

167 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

International Transmission Company
ITC Midwest, LLC

Docket Nos. EL18-159-000
EL18-160-000

Midcontinent Independent System Operator, Inc.

Docket No. ER18-2323-002

ORDER ACCEPTING IN PART AND REJECTING IN PART COMPLIANCE FILING
AND TERMINATING SECTION 206 PROCEEDINGS

(Issued May 16, 2019)

1. On January 22, 2019, Midcontinent Independent System Operator, Inc. (MISO) and the ITC Companies¹ (the Filing Parties)² submitted a compliance filing in Docket No. ER18-2323-002, to eliminate from the ITC Companies' transmission formula rate templates, included in Attachment O of the MISO Tariff, the two-step averaging methodology they had used to calculate the Accumulated Deferred Income Tax (ADIT) component of rate base³ in their projected test year calculations, in accordance with the Commission's order issued on December 20, 2018 in Docket Nos. EL18-159-000 and EL18-160-000.⁴ In addition, the Filing Parties propose to revise the ITC Companies'

¹ The ITC Companies for this filing consist of: International Transmission Company (International Transmission), and ITC Midwest, LLC (ITC Midwest).

² The Filing Parties state that MISO submitted the filing in its role as administrator of the MISO Open Access Transmission, Energy and Operating Reserves Markets Tariff (Tariff), but that MISO takes no position on the substance of the filing, and reserves the right to comment or protest.

³ ADIT arises from timing differences between the method of computing taxable income for reporting to the Internal Revenue Service (IRS) and the method of computing income for regulatory accounting and ratemaking purposes.

⁴ *Int'l Transmission Co.*, 165 FERC ¶ 61,236 (2018) (December 2018 Order).

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annual true-up calculations. In this order, we accept in part and reject in part the filing, effective January 1, 2019, and terminate the proceedings in Docket Nos. EL18-159-000 and EL18-160-000 that were initiated pursuant to section 206 of the Federal Power Act (FPA).⁵

I. December 2018 Order

2. In the December 2018 Order, the Commission found that the two-step averaging methodology used in the transmission formula rates of International Transmission and ITC Midwest to calculate the ADIT component of rate base was unjust and unreasonable and unduly discriminatory or preferential.⁶ The Commission rejected the Tariff revisions proposed by the Filing Parties and Michigan Electric Transmission Company, LLC in Docket No. ER18-2323-000 (August 2018 Filing) to remedy the concerns the Commission expressed in the order instituting the proceedings in Docket Nos. EL18-159-000 and EL18-160-000⁷ with respect to the use of the two-step averaging methodology. The Commission found that the Filing Parties' proposed revisions did not remedy the issues identified in the June 2018 Order because the Filing Parties did not propose a date to make the filing effective.⁸ Accordingly, the Commission directed the ITC Companies to submit a compliance filing revising their transmission formula rates to remove the two-step averaging methodology, with such changes to be effective June 27, 2018, the refund effective date established by the June 2018 Order.⁹

⁵ 16 U.S.C. § 824e (2012).

⁶ December 2018 Order, 165 FERC ¶ 61,236 at P 29.

⁷ *Ameren Illinois Co.*, 163 FERC ¶ 61,200 (2018) (June 2018 Order). In the June 2018 Order, the Commission stated that it appeared that the transmission formula rates of International Transmission, ITC Midwest and others that utilize the two-step averaging methodology in their projected test year calculations and/or annual true-up calculations may be unjust, unreasonable, or unduly discriminatory or preferential. Pursuant to FPA section 206, the Commission commenced paper hearing procedures to resolve these matters.

⁸ December 2018 Order, 165 FERC ¶ 61,236 at P 33. The Commission noted that, to the extent that the ITC Companies needed to revise their true-up calculations to meet the IRS's proration requirement, they may make a subsequent filing with the Commission pursuant to section 205 of the FPA to do so. *Id.* P 33 n.63.

⁹ *Id.* P 33.

(continued ...)

II. Compliance Filing

3. The Filing Parties state that, consistent with the Commission's compliance directive and guidance in the December 2018 Order, the ITC Companies propose to revise their company-specific ADIT work papers to eliminate the use of the two-step averaging methodology to determine ADIT balances in their projected test year calculations.¹⁰ Specifically, the Filing Parties propose to revise each of the ITC Companies' respective formula rates in lines 29 (Account 190), 58 (Account 282), and 87 (Account 283) to ensure that they will no longer perform the two-step averaging methodology in calculating the "Average Balance" for these accounts.¹¹ The Filing Parties state that the proposed revisions modify the "Average Balance" formulas in the work papers to remove the simple averaging of prorated items and to instead use only the ending balance of prorated items. However, the Filing Parties state that, per the requirements of the Consistency Rule,¹² the formulas will require the ITC Companies to continue to perform a simple averaging of non-prorated items using beginning-of-year and end-of-year balances.¹³

4. In addition, the Filing Parties state that the ITC Companies propose to modify the calculation of average ADIT balances in their annual true-up calculations so as to preserve the effect of the application of the proration methodology used in their projected test year calculations.¹⁴ Specifically, the ITC Companies propose to revise Note F of their company-specific Attachment Os to make clear that they will apply the IRS's proration methodology in calculating ADIT balances for both the annual projection and annual true-up. The Filing Parties also propose several other ministerial revisions to Note F. In addition, the ITC Companies propose revisions to their company-specific ADIT work papers to preserve, in their annual true-up calculations, the effect of the

¹⁰ Filing at 5, 9. The Filing Parties note that the proposed Tariff revisions are identical to those contained in the August 2018 Filing.

¹¹ *Id.* at 5.

¹² The Filing Parties state that the IRS's Consistency Rule requires that if a taxpayer uses an average balance for one component of its rate base calculation, the taxpayer must use a comparable average balance for all other rate base items. Filing at 5 (citing 26 U.S.C. §§ 168(i)(9)(A)(ii), 168(i)(9)(B)(ii)).

¹³ *Id.*

¹⁴ *Id.* at 4, 8-9.

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application of the proration methodology that they use in their projected test year calculations.¹⁵

5. The Filing Parties request an effective date of January 1, 2019 for their proposed Tariff revisions.¹⁶ They assert that this requested effective date is consistent with the Commission's findings in its December 20, 2018 order¹⁷ regarding the ADIT filing of Certain MISO TOs.¹⁸ The Filing Parties note that the Commission explained that, although it had established a refund effective date of May 4, 2018 in the FPA section 206 proceeding addressing the Certain MISO TOs' use of the two-step averaging methodology, an effective date of January 1, 2019 was acceptable for the Tariff revisions given that it was "unfeasible for [Certain MISO TOs] to change their projected test year calculations for rate year 2018."¹⁹

6. The Filing Parties contend that first, like the Certain MISO TOs, it is unfeasible for the ITC Companies to revise their test year projections for rate year 2018.²⁰ Second, the Filing Parties state that, similar to the Certain MISO TOs, the ITC Companies do not utilize the two-step averaging methodology in their true-up calculations, and that any over-recoveries created by the ITC Companies' use of the two-step averaging methodology in their projected test year calculations will therefore be reversed and refunded, with interest, to customers through the true-up calculations for rate year 2018.²¹

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 2, 10.

¹⁷ *Id.* at 10 (both citing *Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,235, at P 33 n.60 (2018) (December 2018 Certain MISO TOs Order)).

¹⁸ Certain MISO TOs include: ALLETE, Inc. for its operating division Minnesota Power (and its subsidiary Superior Water, L&P), Montana-Dakota Utilities Co., Northern Indiana Public Service Company, Otter Tail Power Company, and Southern Indiana Gas & Electric Company.

¹⁹ Filing at 10-11 (quoting December 2018 Certain MISO TOs Order, 165 FERC ¶ 61,235 at P 33 n.60).

²⁰ *Id.* at 11.

²¹ *Id.*

III. Notice and Responsive Pleadings

7. Notice of the Filing Parties' compliance filing in Docket No. ER18-2323-002 was published in the *Federal Register*, 84 Fed. Reg. 708 (2019), with interventions and protests due on or before February 12, 2019. Michigan Commission filed a notice of intervention. Michigan Agency for Energy and Michigan Public Power Agency filed timely motions to intervene.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

B. Substantive Matters

9. We accept the Filing Parties' compliance filing in part and reject it in part. Specifically, we accept the Filing Parties' Tariff revisions that pertain to the ITC Companies' calculation of ADIT balances for the projected test year, but we reject those revisions that pertain to their calculation of ADIT balances for the annual true-up, which include revisions to ITC Companies' company-specific ADIT work papers and revisions to Note F of their company-specific Attachment Os pertaining to their annual true-up calculations, and we reject the proposed ministerial changes to Note F.

10. We find that the Filing Parties' Tariff revisions concerning the ITC Companies' calculation of ADIT balances for the projected test year comply with the December 2018 Order and address the concerns identified in the June 2018 Order by eliminating the use of the two-step averaging methodology.²² Accordingly, we accept the Filings Parties' compliance filing in part, effective January 1, 2019,²³ and we terminate the section 206 proceedings in Docket Nos. EL18-159-000 and EL18-160-000.

²² June 2018 Order, 163 FERC ¶ 61,200 at PP 13-14.

²³ Although the June 2018 Order established a refund effective date of June 27, 2018 for Docket Nos. EL18-159-0000 and EL18-160-000, we find that a January 1, 2019 effective date for the elimination of the two-step averaging methodology is acceptable. Given the date of the December 2018 Order, it was unfeasible for the ITC Companies to change their projected test year calculations for rate year 2018. Further, because the ITC Companies do not use the two-step averaging methodology in their true-up calculations, (continued ...)

11. However, we reject the Filing Parties' proposed revisions to the ITC Companies' annual true-up calculations. We find that the Filing Parties' proposal to revise the ITC Companies' transmission formula rates to apply the IRS's proration methodology to their annual true-up calculations—including the Filing Parties' proposed revisions to the ITC Companies' company-specific ADIT work papers and revisions to Note F of their company-specific Attachment Os pertaining to the annual true-up calculations—is beyond the scope of these compliance proceedings. As the ITC Companies do not use the two-step averaging methodology in their true-up calculations, the Filing Parties' proposal to prorate the ITC Companies' annual true-up calculations is not necessary to comply with the December 2018 Order and is thus outside the scope of these proceedings.²⁴ Similarly, the Filing Parties' proposed ministerial revisions to Note F are also outside the scope of this compliance proceeding. Therefore, we direct the Filing Parties, within 30 days of the date of this order, to submit a further compliance filing to refile the accepted Tariff revisions with respect to the calculation of ADIT balances for the ITC Companies' projected test year calculations without any other modifications or revisions. To the extent the ITC Companies want to revise their transmission formula rates to apply the proration methodology in their true-up calculations or to make ministerial revisions to Note F, they may make a separate filing with the Commission pursuant to section 205 of the FPA.²⁵ The Commission will review the proposal at that time.

any over-recoveries created by the use of this methodology by the ITC Companies in their projected test year calculations for rate year 2018 will be reversed and refunded with interest through their true-up calculations for rate year 2018.

²⁴ See, e.g., *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186, at P 28 (2010) (finding that “portions of [MISO’s] filing exceed the scope of compliance and include material that should have been filed under section 205 of the FPA”); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,156, at P 57 n.51 (2008) (citations omitted) (“The Commission has previously held that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether or not they comply with the Commission's previously-stated directives”).

²⁵ Any such section 205 filing should apply the IRS's proration methodology to the annual true-up prospectively—i.e., for true-up periods subsequent to the date of that filing. See, e.g., December 2018 Certain MISO TOs Order, 165 FERC ¶ 61,235 at PP 31-32.

The Commission orders:

(A) The Filing Parties' compliance filing in Docket No. ER18-2323-002 is hereby accepted in part and rejected in part, effective January 1, 2019, as discussed in the body of this order.

(B) The section 206 proceedings in Docket Nos. EL18-159-000 and EL18-160-000 are hereby terminated, as discussed in the body of this order.

(C) The Filing Parties are hereby directed to submit a further compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.