

168 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Electric Transmission Company, LLC

Docket Nos. EL19-16-000

Midcontinent Independent System Operator, Inc.
Michigan Electric Transmission Company, LLC

ER18-2323-003

ORDER ACCEPTING COMPLIANCE FILING AND TERMINATING SECTION 206
PROCEEDING

(Issued August 21, 2019)

1. On June 17, 2019, Midcontinent Independent System Operator, Inc. (MISO) and Michigan Electric Transmission Company, LLC (METC) (collectively, the Filing Parties)¹ submitted a compliance filing in Docket No. ER18-2323-003, to eliminate from METC's transmission formula rate template, included in Attachment O of the MISO Tariff, the two-step averaging methodology it had used to calculate the Accumulated Deferred Income Tax (ADIT) component of rate base² in its projected test year calculations, in accordance with the Commission's order issued on May 16, 2019 in Docket Nos. EL19-16-000 and ER18-2323-001.³ In this order, we accept the compliance

¹ The Filing Parties state that MISO submitted the filing in its role as administrator of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), but takes no position on the substance of the filing, and reserves the right to comment or protest.

² 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.

³ *Mich. Elec. Transmission Co.*, 167 FERC ¶ 61,135 (2019) (May 2019 Order).

filing, effective January 1, 2019, and terminate the proceeding in Docket No. EL19-16-000 that was initiated by an order issued on December 20, 2018.⁴

I. May 2019 Order

2. In the May 2019 Order, the Commission found that the two-step averaging methodology used in METC's transmission formula rate to calculate the ADIT component of rate base in its projected test year calculations was unjust and unreasonable and unduly discriminatory or preferential.⁵ Additionally, the Commission rejected the Filing Parties' proposed Tariff revisions in Docket No. ER18-2323-001 (January 2019 Filing) that were intended to remedy the concerns expressed in the December 2018 Order with respect to the use of the two-step averaging methodology. The Commission found that the Filing Parties' proposal in their January 2019 Filing would address the concerns outlined in the December 2018 Order.⁶ However, the Commission found that the revisions proposed in the January 2019 Filing included revisions that were not part of METC's two-step averaging remedy, i.e., revisions to apply the IRS's proration methodology to METC's annual true-up calculations, and that these were barred by the filed-rate doctrine and the rule against retroactive ratemaking.⁷

3. Specifically, the Commission found that the proposed effective date of January 1, 2019 for the Tariff revisions to apply the proration methodology to METC's annual true-up calculations could result in a retroactive rate increase, as it would apply to a portion of the 2019 rate year that was partly historical, given that the revisions were filed on January 22, 2019, after part of 2019 had elapsed.⁸ Accordingly, the Commission rejected the January 2019 Filing in its entirety and directed METC to make a further

⁴ *Int'l Transmission Co.*, 165 FERC ¶ 61,236 (2018) (December 2018 Order). In the December 2018 Order, the Commission stated that it appeared that METC's transmission formula rate may be unjust, unreasonable, or unduly discriminatory or preferential because its projected test year calculations utilize a two-step averaging methodology to determine ADIT balances. Pursuant to section 206 of the Federal Power Act, 16 U.S.C. § 824e (2012), the Commission commenced paper hearing procedures to resolve this matter.

⁵ May 2019 Order, 167 FERC ¶ 61,135 at P 24.

⁶ *Id.* P 25.

⁷ *Id.*

⁸ *Id.* P 26.

compliance filing revising METC's transmission formula rate to remove the two-step averaging methodology.⁹

II. Compliance Filing

4. The Filing Parties state that, consistent with the Commission's compliance directive in the May 2019 Order, METC proposes to revise its company-specific ADIT work papers found in Attachment O of MISO's Tariff to eliminate the use of the two-step averaging methodology to determine ADIT balances in the projected test year calculation.¹⁰ The Filing Parties further state that METC is not currently proposing any revisions to its annual true-up calculations.¹¹

5. The Filing Parties state that METC's proposed Tariff revisions to eliminate the two-step averaging methodology are identical to those contained in the January 2019 Filing.¹² Specifically, the Filing Parties propose to revise METC's transmission formula rate in lines 29 (Account 190), 58 (Account 282), and 87 (Account 283) to ensure that METC will no longer perform the two-step averaging methodology in calculating the "Average Balance" for these accounts.¹³ 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 and to instead use only the ending balance of prorated items. However, the Filing Parties state that, per the requirements of the Consistency Rule,¹⁴ the formulas will require METC to continue to perform a simple averaging of non-prorated items using beginning-of-year and end-of-year balances.¹⁵

⁹ *Id.* PP 25-27.

¹⁰ Filing at 1, 3.

¹¹ *Id.* at 3.

¹² *Id.* at 3-4.

¹³ *Id.* at 4.

¹⁴ 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.* at 4. (citing, *inter alia*, 26 U.S.C. §§ 168(i)(9)(A)(ii), 168(i)(9)(B)(ii) (2012)).

¹⁵ *Id.*

6. The Filing Parties request an effective date of January 1, 2019 for their proposed Tariff revisions.¹⁶ They assert that this requested effective date is consistent with the Commission's findings in its order regarding the ADIT filing of certain MISO Transmission Owners (Certain MISO TOs).¹⁷ The Filing Parties note that the Commission explained there that, although it had established a refund effective date of May 4, 2018 in the FPA section 206 proceeding requiring Certain MISO TOs to eliminate the two-step averaging methodology, an effective date of January 1, 2019 was acceptable for the Tariff revisions given that it was "unfeasible for [Certain MISO TOs] to change their projected test year calculations for rate year 2018."¹⁸

7. The Filing Parties contend that, like the Certain MISO TOs, it is unfeasible for METC to revise its test year projections for rate year 2018.¹⁹ Additionally, the Filing Parties state that, similar to the Certain MISO TOs, METC does not utilize the two-step averaging methodology in its annual true-up calculations. Thus, the Filing Parties explain that any over-recoveries created by METC's use of the two-step averaging methodology in its projected test year calculations for the three-day period between the December 28, 2018 refund effective date established in Docket No. EL19-16-000 and its proposed effective date of January 1, 2019 will be reversed and refunded, with interest, to customers through the annual true-up calculations for rate year 2018.²⁰

8. Finally, the Filing Parties state that, upon the Commission's acceptance of the proposed Tariff revisions, METC will begin utilizing the proposed version of the ADIT work paper that does not include the two-step averaging methodology, and any over-

¹⁶ *Id.* at 1, 4.

¹⁷ *Id.* at 4-5 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,235, at P 33 n.60 (2018) (December 2018 Certain MISO TOs Order)). Certain MISO TOs included ALLETE, Inc. for its operating division Minnesota Power (and its subsidiary Superior Water, L&P), Montana-Dakota Utilities Co., Northern Indiana Public Service Company, Otter Tail Power Company, and Southern Indiana Gas & Electric Company.

¹⁸ *Id.* at 5 (quoting December 2018 Certain MISO TOs Order, 165 FERC ¶ 61,235 at P 33 n.60).

¹⁹ *Id.*

²⁰ *Id.*

recoveries created by use of the two-step averaging methodology for the period of January 1, 2019 up to that date will be reversed and refunded with interest in the annual true-up for the 2019 rate year.²¹ The Filing Parties state that MISO supports the use of the annual true-up for this purpose.²²

III. Notice

9. Notice of the Filing Parties' compliance filing in Docket No. ER18-2323-003 was published in the *Federal Register*, 84 Fed. Reg. 29,193 (2019), with interventions and protests due on or before July 8, 2019. None was filed.

IV. Discussion

10. We find that the Filing Parties' filing complies with the May 2019 Order and addresses the concerns identified in the December 2018 Order by eliminating the use of the two-step averaging methodology in the calculation of ADIT balances for METC's projected test year calculations. Accordingly, we accept the compliance filing, effective January 1, 2019,²³ and terminate the captioned section 206 proceeding.

The Commission orders:

(A) The Filing Parties' compliance filing in Docket No. ER18-2323-003 is hereby accepted, effective January 1, 2019, as discussed in the body of this order.

²¹ *Id.* at 5-6.

²² *Id.* at 6.

²³ Although the December 2018 Order established a refund effective date of December 28, 2018 for Docket No. EL19-16-000, we find that a January 1, 2019 effective date for the elimination of the two-step averaging methodology is acceptable. Given the date of the December 2018 Order, it was unfeasible for METC to change its projected test year calculations for rate year 2018. Further, because METC does not use the two-step averaging methodology in its annual true-up calculations, any over-recoveries created by the use of this methodology by METC in its projected test year calculations for rate year 2018 will be reversed and refunded with interest through their annual true-up calculations for rate year 2018.

(B) The section 206 proceeding in Docket No. EL19-16-000 is hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.