

167 FERC ¶ 61,128  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. ALLETE, Inc. Montana-Dakota Utilities Co. Northern Indiana Public Service Company Otter Tail Power Company Southern Indiana Gas & Electric Company	Docket No. EL18-138-000
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Midcontinent Independent System Operator, Inc.	Docket No. ER18-1739-001
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ORDER ACCEPTING IN PART AND REJECTING IN PART COMPLIANCE FILING  
AND TERMINATING SECTION 206 PROCEEDING

(Issued May 16, 2019)

1. On January 22, 2019, Midcontinent Independent System Operator, Inc. (MISO) and Certain MISO Transmission Owners (Certain MISO TOs)<sup>1</sup> (collectively, the Filing Parties)<sup>2</sup> submitted a compliance filing in Docket No. ER18-1739-001, to eliminate from Certain MISO TOs' transmission formula rate templates, included in Attachment O of the Tariff, the two-step averaging methodology they use to calculate the Accumulated

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<sup>1</sup> Certain MISO TOs include: ALLETE, Inc. for its operating division Minnesota Power (and its subsidiary Superior Water, L&P) (collectively, ALLETE, Inc.), Montana-Dakota Utilities Co., Northern Indiana Public Service Company, Otter Tail Power Company, and Southern Indiana Gas & Electric Company.

<sup>2</sup> The Filing Parties state that MISO submitted the compliance filing in its role as administrator of the MISO Open Access Transmission, Energy and Operating Reserves Markets Tariff (Tariff), but takes no position on the substance of the compliance filing, and reserves the right to comment or protest. Compliance Filing at 1 n.2.

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Deferred Income Tax (ADIT) component of rate base<sup>3</sup> in their projected test year calculations, in accordance with the Commission's order issued on December 20, 2018 in Docket No. EL18-138-000.<sup>4</sup> The Filing Parties also propose to revise Certain MISO TOs' annual true-up calculations. In this order, we accept in part and reject in part the compliance filing, effective January 1, 2019, and terminate the proceeding in Docket No. EL18-138-000 that was initiated pursuant to section 206 of the Federal Power Act (FPA).<sup>5</sup>

## **I. December 2018 Order**

2. In the December 2018 Order, the Commission found that the two-step averaging methodology used in Certain MISO TOs' transmission formula rates to calculate the ADIT component of rate base in their projected test year calculations was unjust and unreasonable and unduly discriminatory or preferential.<sup>6</sup> The Commission rejected the Filing Parties' proposed Tariff revisions that were filed in Docket No. ER18-1739-000 (June 2018 Filing) to remedy the concerns the Commission expressed in the order instituting this proceeding<sup>7</sup> with respect to the use of the two-step averaging methodology. The Commission found that the Filing Parties' proposal in their June 2018 Filing to remove the two-step averaging methodology from the calculation of ADIT balances for the projected test year would address the concerns outlined by the Commission in the April 2018 Order. However, the Commission found that the revisions proposed in the June 2018 Filing that were not part of their remedy to remove the two-step averaging methodology, i.e., to apply the IRS's proration methodology to Certain

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<sup>3</sup> 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.

<sup>4</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,235 (2018) (December 2018 Order).

<sup>5</sup> 16 U.S.C. § 824e (2012).

<sup>6</sup> December 2018 Order, 165 FERC ¶ 61,235 at P 30.

<sup>7</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,061 (2018) (April 2018 Order). In the April 2018 Order, the Commission stated that it appeared that the transmission formula rates of Certain MISO TOs that utilized the two-step averaging methodology in their projected test year 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.

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MISO TOs' annual true-up calculations, were barred by the filed-rate doctrine and the rule against retroactive ratemaking.<sup>8</sup>

3. Specifically, the Commission noted that the Filing Parties proposed to apply the IRS's proration methodology to their annual true-up calculations for the (entire) 2018 rate year.<sup>9</sup> The Commission explained that the proposal could result in a retroactive rate increase for some or all of Certain MISO TOs' customers, as it would apply to a period—the 2018 rate year—that was partly prior to their filing.<sup>10</sup>

4. Accordingly, the Commission rejected the Filing Parties' June 2018 Filing in its entirety and directed the Filing Parties to submit a compliance filing revising Certain MISO TOs' transmission formula rates to remove the two-step averaging methodology, effective January 1, 2019.<sup>11</sup>

## II. Compliance Filing

5. The Filing Parties state that, consistent with the Commission's compliance directive in the December 2018 Order, they propose to revise Certain MISO TOs' 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.<sup>12</sup> Specifically, the Filing Parties propose to revise the formulas in lines 25 (Account 190), 52 (Account 282), and 79 (Account 283) such that Certain MISO TOs will no longer

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<sup>8</sup> December 2018 Order, 165 FERC ¶ 61,235 at P 31.

<sup>9</sup> *Id.* P 32.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* PP 32-33. Although the April 2018 Order established a refund effective date of May 4, 2018, the Commission found that a January 1, 2019 effective date for the elimination of the two-step averaging methodology was acceptable. *Id.* P 33 n.60. The Commission explained that given the date of the December 2018 Order it was unfeasible for Certain MISO TOs to change their projected test year calculations for rate year 2018. Further, the Commission explained that because Certain MISO TOs do not use the two-step averaging methodology in their true-up calculations, any over-recoveries created by the use of this methodology by Certain MISO TOs 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.

<sup>12</sup> Compliance Filing at 5, 11. The Filing Parties note that the proposed Tariff revisions are identical to those contained in the June 2018 Filing.

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perform a double averaging in calculating the “Average Balance” for these accounts.<sup>13</sup> 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 to instead use only the ending balance of prorated items. The Filing Parties state, however, that per the requirements of the Consistency Rule,<sup>14</sup> the formulas will require Certain MISO TOs to continue to perform a simple averaging of non-prorated items using beginning-of-year and end-of-year balances.<sup>15</sup>

6. In addition to these revisions, the Filing Parties propose to modify the calculation of average ADIT balances in Certain MISO TOs’ annual true-up calculations so as to preserve the effect of the application of the proration methodology that they use in their projected test year calculations.<sup>16</sup> Specifically, the Filing Parties propose to revise Note F of Certain MISO TOs’ company-specific Attachment Os to explicitly state that they will apply the IRS’s proration methodology to the calculation of the annual true-up. The Filing Parties also propose to revise Note F to clarify that, beginning with the 2019 rate year, the annual true-up for a given year will use the same methodology that was used to project that year’s rates. The Filing Parties state that this clarification makes clear that, beginning in 2019, when the proration methodology is used to calculate the annual projection, the proration methodology will also be used to calculate the annual true-up.<sup>17</sup>

7. Further, the Filing Parties propose to revise Note F to include language describing how Certain MISO TOs will apply the IRS’s proration methodology.<sup>18</sup> The Filing Parties also propose several other ministerial revisions to Note F. Finally, the Filing Parties propose revisions to Certain MISO TOs’ company-specific ADIT work papers to preserve, in the annual true-up calculations, the effect of the application of the proration methodology that they use in their projected test year calculations.

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<sup>13</sup> *Id.* at 5.

<sup>14</sup> 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. *Id.* (citing 26 U.S.C. §§ 168(i)(9)(A)(ii), 168(i)(9)(B)(ii)).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 8, 12.

<sup>17</sup> *Id.* at 8-9.

<sup>18</sup> *Id.* at 9.

### **III. Notice and Responsive Pleadings**

8. Notice of the Filing Parties' compliance filing in Docket No. ER18-1739-001 was published in the *Federal Register*, 84 Fed. Reg. 708 (2019), with interventions and protests due on or before February 22, 2019. Missouri Public Service Commission (Missouri Commission) filed a notice of intervention.

### **IV. Discussion**

#### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), Missouri Commission's notice of intervention makes it a party to the proceeding in Docket No. ER18-1739-001.

#### **B. Substantive Matters**

10. As discussed below, 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 Certain MISO TOs' calculation of ADIT balances for the projected test year, but we reject those proposed revisions that pertain to the calculation of ADIT balances for the annual true-up, which include revisions to Certain MISO TOs' company-specific ADIT work papers and revisions to Note F of their company-specific Attachment Os pertaining to their annual true-up calculations. We also reject the proposed ministerial revisions to Note F.

11. We find that the Filing Parties' Tariff revisions with respect to calculation of ADIT balances for the projected test year comply with the December 2018 Order and address the concerns identified in the April 2018 Order by eliminating the use of the two-step averaging methodology in the calculation of ADIT balances for the projected test year.<sup>19</sup> Accordingly, we accept the Filings Parties' compliance filing in part, effective January 1, 2019, and terminate the captioned section 206 proceeding.

12. However, we reject the Filing Parties' proposed revisions to their annual true-up calculations. We find that the Filing Parties' proposal to revise Certain MISO TOs' transmission formula rates to apply the IRS's proration methodology to their annual true-up calculations—including Certain MISO TOs' company-specific ADIT work papers and revisions to Note F of their company-specific Attachment Os pertaining to their annual true-up calculations—is beyond the scope of this compliance proceeding. The Filing Parties' proposal to prorate Certain MISO TOs' annual true-up calculations is not

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<sup>19</sup> April 2018 Order, 163 FERC ¶ 61,061 at PP 13-14.

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necessary to comply with the remedy required by the December 2018 Order pursuant to section 206 of the FPA, and is thus outside the scope of this compliance proceeding.<sup>20</sup> 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 Certain MISO TOs' projected test year calculations, without any other modifications or revisions. To the extent Certain MISO TOs 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.<sup>21</sup> The Commission will review the proposal at that time.

The Commission orders:

(A) The Filing Parties' compliance filing in Docket No. ER18-1739-001 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 proceeding in Docket No. EL18-138-000 is hereby terminated, as discussed in the body of this order.

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<sup>20</sup> 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").

<sup>21</sup> 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 Order, 165 FERC ¶ 61,235 at PP 31-32.

(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.