

154 FERC ¶ 61,053
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 29, 2016

In Reply Refer To:
Midcontinent Independent System
Operator, Inc.
Docket No. ER16-432-000

Midcontinent Independent System Operator, Inc.
P.O. Box 4202
Carmel, IN 46082-4202

Attention: Matthew R. Dorsett

Jennings Strouss & Salmon, PLC
1350 I Street, NW, Suite 810
Washington, DC 20005

Attention: Alan I. Robbins

Dear Mr. Dorsett and Mr. Robbins:

1. On November 30, 2015, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Midcontinent Independent System Operator, Inc. (MISO) and Rochester Public Utility Board (RPU)³ (collectively, Filing Parties) filed a proposed revision to RPU's formula rate template in Attachment O of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) (November 30 Filing).⁴ Filing Parties propose to implement a 50-basis point adder (RTO Adder) to RPU's authorized rate of return on equity (ROE) recognizing its

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. Pt 35 (2015).

³ RPU states that it is a division of the City of Rochester, Minnesota.

⁴ Filing Parties state that MISO joins in this filing in its capacity as administrator of the Tariff but takes no position on the substance of this filing.

continuing participation in MISO, a regional transmission organization (RTO). We accept the proposed tariff revision, effective February 1, 2016. We also accept RPU's request to defer collection of the RTO Adder pending the outcome of the complaint proceeding in Docket No. EL14-12-000 (Complaint Proceeding),⁵ as discussed below.

2. On November 6, 2014, in Docket No. ER15-358-000, a group of MISO transmission owners (MISO Transmission Owners)⁶ submitted revisions to their formula rate templates in Attachment O of the Tariff to implement a 50-basis point RTO Adder to the authorized ROE based on their participation as members in an RTO.

3. On January 5, 2015, the Commission accepted and nominally suspended the MISO Transmission Owners' proposed RTO Adder to become effective January 6, 2015, subject to refund.⁷ Acceptance of the RTO Adder was conditioned on it being applied to

⁵ *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014) (Complaint Hearing Order). In the Complaint Hearing Order, the Commission granted in part a complaint that alleged that the current 12.38 percent base ROE allowed for MISO transmission owners is unjust and unreasonable. The Commission established hearing and settlement judge procedures with respect to the MISO transmission owners' base ROE, and established a refund effective date of November 12, 2013, for the MISO transmission owners' base ROE.

⁶ The MISO Transmission Owners for the November 6, 2014 filing are 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 (collectively, Ameren); American Transmission Company LLC (ATC); Cleco Power LLC; Duke Energy Corporation for Duke Energy Indiana, Inc. (Duke); Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc. (collectively, Entergy Operating Companies); Indianapolis Power & Light Company (IPL); International Transmission Company d/b/a *ITCTransmission* (*ITCTransmission*); ITC Midwest LLC (ITC Midwest); Michigan Electric Transmission Company, LLC (METC); MidAmerican Energy Company (MidAmerican); Montana-Dakota Utilities Co. (MDU); Northern Indiana Public Service Company (NIPSCO); Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc. (collectively, NSP); Northwestern Wisconsin Electric Company; Otter Tail Power Company (Otter Tail); Vectren Energy Delivery of Indiana (Vectren); and Wolverine Power Supply Cooperative, Inc. (Wolverine).

⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004 (2015) (January 5 Order).

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. The Commission also accepted the MISO Transmission Owners' request to defer collection of the RTO Adder pending the outcome of the Complaint Proceeding.

4. In the January 5 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.⁸ However, the Commission determined that those entities utilizing an Attachment O formula 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.⁹

5. RPU requests approval of its ability to apply the RTO Adder in its MISO Tariff Attachment O filing in accordance with the January 5 Order, and authorization to defer collection of the RTO Adder (but not the effectiveness of the RTO Adder) until after the issuance of a final order in the Complaint Proceeding.

6. RPU's filing proposes revisions to Note P to its Attachment O formula specifying that RPU's RTO adder may be added to the ROE up to the upper end of the zone of reasonableness established by FERC for a transmission owner that has turned over functional control of its transmission facilities to MISO or provides service over Non-transferred Transmission facilities through the MISO Tariff with MISO acting as agent. The revisions to Note P commit RPU to provide refunds with interest to the extent that the ROE or zone of reasonableness established in the Complaint Proceeding would result in a lower revenue requirement than that charged by RPU, and also commit it to provide refunds with interest consistent with any refund effective date established in any other proceeding resulting in a new base ROE or zone of reasonableness for MISO

⁸ Complaint Hearing Order, 149 FERC ¶ 61,049 at P 48 (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)).

⁹ *Id.*

transmission owners to the extent the new ROE or zone of reasonableness would result in a lower revenue requirement than that charged.¹⁰

7. RPU 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. RPU states that this information would merely duplicate the exhibits and testimony that have been or may be filed in the Complaint Proceeding, given that RPU agrees, for the purpose of implementing the RTO Adder, to adhere to any range of reasonable returns that the Commission may establish in the Complaint Proceeding.¹¹

8. Notice of the November 30 Filing was published in the *Federal Register*, 80 Fed. Reg. 76,014 (2015), with interventions and protests due on or before December 21, 2015. Southern Minnesota Municipal Power Agency (SMMPA) and a group of MISO transmission owners (TO Intervenors)¹² filed timely motions to intervene, raising no substantive issues. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹³ the timely, unopposed motions to intervene of SMMPA and the TO Intervenors serve to make them parties to this proceeding.

9. 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.¹⁴ 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.¹⁵ The Commission

¹⁰ November 30 Filing at 3.

¹¹ *Id.* at 5.

¹² The TO Intervenors are: Ameren; ATC; Cleco; Duke; Entergy Operating Companies; IPL; ITC Transmission; ITC Midwest; METC; MidAmerican; Minnesota Power (and its subsidiary Superior Water, L&P); MDU; NIPSCO; NSP; Northwestern Wisconsin; Otter Tail; Vectren; and Wolverine.

¹³ 18 C.F.R. § 385.214 (2015).

¹⁴ 16 U.S.C. § 824s(a), (b) (2012).

¹⁵ *Id.*

subsequently issued Order No. 679,¹⁶ which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA, including the incentives requested here by RPU.

10. We grant RPU'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, effective February 1, 2016.¹⁷ We find that RPU has demonstrated that it is qualified to receive the requested 50-basis point adder.

11. Our acceptance of the RTO Adder is conditioned upon a voluntary commitment by RPU 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 Proceeding when applied as of the refund effective date in the Complaint Proceeding would result in a lower revenue requirement than that charged by RPU, 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 RPU.¹⁸ Filing Parties have included these conditions in their proposed revisions to Note P to RPU's formula rate template, so a compliance filing is not required to make those commitments.

12. 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 proposed revisions to RPU's formula

¹⁶ *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).

¹⁷ *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).

¹⁸ *See Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,050, at P 24 (2015). These voluntary refund commitments are necessary because RPU 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.

rate template in Attachment O of the Tariff to become effective February 1, 2016, 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 Proceeding, and we make the proposed revisions subject to the outcome of the Complaint Proceeding.

13. Because we are accepting the proposed revisions subject to the outcome of the Complaint Proceeding 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 RPU's request for waiver of the 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.

14. We accept RPU's proposal to defer collection of the RTO Adder pending the outcome of the Complaint Proceeding. This should promote administrative efficiency.

15. We note that Filing Parties requested two inconsistent effective dates for the revisions, January 1, 2016 and February 1, 2016.¹⁹ As only the February 1 date complies with our 60-day prior notice requirement,²⁰ we assume that is the intended requested effective date.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁹ On page 4 of the Transmittal Letter, RPU requests an effective date of January 1, 2016, while on Page 5 of the Transmittal Letter, RPU requests an effective date of February 1, 2016.

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