

151 FERC ¶ 61,269
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. ER15-358-001

ORDER GRANTING CLARIFICATION AND DENYING REHEARING

(Issued June 30, 2015)

1. In this order, we grant a motion for clarification by Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) and Southern Illinois Power Cooperative (Southern Illinois), and deny a request for rehearing by the Coalition of MISO Transmission Customers (MISO Coalition), of the Commission's order issued January 5, 2015.¹

I. Background

2. On November 6, 2014 (November 6 Filing), pursuant to sections 205 and 219 of the Federal Power Act (FPA)² and section 35.13 of the Commission's regulations,³ the MISO Transmission Owners⁴ filed revisions to the generic and company-specific

¹ *Midcontinent Independent System Operator, Inc.*, 150 FERC ¶ 61,004 (2015) (January 5 Order).

² 16 U.S.C. §§ 824e, 824s (2012).

³ 18 C.F.R. § 35.13 (2014).

⁴ The MISO Transmission Owners for the November 6 Filing consist 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 (ATC); 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); ITC Midwest LLC;

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Attachment O formula rate templates of Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to implement a 50-basis point adder (RTO Adder) to their authorized rate of return on equity (ROE), based on the MISO Transmission Owners' participation as members in a regional transmission organization (RTO).⁵

3. In the January 5 Order, the Commission granted the MISO Transmission Owners' request to implement the RTO Adder, 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 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 (Complaint Proceeding).⁶ The Commission accepted the proposed Attachment O revisions for filing and suspended them for a nominal period, to become effective January 6, 2015, subject to refund, and subject to the outcome of the Complaint Proceeding.⁷ The Commission also accepted the MISO Transmission Owners' request to defer collection of the RTO Adder pending the outcome of the Complaint Proceeding.⁸

4. In response to concerns raised by intervenors about the ability of MISO transmission owners who were not participants in the November 6 Filing to also implement the RTO Adder, the Commission held:

Consistent with the way that the generally applicable MISO ROE is available for use by any MISO transmission owner, we affirm that the RTO

Michigan Electric Transmission Company, LLC (METC); 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 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 MISO was also a party to the filing solely in its role as the administrator of its Tariff.

⁶ January 5 Order, 150 FERC ¶ 61,004 at P 45 (citing *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014) (Complaint Hearing Order)).

⁷ *Id.*

⁸ *Id.* P 47.

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. However, those entities utilizing an Attachment O formula that has not been revised to reflect the RTO Adder in the instant proceeding will need to make a filing under section 205 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.^{9]}

II. Requests for Clarification and Rehearing

5. On February 4, 2015, Hoosier and Southern Illinois filed a motion for clarification or, in the alternative, rehearing of the January 5 Order. Hoosier and Southern Illinois state that they are MISO transmission owners that did not join in the November 6 Filing. They state that they are therefore directly affected by the Commission's determination that the RTO Adder should be available to all MISO transmission owners. However, as rural electric cooperatives that receive financing from the Rural Utilities Service, they state that neither Hoosier nor Southern Illinois is a public utility under section 201(f) of the FPA,¹⁰ and thus neither is able to make a filing under section 205 of the FPA. Therefore, Hoosier and Southern Illinois seek clarification that the January 5 Order contemplated that a filing to implement the RTO Adder in the Attachment O formula of a non-jurisdictional transmission owner not included in the November 6 Filing would be submitted by MISO on behalf of that transmission owner, rather than by the transmission owner itself. In the alternative, if the Commission intended to require that entities utilizing an Attachment O formula must themselves make the section 205 filing, then Hoosier and Southern Illinois seek rehearing on the grounds that such a procedure would require an impossible act – submission of a filing pursuant to section 205 by an entity that is not a public utility – and would be unjust and unreasonable, and unduly discriminatory.¹¹

⁹ *Id.* P 48 (footnote omitted).

¹⁰ 16 U.S.C. § 824(f) (2012).

¹¹ Hoosier and SPIC Motion for Clarification or Rehearing at 3-4. We note that on March 10, 2015, in Docket No. ER15-1210-000, MISO submitted in its role as administrator of the Tariff, on behalf of Hoosier and Southern Illinois pursuant to sections 205 and 219 of the FPA, a filing to seek Commission approval to implement a 50 basis-point RTO Adder to the authorized ROE for participation in MISO in the revenue requirements of Hoosier and Southern Illinois included in Attachment O-RUS Non-Levelized Generic Rate Formula Template under the MISO Tariff. On May 8,

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6. On February 4, 2015, MISO Coalition filed a request for rehearing of the January 5 Order. MISO Coalition disputes the Commission's determination that the MISO Transmission Owners "need not provide additional justification as to the necessity of the incentive" and that, rather, they are "presumed eligible" for the incentive because they have already joined MISO and their membership is ongoing.¹² MISO Coalition states that the Commission rejected protestors' arguments, including those presented by MISO Coalition, that the RTO Adder would not yield consumer benefits. MISO Coalition states that, under section 205 of the FPA, the MISO Transmission Owners, as the filing parties, have the burden of proof to show that the proposed RTO Adder is just and reasonable. However, MISO Coalition contends that the Commission improperly shifted onto the protestors the burden of proof to demonstrate that the proposed RTO Adder is unjust and unreasonable because the proposal fails to yield the type of benefits contemplated by section 219 of the FPA.¹³

7. In addition, MISO Coalition argues that, based on the plain language of Order No. 679,¹⁴ the MISO Transmission Owners were required to provide justification for their proposed RTO Adder, but they have failed to do so.¹⁵ While the Commission noted that its approval of the RTO Adder for the MISO Transmission Owners was based on their commitment to continue being members of MISO, MISO Coalition asserts that there is no minimum commitment period and the January 5 Order does not require the MISO Transmission Owners to remain with MISO any longer than if the proposed RTO Adder had been rejected. MISO Coalition states that many of the MISO Transmission Owners have been MISO members for over a decade without ever receiving the incentive of an

2015, the Commission conditionally accepted Hoosier and Southern Illinois's March 10 filing, subject to a compliance filing. *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,104 (2015).

¹² MISO Coalition Request for Rehearing at 3 (citing January 5 Order, 150 FERC ¶ 61,004 at P 41).

¹³ *Id.* at 3-4.

¹⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

¹⁵ MISO Coalition Request for Rehearing at 4 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326 (the Commission "will approve, *when justified*, requests for ROE-based incentives for public utilities that join and/or continue to be a member of an . . . RTO.)) (Emphasis supplied by MISO Coalition).

RTO Adder and, therefore, there is no threat that they would leave if they are unable to collect the RTO Adder.¹⁶

8. In addition, MISO Coalition argues that there must be a showing that the benefits and costs of incentives must be roughly proportional and that the MISO Transmission Owners have not demonstrated that the RTO Adder would yield benefits that are equal to or greater than the amount that customers would be required to pay if the Commission's approval of the RTO Adder is affirmed, i.e., approximately an additional \$50 million annually, according to MISO Coalition. MISO Coalition contends that the RTO Adder is a large windfall for the MISO Transmission Owners with no realizable corresponding benefit.¹⁷

9. Finally, MISO Coalition disputes the January 5 Order's reliance on cases in which the Commission approved 50-basis point adders for RTO participation, arguing that the Commission must consider incentives on a case-by-case basis, and not on a generic basis, to fulfill its Congressional mandate.¹⁸

III. Discussion

10. We grant the motion for clarification by Hoosier and Southern Illinois. With respect to their concern, we clarify that where a MISO transmission owner is not subject to the Commission's jurisdiction under section 205 of the FPA, it does not need to make its own filing to request the revision to its Attachment O formula to implement the RTO Adder. It may instead rely upon MISO to make such a filing on its behalf.

11. We deny MISO Coalition's request for rehearing. First, the MISO Transmission Owners met their burden of proof under section 205 of the FPA. It is undisputed that the MISO Transmission Owners are members of MISO and have turned operational control of their transmission systems over to MISO, and it is undisputed that they made such showing.¹⁹ The January 5 Order requires a showing that the resulting ROE with the ROE

¹⁶ *Id.*

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* at 5 (citing January 5 Order, 150 FERC ¶ 61,004 at n.100).

¹⁹ *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326 (any entity is eligible for the ROE incentive for RTO participation incentive if it can demonstrate that it has joined an RTO and that its membership is ongoing); Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86 (same). *See also, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,050, at P 23 (2015) (a utility must turn over operational control of its transmission facilities to an RTO, or in the case of MISO transmission owners'

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Adder for RTO membership be just and reasonable, but granted a waiver of the necessity to provide cost support in this proceeding because issues related to the just and reasonable ROE are being addressed in the Complaint Proceeding.

12. Further, MISO Coalition's argument that there is no minimum commitment period for the MISO Transmission Owners to remain members of MISO is misplaced. No minimum commitment period is necessary. If a MISO Transmission Owner withdraws from MISO, it would no longer be eligible to receive an RTO Adder based on on-going membership in MISO.²⁰

13. In addition, MISO Coalition's argument that the MISO Transmission Owners failed to show benefits commensurate with the costs of the RTO Adder overlooks that in Order No. 679-A, the Commission found that encouraging both new and continuing RTO membership provides reliability and cost benefits consistent with the statutory goals of section 219 of the FPA. The RTO Adder is not subject to a test that the public utility would not be a member of the RTO but for the incentive, as MISO Coalition suggests. Rather, in Order No. 679-A, the Commission determined as follows:

We affirm the finding in the Final Rule that the incentive applies to all utilities joining transmission organizations, irrespective of the date they join, based on a reading of section 219 in its entirety. Section 219 specifically provides that "the Commission shall . . . provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization." The stated purpose of section 219 is to provide incentive-based rate treatments that benefit consumers by ensuring reliability and reducing the cost of delivered power. We consider an inducement for utilities to join, and remain in, Transmission Organizations to be entirely consistent with those purposes. The consumer benefits, including reliability and cost benefits, provided by Transmission Organizations are well documented, and the best way to ensure those benefits are spread to as many consumers as possible is to provide an incentive that is widely available to member utilities of Transmission Organizations and is effective

transmission facilities that do not qualify for such transfer, provide service over such facilities through the MISO Tariff with MISO acting as agent pursuant to Appendix G of the Transmission Owners Agreement); *Northeast Transmission Development, LLC*, 135 FERC ¶ 61,244, at P 73 (2011); *Atlantic Grid Operations A LLC*, 135 FERC ¶ 61,144, at P 75 (2011).

²⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 327 (requiring that membership in an RTO be "on-going" in order to be eligible for the RTO participation incentive).

for the entire duration of a utility's membership in the Transmission Organization. To limit the incentive to only utilities yet to join Transmission Organizations offers no inducement to stay in these organizations for members with the option to withdraw, and hence risks reducing Transmission Organization membership and its attendant benefits to consumers. Because the incentive is applicable to utilities that join Transmission Organizations and is consistent with the requirements of section 219 of the FPA, the incentive complies with EAct 2005 and the FPA.^[21]

In making that determination, the Commission also explained that its approach was consistent with the goal of Order No. 2000.²²

²¹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86.

²² *Id.*:

In Order No. 2000, in which the Commission's goal was to promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service, the Commission stated that:

These benefits [of RTOs] will include: increased efficiency through regional transmission pricing and the elimination of rate pancaking; improved congestion management; more accurate estimates of [available transmission capacity]; more effective management of parallel path flows; more efficient planning for transmission and generation investments; increased coordination among state regulatory agencies; reduced transaction costs; facilitation of the success of state retail access programs; facilitation of the development of environmentally preferred generation in states with retail access programs; improved grid reliability; and fewer opportunities for discriminatory transmission practices. All of these improvements to the efficiencies in the transmission grid will help improve power market performance, which will ultimately result in lower prices to the Nation's electricity consumers.

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14. Finally, the fact that entities request the same level of ROE Adder for RTO membership that other entities have been granted does not mean that granting such a request makes an RTO adder the Commission's "generic" adder. Indeed, in Order No. 679, the Commission declined to create a generic adder for such membership.²³ The Commission's granting of the requested 50-basis point ROE Adder for RTO membership is 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 and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash-flow analysis. This is consistent with our determinations in other cases involving applicants for incentives, such as the cases cited in the January 5 Order.

The Commission orders:

(A) Hoosier and Southern Illinois's request for clarification is hereby granted, as discussed in the body of this order.

(B) MISO Coalition's 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,024 [(1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)].

²³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326.