

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Association of Businesses Advocating Tariff Equity)	
Coalition of MISO Transmission Customers)	
Illinois Industrial Energy Consumers)	
Indiana Industrial Energy Consumers, Inc.)	
Minnesota Large Industrial Group)	
Wisconsin Industrial Energy Group)	
)	
v.)	Docket No. EL14-12-000
)	
Midcontinent Independent System Operator, Inc.)	
ALLETE, Inc.)	
Ameren Illinois Company)	
Ameren Missouri)	
Ameren Transmission Company of Illinois)	
American Transmission Company LLC)	
Cleco Power LLC)	
Duke Energy Business Services, LLC)	
Entergy Arkansas, Inc.)	
Entergy Gulf States Louisiana, LLC)	
Entergy Louisiana, LLC)	
Entergy Mississippi, Inc.)	
Entergy New Orleans, Inc.)	
Entergy Texas, Inc.)	
Indianapolis Power & Light Company)	
International Transmission Company)	
ITC Midwest LLC)	
Michigan Electric Transmission Company, LLC)	
MidAmerican Energy Company)	
Montana-Dakota Utilities Co.)	
Northern Indiana Public Service Company)	
Northern States Power Company-Minnesota)	
Northern States Power Company-Wisconsin)	
Otter Tail Power Company)	
Southern Indiana Gas & Electric Company)	

REQUEST FOR REHEARING OF THE ORGANIZATION OF MISO STATES

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §385.713, and Section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 8251, the Organization of MISO States (“OMS”) respectfully submits this Request for Rehearing of *Association of Businesses Advocating Tariff Equity Coalition of MISO Transmission Customers et al.*, 149 FERC ¶ 61,049 (2014) issued October 16, 2014 (“Order”) in the above captioned docket.

OMS filed an intervention in these proceedings on November 15, 2013 and provided comments on January 6, 2014. Accordingly, OMS is a party to these proceedings.

I. BACKGROUND

On November 12, 2013, the Association of Businesses Advocating Tariff Equity (“ABATE”), Coalition of MISO Transmission Customers (“CMTC”), Illinois Industrial Energy Consumers (“IIEC”), Indiana Industrial Energy Consumers, Inc. (“INDIEC”), Minnesota Large Industrial Group (“MLIG”), and Wisconsin Industrial Energy Group (“WIEG”) (collectively, “Complainants”) submitted a complaint against the Midcontinent Independent System Operator, Inc. (“MISO”) and its transmission owning members (“TOs”). Complainants provided evidence in support of their argument that the current TO return on equity (“ROE”) of 12.38%¹ was no longer just and reasonable and a reduction to 9.15% was warranted.² Complainants asked the Commission to (1) adopt the 9.15% ROE for TOs in MISO, (2) cap the equity component of the TOs’ capital structure for ratemaking purposes at 50% and (3) eliminate transmission rate incentives for RTO participation and independence.³ Absent acceptance of the Complainants’ specific requests, they asked that the issues be set for expedited hearing and settlement

¹ 12.2% for ATC.

² Complaint of the Association of Business Advocating Tariff Equity, Coalition of MISO Transmission Customers, Illinois Industrial Energy Customers, Indiana Industrial Energy Customers, Inc., Minnesota Large Industrial Group, and Wisconsin Industrial Energy Group (“Complaint”), filed November 12, 2013, pgs 1-2.

³ *Id.*

procedures to address the issues raised.⁴ OMS filed comments supporting consideration of a reduction in the TOs' ROE and concurred that an evaluation of the capital structures and use of incentives was warranted.⁵

On October 16, 2014, the Commission issued its Order finding that the current 12.38% ROE is no longer just and reasonable and setting the matter for hearing to be held in abeyance while settlement proceedings take place. On the capital structure and transmission incentive issues, however, the Commission found the Complainants had not met their burden of showing that either element was not just and reasonable and declined to modify those elements of the TOs' rates.

II. STATEMENT OF ISSUE

The Commission erred and acted arbitrarily and capriciously when it denied Complainants' request to limit the equity component of the TOs capital structure to 50 percent and to review the use of incentive adders without the opportunity for an evidentiary hearing.

III. ARGUMENT

The OMS seeks rehearing on the Commission's decision not to include review of the TOs capital structure and continued use of incentive transmission adders for independence and RTO participation in the hearing process established to determine the appropriate ROE for MISO TOs. If not reviewed alongside the ROE, the resulting costs in these two areas could lead to rates that will be higher than necessary to achieve investment grade utilities that build needed transmission. Requiring the parties to review base ROE without looking at all the relevant factors that impact end-use rates rests on the faulty notion that these elements are discrete and disconnected from each other. OMS submits that Complainants presented sufficient evidence on these issues to allow the Commission to conclude that additional review through the evidentiary

⁴ *Id.*

⁵ OMS Comments, January 6, 2014.

process is necessary in order to holistically determine that returns to TOs are truly just and reasonable. To preclude consideration of these matters without hearing is arbitrary and capricious.

Capital Structure

The evidence presented by Complainants in this case shows that higher-than-average equity ratios lead to higher cost of capital in rates and therefore higher costs to customers without evidence of offsetting benefits.⁶ Since the ROE established through the hearing and settlement procedures will be applied to the TOs' equity component of their capital structures, it is important that the two be evaluated together to ensure a reasonable outcome for customers.

It is unclear what evidence would satisfy the Commission to limit capital structure to assure that the end result of its ratemaking is just and reasonable. Furthermore, because higher equity ratios ordinarily correlate with less risk and therefore lower base returns, precluding discussion of capital structure necessarily leads to an incomplete discussion of the base ROE. Regardless, vetting the evidence further through a hearing process as part of the discussion on the appropriate ROE for MISO TOs is an important component of the ultimate impact on end-use customers.

Incentives

OMS is concerned that the language in the Commission's Order indicates a policy position that incentives, once granted, may never be reexamined or removed.⁷ "Finally, nothing in the Commission's transmission incentive policy requires periodic reexamination of whether

⁶ Gorman Testimony pg. 12; 18-19; Exhibits MPG-2 and MPG-3. The Michigan PSC takes no position at this time on the appropriate capital structure.

⁷ The Public Service Commission of Wisconsin at this time takes no position with respect to this section on incentives.

incentives are needed, as suggested by Arkansas Energy Customers.”⁸ Just as the ROE established at a different time under different circumstances has been deemed no longer just and reasonable in this case, the application of transmission incentives under FPA 219 requires a fresh look when concerns are raised in a 206 complaint proceeding like this one. Ample evidence was presented to draw into question the continuing effectiveness of the RTO membership and independence adders.

With regard to the RTO adder, it is notable that after more than a decade of MISO’s existence, only one TO has been granted the RTO adder while there are 50 TO members of MISO.⁹ In this instance, particularly as a group, the MISO TOs clearly have not required such an incentive to achieve the goal of RTO membership. The fact that the Commission has rejected similar arguments in the past¹⁰ does not prohibit another look in this or other cases and the fact that the issue continues to be raised further supports the need to consider appropriate duration for these incentives. In addition, it is unclear from the Order what, if any, evidence would suffice to trigger reexamination of an RTO adder.

Similarly, the continued need for ITC Transmission and METC to receive a 100 basis point adder for being an independent transmission company should be reviewed.¹¹ The Commission stated that the benefits of independence continue without reference or discussion of what the benefits are. OMS referenced prior FERC statements in its comments regarding a

⁸ Order at P 204.

⁹ Request for Incentive Adder to Return on Equity for Participation in Regional Transmission Organization, ER15-358, filed November 6, 2014.

¹⁰ Order at P 200.

¹¹ Michigan PSC Footnote: The Michigan PSC reiterates that there may be benefits to providing some amount of incentive ROE adder for independence given our state’s decade-long experience with independent transmission companies. Notwithstanding, the Michigan PSC emphasizes that the overall ratemaking treatment should be considered in a comprehensive fashion, including the interaction among the incentive ROE adders, allowed base ROE, formula-based forward looking rates, and the overall allowed rate of return for each MISO TO. Therefore, the Michigan PSC agrees with the OMS that these issues should be considered as part of the hearing and settlement process.

“superior record of adding infrastructure” and “actually getting transmission built” as support for singling out independent transmission companies for higher returns.¹² But the transmission expansion plans show that billions of dollars of investment are being made in the MISO footprint, most of which is being done by transmission companies that are not deemed independent.¹³ This information highlights the value of including the adders in the hearing and settlement process, to provide greater discussion of the total impacts of these additional costs.

In addition to the facts belying the need for adders to incentivize RTO membership or independence, the Commission failed to address the OMS’s suggestion that adders may misallocate capital from (or raise cost of capital for) other public service utility obligations. There are numerous areas in which utilities are asked to deploy capital to meet the changing needs of the electric system, such as smart meters and associated distribution system upgrades, cybersecurity, coordination of distributed generation, energy efficiency programs, and numerous other expectations this Commission has historically shared with state commissions. More parity in the ability to earn among these various forms of investment will help make these capital allocation decisions based on priority of need instead of ability to earn for shareholders.

Refusal to reexamine adders regardless of evidence that may show they do not result in just and reasonable rates is below the Commission’s required decisional standard. Though the Commission rejected the evidence provided to support a review of the use of incentives for independence and RTO participation, the rationale provided in the Order does not indicate that any evidence could exist to support such a finding. OMS appreciates that any incentive ROE

¹² *Promoting Transmission Investment through Pricing Reform*, 111 FERC ¶ 61,057, at 225 and 226 (2006).

¹³ On December 12, 2013, MISO announced approval of its Transmission Expansion Plan 2013 (MTEP 2013), noting that it covers 317 projects representing an incremental cost of transmission infrastructure projects totaling \$1.48 billion. Available at <https://www.misoenergy.org/AboutUs/MediaCenter/PressReleases/Pages/MISOMTEP13MarksaDecadeofPlanningfor.aspx>.

will ultimately be restrained by the high end of the resulting zone of reasonableness,¹⁴ but submits that a public policy established to incentivize change in an industry must not then exist in perpetuity. The Commission should explain what type of evidence would be persuasive and what circumstances would indicate that an incentive adder has outlived its purpose.

IV. CONCLUSION

For the reasons provided, the OMS requests rehearing of the Commission's October 16, 2014, order in this case and urges consideration of all of the relevant factors affecting the base ROE, including capital structure and incentive transmission adders, as part of the hearing and settlement procedures.

The OMS submits this pleading because a majority of its members has agreed to generally support it. Individual OMS members reserve the right to file separate pleadings regarding the issues discussed herein. The following members generally support this pleading:

Arkansas Public Service Commission
Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Kentucky Public Service Commission
Michigan Public Service Commission
Minnesota Public Utilities Commission
Mississippi Public Service Commission
Missouri Public Service Commission
Montana Public Service Commission
City of New Orleans
South Dakota Public Utilities Commission
Public Utility Commission of Texas
Public Service Commission of Wisconsin

¹⁴ Order at P 205.

The Louisiana Public Service Commission and Manitoba Public Utilities Board abstained. The North Dakota Public Service Commission did not vote on this matter.

Respectfully Submitted,

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Dated: November 14, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Des Moines, Iowa, this 14th day of November, 2014.

William H. Smith, Jr.