

162 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

MISO Transmission Owners

Docket No. ER18-783-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued March 15, 2018)

1. On February 1, 2018, certain of Midcontinent Independent System Operator, Inc. (MISO) Transmission Owners (Certain MISO Transmission Owners)¹ submitted a request that the Commission waive applicable provisions of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)² to enable them to

¹ Certain MISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Ameren Illinois Company (Ameren Illinois) and Ameren Transmission Company of Illinois (ATXI); American Transmission Company LLC (ATCLLC); International Transmission Company (ITC); ITC Midwest LLC (ITC Midwest); Michigan Electric Transmission Company, LLC (METC); MidAmerican Energy Company (MidAmerican); Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co. (MDU); Northern Indiana Public Service Company (NIPSCO); Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc. (NSP); Otter Tail Power Company; and Southern Indiana Gas & Electric Company (Vectren).

² MISO, FERC Electric Tariff, Attachment O, Rate Formulae, 40, AIC Annual Rate Calculation and True-Up Procedures § V (32.0.0); 36A, ATXI Annual Rate Calculation And True-Up Procedures § V (32.0.0); 9, ATCLLC's Methodology for Calculating AFUDC and Weighted Average Cost of Capital, § V (32.0.0); 13, Annual True-Up, Information Exchange, And Challenge Procedures § V (32.0.0); 18, ITCM Annual Rate Calculation and True-Up Procedures § V (32.0.0); 16, Annual Rate Calculation and True-Up Procedures § V (32.0.0); 28, MidAmerican Network Customers Section 30.9 Credits Calculation Procedures, § V (33.0.0); 32, Annual Rate Calculation and True-Up Procedures § V (32.0.0); 44, MDU Annual Rate Calculation and True-Up Procedures § V (33.0.0); 42, NIPSCO Annual Rate Calculation and True-Up Procedures

revise inputs to their projected net revenue requirements for Rate Year 2018 to reflect recent tax law changes. For the reasons discussed below, we grant Certain MISO Transmission Owners' request for waiver, effective January 1, 2018.

I. Background

2. Certain MISO Transmission Owners state that they each use a company-specific forward-looking formula rate, under Attachment O of MISO's Tariff, to calculate their company-specific transmission revenue requirements for Commission-jurisdictional services.³ Certain MISO Transmission Owners assert that each of their company-specific Formula Rate Protocols⁴ require them to submit to MISO by September 1 or October 1 of each year the projected net revenue requirement for the subsequent calendar year (i.e., Rate Year).⁵ Certain MISO Transmission Owners state that the Rate Year runs from January 1 through December 31, and the projected revenue requirement is thereafter subject to a true-up based on the actual costs incurred during the year.⁶

3. Certain MISO Transmission Owners state that, on December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act, which reduced the federal corporate

§ VI (32.0.0); 20, NSP Annual Rate Calculation and True-Up Procedures § V (32.0.0); 34, OTP Annual Rate Calculation and True-Up Procedures § V (33.0.0); 25, Vectren Annual Rate Calculation and True-Up Procedures (32.0.0).

³ Certain MISO Transmission Owners note that the projected net revenue requirements calculated under their company-specific Attachment O formula rate also cause corresponding changes to their rates under Attachment GG, Attachment MM, and the NERC Recommendation or Essential Action Charge under Attachment ZZ of MISO's Tariff. *See* MISO, FERC Electric Tariff, Attachment GG, Network Upgrade Charge and TMEP Project Charge (33.0.0); Attachment MM, Multi-Value Project Charge (MVP Charge) (38.0.0); Attachment ZZ, NERC Recommendation or Essential Action Charge (30.0.0).

⁴ Formula Rate Protocols set forth the procedures for calculating the actual net revenue requirement, true-up adjustment, and projected net revenue requirements for transmission rates.

⁵ Waiver Request at 4 (citing Ameren Illinois Formula Rate Protocols § II.C; NIPSCO Formula Rate Protocols § III.A.).

⁶ *Id.* at 3-4.

income tax rate from a maximum of 35 percent to 21 percent, effective January 1, 2018.⁷ Certain MISO Transmission Owners state that the Tax Cuts and Jobs Act also includes other tax-related changes.

II. Waiver Request

4. Certain MISO Transmission Owners contend that their current projected net revenue requirements for Rate Year 2018 reflect the former federal corporate income tax rate as well as other tax-related assumptions, because they submitted their projected net revenue requirements on or before September 1, 2017 or October 1, 2017, pursuant to their Formula Rate Protocols. Certain MISO Transmission Owners state that because their Formula Rate Protocols prohibit mid-Rate Year adjustments, they are unable to revise their federal corporate income tax rates and other income tax-related inputs in their projected net revenue requirements for Rate Year 2018 without the Commission granting a waiver of the provisions of the Formula Rate Protocols that prevent mid-Rate Year adjustments.⁸

5. Certain MISO Transmission Owners state that the Commission generally requires that a requested waiver: (1) be of limited scope; (2) address a concrete problem that needs to be remedied; and (3) not have undesirable consequences, such as harming third parties.⁹ First, Certain MISO Transmission Owners contend that their waiver request is limited in scope, as it will permit them to reflect the impacts of the lower federal corporate income tax rate in their Rate Year 2018 projected net revenue requirements, as well as allowing them to be consistent with other income tax-related changes in the Tax Cuts and Jobs Act. Certain MISO Transmission Owners assert that no other Tariff provisions are implicated and no additional relief is required.¹⁰

⁷ *Id.* at 4-5 (citing Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 13001(b), 131 Stat. 2054, 2096 (2017)).

⁸ *Id.* at 5-6.

⁹ *Id.* at 6-7 (citing *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,184, at P 18 (2014); *Sw. Power Pool, Inc.*, 148 FERC ¶ 61,013, at P 13 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014)).

¹⁰ Although Certain MISO Transmission Owners claim that no other Tariff provisions are implicated, we note that Certain MISO Transmission Owners state that the projected net revenue requirements calculated under their company-specific Attachment O formula rate also cause corresponding changes to their rates under

6. Second, Certain MISO Transmission Owners assert that granting the requested waiver will fix a concrete problem and remove regulatory uncertainty. Certain MISO Transmission Owners contend that the waiver will remove regulatory uncertainty surrounding how they may reflect the impacts of the new federal corporate income tax rate in their transmission rates as quickly as possible, while complying with the requirements of their as-filed Formula Rate Protocols.

7. Third, Certain MISO Transmission Owners maintain that the requested waiver poses no threat of adverse market impact, as it will allow them to lower their projected net revenue requirements. Certain MISO Transmission Owners state that without the requested waiver, the new federal corporate income tax rate would be implemented in the annual update for Rate Year 2019 and, consequently, Certain MISO Transmission Owners' customers would not receive the benefits of the lower federal corporate income tax rate for Rate Year 2018 until the true-up for that year (i.e., 2020).¹¹ Certain MISO Transmission Owners state that MISO, in its role as administrator of the Tariff, supports their waiver request.¹²

8. Certain MISO Transmission Owners request that the Commission grant the waiver request effective January 1, 2018, consistent with the effective date of the lower federal corporate income tax rate. Certain MISO Transmission Owners assert that the January 1, 2018 effective date is necessary in order to immediately reduce the federal corporate income tax rate in their projected net revenue requirements and avoid relying on the true-up for Rate Year 2018 to return the money to customers. Certain MISO Transmission Owners state that, if the waiver is granted effective January 1, 2018, MISO would begin charging the new lower transmission rates in 2018, and re-bill the transmission charges that have been assessed since January 1 at the new lower rates.¹³

III. Notice and Responsive Pleadings

9. Notice of Certain MISO Transmission Owners' filing was published in the *Federal Register*, 83 Fed. Reg. 5617 (2018), with interventions and protests due on or before February 22, 2018. Exelon Corporation, Arkansas Electric Cooperative Corporation, Wabash Valley Power Association, Inc., Consumers Energy Company, Ameren Services Company, GridLiance Holdco, LP, American Municipal Power, Inc.,

Attachment GG, Attachment MM, and the NERC Recommendation or Essential Action Charge under Attachment ZZ of MISO's Tariff. *See supra* n.3.

¹¹ Waiver Request at 7-8.

¹² *Id.* at 2.

¹³ *Id.* at 8.

and NRG Power Marketing LLC and GenOn Energy Management, LLC filed timely motions to intervene. Missouri Public Service Commission filed a notice of intervention.

10. DTE Electric Company and Alliant Energy Corporate Services, Inc. (Alliant Energy) each filed timely motions to intervene and comments. Organization of MISO States and Michigan Public Service Commission filed notices of intervention and comments.

11. DTE Electric Company, Alliant Energy, Organization of MISO States, and Michigan Public Service Commission support Certain MISO Transmission Owners' waiver request. DTE Electric Company states that the lower federal corporate income tax rate will result in lower transmission expenses for DTE Electric Company and its retail customers and if Certain MISO Transmission Owners' request is not granted, the impacts of the federal corporate income tax change will not be realized until 2019.¹⁴ Alliant Energy also states that the requested waiver will enable it and its state regulators to move forward with planning and implementing how to pass the savings on to customers.¹⁵ Organization of MISO States asserts that Certain MISO Transmission Owners' request is in line with a letter that Organization of MISO States sent to the Commission on January 19, 2018 asking the Commission to take prompt action to ensure that customers receive the value of lower costs to utilities from the tax reduction.¹⁶ Michigan Public Service Commission states that transmission costs are a large part of what regulated utilities pay for purchased power and granting the waiver request will allow Certain MISO Transmission Owners to incorporate the new tax rate into their projected net revenue requirements for Rate Year 2018 instead of waiting for the true-up for Rate Year 2018 that will take place in 2020.¹⁷

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁴ DTE Electric Company Comments at 3.

¹⁵ Alliant Energy Comments at 3.

¹⁶ Organization of MISO States Comments at 2.

¹⁷ Michigan Public Service Commission Comments at 4-6.

B. Substantive Matters

13. We grant Certain MISO Transmission Owners' request for waiver of applicable provisions of MISO's Tariff that prevent mid-Rate Year adjustments to allow Certain MISO Transmission Owners to revise the inputs in their 2018 projected net revenue requirements to reflect the recent tax law changes.¹⁸ The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁹ We find that Certain MISO Transmission Owners' waiver request satisfies these waiver criteria.

14. First, we find that Certain MISO Transmission Owners acted in good faith as the Tax Cuts and Jobs Act was signed into law after the date that Certain MISO Transmission Owners were required by the Formula Rate Protocols to submit their projected net revenue requirements for Rate Year 2018 to MISO.

15. Second, we find that the waiver is limited in scope to permit Certain MISO Transmission Owners to reflect the impacts of the Tax Cuts and Jobs Act for Rate Year 2018. Certain MISO Transmission Owners assert that no other Tariff provisions are implicated, other than the related sections of the Tariff that use inputs from Attachment O,²⁰ and no additional relief is required.

16. Third, we find that the waiver addresses a concrete problem by allowing Certain MISO Transmission Owners to reflect the beneficial impacts of the new federal corporate income tax rate reduction in transmission rates in a timely manner, while complying with the requirements of their as-filed Formula Rate Protocols.

17. Fourth, we find that the waiver does not have undesirable consequences, such as harming third parties, as it will allow Certain MISO Transmission Owners to lower their projected net revenue requirements and provide benefits to customers through lower rates sooner than if Certain MISO Transmission Owners had to wait until the true-up for Rate Year 2018 (i.e., 2020) to recognize the new federal corporate income tax rate. We note that Certain MISO Transmission Owners represent that MISO supports their request, and

¹⁸ See *supra* n.2

¹⁹ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

²⁰ See *supra* n.10.

that no party has opposed the request. Accordingly, we grant Certain MISO Transmission Owners' request for waiver, effective January 1, 2018, as requested.

The Commission orders:

Certain MISO Transmission Owners' request for waiver of provisions of MISO's Tariff is hereby granted, effective January 1, 2018, as discussed in the body of this order.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.