

169 FERC ¶ 61,264
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.
Pioneer Transmission, LLC

Docket No. ER20-159-000

ORDER ACCEPTING FILING TO RECOVER PRE-COMMERCIAL COSTS,
SUBJECT TO CONDITION, AND DIRECTING COMPLIANCE FILING

(Issued December 31, 2019)

1. On October 22, 2019, Pioneer Transmission, LLC (Pioneer)¹ and Midcontinent Independent System Operator, Inc. (MISO)² filed a request for Pioneer to recover the pre-commercial operation costs, deferred as a regulatory asset (regulatory asset), incurred during development of the Greentown-to-Reynolds 765 kV transmission line located in Indiana (Greentown-to-Reynolds segment). As discussed below, we accept Pioneer's filing to include the regulatory asset in its formula rate, subject to condition, effective January 1, 2020, as requested, and direct Pioneer to submit a compliance filing within 30 days of the date of this order.

¹ Pioneer is a limited liability company organized and existing under the laws of the State of Indiana, with its principal executive office in Plainfield, Indiana. Pioneer is a joint venture formed by American Electric Power Company, Inc. (AEP) and Duke Energy Transmission Holding Company, an affiliate of Duke Energy Corporation (Duke).

² Pioneer explains that MISO joins in the filing as administrator of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff), but takes no position on the substance of the filing.

I. Background

2. Pioneer states that it deferred the regulatory asset in accordance with the Commission's authorization in Docket Nos. ER09-75-000 and ER09-75-001.³ In that docket, Pioneer filed a formula rate and requested transmission rate incentives for the proposed Pioneer transmission project, which included the Greentown-to-Reynolds segment.⁴ On March 27, 2009, the Commission issued an order that, among other things: (1) established a base return on equity (ROE) of 10.54 percent; (2) approved an ROE adder of 50 basis points for membership in a regional transmission organization (RTO), effective upon the date that Pioneer becomes a member of PJM Interconnection, L.L.C. (PJM) and MISO and upon the project being placed under their operational control; (3) approved an ROE adder of 150 basis points for new transmission, which "will not go into effect unless and until the project is approved by the regional transmission planning processes of PJM and MISO and there is a Commission-approved cost allocation methodology in place;"⁵ and (4) approved the incentive allowing Pioneer to establish and subsequently amortize a regulatory asset for certain expenses, finding "Pioneer's recovery of pre-construction costs during the construction period to be appropriate."⁶ In

³ *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009) (*Pioneer I*), order granting clarification and denying rehearing, 130 FERC ¶ 61,044 (2010).

⁴ In that filing, the Pioneer project was proposed as a 240-mile, 765 kV interregional transmission project between two existing 765 kV substations that would cross the electrical border between PJM and MISO and estimated to cost \$1 billion. Pioneer stated that the Pioneer project was designed to address a critical shortage of high voltage transmission that existed in Indiana and would eliminate reliability violations, reduce transmission congestion, and allow for the interconnection of up to 4,000 MW of new wind generation then under development in southwestern Indiana with the more populated load centers in central and northern Indiana. The Greentown-to-Reynolds segment was to be a part of this larger project.

⁵ *Pioneer I*, 126 FERC ¶ 61,281 at P 56.

⁶ *Id.* P 83.

addition, the Commission accepted Pioneer's proposed tariff sheets subject to settlement and hearing procedures for certain formula rate issues.⁷

3. As the Greentown-to-Reynolds segment neared completion, Pioneer filed on March 22, 2018, in Docket No. ER18-1159-000, tariff sheets to be included in the MISO Tariff to establish and recover the annual transmission revenue requirement for its portion of the Greentown-to-Reynolds segment.⁸ As part of this filing, Pioneer proposed to recover two of the transmission rate incentives granted in *Pioneer I*, the 50 basis point ROE adder for RTO membership and 150 basis point ROE adder for investment in new transmission. Pioneer explained that it encountered challenges to being studied and evaluated as a single, interregional transmission project, and therefore pursued the development of just the Greentown-to-Reynolds segment, which is located entirely in MISO.

4. On August 30, 2018, the Commission accepted Pioneer's proposed formula rate template as an addition to the MISO Tariff, effective June 1, 2018. However, the Commission denied Pioneer's request to implement the 150 basis point ROE adder for new transmission for the Greentown-to-Reynolds segment because Pioneer had not met the condition of having the project approved by the regional transmission planning processes of PJM and MISO and having a Commission-approved cost allocation methodology in place.⁹ In response, Pioneer made a compliance filing removing the 150 basis point ROE adder from its formula rate, which the Commission accepted.

5. On July 25, 2019, in Docket No. ER18-2119-000, the Commission issued an order rejecting, without prejudice, a previous filing by Pioneer and MISO requesting to recover the regulatory asset for pre-commercial operation costs that Pioneer seeks to recover in the present filing.¹⁰ The Commission found that: (1) Pioneer's proposed carrying charge

⁷ On October 26, 2009, the Commission issued an order approving the settlement resulting from those procedures filed under Docket No. ER09-75-001. *Pioneer Transmission, LLC*, 129 FERC ¶ 61,065 (2009).

⁸ In its filing, Pioneer explained that the Greentown-to-Reynolds segment is a joint venture between Pioneer and Northern Indiana Public Service Company LLC. Docket No. ER18-1159-000 Transmittal at 8.

⁹ *Midcontinent Indep. Sys. Operator, Inc. and Pioneer Transmission, LLC*, 164 FERC ¶ 61,155, at PP 52-56 (2018) (August 2018 Order).

¹⁰ *Midcontinent Indep. Sys. Operator, Inc. and Pioneer Transmission, LLC*, 168 FERC ¶ 61,055 (2019) (July 2019 Order). In that proceeding, Pioneer sought to recover approximately \$8,828,383 in pre-commercial operation costs incurred, including carrying charges, for the period March 2009 through April 2018. Pioneer also sought to

calculation in that filing included the 150 basis point ROE adder for investment in new transmission which the Commission denied in the August 2018 Order;¹¹ and (2) Pioneer may not recover the pre-commercial operation costs incurred for the period May 1, 2018 through June 24, 2018 in a formula rate true-up as proposed, but must include those costs and relevant cost support in an FPA section 205 filing. Pioneer filed a request for rehearing of this order.¹²

II. Pioneer's Filing

6. In the instant filing, Pioneer requests that it be allowed to recover approximately \$9,967,798 of pre-commercial costs incurred for the March 2009 through December 31, 2019 period, including carrying charges, for development of the Greentown-to-Reynolds segment, which Pioneer has deferred as a regulatory asset.

7. Pioneer asserts that the identified pre-commercial operation costs were prudently incurred and properly recorded and categorized as: (1) business services; (2) legal services; (3) FERC regulatory services; (4) Indiana regulatory services; (5) tax services; and (6) carrying costs.¹³ Pioneer states that these prudently incurred costs would have otherwise been chargeable to expense in the period incurred, but Pioneer's formula rate was not then in effect.¹⁴ Pioneer asserts that such costs associated with owning and operating facilities that are used to provide utility service are recoverable in rates.¹⁵

recover unfinalized pre-commercial operation costs incurred between May 1, 2018 and June 24, 2018, via the true-up to its formula rate.

¹¹ August 2018 Order, 164 FERC ¶ 61,155 at P 54.

¹² In an order issued in Docket No. ER18-2119-001 concurrently with this order, the Commission denies Pioneer's rehearing request. *See Pioneer Transmission, LLC*, 169 FERC ¶ 61,265 (2019).

¹³ Transmittal at 6-7.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 8-9 (citing *Denver Union Stock Yard Co. v. U.S.*, 304 U.S. 470, 475 (1938); *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1178 (D.C. Cir. 1987); *Tennessee Gas Pipeline Co. v. FERC*, 606 F.2d 1094, 1123 (D.C. Cir. 1979)).

8. Pioneer proposes to recover approximately \$4,446,324 in carrying charges for the period March 2009 through December 31, 2019.¹⁶ Pioneer states that it calculated its carrying charges without the 150 basis point ROE adder in accordance with the July 2019 Order. Pioneer asserts that it must stop accruing the carrying charges on the regulatory asset once the regulatory asset balance is included in rate base because Pioneer will then be able to earn a return on the unamortized balance.¹⁷ Pioneer states that the cost of capital used in the determination of the carrying charges is generally based on a hypothetical capital structure reflecting 50 percent equity and 50 percent debt. Pioneer explains that for the period March 2009 through November 11, 2013 the cost of capital reflects an 11.04 percent ROE (10.54 percent base ROE approved in *Pioneer I* plus 50 basis points for RTO participation), and for the period November 12, 2013, through December 31, 2019, it reflects a 10.82 percent ROE (10.32 percent base ROE approved for MISO transmission owners in Docket No. EL14-12 plus 50 basis points for RTO participation).¹⁸ Pioneer also states that the carrying charges are calculated and compounded semi-annually.¹⁹

9. Pioneer requests to amortize the pre-commercial operation costs deferred as a regulatory asset over a five-year period beginning on the effective date to be granted by the Commission in the instant filing, which it asserts is consistent with the Commission's authorization in *Pioneer I*. Pioneer requests an effective date of January 1, 2020.²⁰

III. Notice of Filing

10. Notice of Pioneer's filing was published in the *Federal Register*, 84 Fed. Reg. 57,719 (2019), with motions to intervene and protests due on or before November 12, 2019. Ameren Services Company filed a timely motion to intervene. WPPI Energy (WPPI) filed a timely motion to intervene and protest.

¹⁶ Pioneer Filing, Exhibit PT-102.

¹⁷ Transmittal at 9.

¹⁸ *Id.* at 9-10 (citing *Ass'n of Bus. Advocating Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,234 (2016)).

¹⁹ *Id.* at 10 (citing *Transource Missouri, LLC*, 141 FERC ¶ 61,075 at P 57 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,021, at P 23 (2012)).

²⁰ *Id.* at 11.

IV. Protest

11. WPPI argues that Pioneer's statement that the Commission approved a 10.82 percent ROE for Pioneer is not precisely accurate. WPPI states that the Commission did not allow Pioneer a 10.82 percent total (incentive-adder-inclusive) ROE outright. WPPI states that Pioneer's filing does not reflect that the 10.82 percent ROE authorized in the August 2018 Order for Pioneer's formula rate was made subject to the outcome of the complaint proceedings in Docket Nos. EL14-12 and EL15-45.²¹ WPPI requests that the Commission impose that same condition on the ROE applied in Pioneer's carrying charge calculation beginning November 12, 2013.²²

V. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

13. We accept Pioneer's filing subject to condition, as discussed below.²³

14. In *Pioneer I*, the Commission authorized Pioneer to utilize a 50 percent debt/50 percent equity hypothetical capital structure until the completion of the project, finding that Pioneer did not provide a sufficient nexus for the use of a hypothetical capital structure beyond the completion of the project. Therefore, the Commission

²¹ WPPI Protest at 3 (citing August 2018 Order, 164 FERC ¶ 61,155 at P 27 ("We grant Pioneer's request to use the MISO base ROE, . . . subject to the outcome of the complaint proceedings in Docket Nos. EL14-12 and EL15-45, consistent with such authorization granted by the Commission in other recent orders.")).

²² *Id.* at 3-4.

²³ The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has "authority to propose modifications to a utility's [FPA section 205] proposal *if the utility consents to the modifications.*" *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

directed Pioneer, upon completion of the project, to adopt a capital structure based upon its actual financing presented in its Form No. 1.²⁴

15. In the instant filing, Pioneer proposes to utilize the 50 percent debt/50 percent equity hypothetical structure beyond the completion date of the project, June 24, 2018.²⁵ However, Pioneer's Form No. 1 annual update, filed April 15, 2019, shows that Pioneer's actual capital structure for the year ending 2018 was approximately 51.1 percent debt and 48.9 percent equity.²⁶ Accordingly, consistent with the Commission's directive in *Pioneer I*, we direct Pioneer to submit, within 30 days of the date of issuance of this order, a compliance filing utilizing Pioneer's actual capital structure as presented in its Form No. 1 in calculating its carrying charges beginning June 25, 2018.

16. Pioneer explains that for the period November 12, 2013, through December 31, 2019, the cost of capital used in the determination of the carrying charges reflects a 10.82 percent ROE (10.32 percent base ROE approved for MISO transmission owners in Docket No. EL14-12 plus 50 basis points for RTO participation). Consistent with the August 2018 order,²⁷ our acceptance of Pioneer's request to use the MISO regional base ROE for the period November 12, 2013 – February 11, 2015 and prospectively from September 28, 2016, is subject to the outcome of the complaint proceedings in Docket Nos. EL14-12 and EL15-45.²⁸

The Commission orders:

(A) Pioneer's filing to recover the regulatory asset balance for pre-commercial operation costs incurred during the development of the Greentown-to-Reynolds segment is hereby accepted, subject to condition, effective January 1, 2020, as discussed in the body of this order.

²⁴ *Pioneer I*, 126 FERC ¶ 61,281 at P 119 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 56 (2009) (directing PATH to adopt a capital structure based upon its actual financing presented in its Form No. 1)).

²⁵ Pioneer Filing, Exhibit PT-103.

²⁶ Pioneer's Form No. 1 Annual Report of Major Electric Utilities, Licensees and Others at 112 (filed April 15, 2019).

²⁷ August 2018 Order, 164 FERC ¶ 61,155 at PP 22, 27.

²⁸ *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,129 (2019), *reh'g pending*.

(B) Pioneer is hereby directed to submit a 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.