounting standards, which prescribe a particular methodology for business combination accounting.⁹ South Mississippi explains that, under the RUS accounting standards, the purchaser records the same asset cost and accumulated depreciation balances (net book value) as recorded on the books of the acquired entity on the date of acquisition.¹⁰ South Mississippi explains further that RUS accounting directs that any difference between the actual price paid and the net book value on the seller's books is either recorded to Account 114 (Electric Plant Acquisition Adjustments) as part of utility plant in service, if the acquisition price paid was based on the valuation of a third party, or recorded as goodwill if it was not.¹¹ According to South Mississippi, the difference between the \$326 per kilowatt price it paid for Batesville and the asset cost and accumulated depreciation balances for the facility on the books of LSP Energy was \$53.6 million.¹²

6. South Mississippi explains that, according to a third-party valuation of Batesville, no goodwill was paid; therefore, RUS accounting requires the \$53.6 million difference to be recorded in Account 114, and the Account 114 balance related to Batesville is deemed part of utility plant in service.¹³ According to South Mississippi, the rates that its member distribution cooperatives pay for their all requirements service include an acquisition adjustment related to Batesville; therefore, in order to comply with RUS accounting requirements and recover South Mississippi's full cost of Batesville in its cost-based rates on a comparable basis to the rates that South Mississippi's members pay,

⁹ *Id.*

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 4, Pardikes Test. at 9.

¹² *Id.*, Transmittal Letter at 3.

¹³ *Id.* at 6.

South Mississippi must include the Batesville acquisition adjustment costs in its formula rates used to calculate its ATRR.¹⁴

7. South Mississippi explains that, in preparing its 2013 RUS Non-Levelized Attachment O, it included amounts associated with the Batesville acquisition adjustment found on RUS Form 12h.A.24.e (Acquisition Adjustment) (FERC Account 114).¹⁵ However, MISO staff alerted South Mississippi that the *pro forma* RUS Non-Levelized Attachment O template does not currently allow for inclusion of values found in FERC Account 114 and that a modification of the Attachment O template would be necessary to allow for the inclusion of Account 114 Acquisition Adjustment and related amortization. South Mississippi states that, as a result, it removed the acquisition adjustment from its 2013 Attachment O template and began the process of developing the instant filing to revise the *pro forma* Attachment O.

8. South Mississippi seeks Commission authorization to revise the existing formula rate under MISO's *pro forma* RUS Non-Levelized Attachment O so as to incorporate amounts related to the acquisition of Batesville in the calculation of South Mississippi's ATRR.¹⁶ For these purposes, South Mississippi proposes a new South Mississippi Attachment O transmission formula rate based on the *pro forma* RUS Non-Levelized Attachment O, with several revisions. First, South Mississippi proposes to reference Account 114 (Electric Plant Acquisition Adjustment) from the RUS Form 12 (12h.A.24.e) on Page 2 of 5, Lines 1 and 2 of its proposed Attachment O in order to accurately reflect the correct gross plant balances to include Batesville, and to add a Note AA to these lines to identify that it will provide a work paper to indicate how much of the balance in Account 114 (Electric Plant Acquisition Adjustment) is added to each. South Mississippi also proposes to reference Account 425 (Miscellaneous Amortization) from the RUS Form 12 (12a.A.28.b) on Page 3 of 5, Line 9 and add a Note BB to this line to identify that South Mississippi will provide a work paper to indicate the amount of annual amortization added to this line item. In addition, in a supplemental filing on March 20, 2015, South Mississippi submitted work papers in support of the acquisition adjustment recovery proposed in the February 20, 2015 filing.¹⁷ South Mississippi reiterates that

¹⁴ *Id.* at 3-4, 5-6.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 6. South Mississippi states that it will seek advance Commission approval prior to including any future Account 114 acquisition adjustment amounts not attributable to Batesville in its Attachment O. *Id.* at 1.

¹⁷ March 20 Supplemental Filing at 2-3.

both of these variances are required because the *pro forma* RUS Non-Levelized version of Attachment O to MISO's Tariff does not include Accounts 114 or 425, even though these accounts are properly includable costs for South Mississippi, which follows RUS accounting requirements.¹⁸

9. South Mississippi observes that, notwithstanding that it is an RUS borrower and therefore not a public utility within the meaning of section 201 of the FPA, the Commission does have jurisdiction over transmission service rates administered by MISO, as made clear by the courts.¹⁹ South Mississippi also notes that the Commission has determined that the level of deference it applies to a non-jurisdictional entity is dependent upon the specific facts presented in each case and has declined to establish a formal standard of review to be applied to all non-jurisdictional revenue requirement cases.²⁰ South Mississippi asserts that, although as a non-jurisdictional RUS borrower the Commission's requirement that jurisdictional utilities request authorization before including amounts attributable to an acquisition adjustment in their rates does not directly apply to it, South Mississippi meets the Commission's standards for inclusion of the acquisition adjustment because of the benefits provided to South Mississippi's customers²¹ and the non-discriminatory manner in which South Mississippi proposes to recover these costs in its Attachment O.²² Specifically, South Mississippi contends that the Batesville acquisition benefits South Mississippi's ratepayers because: (1) the increase in South Mississippi-owned generation leaves South Mississippi less vulnerable to spikes in purchased power prices; (2) the purchase of Batesville diversifies South

¹⁸ February 20 Filing, Pardikes Test. at 12.

¹⁹ According to South Mississippi, when a non-jurisdictional transmission owner voluntarily joins a regional transmission organization (RTO), the Commission "can ensure by examining [the non-jurisdictional utility's revenue requirement] that the [RTO's] rates will ultimately be just and reasonable." *Id.*, Transmittal Letter at 4 (citing *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

²⁰ *Id.* (citing *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at P 36, *reh'g granted in part and denied in part*, Opinion No. 479-A, 112 FERC ¶ 61,207, *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006)).

²¹ *Id.* (citing *Minnesota Power & Light Co., et al.*, 43 FERC ¶ 61,104, at 61,342 ("[R]ate recovery of acquisition adjustments will be permitted if the acquisition provides measurable benefits to ratepayers"), *reh'g denied*, 43 FERC ¶ 61,502, *reconsidered denied*, 44 FERC ¶ 61,302 (1988)).

²² *Id.* at 4-5.

Mississippi's fuel mix, thus mitigating price spikes in fuel; (3) the amount paid for the facility was well under the costs to build new combined cycle units, leading to a lower revenue requirement; and (4) the relative costs for the transmission portion of the facility were also likely reasonable, given that the transmission portion of Batesville could not be separated from the generation assets in the bankruptcy proceeding and the purchase price of the entire facility was reasonable relative to the cost of building a new generation facility.²³ In addition, South Mississippi states that the inclusion of acquisition adjustment costs in its proposed Attachment O is not discriminatory, since South Mississippi's own members also pay rates which include these costs.²⁴

10. In a further supplemental filing on May 12, 2015, South Mississippi submitted in support of the February 20, 2015 filing an original copy of the Power Purchase Agreement between itself and LSP Energy, a copy of South Mississippi's 2014 RUS Form 12, a summary of Batesville's operating and maintenance data, copies of South Mississippi's 2012 and 2013 financial statements, and a copy of the third-party valuation of Batesville.

C. Ministerial Changes to South Mississippi's Attachment O Formula Rate and Formula Rate Protocols

11. South Mississippi states that, while the purpose of this filing concerns the acquisition adjustment described above, South Mississippi is also proposing to make ministerial changes to its Attachment O to incorporate formula rate protocol provisions that have been required by two recent Commission orders but that have not yet been incorporated into MISO's *pro forma* RUS Non-Levelized Attachment O.²⁵ First, in an order issued on January 22, 2015 in Docket Nos. ER13-2379-002 and ER13-2379-003, the Commission conditionally accepted a MISO compliance filing containing Tariff revisions made pursuant to an ongoing investigation under section 206 of the FPA to determine whether the formula rate protocols of the Tariff were sufficient to ensure just and reasonable rates.²⁶ The Commission conditionally accepted the compliance filing to become effective January 1, 2014, subject to further revisions to the protocols' challenge

²³ *Id.* at 6, Pardikes Test. at 7, 9-10.

²⁴ *Id.*, Transmittal Letter at 6.

²⁵ *Id.* at 2.

²⁶ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015) (January 22 Order).

procedures.²⁷ In compliance with the Commission's directives in the January 22 Order, South Mississippi proposes to add language to Section IV.G of its Attachment O protocols stating that: (1) an interested party must submit an informal challenge on any issue to submit a formal challenge; and (2) any interested party will have until April 15 to make a formal challenge with the Commission.

12. Second, in Docket Nos. ER15-277-000 and ER14-2154-000, the Commission issued an order on December 30, 2014 requiring, among other things, the transmission owner "to submit revised tariff sheets for its Attachment O to state the values of all fixed components of its formula rate."²⁸ In order to comply with the Commission's directives in the December 30, 2014 Order, South Mississippi proposes revisions to: (1) Exhibit 7 to its application that set out the stated values for the depreciation rates; and (2) its Attachment O at page 4, line 25 that set out the stated return on equity (ROE) of 12.38 percent.²⁹

13. In addition, in a supplemental filing on March 20, 2015, South Mississippi requested that the proposed Tariff revisions be accepted subject to the ongoing proceedings in Docket Nos. ER13-2379 and EL14-12.³⁰ In Docket No. EL14-12, the Commission found that the current ROE of 12.38 percent for MISO transmission owners may be unjust and unreasonable and established hearing and settlement judge procedures that are currently in progress.³¹

D. Effective Date and Waivers

14. South Mississippi requests that the proposed Tariff revisions be made effective on June 1, 2015 in order for South Mississippi to implement its proposed revisions to Attachment O in its next Annual Update.³² Because this date is more than 120 days from the date of the filing, South Mississippi requests waiver of the 120-day prior notice

²⁷ *Id.* PP 49, 55.

²⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,282, at P 61 (2014).

²⁹ February 20 Filing, Transmittal Letter at 2.

³⁰ March 20 Supplemental Filing at 1.

³¹ *See Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049, at P 1 (2014).

³² February 20 Filing, Transmittal Letter at 2.

requirement under section 35.3(a) of the Commission's regulations.³³ South Mississippi states that there is good cause to grant a waiver of this prior notice requirement to allow the requested changes to become effective in the next Annual Update.³⁴

15. To the extent it is deemed applicable to this filing, South Mississippi requests waiver of section 35.13(d) of the Commission's regulations³⁵ concerning the Period I and II cost data requirements.³⁶ South Mississippi states that it is proposing changes to its formula rates for transmission service, rather than requesting any change or increase in a stated rate, and the inputs for the formula rate are provided annually. Given this and the fact that South Mississippi is not subject to the general rate regulations of the Commission, South Mississippi maintains that waiver of these provisions is appropriate and supported by Commission precedent.³⁷ South Mississippi also requests waiver of any other Commission rule or regulation as may be necessary to permit the proposed Tariff changes to be accepted by the Commission and made effective as requested.

II. Notice of Filing and Responsive Pleadings

16. Notice of the February 20, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 10,470 (2015), with interventions and protests due on or before March 13, 2015.

17. South Mississippi submitted a motion to intervene and comments in support of the proposed Tariff revisions on March 13, 2015. South Mississippi supports the proposed Tariff revisions for the reasons stated in the filing.³⁸ South Mississippi notes that it seeks narrowly crafted revision to the *pro forma* RUS Non-Levelized Attachment O in MISO's Tariff to include Account 114 acquisition adjustment amounts attributable to Batesville in its Attachment O, and that it will seek advance Commission approval prior to including any future Account 114 acquisition adjustment amounts not attributable to Batesville.

³³ 18 C.F.R. § 35.3(a) (2014).

³⁴ February 20 Filing, Transmittal Letter at 7.

³⁵ 18 C.F.R. § 35.13(d) (2014).

³⁶ February 20 Filing, Transmittal Letter at 7.

³⁷ *Id.*

³⁸ South Mississippi Comments in Support at 4.

III. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), South Mississippi's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

19. We find that South Mississippi has not adequately supported its proposal to include the amounts associated with its acquisition adjustment in its RUS Non-Levelized Attachment O. Therefore, we will reject, without prejudice, South Mississippi's proposal to include costs related to South Mississippi's acquisition of Batesville in South Mississippi's formula rate used to calculate its ATRR.

20. Commission precedent requires that, in order for an entity to include an acquisition adjustment in a cost-based rate, there must be an evidenced-based, quantifiable demonstration that there are benefits to the provision of a jurisdictional service to those customers from whom cost recovery is sought.³⁹ We find that South Mississippi has not adequately supported its claims of transmission benefits associated with the purchase of Batesville to warrant inclusion in wholesale transmission customers' rates. Instead, South Mississippi merely asserts that the purchase of Batesville has provided generation benefits in the form of mitigation against price spikes and cost savings compared to construction of a new generating plant.⁴⁰

21. Accordingly, we will deny South Mississippi's proposed revisions to include an acquisition adjustment in the calculation of its ATRR, without prejudice to South Mississippi making a new filing that is properly supported and substantiated. Southern Mississippi explains that it proposes to adopt an individual company Attachment O

³⁹ *Missouri Interstate Gas, LLC*, 142 FERC ¶ 61,195, at P 43-44 (2013) (citing *United Gas Pipe Line Co.*, 25 FPC 26, at 64 (1961)) ("The Commission's general policy is to use original cost principles in establishing the cost of service upon which a pipeline's regulated rates are based. This policy limits a pipeline to including no more than the facilities' depreciated original cost in rate base"). See also *Arizona Public Service Co.*, 144 FERC ¶ 61,200, at P 17 (2013) (finding that an entity must demonstrate a transmission benefit to include an acquisition adjustment in transmission customers' wholesale rates).

⁴⁰ February 20 Filing, Pardikes Test. at 8-9.

formula because the *pro forma* RUS Non-Levelized Attachment O template does not currently allow for inclusion of acquisition adjustments. Its other proposed revisions are non-substantive and were merely necessitated by its proposal to adopt an individual company Attachment O formula to allow recovery of the acquisition adjustment. Thus, in light of our rejection of the proposed revisions to include the acquisition adjustment, there appears to be no reason for Southern Mississippi to adopt an individual company Attachment O formula at this time. Accordingly, we will reject the proposed South Mississippi Attachment O in its entirety, without prejudice.

The Commission orders:

The proposed South Mississippi Attachment O is hereby rejected, without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.