

167 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Republic Transmission, LLC

Docket Nos. ER19-605-000
ER19-605-003

ORDER ON TRANSMISSION FORMULA RATE PROPOSAL AND INCENTIVES

(Issued June 11, 2019)

1. On December 19, 2018 (December 19 Filing), as amended on February 26, 2019 (Deficiency Response)¹ and April 12, 2019 (April 12 Amendment), Republic Transmission, LLC (Republic)² submitted, under sections 205 and 219 of the Federal Power Act (FPA),³ a proposed transmission formula rate comprised of a company-specific Attachment O, Attachment GG (Template), and associated protocols (Protocols) (together, Formula Rate), applicable to the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff). Republic also requests to apply the Formula Rate, including certain previously granted incentives, for certain future affiliates or subsidiaries. In this order, we accept Republic's proposed Formula Rate, to be effective once the Formula Rate is filed with

¹ On February 8, 2019, Commission staff issued a deficiency letter.

² Republic states that it is a transmission-only company organized under the laws of the State of Indiana, and it is wholly owned by Republic Transmission Holdings, LLC (RT Holdings), which in turn is owned by LS Power Grid DRS Holdings, LLC (LS Power Grid) and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier). Republic states that Hoosier currently owns 10 percent of RT Holdings and has an option to purchase up to 20 percent of RT Holdings at the time the Project is placed into commercial operations. LS Power Grid is owned by LSP Transmission Holdings, LLC (LSP Holdings), which is ultimately owned by LS Power Associates, L.P. (LS Power Associates), which in turn is wholly owned by certain private individuals and associated entities. December 19 Filing, Transmittal at 3 & Ex. No. Republic-100 (Testimony of Adam Gassaway) at 8.

³ 16 U.S.C. §§ 824d, 824s (2012).

the Commission to become part of MISO's Tariff. In addition, we grant Republic's request for authorization to apply the same Formula Rate accepted herein and previously granted hypothetical capital structure and regulatory asset incentives granted to Republic to future affiliates of Republic formed to operate in MISO.

I. Background

2. In Order No. 1000,⁴ the Commission required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁵ In addition, the Commission required public utility transmission providers to revise their open access transmission tariffs to, among other things: (1) establish qualification criteria to determine whether an entity is eligible to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation;⁶ (2) identify information a prospective transmission developer must submit in support of a transmission project proposed for selection;⁷ and (3) describe a transparent and not unduly discriminatory process for evaluating proposals for selection in the regional transmission plan for purposes of cost allocation.⁸ The Commission noted that, although not mandatory, public utility transmission providers in a transmission planning region could use, for example, a competitive bidding process as one method to comply with the requirements of Order No. 1000.⁹ In response to the requirements of Order No. 1000, MISO established a competitive solicitation process, under which qualified transmission developers can bid to develop transmission projects that have been selected in MISO's

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁵ Order No. 1000, 136 FERC ¶ 61,051 at P 313.

⁶ *Id.* PP 225, 323.

⁷ *Id.* PP 325-326.

⁸ *Id.* P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

⁹ Order No. 1000, 136 FERC ¶ 61,051 at P 336.

regional transmission plan, termed the MISO Transmission Expansion Plan, for purposes of cost allocation.¹⁰

3. As part of MISO's 2015 Transmission Expansion Plan, MISO identified several congested flowgates, including flowgates in southern Indiana. MISO studied alternatives to address this congestion, including a new 345 kV transmission line between the existing Duff substation in Indiana and the existing Coleman substation in Kentucky (Project). MISO's studies determined that the Project would provide substantial benefits, and MISO recommended approval of the Project as a market efficiency project; MISO's Board of Directors approved the Project in December 2015. MISO initiated a competitive solicitation process in January 2016 to determine the Selected Developer for the Project. Republic submitted a proposal for consideration, and MISO determined that Republic's proposal provided the strongest combination of attributes and chose Republic as the Selected Developer for the Project.¹¹

4. Republic's competitive solicitation bid for the Project included rate concessions, including: (1) a Total Rate Base Cap of \$58.1 million; (2) a return on equity (ROE) cap at the lesser of 9.80 percent inclusive of incentives or the MISO region-wide base ROE plus a Regional Transmission Organization (RTO) participation adder (RTO Participation Incentive); (3) a Schedule Guarantee under which the ROE would be reduced for every month of delay up to a total of 30 basis points, for a delay of 12 months or longer, in the event the completion date is later than the Guaranteed Completion Date of January 1, 2021, subject to extension due to events outside of Republic's control; and (4) an Equity Percentage Cap that would limit the equity component of the capital structure used to set rates, to be the lower of the actual capital structure or 45 percent. Republic states that these rate concessions were incorporated in the Amended and Restated Selected Developer Agreement for the Project.¹²

5. On October 6, 2017, the Commission approved Republic's request for certain transmission rate incentives.¹³ Approved incentives included: (1) deferred recovery of prudently incurred pre-commercial costs through creation of a regulatory asset; (2) full recovery of prudently incurred costs if the Project is abandoned for reasons beyond Republic's control; (3) use of a hypothetical capital structure consisting of 55 percent

¹⁰ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 (2013), *order on reh'g & compliance filings*, 147 FERC ¶ 61,127 (2014).

¹¹ December 19 Filing, Transmittal at 5-6.

¹² *Id.* at 6-8.

¹³ *Republic Transmission, LLC*, 161 FERC ¶ 61,036 (2017) (Republic Incentives Order).

debt and 45 percent equity until the Project achieves commercial operation; and (4) a 50 basis point adder to Republic's ROE for participation in an RTO, subject to an overall ROE cap consistent with Republic's project proposal submitted to and accepted by MISO.

II. Notice of Filings

6. Notice of Republic's December 19 Filing was published in the *Federal Register*, 83 Fed. Reg. 66,701 (2018), with interventions and protests due on or before January 9, 2019. Timely motions to intervene were filed by MISO and GridLiance Heartland LLC. On February 12, 2019, a motion to intervene out-of-time was filed jointly by Starwood Energy Group Global L.L.C., Startrans IO, LLC, and DCR Transmission, LLC (Joint Motion).

7. Notice of Republic's Deficiency Response was published in the *Federal Register*, 84 Fed. Reg. 7893 (2019), with interventions or protests due on or before March 19, 2019. None was filed.

8. Notice of Republic's April 12 Amendment was published in the *Federal Register*, 84 Fed. Reg. 16,251 (2019), with interventions or protests due on or before May 3, 2019. None was filed.

III. 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), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.¹⁴

B. Substantive Matters

1. Formula Rate Templates and Protocols

a. Proposal

10. Republic states that its proposed Formula Rate will be applied initially to Republic's investment in transmission facilities for which Republic is chosen as the Selected Developer through MISO's Order No. 1000-compliant competitive solicitation

¹⁴ We deem the Joint Motion to be timely, as it was filed prior to the new due dates for interventions established by the notice of the Deficiency Response and the notice of the April 12 Amendment.

process. Republic states that the Formula Rate will be incorporated into the MISO Tariff upon Republic becoming a transmission owner in MISO.¹⁵ Republic states that its proposed Template incorporates the return-related concessions, described above, which it committed to in its Order No. 1000 competitive solicitation bid.¹⁶

11. Republic proposes to use a forward-looking Template, which it states is similar to those approved for other MISO transmission owners. Republic also states that the Template is consistent with the MISO templates for Attachment O and Attachment GG, as well as the formula rate approved for Republic's affiliate, Northeast Transmission Development, LLC, now known as Silver Run Electric, LLC. Republic states that the Formula Rate Templates calculate Republic's cost of service in the form of an annual transmission revenue requirement (ATRR) using forecasted values, which is subject to a true-up mechanism that makes adjustments for any potential variances between projected and actual values in the rate for the subsequent rate year. Republic notes that the project specific revenue requirement determined by the Formula Rate Templates are ceiling rates, and the effect of any discounts due to cost commitments made by Republic are taken into account as a part of the annual forecasting and true-up process.¹⁷

12. Republic describes its proposed Protocols as consistent with those approved for other MISO transmission owners. Republic asserts that the Protocols satisfy the Commission's concerns with respect to the scope of participation in the information exchange process, the transparency of the information exchange, and the ability of interested parties to challenge Republic's implementation of the Formula Rate as a result of the information exchange. Republic states that the Protocols are consistent with Commission requirements for MISO and satisfy the Commission's requirements for forward-looking formula rate protocols.¹⁸ Republic explains that the Protocols permit Republic to discount its ATRR to recognize any specific cost commitments Republic made during the competitive bidding process.¹⁹

¹⁵ December 19 Filing, Transmittal at 1, 2.

¹⁶ *See supra* P 4.

¹⁷ December 19 Filing, Transmittal at 12-13.

¹⁸ *Id.* at 11 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014), *reh'g denied*, 150 FERC ¶ 61,024 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015)).

¹⁹ *Id.* at 13-14.

13. Republic states that it plans to secure various services, including accounting, financial reporting, information technology, legal, regulatory, and engineering services, from its affiliates. Republic explains that these services will be provided at a price consistent with any applicable affiliate pricing requirements.²⁰ Republic states that its Protocols require it to provide, in its annual updates, a description of the methodologies used to allocate and directly assign costs between Republic and its affiliates, a description and reasons for any changes to cost allocation methodologies from the prior year, and the magnitude of these allocated costs by service category or function for the applicable period.²¹

14. Republic states that its Attachment O Protocols include a requirement that, as part of its annual informational filing, it will include a work paper showing how the rate concessions are being met in the proposed ATRR. Republic contends that this will provide interested parties with sufficient information to determine if Republic's annual rate filings meet the rate concession commitments made to MISO.²²

15. Republic states that if, as anticipated, Big Rivers Electric Corporation (Big Rivers) takes ownership of the Kentucky portion of the Project at commercial operation, Big Rivers will be bound by the rate commitments made by Republic. Republic states that its Attachment O Protocols also include a requirement to provide an annual work paper to stakeholders that will identify all rate commitments, including the value of facilities transferred to Big Rivers, and how the rate commitments are being met in Republic's ATRR.²³

16. Republic proposes to include an income tax allowance in its Formula Rate for the portion of its ownership shares owned by LS Power Grid, but not for the portion owned by Hoosier. In its Deficiency Response, Republic states that none of the entities holding membership interests in Republic is a publicly-traded partnership or Master Limited Partnership (MLP). Republic also states that LSP Holdings elected to be classified as a corporation for U.S. federal income tax purposes. Republic explains that all of the distributive share of income or losses from Republic are includable on LSP Holdings'

²⁰ *Id.* at 21.

²¹ *Id.*

²² *Id.* at 8.

²³ *Id.*

income tax return, and LSP Holdings itself is obligated to pay corporate income tax on such amounts.²⁴

b. Commission Determination

17. We accept Republic's proposed Formula Rate. We find that the Template is consistent with other Commission-approved formula rate templates, and the Template incorporates the rate commitments agreed to by Republic in the Project's Amended and Restated Selected Developer Agreement. We also accept Republic's proposal to recover an income tax allowance in its Formula Rate for LSP Holdings' ownership share.²⁵ Additionally, we find that Republic's proposed Protocols meet the standards set forth in Commission precedent.²⁶

18. Regarding the effective date for the Formula Rate, the Formula Rate will not become effective until Republic becomes a transmission-owning member of MISO. Accordingly, we reset the effective date of the Formula Rate in eTariff to an indeterminate effective date²⁷ and further note that Republic must make an eTariff filing pursuant to section 205 of the FPA to cancel the initial Republic baseline tariff accepted in this proceeding when its filing to become part of MISO's Tariff becomes effective.

2. Depreciation Rates

a. Proposal

19. Republic proposes to use the depreciation rates currently in effect for its affiliate, Cross Texas Transmission, LLC (Cross Texas). Republic states that, because it is in the process of developing its first transmission asset, it lacks an operating history upon which

²⁴ *Id.* at 3-4.

²⁵ *Enable Miss. River Transmission, LLC*, 164 FERC ¶ 61,075, at P 36 (2018); *Trailblazer Pipeline Co. LLC*, 166 FERC ¶ 61,141, at P 29 (2019).

²⁶ *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209, *order on compliance*, 146 FERC ¶ 61,212 (2014), *order on compliance*, 150 FERC ¶ 61,025 (2015); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 127 (2016).

²⁷ *See* Office of the Secretary, Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings, at 10 (Nov. 14, 2016) (establishing 12/31/9998 as the date for filings with indeterminate effective dates).

to base a depreciation study. Republic contends that the depreciation rates of Cross Texas closely approximate the appropriate depreciation rates for Republic, as their facilities have similar design, age, and voltage characteristics. Republic notes that, as part of a comprehensive settlement of issues set for hearing, the Commission accepted use of the Cross Texas depreciation rates by Republic's affiliate Northeast Transmission, now known as Silver Run Electric, LLC.²⁸ Republic's Template states that the depreciation rates cannot be changed absent a filing pursuant to section 205 or 206²⁹ of the FPA.³⁰ In the April 12 Amendment, Republic proposes revisions to Note AA in Attachment O to reflect that, within 12 months after the transmission facilities at issue have been in service for five years, it will prepare and file a new depreciation study pursuant to section 205 of the FPA proposing updated depreciation parameters for the Project.³¹

b. Commission Determination

20. We accept Republic's proposed, initial depreciation rates, as well as its commitment to complete a depreciation study within five years from the date its Formula Rate becomes effective in the MISO Tariff and its commitment to file the results with the Commission under section 205 of the FPA. Because Republic does not currently have transmission assets, there is no historical data to support a depreciation study. The Commission has accepted formula rates that use a corporate affiliate's Commission-approved depreciation rates for a transmission start-up, and we do so here.³² We find that Cross Texas' depreciation rates would be an appropriate proxy for Republic to adopt in determining its proposed depreciation rates.

²⁸ December 19 Filing, Ex. No. Republic-300 (Testimony of Joseph L. Myers) at 15.

²⁹ *Id.*, Transmittal at 16.

³⁰ 16 U.S.C. § 824e.

³¹ April 12 Amendment, Transmittal at 2. In the April 12 Amendment, Republic also includes corrections to Line 8 on page 3 and Note JJ in Attachment O, as confirmed in its Deficiency Response. *See* Deficiency Response at 5.

³² *PJM Interconnection, L.L.C. & Ne. Transmission Development, LLC*, 155 FERC ¶ 61,097, at PP 164-165 (2016).

3. **Request for Republic's Future Affiliates or Subsidiaries in MISO to Apply Republic's Formula Rate and Incentives**

a. **Proposal**

21. Republic requests authorization for its new and yet-to-be-formed affiliates or subsidiaries that undertake transmission projects in the MISO region to apply the Republic Formula Rate and base ROE, together with the Regulatory Asset Incentive, the Hypothetical Capital Structure Incentive, and RTO-Participation Incentive, which the Commission granted to Republic in the Republic Incentives Order. Republic states that this would permit that affiliate to submit bids through the MISO Transmission Expansion Plan process that reflect the cost recovery the affiliate should expect, which would in turn increase the accuracy of the affiliate's estimates. Further, Republic reasons that the Commission is fully considering these incentives in the instant proceeding, and any subsequent proceedings under section 205 or section 219 of the FPA would result in identical rationales for granting the incentives. Republic also notes that the Commission has granted such requests in the past.³³

b. **Commission Determination**

22. We grant Republic's request to allow future Republic affiliates and subsidiaries to use Republic's Formula Rate and the hypothetical capital structure and regulatory asset for pre-commercial costs incentives approved for Republic in the Republic Incentives Order.³⁴ Consistent with the Commission's determinations in, *Transource Wisconsin* and *Transource Kansas*,³⁵ we find that granting the regulatory asset for pre-commercial costs and hypothetical capital structure incentives in this instance for future use by Republic's yet-to-be formed affiliates and subsidiaries will facilitate the formation of additional entities for purposes of participating as nonincumbent transmission developers in the Order No. 1000 transmission planning process, which is consistent with our goals of removing barriers to transmission development and ensuring just and reasonable rates

³³ December 19 Filing, Transmittal at 19-21.

³⁴ We deny, however, at this time, Republic's request that its affiliates or subsidiaries be permitted to utilize an RTO Participation Incentive.

³⁵ See *Transource Wisconsin*, LLC, 149 FERC ¶ 61,180, at P 16 (2014) (*Transource Wisconsin*); *Transource Kansas*, LLC, 151 FERC ¶ 61,010, at P 15 (2015), *order on reh'g and compliance*, 154 FERC ¶ 61,011 (2016) (*Transource Kansas*).

through such processes.³⁶ Moreover, we find that because the rationale for granting these incentives to future Republic subsidiaries would be identical to the rationale adopted in this proceeding, and because the Commission has fully considered the incentives issue in this proceeding, the issue need not be re-litigated through further section 205 or section 219 filings.³⁷ As discussed above, if and when MISO awards a project to a Republic affiliate or subsidiary through MISO's competitive solicitation process, the Republic affiliate or subsidiary will be expected to make a joint section 205 filing to incorporate the formula rate into the MISO Tariff.

23. Such an affiliate or subsidiary of Republic would become a transmission owner in MISO after being designated by MISO as the Selected Developer of a transmission project and turning over operational control of the facilities to MISO. At that time, Republic, or the Republic subsidiary operating in MISO, and MISO will make a joint section 205 filing to incorporate the Formula Rate into the MISO Tariff. In that filing, Republic should label the Template and Protocols as the *pro forma* formula rate template and protocols for use by any Republic affiliate or subsidiary, which will obviate the need to make additional section 205 or 219 filings.³⁸

The Commission orders:

(A) Republic's proposed Formula Rate is hereby accepted, as discussed in the body of this order. Republic's proposed Formula Rate will take effect once filed with the Commission to become part of MISO's Tariff, consistent with the effective date established in that future proceeding.

³⁶ Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000-A, 139 FERC ¶ 61,132, at P 87 (2012).

³⁷ *Transource Kansas*, 151 FERC ¶ 61,010 at P 82.

³⁸ If any Republic subsidiary operating in MISO is awarded a project through MISO's competitive developer selection process or acquires an asset prior to Republic becoming a transmission owner in MISO, then that subsidiary will make the section 205 filing.

(B) Republic's requests that any future affiliates or subsidiaries of Republic formed to operate in MISO be authorized to apply Republic's Formula Rate and utilize the regulatory asset and hypothetical capital structure incentives awarded to Republic are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.