

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

Association of Businesses Advocating Tariff)	
Equity, <i>et al.</i>)	
)	
v.)	Docket No. EL14-12-002
)	
Midcontinent Independent System Operator,)	
Inc., <i>et al.</i>)	

**COMMENTS IN SUPPORT OF MOTION FOR PARTIAL
SUMMARY DISPOSITION AND INTERIM RELIEF BY
THE ORGANIZATION OF MISO STATES**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 385.213 (2015), the Organization of MISO States (“OMS”)¹ respectfully submits these comments in support of the Motion for Partial Summary Disposition and Interim Relief of the Joint Movants² filed in the above-captioned docket on February 19, 2016 (“Joint Movants’ Motion” or “Motion”). Should the Commission not grant the relief requested in the Joint Movants’ Motion, OMS respectfully requests that the Commission institute *sua sponte*, pursuant to Section 206 of

¹ The OMS submits these Comments because the following members, which represent a majority, support its contents: Arkansas Public Service Commission, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Iowa Utilities Board, Kentucky Public Service Commission, Minnesota Public Utilities Commission, Mississippi Public Service Commission, Missouri Public Service Commission, Montana Public Service Commission, City of New Orleans, North Dakota Public Service Commission, South Dakota Public Utilities Commission, and Public Utility Commission of Texas. The Manitoba Public Utilities Board, the Michigan Public Service Commission, the Public Service Commission of Wisconsin and the Louisiana Public Service Commission abstained.

² Joint Movants include: Joint Customer Intervenors, Joint Complainants, Joint Consumer Advocates and Southwestern Electric Cooperative, Inc.

the Federal Power Act (“FPA”),³ a proceeding to investigate the justness and reasonableness of the current Base ROEs for the respondent Transmission Owners (“TOs”) in the Midcontinent Independent System Operator, Inc. (“MISO”) region, during the period immediately following the end of the refund period established in Docket No. EL15-45 (*i.e.*, the period beginning May 11, 2016).

I. BACKGROUND

On November 12, 2013, the Joint Complainants filed a complaint pursuant to Section 206 of the FPA challenging, among other things, the justness and reasonableness of the MISO TOs’ Base ROEs. On October 16, 2014, the Commission issued an order finding that there are issues of material fact bearing on the justness and reasonableness of the MISO TOs’ existing Base ROE. For that reason, the Commission set the Base ROE issue for hearing and settlement judge procedures and established a refund effective date of November 12, 2013.⁴ After settlement efforts failed, the Chief Judge reinstated formal evidentiary procedures, and, in August 2015, Presiding Judge Coffman conducted a trial-type hearing. On December 22, 2015, Judge Coffman issued an Initial Decision recommending a Base ROE of 10.32 percent for the MISO TOs.⁵ In their Brief on Exceptions to initial decision, the MISO TOs did not challenge Judge Coffman’s recommendation for a 10.32 percent Base ROE, nor did they argue that a higher Base ROE is necessary to satisfy the governing standards under applicable statutory and decisional law.⁶

³ 16 U.S.C. § 824e (2012).

⁴ See “Order on Complaint, Establishing Settlement and Hearing Judge Procedures, and Establishing Refund Effective Date,” *Assn. of Businesses Advocating Tariff Equity et al. v. Midcontinent Indep. Sys. Op., Inc., et al.*, Docket No. EL14-12-000, issued October 16, 2014.

⁵ *Assn. of Businesses Advocating Tariff Equity, et al. v. Midcontinent Indep. Sys. Operator, Inc., et al.*, 153 FERC ¶ 63,027 (2015).

⁶ See “Brief on Exceptions of the MISO Transmission Owners under EL14-12,” filed January 21, 2016 (eLibrary Accession No. 20160121-5224).

On February 12, 2015, Joint Customer Complainants⁷ filed a separate complaint under Docket No. EL15-45, also challenging the justness and reasonableness of the MISO TOs' existing Base ROE based on new analyses and a different study period. On June 18, 2015, the Commission issued an Order finding the existence of issues of material fact bearing on the justness and reasonableness of the MISO TOs' existing Base ROE. The Commission set the matter for hearing and established a refund effective date of February 12, 2015. The refund period in Docket No. EL15-45 thus runs through May 10, 2016. Presiding Judge Coffman conducted a trial-type hearing in Docket No. EL15-45 in February 2016. An initial decision in Docket No. EL15-45 is pending.

II. COMMENTS

OMS supports the Joint Movants' request for partial summary disposition. The relief the Joint Movants request would protect consumers from the possibility that the MISO TOs' Base ROE might revert to the current excessive levels between the end of the Docket No. EL15-45 refund period and the date on which the Commission issues an order on the initial decision in Docket No. EL14-12. As the Joint Movants note, the relief they seek is consistent with the purposes of the Federal Power Act and mitigates consumers' exposure to excessive rates.⁸

⁷ The Joint Customer Complainants include: Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency and its two members, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi; and Hoosier Energy Rural Electric Cooperative, Inc.

⁸ For the reasons set forth in OMS's Brief on Exceptions in Docket No. EL14-12, OMS believes that the 10.32 percent Base ROE recommended by the Presiding Judge itself is higher than is produced by a correct application of the Commission's ROE methods and policies. To that extent, OMS does not view the relief requested by the Joint Movants as fully protecting consumers from excessive charges during the time between the end of the Docket No. EL15-45 refund period and the date on which the Commission issues an order on the initial decision in Docket No. EL14-12 (Joint Movants do not seek refunds for this period, should the Commission ultimately set an ROE lower than 10.32 percent). Nevertheless, the requested relief mitigates consumers' exposure to excessive charges, especially if the alternative is reversion to the existing ROE during that period.

As explained in the Motion,⁹ the Joint Movants' request satisfies the Commission's standards for summary disposition. In particular, the MISO TOs have had ample opportunity to litigate the justness and reasonableness of the 12.38 percent and 12.22 percent Base ROEs¹⁰ and, indeed, the TOs have tacitly accepted the Presiding Judge's recommended 10.32 percent Base ROE by foregoing exceptions to that recommendation. Further, the Joint Movants do not seek refunds based on the 10.32 percent Base ROE as applied to the period beginning May 11, 2016. By limiting the time period to which potential refunds might apply, the Joint Movants' tailored request alleviates any refund-related administrative burden MISO might claim to suffer.¹¹

For the foregoing reasons, OMS urges the Commission to grant the relief requested in the Joint Movants' Motion. Should the Commission deny that relief, however, OMS would respectfully request that the Commission institute a Section 206 proceeding *sua sponte* to investigate the justness and reasonableness of the MISO TOs' Base ROEs during the period beginning May 11, 2016. The Commission has taken similar action when the available information indicated that the ROE included in a utility's formula rates may be excessive,¹² or that the utility's earned returns appear unjust and unreasonable.¹³ Here, the MISO TOs' tacit acceptance of the Presiding Judge's 10.32 percent Base ROE recommendation is sufficient basis for the Commission to initiate a proceeding investigating the justness and reasonableness of the current 12.38 percent and 12.2 percent Base ROEs for the MISO TOs for the period beginning May 11, 2016.

⁹ Motion at 6-7.

¹⁰ American Transmission Company, LLC has a 12.22 percent Base ROE, the remaining MISO TOs respondents in this proceeding have a 12.38 percent Base ROE.

¹¹ See Motion at 8.

¹² See, e.g., *Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.*, 139 FERC ¶ 61,068, P 87 (2012).

¹³ See, e.g., *Tuscarora Gas Transmission Company*, 154 FERC ¶ 61,030 (2016); *Columbia Gulf Transmission, LLC*, 154 FERC ¶ 61,027 (2016); *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016); *Iroquois Gas Transmission System, L.P.*, 154 FERC ¶ 61,028 (2016).

III. CONCLUSION

WHEREFORE, for the reasons set forth above, OMS respectfully requests that the Commission grant the relief sought by the Joint Movants in their February 19, 2016 Motion. If the Commission declines to grant that relief, OMS respectfully requests that the Commission initiate a proceeding *sua sponte* pursuant to FPA Section 206 to investigate the justness and reasonableness of the MISO TOs' 12.38 percent and 12.2 percent Base ROEs during the period beginning May 11, 2016.

Respectfully submitted,

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Dated: March 7, 2016

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 of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, D.C. this 7th day of March, 2016.

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