

153 FERC ¶ 61,240
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER15-2724-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued November 24, 2015)

1. On September 25, 2015, pursuant to sections 205 and 219 of the Federal Power Act (FPA),¹ and section 35.13 of the Commission's regulations,² Midcontinent Independent System Operator, Inc. (MISO) and Missouri River Energy Services (Missouri River), on behalf of Marshall Municipal Utilities (Marshall) (collectively, Filing Parties), filed proposed revisions to Attachment O – Marshall Formula Rate Template of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) (September 25 Filing).³ Filing Parties propose to implement a 50-basis point adder (RTO Adder) to Marshall's authorized rate of return on equity (ROE) recognizing its continuing participation in MISO, a regional transmission organization (RTO). In addition, Filing Parties also submit several revisions to Marshall's formula rate protocols. We accept the proposed Tariff revisions, effective November 25, 2015. We also accept Marshall's request to defer collection of the RTO Adder pending the outcome of the complaint proceeding in Docket No. EL14-12-000⁴, as discussed below.

¹ 16 U.S.C. §§ 824d, 824s (2012).

² 18 C.F.R. § 35.13 (2015).

³ The filing states that MISO joins in this filing in its capacity as administrator of the Tariff but takes no position on the substance of this filing.

⁴ See *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014) (First Complaint Order).

I. Background

2. In Docket No. EL14-12-000, the Commission issued an order granting in part a complaint that alleged that the current 12.38 percent base ROE allowed for transmission owning members of MISO is unjust and unreasonable. The Commission established hearing and settlement judge procedures with respect to that base ROE,⁵ and set a refund effective date of November 12, 2013, for the base ROE. In Docket No. EL15-45-000, the complainants also alleged that the current 12.38 percent base ROE allowed for MISO transmission owners is unjust and unreasonable, and in the Second Complaint Order,⁶ the Commission established hearing and settlement judge procedures and a refund effective date of February 12, 2015 for the MISO transmission owners' base ROE.⁷

3. On November 6, 2014, a group of MISO transmission owners (MISO Transmission Owners)⁸ submitted revisions to their Attachment O formula rate templates 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. On January 5,

⁵ First Complaint Order, 149 FERC ¶ 61,049 at P 183.

⁶ *Arkansas Electric Cooperative Corporation v. ALLETE, Inc.*, 151 FERC ¶ 61,219 (2015) (Second Complaint Order).

⁷ Collectively, the proceedings in Docket Nos. EL14-12-000 and EL15-45-000 are referred to herein as the Complaint Proceedings.

⁸ 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 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.

2015, the Commission accepted and nominally suspended the MISO Transmission Owners' proposed RTO Adder to become effective January 6, 2015, subject to refund.⁹ Acceptance of the RTO Adder was 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 Docket No. EL14-12-000.¹⁰ The Commission also accepted the MISO Transmission Owners' request to defer collection of the RTO Adder pending the outcome of the proceeding in Docket No. EL14-12-000.

4. In the RTO Adder 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.¹¹ However, the Commission determined that those entities utilizing an Attachment O formula rate 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.¹²

5. On May 8, 2015, the Commission granted requests for the 50-basis point adder for Hoosier Energy Rural Electric Cooperative (Hoosier) and Southern Illinois Power

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004 (2015) (TO Adder Order).

¹⁰ The complaint in Docket No. EL15-45-000 had not yet been filed when the MISO Transmission Owners' filing was made.

¹¹ TO Adder Order, 150 FERC ¶ 61,004 at P 48 (2015) (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 Midwest Holdings, LLC 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)).

¹² *Id.*

Cooperative (SIPC).¹³ Both Hoosier and SIPC are non-public utility TOs within MISO similarly situated to Marshall. The Commission accepted the requests for the RTO adder subject to refund pending the outcome of the proceeding in Docket No. EL14-12-000 and the condition that Hoosier and SIPC commit to provide refunds consistent with any proceedings that establish a new base ROE or a new zone of reasonableness for MISO transmission owners' base ROE.¹⁴

II. The September 25 Filing

6. Marshall states that the instant filing is modeled after the MISO Transmission Owners' November 6, 2014 filing to implement an RTO Adder, and that it seeks the same relief as the MISO Transmission Owners.¹⁵ Marshall further states that subsequent to that filing, Hoosier and SIPC – both non-public utility transmission owners within MISO – were granted the 50-basis point adder on May 8, 2015.¹⁶ Specifically, Marshall requests the following: (1) approval of its ability to apply the RTO Adder in its MISO Tariff Attachment O formula rate in accordance with the TO Adder Order; (2) authorization to defer collection of the RTO Adder until after the issuance of a final order in Docket No. EL14-12-000; and (3) an effective date of January 6, 2015, the same effective date established by the Commission for MISO Transmission Owners' RTO Adder.

7. Marshall states that it qualifies for the RTO Adder on the same basis as the MISO Transmission Owners and Hoosier/SIPC who were approved for the RTO Adder in the TO Adder Order and the Coop Adder Order, respectively, because (1) Marshall's applicable transmission assets are included in MISO, (2) Marshall uses the generally applicable MISO ROE, and (3) Marshall intends to continue as a transmission-owning member of MISO on an on-going, voluntary basis.¹⁷

¹³ *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,104 (2015) (Coop Adder Order).

¹⁴ *Id.* P 27.

¹⁵ For ease of reference, the assertions and requests that Filing Parties make on behalf of Marshall will be attributed to Marshall.

¹⁶ September 25 Filing at 2 (citing Coop Adder Order).

¹⁷ Marshall, a Minnesota municipal utility, states that it is not a Commission-jurisdictional transmission owner but that it is nonetheless eligible for the RTO

8. Marshall requests waiver of the Commission's prior notice requirement, to allow its requested effective date of January 6, 2015. Marshall contends that good cause exists to grant waiver of notice, i.e., to avoid transmission settlement billing adjustments and also to keep the effective date consistent with the MISO Transmission Owners' filing.¹⁸

9. Marshall requests deferred collection of the RTO Adder until the Commission issues an order in Docket No. EL14-12-000 in which the Commission will establish a zone of reasonableness for the MISO transmission owners' ROE. Marshall states that deferral of collection will safeguard Marshall against charging rates above the upper end of the range of reasonable returns. Marshall states that, consistent with the MISO Transmission Owners' proposal as ordered by the Commission, it will rely on the zone of reasonableness established by the Commission in Docket No. EL14-12-000 to govern the application of the RTO Adder.¹⁹

10. In addition, consistent with MISO's proposed revisions to its formula rate protocols filed on February 13, 2015, in Docket No. ER13-2379, and accepted in a Commission letter order on August 21, 2015, MISO submits revised protocols for Marshall which: (1) change the formal challenge from March 31 to April 15 each year, providing an additional 15 days; and (2) make clear that a Formal Challenge may follow an Informal Challenge on any issue during the review period.²⁰

11. Marshall also requests waiver of portions of section 35.13 of the Commission's regulations 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. Marshall states that this information would merely duplicate the exhibits and testimony that have been or may be filed in Docket No. EL14-12-000, given that Marshall agrees, for the purpose of implementing the RTO Adder, to

participation adder. *Id.* at 6, n.29. 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 and Elec. Co. v. FERC*, 306 F.3d 1112, 1114 (D.C. Cir. 2002)).

¹⁸ September 25 Filing at 7.

¹⁹ *Id.* at 8, n.33.

²⁰ *Id.*

adhere to any range of reasonable returns that the Commission may establish in Docket No. EL14-12-000.²¹

III. Notice of Filing and Responsive Pleadings

12. Notice of the September 25 Filing was published in the *Federal Register*, 80 Fed. Reg. 59,760 (2015), with interventions and protests due on or before October 16, 2015. Marshall, Missouri River, and a group of MISO transmission owners (TO Intervenor)²² filed timely motions to intervene.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the TO Intervenor, Marshall, and Missouri River parties to this proceeding.

²¹ *Id.*

²² The TO Intervenor consist of the following: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a 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 Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Indianapolis Power & Light Company; International Transmission Company d/b/a 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; Otter Tail Power Company; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wolverine Power Supply Cooperative, Inc.

B. Substantive Matters

1. Marshall's Request for the RTO Adder

14. The Commission accepts the September 25 Filing, as discussed below. We grant Marshall'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.²³ We find that Marshall has demonstrated that it is qualified to receive the requested 50-basis point adder. Our approval of this incentive is based on Marshall's commitment to continue being a member of MISO.

15. 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.²⁴ 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.²⁵ The Commission subsequently issued Order No. 679,²⁶ which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA, including the incentive requested here by Marshall.

16. Additionally, our acceptance of the RTO Adder is conditioned upon a voluntary commitment by Marshall to (1) provide refunds, with interest at Commission refund interest rates, to the extent that the ROE or zone of reasonableness established in the Complaint Proceedings when applied as of the refund effective date in the Complaint Proceedings would result in a lower revenue requirement than that charged by Marshall,

²³ 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).

²⁴ 16 U.S.C. § 824s(a), (b) (2012).

²⁵ *Id.*

²⁶ *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 clarification*, 119 FERC ¶ 61,062 (2007).

and (2) provide refunds, with interest at Commission refund interest rates, consistent with any refund effective date established in any other proceedings resulting in a new base ROE or a new zone of reasonableness for the MISO transmission owners' base ROE, 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 Marshall.²⁷ Filing Parties have included these conditions in their proposed revisions to Note P to Marshall's formula rate template.²⁸

17. 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 – Marshall Rate Formula Template of the Tariff to become effective November 25, 2015, subject to the RTO Adder being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash-flow analysis and 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 Proceedings, and make the proposed revisions subject to the outcome of the Complaint Proceedings.

18. Because we are accepting the proposed revisions subject to the outcome of the Complaint Proceedings 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 Marshall'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.

²⁷ See *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,050, at P 24 (2015). These voluntary refund commitments are necessary because Marshall states that 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.

²⁸ Although Filing Parties' revisions to Note P refer to Docket No. EL14-12-000 in the first commitment, the second commitment would encompass Docket No. EL15-45-000 as well.

19. We accept the proposed revisions to Marshall's formula rate protocols. We also accept Marshall's proposal to defer collection of the RTO Adder pending the outcome of the proceeding in Docket No. EL14-12-000, which should promote administrative efficiency.

2. Marshall's Request for Waiver of Prior Notice Requirement

20. We deny Marshall's request for waiver of the 60-day prior notice requirement for failure to show good cause. Absent waiver, public utilities must provide the Commission at least 60 days prior notice before any proposed rate, term, or condition is to become effective.²⁹ Therefore, the earliest date that proposed rates, terms, or conditions may become effective, absent waiver, is the day after the 60-day prior notice period has expired, which in this case is November 25, 2015.

The Commission orders:

The September 25 Filing is hereby accepted, effective November 25, 2015, subject to the outcome of the Complaint Proceedings, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁹ 16 U.S.C. § 824d(d) (2012); 18 C.F.R. § 35.3 (2015).