

155 FERC ¶ 61,330
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.,
KCP&L Greater Missouri Operations Company,
The Empire District Electric Company, and
Associated Electric Cooperative, Inc.

Docket No. EL15-66-001

v.

Midcontinent Independent System Operator, Inc.

Morgan Stanley Capital Group, Inc.

Docket No. EL15-77-001

v.

Midcontinent Independent System Operator, Inc.

ORDER DENYING REHEARING

(Issued June 30, 2016)

1. On October 15, 2015, the Commission issued an order¹ denying two complaints, one filed by a group of “Entergy Export Customers”² and the other filed by Morgan Stanley Capital Group, Inc. (Morgan Stanley), against Midcontinent Independent System

¹ *Southern Co. Servs., Inc.*, 153 FERC ¶ 61,026 (2015) (October 15 Order).

² The Entergy Export Customers consist of: Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company (collectively, Southern Companies); KCP&L Greater Missouri Operations Company; The Empire District Electric Company; and Associated Electric Cooperative, Inc.

Operator, Inc. (MISO). In the October 15 Order, the Commission held that both complaints were duplicative of an existing proceeding initiated by the Commission under section 206 of the Federal Power Act (FPA)³ in Docket No. EL14-19-000. Two requests for rehearing were filed in the Morgan Stanley complaint proceeding (Docket No. EL15-77-001).⁴ In this order, we deny the two requests for rehearing.

I. Background and Related Proceedings

A. The RTOR Proceeding

2. On December 19, 2013, the Entergy Operating Companies⁵ (collectively, Entergy) transferred functional control over their transmission facilities located in the states of Arkansas, Mississippi, Louisiana, and Texas to MISO. Prior to that time, customers had been taking transmission service under the terms and conditions of Entergy's then-effective open access transmission tariff (Entergy Tariff). After Entergy's integration into MISO, transmission service over Entergy's transmission facilities became subject to the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (MISO Tariff).⁶

3. In the Rates Rehearing Order, issued February 20, 2014,⁷ the Commission instituted a proceeding pursuant to section 206 of the FPA in Docket No. EL14-19-000

³ 16 U.S.C. § 824e (2012).

⁴ Various requests for rehearing were filed in the Entergy Export Customers complaint proceeding (Docket No. EL15-66-001), but those requests will be withdrawn pursuant to the settlement agreement that was filed in Docket No. ER13-948-004, *et al.*, which the Commission approved in *Entergy Servs., Inc.*, 155 FERC ¶ 61,298 (2016) (June 23 Order), and therefore it is unnecessary for us to address them.

⁵ The Entergy Operating Companies include: Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

⁶ *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (MISO-Entergy Rates Order), *order on reh'g*, 146 FERC ¶ 61,111 (2014) (Rates Rehearing Order), *order on reh'g*, 151 FERC ¶ 61,263 (2015).

⁷ Rates Rehearing Order, 146 FERC ¶ 61,111, at P 75.

addressing Regional Through and Out Rates (RTORs) in MISO South⁸ (RTOR Proceeding). The Commission established the RTOR Proceeding in response to arguments by several customers who historically took transmission service pursuant to the Entergy Tariff and who claimed to experience a substantial rate increase under the new system-wide MISO RTORs.

4. In setting the RTOR issue for hearing, the Commission stated: “We find. . .that the proposed RTOR for service over the transmission system in the MISO South region has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful.”⁹ Therefore, it provided “a forum for parties to address the issues raised regarding MISO’s proposed RTOR.”¹⁰ The Entergy Export Customers sought and were granted party status in that proceeding, but Morgan Stanley did not seek to intervene.

B. The Entergy Export Customers and Morgan Stanley Complaints and the October 15 Order

5. The Entergy Export Customers and Morgan Stanley filed nearly identical complaints against MISO on May 21, 2015 and June 9, 2015, respectively. The complainants argued in part that MISO’s charges for through-and-out transactions under Schedules 7, 8, and 26 were unjust and unreasonable.¹¹

⁸ MISO South refers to the Entergy system as it existed prior to its integration into MISO. MISO Midwest refers to the MISO system as it existed prior to Entergy’s integration into MISO.

⁹ Rates Rehearing Order, 146 FERC ¶ 61,111 at P 75.

¹⁰ *Id.*

¹¹ Complainants also argued that MISO’s charges under Schedules 7, 8, and 26 were in violation of the MISO Tariff and therefore requested relief under FPA sections 309 and 205. Specifically, they argued that the charges violated the MISO Tariff by not applying cost allocation provisions in Attachment FF-6 of the MISO Tariff to “through-and-out” transactions (Attachment FF-6 of the MISO Tariff outlines “Transmission Expansion Planning and Cost Allocation for Second [Planning] Area’s Transition.” The Second Planning Area is the area consisting of the states where Entergy Corporation and the Entergy Operating Companies own and/or operate transmission facilities and any adjacent areas where transmission facilities are conveyed to MISO’s functional control, *i.e.*, MISO South. *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 61,020, at P 4 (2013)). However, the rehearing requests of

(continued ...)

6. They also argued that the charges were inconsistent with principles of cost causation because they allocated to former Entergy through-and-out service customers the costs of MISO Transmission Expansion Plan projects conceived prior to Entergy's integration (legacy MISO costs). They further argued that the charges were unduly discriminatory because the legacy MISO costs were being assessed to former Entergy export customers (i.e., customers with a sink outside of MISO South) but not to former Entergy customers with reservations that sink within MISO South.

7. In the October 15 Order, the Commission held that MISO had not violated the terms of the MISO Tariff. Further, the Commission held that the justness and reasonableness of the RTORs were already being addressed in the RTOR Proceeding in Docket No. EL14-19-000. The Commission denied both complaints as duplicative of the issues in the RTOR Proceeding, based on Commission precedent that prohibits the filing of successive complaints that seek to re-litigate the same issue absent new evidence or changed circumstances. The Commission cited to its policy that it would dismiss complaints that were identical in all relevant aspects to another complaint filed earlier that raised no new factual or legal allegations but was instead intended to thwart Congress' intent in establishing the limited 15-month refund protection period if different refund effective dates were established.¹² The Commission stated that because it was denying the complaints on these grounds, it need not address the allegations regarding cost causation and undue discrimination.¹³

C. The RTOR Proceeding Settlement

8. On February 25, 2016, the parties in the RTOR Proceeding filed a settlement agreement that encompasses MISO Tariff Schedules 7, 8, and 26 (RTOR Proceeding Settlement).¹⁴ The RTOR Proceeding Settlement resolves all issues in the RTOR

the Morgan Stanley complaint proceeding are focused only on the Commission's determination on the FPA section 206 claim.

¹² October 15 Order, 153 FERC ¶ 61,026 at PP 77-79.

¹³ *Id.* P 75.

¹⁴ See Midcontinent Independent System Operator, Inc., Docket No. ER13-948-004, *et al.*, Settlement Agreement and Offer of Settlement (filed Feb. 25, 2016) (RTOR Proceeding Settlement). Schedule 7 (Long-Term and Short-Term Firm Point-to-Point Transmission Service) of the MISO Tariff provides that transmission customers will pay a single system-wide rate for firm, point-to-point transmission service associated with through-and-out transactions. Schedule 8 (Non-Firm Point-to-Point Transmission Service) of the MISO Tariff provides for a similar rate assessment for non-firm, point-to-

(continued ...)

Proceeding. In brief, the RTOR Proceeding Settlement applies to certain long-term firm point-to-point transmission service agreements that customers had executed with Entergy under the Entergy Tariff but are now under the MISO Tariff. The RTOR Proceeding Settlement provides for phased increases of the rates in the transmission service agreements and refunds by MISO. On March 16, 2016, Morgan Stanley filed a request to be designated as an additional settling party in the RTOR Proceeding, in accordance with a provision in the RTOR Proceeding Settlement that allows customers who meet certain eligibility requirements to join the settlement. MISO, Entergy, and MISO Transmission Owners filed comments opposing this request. They argued that Morgan Stanley does not qualify as an additional settling party because its transmission service agreement, which sources from generation in the Ameren Balancing Authority Area,¹⁵ does not meet the RTOR Proceeding Settlement's applicability requirements, as the Ameren Balancing Authority Area was part of MISO before the integration of Entergy.¹⁶ On April 15, 2016, Morgan Stanley filed a motion to withdraw its request for designation as an additional settling party, which was granted by the Presiding Judge. On April 29, 2016, the Presiding Judge certified the RTOR Proceeding Settlement as uncontested.¹⁷

point transmission service associated with through-and-out transactions. MISO Transmission Expansion Plan project costs, excluding Multi-Value Projects, are assessed to through-and-out transactions through Schedule 26 (Network Upgrade Charge from Transmission Expansion Plan) of the MISO Tariff.

¹⁵ See note 4, *supra*.

¹⁶ Section II.A(1)(e) of the RTOR Proceeding Settlement specifies that eligible service agreements must “not specify a path which required the customer to pay the MISO RTOR prior to the Entergy Operating Companies’ integration into MISO.” Section II.A(1)(d) further requires that eligible service agreements “involve (1) firm point-to-point transmission service where the generation source is located within the Entergy Operating Companies’ Transmission System and the sink is located outside of the MISO Transmission System Region; or (2) firm point-to-point transmission service where both the generation source and sink are located outside of the MISO Transmission System region, but with a path through the Entergy Operating Companies’ Transmission System.” MISO, MISO Transmission Owners, and Entergy argue that Morgan Stanley’s service fails both of these requirements because the generation source is in MISO Midwest.

¹⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 63,010 (2016).

9. As part of the RTOR Proceeding Settlement, the Entergy Export Customers, Southern Companies, and MISO Transmission Owners¹⁸ have agreed to withdraw (within 15 days of the settlement effective date) their requests for rehearing in the Entergy Export Customers complaint proceeding (Docket No. EL15-66-001). As noted above, because the Commission approved the RTOR Proceeding Settlement, it is unnecessary for us to address issues raised on rehearing in Docket No. EL15-66-001.¹⁹

II. Requests for Rehearing in Docket No. EL15-77-001

10. Morgan Stanley and MISO Transmission Owners filed timely requests for rehearing of the October 15 Order. Morgan Stanley argues that the Commission erred in dismissing the Morgan Stanley complaint as duplicative. Morgan Stanley challenges the Commission's distinction between the circumstances of the instant complaint and other circumstances in which the Commission has allowed successive complaints involving return on equity (ROE). In the October 15 Order, the Commission explained that the ROE cases concerned challenges to rate components as opposed to a rate methodology.²⁰ Morgan Stanley maintains that the ROE cases do involve a challenge to the methodology for computing the ROE components of formula rates by incorporating challenges to the Opinion No. 531 methodology in the evidentiary support.²¹ Morgan Stanley also points

¹⁸ For purposes of this proceeding, MISO Transmission Owners are: Ameren Services Company, as agent for Union Electric Company; Ameren Illinois Company; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy; Rural Electric Cooperative, Inc.; International Transmission Company; ITC Midwest LLC; Indianapolis Power & Light Company; Michigan Public Power Agency; 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 Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

¹⁹ June 23 Order, 155 FERC ¶ 61,298.

²⁰ October 15 Order, 153 FERC ¶ 61,026 at P 80.

²¹ Morgan Stanley Rehearing Request at 4.

out that its challenge to Schedule 7 is based on its challenge to the Schedule 26 input. Challenging Schedule 26, Morgan Stanley asserts, is the same as challenging a stated input to a cost-of-service formula rate.²²

11. Further, Morgan Stanley maintains that its substantive arguments concerning Schedule 26 constitute new evidence and analysis because those arguments were not explicitly addressed by the Commission when setting the RTOR Proceeding for hearing. Morgan Stanley also faults the Commission for not addressing its argument that it was unduly discriminatory to assess Schedule 26 charges to transmission service that sinks outside MISO South and not to service that sinks within MISO South. Morgan Stanley also argues that the Commission erred in the October 15 Order by failing to address arguments that the Schedule 7 and Schedule 26 rates are inconsistent with the principle of cost causation.²³

12. MISO Transmission Owners argue that the Commission erred in finding that Schedule 26 of the MISO Tariff was part of the hearing and settlement procedures established in the RTOR Proceeding.²⁴ MISO Transmission Owners state that the Commission's reasoning for establishing the RTOR Proceeding was based on parties' arguments on rehearing of the MISO-Entergy Rates Order. However, MISO Transmission Owners point out that Schedule 26 was never referenced in the rehearing arguments to the MISO-Entergy Rates Order.

III. Discussion

13. We deny the requests for rehearing. Morgan Stanley misunderstands the distinction that the Commission made between prior successive ROE complaint cases that were allowed and the instant case. The successive ROE complaints that Morgan Stanley cites involved new facts and circumstances based on new data and analysis used

²² *Id.*

²³ *Id.* at 5-6.

²⁴ MISO Transmission Owners raised this argument in both Docket Nos. EL15-66-001 and EL15-77-001. Although MISO Transmission Owners have agreed to withdraw their rehearing request as to the Entergy Export Customers complaint proceeding (Docket No. EL15-66-001) per the RTOR Proceeding Settlement, their rehearing arguments remain in the Morgan Stanley complaint proceeding (Docket No. EL15-77-001).

to calculate a rate component.²⁵ Here, there are no changed circumstances involving new data or analysis for the Commission to consider in determining whether MISO's RTORs are just and reasonable.

14. Additionally, we reject Morgan Stanley's argument that the Schedule 26 through-and-out rates constitute new evidence to justify a new complaint. As the Commission held in the October 15 Order, and we affirm in this order, the justness and reasonableness of Schedule 26 was addressed in the RTOR Proceeding.

15. We also find that the Commission appropriately declined to address Morgan Stanley's cost causation and undue discrimination arguments in the October 15 Order because those issues were encompassed within the issues concerning rates that were pending in the RTOR Proceeding.

16. We recognize that Morgan Stanley is not a settling party under the RTOR Proceeding Settlement and did not otherwise intervene to protect its interests in the RTOR Proceeding. However, that outcome does not justify granting rehearing of the Commission's dismissal of Morgan Stanley's complaint. Morgan Stanley had ample opportunity to intervene and advocate for its rights in the RTOR Proceeding; Morgan Stanley did not do so, even after the Commission issued the October 15 Order holding that the Morgan Stanley complaint was duplicative of that proceeding. Morgan Stanley's failure to participate in the RTOR Proceeding does not give it the right to a separate duplicative proceeding.

17. We also reject MISO Transmission Owners' rehearing arguments regarding Schedule 26. In setting the RTOR issue for hearing, the Commission stated: "We find. . . that the proposed RTOR for service over the transmission system in the MISO South region has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful."²⁶ The Schedule 26 rate for export service out of MISO South is a *through-and-out* rate that falls within the scope of the RTOR Proceeding. The fact that the Commission did not explicitly mention Schedule 26 on rehearing of the MISO-Entergy Rates Order does not mean it is not included. Moreover, we note that MISO Transmission Owners are

²⁵ Morgan Stanley Request for Rehearing at 4 (citing *Golden Spread Elec. Coop., Inc.*, 151 FERC ¶ 61,126 (2015); *ENE*, 151 FERC ¶ 61,125 (2015); *Delaware Division of the Public Advocate, et al.*, 150 FERC ¶ 61,081 (2014)).

²⁶ MISO-Entergy Rates Rehearing Order, 143 FERC ¶ 61,111 at P 75.

signatories to the RTOR Proceeding Settlement, which specifically includes Schedule 26.²⁷

The Commission orders:

The requests for rehearing filed in Docket No. EL15-77-001 are 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.

²⁷ See RTOR Proceeding Settlement at 5, 12-15.