

165 FERC ¶ 61,215
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 7, 2018

In Reply Refer To:
Enable Mississippi River
Transmission, LLC
Docket No. RP18-923-000

Enable Midstream Partners, LLC
910 Louisiana, STE 48040 (48th Floor)
Houston, TX 77002

Attention: Lisa D. Yoho
Sr. Director, Regulatory & FERC Compliance

Reference: Compliance Filing

Dear Ms. Yoho:

1. In this order, the Commission addresses Enable Mississippi River Transmission, LLC's (MRT) August 30, 2018 compliance filing submitting *pro forma* tariff records in compliance with the Commission's July 31, 2018 suspension order¹ and directs MRT to file revised tariff records, as discussed below. In the July 2018 Order, the Commission accepted and suspended MRT's tariff records in its general Natural Gas Act (NGA) section 4 rate case filing to be effective January 1, 2019, subject to refund, the outcome of hearing and settlement procedures, and a technical conference. In addition, the Commission directed MRT to file revised tariff records and supporting work papers to address the Commission's summary disposition on two rate issues: (1) to adjust its billing determinants to reflect the renewal of Spire Missouri Inc.'s (Spire Missouri) 437,240 Dth

¹ *Enable Mississippi River Transmission, LLC*, 164 FERC ¶ 61,075 (2018) (July 2018 Order).

per day contract² and (2) to remove a proposed tax allowance from its cost of service consistent with Commission precedent and policy.³

2. As discussed more fully below, the Commission finds that the *pro forma* tariff records, which were submitted in MRT's compliance filing to remove tax allowances and add billing determinants for Spire Missouri, comply with the directives in the Commission's July 2018 Order. Consequently, the Commission directs MRT to file actual tariff records consistent with those *pro forma* tariff records within ten days of the date of this order.

3. In its compliance filing,⁴ MRT submitted *pro forma* tariff records with its revised rates and also revised supporting statements and schedules, including witness testimony.⁵ MRT states that its revised rates are based on a rate base of approximately \$323 million, a cost of service of approximately \$106.9 million, and billing determinants of 999,868 Dth/d for firm service in the Market zone and 973,472 Dth/d in the Field zone.⁶ MRT states that it understands that the Commission may suspend the effectiveness of Docket No. RP18-923-000 tariff records until January 1, 2019. MRT states that it is filing the compliance tariff records on a *pro forma* basis, but commits to file "live" records and move them into effect, incorporating additional Commission directions, if any, received in the interim.

4. Protests to the compliance filing were filed on September 11, 2018 by Ameren Illinois Company and Union Electric Company d/b/a Ameren Missouri (Ameren), Spire Missouri, and the Missouri Public Service Commission. These protesters raise similar issues, objecting to the fact that, when MRT removed the income tax allowance from its

² *Id.* P 26 (citing 18 C.F.R. § 154.303(a) (2018)). In addition, the Commission directed MRT to include additional recontracted capacity, if appropriate. *Id.* PP 27-28.

³ *Id.* PP 29-30; *United Airlines v. FERC*, 827 F.3d 122 (D.C. Cir. 2016); *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement on Treatment of Income Taxes, FERC Stats. & Regs. ¶ 35,060 (cross-referenced at 162 FERC ¶ 61,227) (Revised Policy Statement), *order on reh'g*, 164 FERC ¶ 61,030 (2018) (Revised Policy Statement Rehearing); *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228 (2018).

⁴ MRT's filing is part of its general rate case proceeding. As such, MRT should have made its filing consistent with the Commission's eTariff filing requirements. *See* 18 C.F.R. § 154.4 (2018).

⁵ *See* 18 C.F.R. §§ 154.201, 154.204, and 154.312 (2018).

⁶ Compliance Filing at 4 (citing Statement B).

rates, it also removed the accumulated deferred income tax (ADIT) balance as well as the regulatory asset and liability account balances associated with ADIT, thus increasing MRT's rate base by more than \$77 million. The protesters object to this action as being beyond the scope of the Commission's directive in the July 2018 Order and ask the Commission to reject the filing.

5. In its protest, Ameren raises two additional issues. Ameren states that the compliance filing fails to include the necessary workpapers, data and summaries cross-referenced to the original and objects to the filing of *pro forma* tariff records, rather than live records, as being inconsistent with the July 2018 Order. Ameren objects to this approach as raising questions as to what rates MRT will move into effect at the end of the suspension period and states that the July 2018 Order did not contemplate MRT filing *pro forma* tariff records that would leave this question unanswered. Finally, Ameren states that, in the event the Commission does not reject MRT's compliance filing, the Commission should set for hearing all issues related to the revised billing determinants and elimination of ADIT.

6. On November 19, 2018, Ameren filed a motion for clarification and expedited action requesting the Commission clarify that, at the end of the suspension period, MRT may not place into effect the initial rates set forth in its June 29, 2018 general NGA section 4 rate case filing and that, if MRT intends to place any new rates into effect on January 1, 2019, it must first file those with the Commission no later than December 31, 2018. On November 21, 2018, CenterPoint Energy Resources Corporation (CenterPoint Resources) filed an answer to Ameren's motion requesting that the Commission issue an order clarifying that MRT must move into effect, subject to refund, rates that reflect the conclusions raised in the July 2018 Order at the end of the suspension period. On November 28, 2018, Spire Missouri also filed an answer in support of Ameren's motion.

7. On November 28, 2018, MRT submitted an answer to CenterPoint Resources' answer confirming that it intends to make a filing on or before January 1, 2019 to place into effect the rates shown in the *pro forma* tariff records, adjusted to update plant balances to comply with the Commission's directive in the July 2018 Order, ordering para. C to "remove facilities not placed in service before the effective date." In its answer, MRT provides updated *pro forma* tariff records reflecting revisions proposed after its August 30 compliance filing, including changes proposed in response to the technical conference

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer unless otherwise ordered by the decisional authority. 18 C.F.R. § 385.213(a)(2). We accept MRT's answer because it provides information that assists us in our decision-making process.

9. In this order, the Commission finds that the *pro forma* tariff records in MRT's compliance filing comport with the directives in the Commission's July 2018 Order,

insofar as they remove the tax allowance from the initial rates and add billing determinants to reflect the re-contracting of Spire Missouri's capacity as a known and measurable change in the test period.

10. In the July 2018 Order, the Commission directed MRT to make three changes to its rate proposal prior to moving its rates into effect: (a) to reflect the removal of the tax allowance, (b) to add Spire Missouri billing determinants and (c) to remove facilities not placed in service before the effective date.⁷ MRT, in its supporting work papers and *pro forma* tariff records, represents that it complied with the first two of these requirements. Ameren, Spire Missouri, and the Missouri Public Service Commission object to the fact that, when MRT removed the income tax allowance as directed by the Commission, it also removed ADIT. They argue that this change is beyond the scope of what the Commission directed. The Commission does not agree. In its rehearing order for the Revised Policy Statement addressing the treatment of income tax, the Commission clarified that, "when an MLP pipeline's income tax allowance is eliminated from cost of service, previously accumulated ADIT balances *may* also be eliminated. . . . However, to the extent the Commission addresses these issues in future proceedings, the Commission will consider any arguments regarding not only the application of this policy, but also any arguments regarding the underlying validity of the policy itself."⁸ Thus, MRT was permitted to propose to eliminate the ADIT balances in conjunction with the elimination of the income tax allowance. Parties to this proceeding are permitted to argue the application of this guidance as it applies to MRT in the hearing.

11. Ameren argues that MRT failed to provide workpapers in support of the two adjustments. However, review of MRT's compliance filing indicates that it submitted a full set of workpapers in spreadsheet format. To the extent Ameren believes that these workpapers are incomplete, that issue can be addressed in the hearing. Ameren also questions what MRT intends to move into effect and when. MRT provided an adequate response to these questions.

12. Lastly, the Commission required MRT, upon its motion to place the suspended rates into effect, to remove the costs of facilities not placed in service before the effective date from the rates. If such an adjustment is required, MRT is required to provide revised workpapers reflecting the changes in its motion to place the suspended rates into effect.

⁷ July 2018 Order, 164 FERC ¶ 61,075 at ordering para. C; *see also* 18 C.F.R. § 154.304(2).

⁸ Revised Policy Statement Rehearing, 164 FERC ¶ 61,030 at P 13 (emphasis added).

13. In addition, in its answer, MRT proposes to reflect changing plant balances and depreciation amounts in its filing when it moves to place rates into effect. MRT's motion rates are to reflect only the changes ordered by the July 2018 Order. Interim changes to MRT's cost components are to be reflected in its 45-day update filing following the close of the test period.⁹ However, these interim changes do not constitute an opportunity for MRT to change its underlying case in chief.

14. In its answer, MRT also suggests that it may incorporate changes in its non-rate terms and conditions in response to input received at the September 19, 2018 technical conference. The Commission will not address these proposals in this compliance filing. Such proposals may be considered in the context of the ongoing proceedings to review MRT's non-rate terms and conditions in response to the technical conference.

15. Consequently, the Commission finds MRT's compliance filing consistent with the directive in the July 2018 Order with respect to the tax allowance issue, subject to the outcome of the hearing, technical conference, and settlement procedures in this proceeding. Any issues with respect to the application of the Commission's policy expressed in the Revised Policy Statement may be addressed at hearing.

16. The Commission therefore directs MRT to file, within ten days of the date of this order, actual revised tariff records consistent with its *pro forma* submission, to be effective January 1, 2019, at the end of the suspension period. When MRT then moves those records into effect, they will remain subject to refund and the outcome of the hearing, technical conference, and settlement procedures established in the July 2018 Order, to reflect the resolution of any issues that are still outstanding.

By direction of the Commission. Commissioner McIntyre is not voting on this letter order.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ 18 C.F.R. § 154.311.