

151 FERC ¶ 61,262
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER14-148-001

ORDER ON REHEARING

(Issued June 26, 2015)

1. On October 21, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ the Midcontinent Independent System Operator, Inc. (MISO) filed a Notice of Succession for certain Transmission Service Agreements entered into by and between Entergy Services, Inc. (Entergy Services) and the Entergy Operating Companies² (collectively, Entergy) and various transmission customers (Transmission Service Agreements).³ The Commission accepted the Notice of Succession.⁴
2. On January 17, 2014, Kansas City Power & Light Company (Kansas City Power & Light) and KCP&L Greater Missouri Operations Company (KCP&L Greater Missouri) (together, the Kansas City Power & Light Companies) requested rehearing of the Notice of Succession Order. As discussed below, the Commission denies rehearing.

¹ 16 U.S.C. § 824d (2012).

² The Entergy Operating Companies are: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

³ Midcontinent Independent System Operator, Inc., Notice of Succession of Certain Transmission Service Agreements, Docket No. ER14-148-000 (filed Oct. 21, 2013) (Notice of Succession Filing).

⁴ *Midwest Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,249 (2013) (Notice of Succession Order).

I. Background

3. At the time the Notice of Succession Filing was made, the Entergy Operating Companies were in the process of integrating into MISO. As part of that process, both MISO and the Entergy Operating Companies made various filings with the Commission to effectuate the integration.

4. In an order issued on June 20, 2013, the Commission addressed several of those filings, setting for hearing, and establishing settlement judge procedures for, certain aspects of the Entergy Operating Companies' proposed Attachment O formula rates under the Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff).⁵ Once approved by the Commission, the Entergy Operating Companies' Attachment O formula rates were to be used as the basis for the charges to be collected by the Entergy Operating Companies in their transmission pricing zones pursuant to MISO's proposed revisions to Schedules 7, 8, 9, and 26.

5. In the Notice of Succession Filing, MISO requested authorization to take assignment of certain Transmission Service Agreements under Entergy's Open Access Transmission Tariff (Entergy OATT) that are ongoing, that is, service agreements that

⁵ *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (Entergy-ITC Rates Order), *order on reh'g*, 143 FERC ¶ 61,111 (2014) (Entergy-ITC Rates Rehearing Order). In the Entergy-ITC Rates Order, the Commission addressed several filings related to the integration of the Entergy Operating Companies into MISO and certain related issues raised by an application filed in Docket No. EC12-145-000 in which Entergy and ITC Holdings Corp. (ITC) sought authorization of a transaction pursuant to which the transmission assets of the Entergy Operating Companies were to be transferred to certain newly-formed subsidiaries of ITC (New ITC Operating Companies) (Entergy-ITC Transaction). The filings addressed in the Entergy-ITC Rates Order were submitted in Docket Nos. ER12-2681-000, ER13-948-000, and ER13-782-000; that order consolidated those dockets. We refer to the consolidated proceedings as the Entergy-ITC Rates Proceeding. We note that on December 13, 2013, the New ITC Operating Companies filed a motion to withdraw the filings in Docket Nos. ER12-2681-00 and ER13-782-000. Motion to Withdraw Filings of ITC Holdings Corp., ITC Arkansas LLC, ITC Texas LLC, ITC Louisiana LLC and ITC Mississippi, LLC, Docket Nos. ER12-2681-000 and ER13-782-000 (consolidated) (filed Dec. 13, 2013). On the same day, Entergy and ITC filed a notice of termination of the Entergy-ITC Transaction, notifying the Commission that the Entergy-ITC Transaction was terminated. Notice of Termination of Transaction, Docket No. EC12-145-000 (filed Dec. 13, 2013).

commenced on or continued through December 19, 2013, the date upon which the Entergy Operating Companies would become fully integrated transmission-owning members of MISO. MISO explained that taking assignment of the agreements would obligate it to provide transmission service pursuant to the MISO Tariff. According to MISO, once the Entergy Operating Companies became fully-integrated transmission-owning members of MISO, the succession of the Transmission Service Agreements to the MISO Tariff would occur. MISO stated that, at that time, it would have completed a transfer of functional control and a transfer of contractual arrangements to provide transmission service for the Entergy Operating Companies and its former customers. MISO further explained that, as a result of the succession, transmission-related services previously available from Entergy under the Entergy OATT would become available pursuant to the MISO Tariff.⁶ The Kansas City Power & Light Companies, the Empire District Electric Company (Empire District), and Associated Electric Cooperative, Inc. (Associated Electric) protested the Notice of Succession Filing; the Missouri Joint Municipal Electric Utility Commission filed comments.

6. In their protests and comments, the Kansas City Power & Light Companies, Empire District, and Associated Electric argued that the transfer of the service agreements from the Entergy OATT to the MISO Tariff had not been shown to be just and reasonable and not unduly discriminatory as required by the FPA. The parties argued, among other things, that a notice of succession was not the appropriate filing for requesting authorization to assign jurisdictional contracts where that assignment would result in a substantial increase in rates; that the change in transmission provider would result in a substantial increase in long term point-to-point transmission service costs as a result of having to pay the “through-and-out rate” under Schedule 7 of the MISO Tariff (MISO RTOR), despite receiving similar services on the same Entergy transmission facilities; and that MISO provided no testimony, analysis, or exhibits that explained why such an increase to point-to-point transmission service is justified.

7. In the Notice of Succession Order, the Commission agreed with MISO that the Transmission Service Agreements subject to the Notice of Succession must be transferred to the MISO Tariff to ensure that the transmission customers who were parties to those agreements would continue to receive transmission service. The Commission stated that the Notice of Succession ensured that there would be no gaps in transmission service after the Entergy Operating Companies were integrated into MISO.

⁶ Notice of Succession Filing, Transmittal Letter at 2.

8. With respect to the protests and comments, the Commission concluded that, in the Entergy-ITC Rates Proceeding, several parties, including Empire District and the Kansas City Power & Light Companies, had challenged the application of the MISO RTOR to customers in MISO South.⁷ The Commission noted that these parties, along with Associated Electric, had requested rehearing of the Entergy-ITC Rates Order with respect to the MISO RTOR issues.⁸ The Commission also noted that the Kansas City Power & Light Companies and Empire District had asserted that the Commission did not address all of the issues related to the application of the MISO RTOR to MISO South customers in the Entergy-ITC Rates Order and that those issues were currently pending on rehearing.⁹ The Commission stated that it would address the arguments on those issues in the Entergy-ITC Rates Proceeding rather than in this proceeding.

II. Rehearing Request

9. The Kansas City Power & Light Companies' primary argument on rehearing is that the Commission erred by accepting a notice of succession effecting a substantial rate increase without any finding that the rate increase meets the statutory standard that such a

⁷ Notice of Succession Order, 145 FERC ¶ 61,249 at P 22 (citing Southwest Power Pool, Inc. Transmission Owners Protest, Motion for Consolidation and Request for Evidentiary Hearing at 34-35, Docket Nos. EC12-145-000, ER12-2681-000, EL12-107-000, ER12-2682-000, ER12-2683-000, and ER12-2693-000 (Empire and Kansas City Power & Light were signatories); Comments of KCP&L Greater Missouri Operations Company, Docket Nos. EC12-145-000, ER12-2681-000, EL12-107-000, ER12-2682-000, ER12-2683-000, and ER12-2693-000 (Jan. 22, 2013)).

⁸ *Id.* (citing Request for Rehearing of Associated Electric Cooperative, Inc., Docket No. ER12-2681-000 (July 22, 2013); Request for Rehearing and Clarification of Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and The Empire District Electric Company, Docket Nos. EC12-145-000, EL12-107-000, ER12-2681-000, ER13-948-000, ER13-782-000, ER12-2682-000, and ER12-2693-000 (July 22, 2013). *See also* Motion for Leave to Answer and Answer of Associated Electric Cooperative, Inc., Docket No. ER12-2681-001 (July 29, 2013)).

⁹ *Id.* (citing Motion to Intervene and Comments of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company at 5-6, Docket No. ER14-89-000 (Nov. 5, 2013); The Empire District Electric Company's Protest, Motion for Consolidation, Request for Rate Suspension and Request for Evidentiary Hearing at 8-9, Docket Nos. ER14-89-000, ER14-114-000, and ER14-115-000 (Nov. 5, 2013)).

rate increase must be just, reasonable, and not unduly discriminatory.¹⁰ Specifically, the companies argue that the Commission erred by accepting a notice of succession effecting a substantial rate increase in a transmission service agreement pursuant to which Entergy (and now MISO) provides transmission service to KCP&L Greater Missouri for point-to-point service from the Crossroads generating station to KCP&L Greater Missouri's load in Missouri (Crossroads TSA) without any finding that the rate increase meets the statutory standard that such rate increases must be just, reasonable, and not unduly discriminatory.¹¹

10. The Kansas City Power & Light Companies contend that the Commission's sole basis for accepting the Notice of Succession was that doing so was necessary to "ensure that the transmission customers who are party to those agreements will continue to receive transmission service."¹² The Kansas City Power & Light Companies argue that continuity is a timing issue and not a substantive basis for accepting a rate increase. According to the Kansas City Power & Light Companies, "[t]he only reason that the substantive importance associated with continuity needs to be attached to a ministerial filing like a notice of succession is that there was no prior substantive MISO or Entergy filing in which the rate increase was properly presented for Commission review, subject to the FPA's notice and comment provisions."¹³ The Kansas City Power & Light Companies argue that, had there been such a proceeding, it would have provided for continuity.

11. The Kansas City Power & Light Companies also argue that while the Notice of Succession Order states that issues relating to the MISO RTOR will be addressed in another proceeding, this explanation is not a valid reason for finding the rate increase to be just and reasonable. The Kansas City Power & Light Companies contend that the idea that the rate change will be addressed in another proceeding is logically inconsistent with the idea that approval of the Notice of Succession in this proceeding was needed to preserve continuity. The Kansas City Power & Light Companies conclude that, because the Commission elected to treat this proceeding as the proceeding that determines

¹⁰ Request for Rehearing of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company at 11, Docket No. ER14-148-001 (filed Jan. 17, 2014) (Kansas City Power & Light Companies Request for Rehearing).

¹¹ *Id.*

¹² *Id.* at 11 (citing Notice of Succession Order, 145 FERC ¶ 61,249 at P 21).

¹³ *Id.* at 12.

whether service will continue under the Crossroads TSA, substantive questions as to the propriety of that continuation of service should have been resolved in this proceeding.¹⁴ The Kansas City Power & Light Companies also argue that the Commission failed to explain why the Entergy-ITC Rates Proceeding is the only proper proceeding in which to address the rate increase under the Crossroads TSA.¹⁵

12. According to the Kansas City Power & Light Companies, the Commission also erred by failing to follow or distinguish well-established precedent that customers are permitted to make as-applied challenges to rate increases that occur when a notice of succession is filed in connection with a transmission owner joining a regional transmission organization.¹⁶ The Kansas City Power & Light Companies argue that the Commission has previously entertained as-applied challenges to the MISO Tariff, noting that although “the [MISO Tariff] has been accepted for filing, it does not follow that a transmission customer whose transmission service agreements have been transferred to [MISO] cannot raise an issue of material fact as to whether the [MISO Tariff] is just and reasonable as applied to it.”¹⁷ The Kansas City Power & Light Companies contend that their protest in this proceeding was just such an as-applied challenge and that the Commission’s failure to distinguish its precedent, or to enunciate a reasoned basis for departing from it is arbitrary and capricious.¹⁸

13. The Kansas City Power & Light Companies also argue that the Commission erred by failing to consider that the Crossroads TSA contains terms and conditions that reference provisions of the Entergy OATT that do not parallel provisions of the MISO Tariff, and cannot be implemented without an amendment. The companies assert that acceptance of the Notice of Succession without addressing such compatibility issues is arbitrary and capricious, that the assignment of the Crossroads TSA fundamentally alters

¹⁴ *Id.* at 12-13.

¹⁵ *Id.* at 15.

¹⁶ *Id.* at 10 (citing *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970); *North Carolina Utils. Comm’n v. FERC*, 42 F.3d 659 at 666 (D.C. Cir. 1994)).

¹⁷ *Id.* at 18 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,208, at P 10 (2005)).

¹⁸ *Id.* at 19.

the contractual agreement that the companies entered into, and that under the FPA, such changes cannot go into effect without review.¹⁹

14. The Kansas City Power & Light Companies raise additional arguments, including, among other things, that the Commission must base its actions on reasoned and principled decision-making that can be ascertained from the record; that the Commission is required to address all legitimate issues raised before it; and that the companies were not provided with any notice in the Entergy-ITC Rates Proceeding that the rate under the Crossroads TSA would increase.²⁰ The Kansas City Power & Light Companies also assert that the Notice of Succession Order contradicts the Entergy-ITC Rates Order, which stated that parties would have the opportunity to raise any concerns at the time the notice of succession was filed with the Commission. The Kansas City Power & Light Companies assert that they have done exactly that.²¹

15. Finally, the Kansas City Power & Light Companies request clarification regarding the Commission's grant of waiver to MISO in response to MISO's request that the Commission waive any regulations that the Commission may deem applicable to the Notice of Succession Filing that have not been specifically addressed in the filing.²² The companies request clarification that this "very general, unspecific grant" is not intended to waive the substantive FPA requirements regarding submittal or approval of a rate increase.²³ In the alternative, the Kansas City Power & Light Companies argue that, if this result was the Commission's intention, the Commission erred because MISO's filing failed to mention the rate increase under the Crossroads TSA, and therefore it would be arbitrary and capricious to read MISO's request as somehow pertaining to the rate increase, and it would be arbitrary and capricious to silently find that MISO has met its burden of demonstrating that such waiver is justified.²⁴

¹⁹ *Id.* at 21.

²⁰ *Id.* at 13-15.

²¹ *Id.* at 19.

²² *Id.* at 10 (quoting Notice of Succession Filing, Transmittal Letter at 5).

²³ *Id.* at 10-11.

²⁴ *Id.* at 11.

III. Commission Determination

16. We deny rehearing. In the Notice of Succession Order, the Commission found that several parties, including the Kansas City Power & Light Companies, had raised various issues relating to the MISO RTOR in the Entergy-ITC Rates Proceeding. The Commission stated that it would address those issues in that proceeding rather than in this proceeding.²⁵ Subsequent to the issuance of the Notice of Succession Order, the Commission established an investigation pursuant to FPA section 206 to address those issues.²⁶ Accordingly, because the issues related to the MISO RTOR will be addressed in the hearing and settlement judge procedures established by the Commission under FPA section 206, the Commission affirms the Notice of Succession Order, and denies the request for rehearing.

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁵ Notice of Succession Order 145 FERC ¶ 61,249 at P 22.

²⁶ See Entergy-ITC Rates Rehearing Order, 146 FERC ¶ 61,111 at P 75. The Commission instituted an FPA section 206 proceeding in Docket No. EL14-19-000, established a refund effective date, and consolidated the Entergy-ITC Rates Proceeding with that docket. *Id.* P 76.