

151 FERC ¶ 61,263
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Holdings Corp. Entergy Corporation Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER12-2681-003
Entergy Services, Inc.	ER13-948-002
ITC Arkansas LLC	ER13-782-002
ITC Texas LLC	(consolidated)
ITC Louisiana LLC	
ITC Mississippi LLC	
Midcontinent Independent System Operator, Inc.	EL14-19-001
Entergy Services, Inc.	ER12-2683-002
Midcontinent Independent System Operator, Inc.	ER12-2682-003
	(not consolidated)

ORDER ON REHEARING

(Issued June 26, 2015)

1. In this order, the Commission denies rehearing of the Commission's February 20, 2014 order,¹ which addressed, *inter alia*, the rates for service over the facilities of certain

¹ *ITC Holdings Corp.*, 146 FERC ¶ 61,111 (2014) (Rates Rehearing Order).

subsidiaries of Entergy Corporation (Entergy)² upon their integration into the Midwest Independent Transmission System Operator, Inc. (MISO).³

I. Background

2. On June 20, 2013, the Commission issued several orders conditionally accepting certain proposed tariff revisions submitted under section 205 of the Federal Power Act (FPA)⁴ and Part 35 of the Commission's regulations,⁵ and accepting and suspending certain proposed tariff revisions and establishing hearing and settlement judge procedures.⁶ In the Rates Order, the Commission addressed two separate proposals regarding the integration of the Entergy Operating Companies' transmission facilities into MISO: (1) Docket No. ER13-948-000, which addressed the integration of the Entergy Operating Companies into MISO; and (2) Docket Nos. ER12-2681-000 and ER13-782-000, which addressed the section 205 issues raised by a proposed transaction in Docket No. EC12-145-000 pursuant to which the transmission assets of the Entergy Operating Companies would be transferred to certain newly formed subsidiaries of ITC Holdings Corp. (ITC) (New ITC Operating Companies) (Entergy-ITC Transaction) prior to the integration of those transmission assets into MISO.⁷

² Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc. (collectively, Entergy Operating Companies).

³ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

⁴ 16 U.S.C. § 824d (2012).

⁵ 18 C.F.R. Part 35 (2014).

⁶ *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (Rates Order), *order on reh'g*, Rates Rehearing Order, 146 FERC ¶ 61,111; *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,258 (2013); *Entergy Services, Inc.*, Docket No. ER12-2683-000 (June 20, 2013) (delegated letter order).

⁷ We refer to the consolidated proceedings as the Entergy-ITC Rates Proceeding. On December 13, 2013, the New ITC Operating Companies filed a motion to withdraw the filings in Docket Nos. ER12-2681-000 and ER13-782-000. Further, on December 13, 2013, ITC and Entergy filed a Notice of Termination of Transaction in Docket No. EC12-145-000, notifying the Commission that the Entergy-ITC Transaction would not occur.

3. The Commission denied requests that the Commission confirm that ITC Holdings and MISO will apply the Entergy transition plan for Multi-Value Project (MVP) and non-MVP network upgrade costs to the transmission rates of all Entergy customers, including point-to-point customers.⁸ The Commission also found that any request to receive similar treatment as that provided in the Entergy Cost Allocation proceeding was beyond the scope of the instant proceeding. Additionally, the Commission found that Associated Electric Cooperative Corporation (Associated Electric Cooperative) was being treated comparably to similarly situated customers who were requesting regional through and out transmission service on MISO's transmission system, because any other customers seeking regional through and out transmission service across Entergy's transmission system would be charged the same rate that Associated Electric Cooperative would be charged.⁹ The Commission, among other things: (1) accepted the proposed transmission pricing zones for the Entergy Operating Companies; and (2) accepted and suspended the Entergy Operating Companies' MISO Attachment O formula rates, summarily resolved certain issues concerning those rates, and established hearing and settlement judge procedures to address the remaining issues concerning those rates.

4. Several parties filed requests for rehearing and/or clarification of the Rates Order. As relevant here, certain parties¹⁰ asked the Commission to confirm that issues they had raised regarding the application to pre-existing Entergy transmission customers of the proposed through and out rates (RTOR) for the MISO South region were among the issues set for hearing in the Rates Order and that such issues were not summarily resolved in the Rates Order. They also argued that, if the Commission did not set the RTOR issue for hearing, the Commission should do so in light of a significant rate increase that would result from Entergy's integration into MISO.

5. On February 20, 2014, the Commission granted the requests for rehearing on the RTOR issue, instituted an FPA section 206 proceeding in Docket No. EL14-19-000,

⁸ Rates Order, 143 FERC ¶ 61,257 at P 171. In the Entergy Cost Allocation proceeding in Docket No. ER12-480-000, MISO and the MISO Transmission Owners proposed amendments to the MISO Tariff to provide for a five-year transition period for the integration of Entergy into the MISO transmission planning and cost allocation process. The proposed tariff amendments were conditionally accepted by the Commission on April 19, 2012. *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,056, *order on reh'g and compliance*, 141 FERC ¶ 61,128 (2012).

⁹ Rates Order, 143 FERC ¶ 61,257 at P 171.

¹⁰ Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company (GMO) and Empire District Electric Company (collectively, Kansas-Missouri Companies) and Associated Electric Cooperative.

established a refund effective date of February 27, 2014, and established hearing and settlement judge procedures.¹¹ In the Rates Rehearing Order, the Commission determined that, upon further consideration of the arguments made by the Kansas-Missouri Companies and Associated Electric Cooperative on rehearing, MISO's proposed RTOR for service over the transmission system in the MISO South region raised issues of material fact that could not be resolved based on the record. However, the Commission reasoned that because it had accepted MISO's proposed RTOR for service over the transmission system in the MISO South region in the Rates Order without suspension or setting it for hearing, it would institute a section 206 proceeding to address the issues raised regarding MISO's proposed RTOR. In order to give maximum protection to customers, and consistent with Commission precedent, the Commission established a refund effective date at the earliest date allowed – the date on which notice of the proceeding in Docket No. EL14-19-000 was published in the *Federal Register*.

II. Request for Rehearing

6. The Kansas-Missouri Companies filed a request for rehearing of the Rates Rehearing Order raising two issues. First, the Kansas-Missouri Companies argue that the Commission erred in failing to clarify on rehearing that the RTOR issues were not summarily resolved in the Rates Order, but were among the issues set for hearing and settlement judge procedures subject to refund. The Kansas-Missouri Companies assert that the Commission erred in allowing a rate that has not been shown to be just and reasonable to go into effect over the unaddressed and unresolved objections of customers subject to that rate. They contend that these errors improperly shift the burden of proof from the applicants in these proceedings to the Kansas-Missouri Companies, thereby excusing the applicants from their statutory burden of demonstrating that the rate increase they had proposed is just and reasonable.¹² Second, the Kansas-Missouri Companies argue that the Commission erred in failing to suspend the effectiveness of the application of the RTOR to the MISO South region from the initial date the application of that rate to the MISO South region became effective, i.e., December 19, 2013.

III. Discussion

7. We deny rehearing of the Commission's finding in the Rates Rehearing Order that the RTOR issue was not among the issues that were set for hearing and settlement judge procedures in the Rates Order. In the Rates Order, the Commission stated that it was setting the issues raised in that proceeding for hearing except for the issues summarily resolved in that order. One of the issues addressed was the RTOR issue raised by

¹¹ Rates Rehearing Order, 146 FERC ¶ 61,111.

¹² Kansas-Missouri Companies Request for Rehearing at 9-11.

Associated Electric Cooperative about similarly situated customers receiving regional through and out transmission service. The Commission also addressed other RTOR-related issues in the Merger Order.¹³ In the Rates Rehearing Order, the Commission stated that it accepted MISO's proposed RTOR for service over the transmission system in the MISO South region. However, we clarify that, specifically, the Rates Order, among other things, accepted: (1) revisions to Schedules 7, 8, and 9, which define the boundaries of the transmission pricing zones, to reflect the inclusion of the Entergy Operating Companies' transmission system under the MISO Tariff through the addition of four new transmission pricing zones; and (2) the Entergy Operating Companies' MISO Attachment O formula rate template, which is used to calculate their license plate zonal rates and the MISO regional average RTOR. Thus, the Commission accepted proposed tariff provisions to reflect the integration of the Entergy Operating Companies' transmission system into MISO under MISO's existing filed rate, the RTOR. While the Commission suspended the Entergy Operating Companies' formula rate templates, made them subject to refund, and set them for hearing and settlement judge procedures, the RTOR was MISO's existing filed rate applicable for regional through and out transmission service throughout the MISO footprint. Thus, the Commission was required in the Rates Rehearing Order to proceed under section 206 to establish a proceeding to address issues raised regarding the justness and reasonableness of that rate design. The Commission would have been required to proceed under section 206 even if it had made this determination in the Rates Order. Likewise, because the RTOR was the filed rate, MISO did not have the burden to demonstrate that the RTOR was just and reasonable. Accordingly, we disagree with Kansas-Missouri Companies' argument that the Commission improperly shifted the burden of proof by establishing hearing and settlement judge procedures under section 206 of the FPA rather than section 205, and affirm the Commission's determination that action under section 206 of the FPA was required.

8. When the Commission establishes a section 206 proceeding on its own motion, the earliest refund effective date that the Commission can establish is "the date of the publication by the Commission of notice of its intention to initiate such proceeding..."¹⁴ Accordingly, in order to give maximum protection to customers, the Commission established a refund effective date of February 27, 2014, the date that the notice for the section 206 proceeding established in the Rates Rehearing Order was published in the *Federal Register*. We affirm the refund effective date established in the Rates Rehearing Order.

¹³ See *ITC Holdings Corp.*, 143 FERC ¶ 61,256, at PP 100-40 (2013).

¹⁴ 16 U.S.C. § 824e(b) (2012).

The Commission orders:

The Kansas-Missouri Companies' 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.