153 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. Docket No. ER08-394-030

ORDER DENYING REHEARING

(Issued November 30, 2015)

1. On May 27, 2011, Illinois Municipal Electric Agency (Illinois Municipal) filed a request for rehearing of the Commission's April 27, 2011 order,[1] which accepted the Midwest Independent Transmission System Operator, Inc.'s (MISO)[2] revised annual Cost of New Entry (CONE)[3] value of $90,000 per MW for the 2010/2011 Planning Year. As discussed below, we deny Illinois Municipal's request for rehearing.

I. <u>Background</u>

2. On April 16, 2009, the Commission found that MISO's initial annual CONE value of $80,000 per MW was just and reasonable, and on December 15, 2011, the Commission denied Illinois Municipal's request for rehearing of the April 2009 Order.[4]

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[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,082 (2011) (April 2011 Order).

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

[3] In the 2010/2011 Planning Year, CONE was defined as the capital, operating, financial, and other costs of acquiring a new Generation Resource within the MISO region. MISO, FERC Electric Tariff, Third Revised Vol. No. 1 (March 1, 2009).

[4] *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,054 (2009) (April 2009 Order), *order on reh'g and compliance*, 137 FERC ¶ 61,213 (2011) (December 2011 Order).

3. On July 31, 2009, MISO filed its first revised annual CONE value of $90,000 per MW for the 2010/2011 Planning Year.[5] In its April 2011 Order, the Commission accepted the revised annual CONE value of $90,000 per MW to be effective June 1, 2010. The Commission stated that MISO's revised CONE value was calculated using the Market Monitor's 2008 State of the Market Report for MISO, reflecting the same methodology and assumptions that were used in its calculation of the initial CONE value, but with an updated capital cost estimate.[6] The Commission noted that the April 2009 Order found that the assumptions used by MISO and the Market Monitor for the initial CONE value were just and reasonable, and that MISO's calculation of its initial CONE value appeared to be consistent with CONE values used in other regional transmission organizations (RTOs). The Commission also found that no party provided a basis either to revisit that decision, or to question the justness and reasonableness of MISO's methodology for calculating the initial CONE value. Accordingly, the Commission concluded that the methodology and assumptions for the revised CONE value used by MISO and the Market Monitor, including the updated capital cost estimate, continued to be just and reasonable.[7]

4. The Commission attributed the increased CONE value to the capital cost estimate. The Commission explained that the $638 per kW capital cost estimate for the revised CONE value was based on analysis developed by the Energy Information Administration for the 2009 Annual Energy Outlook, whereas MISO used the 2008 Annual Energy Outlook to determine the $555 per kW capital cost estimate used to establish the initial annual CONE value. The Commission found that MISO's use of the 2009 Annual Energy Outlook, reflecting capital cost information that updated the earlier analysis used in the previous year's CONE estimate, for its increased capital cost estimate was just and reasonable.[8]

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[5] MISO, Compliance Filing, Docket No. ER08-394-023 (filed July 31, 2009) (July 2009 Filing).

[6] MISO explained that the calculation of its proposed revised annual CONE value of $90,000 per MW included the following assumptions: (1) a 5 percent contingency factor; (2) a 7 percent loan interest rate; (3) a 3 percent escalation factor; (4) a 2.5 percent Gross Domestic Product (GDP) deflator; (5) a 50 percent debt to 50 percent equity ratio; (6) 15 year depreciation; (7) 20 year project life and loan term; (8) 43 percent combined federal and state tax rate; (9) $638 per kW capital costs; (10) $12.55 per kW-year fixed operating and maintenance costs; and (11) a 12 percent rate of return on equity. *Id.* at 4-5.

[7] April 2011 Order, 135 FERC ¶ 61,082 at P 23.

[8] *Id.* P 24.

5. The Commission also stated that the 2008 State of the Market Report examined the cost of new entry for the MISO region, which was based on a region-specific analysis in the 2009 Annual Energy Outlook. The Commission noted that this was the same type of analysis that the Commission accepted for MISO's previous CONE value, and the Commission found no reasonable basis to question the validity of that study.[9]

6. The Commission also dismissed arguments that the 3 percent escalation factor and the 2.5 percent GDP deflator assumptions resulted in duplicative cost accounting. The Commission concluded that these assumptions, typical for project cost accounting, simply assumed that operating costs increase at 3 percent per annum over the 20-year project life, and that all future costs were brought back into a current dollar value with a 2.5 percent per annum deflator.[10]

7. Finally, the Commission rejected claims that MISO had not provided sufficient support for its CONE value, and emphasized that the purpose of the CONE value was to establish penalties in the event that a load serving entity was resource deficient and to determine the economic withholding threshold for auction bidding mitigation. The Commission concluded that MISO provided sufficient evidence to support its proposed CONE value and that it was just and reasonable.[11]

II. Request for Rehearing

8. On May 27, 2011, Illinois Municipal filed a request for rehearing of the April 2011 Order accepting MISO's revised CONE value. Illinois Municipal asserts that, because there is no substantial evidence demonstrating that the revised CONE value is just and reasonable and there is no discussion of relevant objections raised in its protest, the Commission failed to engage in reasoned decision-making in finding that MISO had justified the revised CONE value. Furthermore, Illinois Municipal argues that the Commission erred in finding that there was no basis to question the justness and reasonableness of MISO's methodology for calculating the revised CONE value. Illinois Municipal asserts that the burden is on the utility to demonstrate why the assumptions it makes are relevant to its claims that the rate it requests is just and reasonable, and that MISO failed to meet this burden.[12] As such, Illinois Municipal claims that MISO should have been required to support the assumptions MISO used to

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[9] *Id.* P 25.

[10] *Id.*

[11] *Id.* P 26.

[12] Illinois Municipal Request for Rehearing at 8-9.

calculate the revised CONE value by answering the questions raised by Illinois Municipal.[13] Illinois Municipal contends that these answers are fundamental prerequisites to meeting the requirement of providing a detailed description of the process used and to a Commission finding that the proposed revised CONE value is just and reasonable.[14] Illinois Municipal adds that the only support for the revised CONE value is an unexplained analysis based on estimates made by the Energy Information Administration.

9. Illinois Municipal also claims that the Commission's decision to accept MISO's $90,000 per MW revised annual CONE value, in light of the Commission's decisions concerning the requirements for determining CONE values for other RTOs, was not the product of reasoned decision making. Specifically, Illinois Municipal contends that the Commission's ruling cannot be sustained in light of the requirements imposed on PJM Interconnection, L.L.C. (PJM) for determining CONE values, and the Commission's decision is thus arbitrary and capricious.[15] Illinois Municipal asserts that the Commission must explain how it can allow MISO to set a CONE value that is no more than generally in line with other RTOs' values after having rejected PJM's proposal to set a CONE value based on the same generic principle. Illinois Municipal, therefore, asks the Commission to explain why it rejected PJM's CONE value for unconstrained regions, but did not reject MISO's CONE value in this proceeding.[16]

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[13] *Id.* at 7-8. Illinois Municipal argues that MISO should: (1) show that MISO has not overstated the CONE estimate by adding 5 percent contingency factor and an additional 7.5 percent to reflect financing costs and carrying costs of working capital; (2) explain to which annual costs the 3 percent escalation factor was applied; (3) explain to which annual costs the 2.5 percent GDP deflator was applied; (4) show that the 3 percent escalation factor and the 2.5 percent GDP deflator do not result in duplicative cost accounting; (5) explain whether the 15-year depreciation is for tax depreciation or book depreciation and why a 20-year projected life is appropriate; (6) substantiate the 43 percent combined federal and state tax rate; and (7) substantiate the fixed operation and maintenance (O&M) value of $12.55 per kW-year used in the calculation. *Id.*

[14] *Id.*

[15] *Id.* at 2.

[16] *Id.* at 10-11 (citing *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at P 52 (2009)).

III. <u>Discussion</u>

10. We deny Illinois Municipal's request for rehearing of the April 2011 Order. The Commission has previously disposed of the same arguments made by Illinois Municipal in the December 2011 Order, which addressed the earlier initial CONE value. We disagree with Illinois Municipal's contention that MISO failed to meet its burden to demonstrate why its assumptions are relevant to claims that the CONE value is just and reasonable.

11. In the December 2011 Order, the Commission rejected similar arguments to those raised here by Illinois Municipal. In that order, the Commission found that the information provided by MISO and the Market Monitor was sufficient for determining that the initial CONE value served its function of providing an incentive for market participants to be resource sufficient and to offer competitive bids into the voluntary capacity auction. The Commission stated that MISO and the Market Monitor had provided the assumptions and explained the methods for developing the initial CONE value, and found that this information was sufficient for finding that the deficiency charge and economic withholding threshold were developed based on reasonable assumptions and methods. The Commission also explained that an examination of each cost element was appropriate for cost-based rates, but was not required for evaluating the reasonableness of MISO's capacity deficiency charge and economic withholding threshold.[17] Likewise, the same methodology and assumptions are used for developing the revised CONE value. Therefore, the information provided by MISO and the Market Monitor remains sufficient for determining the revised CONE value.

12. We disagree with Illinois Municipal's contention that the only support for the revised CONE value is an unexplained analysis based on estimates made by the Energy Information Administration. In the December 2011 Order, the Commission indicated that capital and operating cost estimates for generators in MISO were relevant to an estimate of CONE for the MISO region. The Commission also determined that the financing and accounting assumptions used by MISO and the Market Monitor were relevant to the CONE value, and that this information provided a reasonable approximation of the cost of new entry for the MISO region.[18]

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[17] December 2011 Order, 137 FERC ¶ 61,213 at PP 34-35.

[18] *Id.* P 36.

13. Furthermore, in the April 2011 Order, the Commission noted that MISO used the 2008 Annual Energy Outlook to determine the $555 per kW capital cost estimate used to establish the initial CONE value, and that MISO used the 2009 Annual Energy Outlook to determine the $638 per kW capital cost estimate used to establish the revised CONE value.[19] As such, while the capital cost estimate has changed from year to year, the methodology used to calculate the revised CONE estimate relies on the same type of analysis that the Commission accepted for MISO's initial CONE value. The analysis used to determine the revised CONE value has been adequately explained and is just and reasonable.

14. We also reject Illinois Municipal's claim that the Commission's decision to accept MISO's revised annual CONE value was not the product of reasoned decision-making. The Commission explained in the December 2011 Order that MISO and the Market Monitor developed an initial CONE value specific to the MISO region, based on their own analysis of regional data and estimates. In contrast, PJM proposed to apply a CONE value for unconstrained areas to constrained areas, with no assessment of the costs specific to the constrained areas. In rejecting PJM's proposal, the Commission correctly distinguished PJM's proposal from MISO's proposal, which does not apply a CONE value established for one region or area to another region or area.[20] Therefore, the Commission's rejection of PJM's proposal has no bearing on the Commission's decision to accept the methodology MISO used to calculate its revised CONE value.

15. In addition, while the capital cost estimate input changes from year to year, the methodology used by MISO to calculate its revised CONE value is identical to the methodology used to calculate its initial CONE value. We find that the assumptions used by MISO and the Market Monitor remain just and reasonable and are consistent with the December 2011 Order. Illinois Municipal's request for rehearing merely repeats the same arguments it made previously, which the Commission already rejected in the December 2011 Order. Illinois Municipal has not persuaded us that we should change these findings on rehearing. Accordingly, we deny Illinois Municipal's request for rehearing.

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[19] April 2011 Order, 135 FERC ¶ 61,082 at P 24.

[20] December 2011 Order, 137 FERC ¶ 61,213 at P 38.

The Commission orders:

Illinois Municipal'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.