

172 FERC ¶ 61,236  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and James P. Danly.

Midcontinent Independent System Operator, Inc.

Docket No. ER20-170-002

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued September 17, 2020)

1. On March 19, 2020, the Commission accepted revisions to the Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to include a new Schedule 50 that would enable MISO transmission owners to recover from interconnection customers the reasonable expenses, including overhead, associated with operation, maintenance, and repair (O&M expenses) of a Transmission Owner's Interconnection Facilities.<sup>1</sup>
2. On April 20, 2020, EDF Renewables, Inc. and RWE Renewables Americas, LLC (collectively, Renewable Generation Owners) jointly requested rehearing (Rehearing Request).
3. Pursuant to *Allegheny Defense Project v. FERC*,<sup>2</sup> the rehearing request filed in this proceeding may be deemed denied by operation of law. As permitted by section 313(a) of the Federal Power Act (FPA),<sup>3</sup> however, we are modifying the discussion in the

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<sup>1</sup> *Midcontinent Indep. System Operator, Inc.*, 170 FERC ¶ 61,226 (2020) (March 2020 Order). Capitalized terms that are not defined in this order have the meaning specified in the MISO Tariff.

<sup>2</sup> 964 F.3d 1 (D.C. Cir. 2020) (en banc).

<sup>3</sup> 16 U.S.C. § 825l(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

March 2020 Order and continue to reach the same result in this proceeding, as discussed below.<sup>4</sup>

## **I. Background**

4. As a basis for their proposal filed on October 23, 2019, MISO and a group of MISO Transmission Owners<sup>5</sup> (collectively, Filing Parties) stated that although section 10.5 of MISO's *pro forma* Generator Interconnection Agreement requires interconnection customers to pay for all reasonable O&M expenses associated with Transmission Owner Interconnection Facilities, MISO's Tariff contained no mechanism to enable a transmission owner's calculation and recovery of such expenses.<sup>6</sup> The Filing Parties stated that their proposed Schedule 50 enables transmission owners to calculate and charge an "Annual O&M and Overheads Charge" that will be collected from each responsible interconnection customer, and revenues from the charge will be treated as a

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<sup>4</sup> *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the March 2020 Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

<sup>5</sup> MISO Transmission Owners for this filing consisted of: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

<sup>6</sup> March 2020 Order, 170 FERC ¶ 61,226 at PP 2, 5.

revenue credit reducing the net revenue requirement to be collected from transmission customers under Attachment O of the Tariff.<sup>7</sup>

5. Specifically, the Annual O&M and Overheads Charge for a given interconnection customer will be computed as:

$$X = [A/(B + C)] * c_x$$

Where:

X = Annual O&M and Overheads Charge

A = The transmission owner's total annual O&M expense in the prior calendar year

B = The transmission owner's total annual transmission gross plant in the prior calendar year

C = Any payments received by the transmission owner for contribution in aid of construction for transmission facilities

$c_x$  = the installed cost of the Transmission Owner's Interconnection Facility that serves the individual interconnection customer, net of any associated retirements.<sup>8</sup>

6. The Renewable Generation Owners protested the Filing Parties' proposed tariff revisions, arguing that the proposal inflated the numerator and deflated the denominator with regard to interconnection customer-funded network upgrades, a distortion that would lead to an inflated Annual O&M and Overheads Charge for an interconnection customer.<sup>9</sup> The Renewable Generation Owners stated that interconnection customer-funded network upgrades are a significant amount of the new transmission built in MISO, yet the Filing Parties ignored this in their proposed formula. The Renewable Generation Owners claimed that either the numerator must exclude the O&M expenses that the MISO transmission owner performs on all of the interconnection customer-funded network upgrades or the denominator must include the gross cost of all interconnection customer-funded network upgrades that have been added to a MISO transmission owner's integrated grid since Order No. 2003<sup>10</sup> was adopted.

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<sup>7</sup> March 2020 Order, 170 FERC ¶ 61,226 at P 5.

<sup>8</sup> *Id.* P 6.

<sup>9</sup> *Id.* P 25.

<sup>10</sup> *Standardization of Generation Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

7. The MISO Transmission Owners filed a motion for leave to answer and answer to all comments and protests.<sup>11</sup>

8. In the March 2020 Order, the Commission disagreed with the Renewable Generation Owners' claim that categories of costs reflected in the numerator and denominator are overly inclusive and not representative of Transmission-Owner-Interconnection-Facility-related expenses.<sup>12</sup> Instead, the Commission found that the proposed use of the installed costs of the facilities, when available, as a share of gross transmission plant to assign a share of total system O&M expenses represents a just and reasonable method for allocating all of the various types of O&M expenses associated with Transmission Owner Interconnection Facilities. The Commission concluded that the Renewable Generation Owners' concern about the omission of interconnection customer-funded network upgrades from the denominator had been addressed by the MISO Transmission Owners' statement that gross transmission plant includes these network upgrades.

9. Ultimately, the Commission accepted the proposed Tariff revisions as a just, reasonable, and not unduly discriminatory or preferential method for allocating the various types of O&M expenses associated with Transmission Owner Interconnection Facilities to the interconnection customers that cause them.<sup>13</sup>

## II. Discussion

10. On rehearing, the Renewable Generation Owners claim that the Commission erred by relying on a statement in the MISO Transmission Owners' answer filed on December 9, 2019, that "all investment is included in the denominator," which includes "Interconnection Customer-funded network upgrades because Gross Plant includes network upgrades to be paid through Facilities Service Agreements, including network upgrades funded by contributions in aid of construction ('CIACs') where the Transmission Owner is not allowed to earn a return."<sup>14</sup>

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<sup>11</sup> MISO Transmission Owners December 9, 2019 Motion for Leave to Answer and Answer (MISO Transmission Owners Answer).

<sup>12</sup> March 2020 Order, 170 FERC ¶ 61,226 at P 58.

<sup>13</sup> *Id.* PP 51, 53.

<sup>14</sup> Renewable Generation Owners Rehearing Request at 2 (quoting MISO Transmission Owners Answer at 19-20).

11. The Renewable Generation Owners state that the MISO Transmission Owners' explanation was illusory for two reasons.<sup>15</sup> First, Facilities Service Agreements have rarely been used for interconnection customer-funded network upgrades. Second, the cost of facilities for which the transmission owner is not allowed to earn a return are not rolled into a transmission owner's transmission rate base and so are not included in a transmission owner's Attachment O data (for formula transmission rates). This omission will propagate forward, the Renewable Generation Owners explain, because Attachment O data will serve as the basis for the gross transmission plant in the proposed formula for the Annual O&M and Overheads Charge.<sup>16</sup> The Renewable Generation Owners assert that both of the MISO Transmission Owners' criteria therefore fail to place the vast majority of network upgrades funded by interconnection customers since 2003 into the denominator of the formula for the Annual O&M and Overheads Charge.

12. The Renewable Generation Owners renew their request that either the numerator must *exclude* the O&M expenses that the MISO transmission owner performs on all of the interconnection customer-funded network upgrades or the denominator must *include* the gross cost of all interconnection customer-funded network upgrades that have been added to a MISO transmission owner's integrated grid since Order No. 2003 was adopted.<sup>17</sup>

13. We find that, regardless of the statements in the MISO Transmission Owners' answer, no language in Schedule 50 suggests that the denominator will exclude any portion of interconnection customer-funded network upgrades. As noted above, the Annual O&M and Overheads Charge for a given interconnection customer will be computed as:

$$X = [A/(B + C)] * c_x$$

Schedule 50 indicates that variable B in the denominator, the transmission owner's total annual transmission gross plant in the prior calendar year, is pulled directly from the transmission owner's formula rate set forth in Attachment O of the Tariff.<sup>18</sup> Variable C in the denominator is equal to "Payments received for Contributions in Aid of

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<sup>15</sup> *Id.* at 3-6.

<sup>16</sup> *Id.* at 6-7.

<sup>17</sup> *Id.* at 7-8.

<sup>18</sup> MISO October 23, 2019 Filing at 8; *id.* Ex. I at 1 (explaining that variable B comes from Attachment O, page 2, column 5, line 2).

Construction for transmission facilities.”<sup>19</sup> The formula in Schedule 50 does not indicate that the data for variable C comes from Attachment O. Rather, Schedule 50 defines “Contributions in Aid of Construction” to mean “payments of money or the value of property received by utilities from customers, real estate developers, government agencies, and others, to offset all or a portion of the cost of extending services to new areas, relocating lines, upgrading facilities, and making similar improvements.”<sup>20</sup>

14. We conclude that the broad definition of Contributions in Aid of Construction in Schedule 50 includes interconnection customer-funded network upgrades. There is no basis in Schedule 50 to limit the denominator to a subset of interconnection customer-funded network upgrades based either on the specific funding mechanism, such as a Facilities Service Agreement, or based on the transmission owner’s ability or inability to earn a return on the network upgrades. Because we conclude that the Schedule 50 formula will capture all transmission investment for which O&M expenses are allocated, including interconnection customer-funded network upgrades, we disagree with the arguments raised on rehearing. We continue to find, as the Commission did in the prior order, that the proposed Tariff revisions are a just, reasonable, and not unduly discriminatory or preferential method for allocating the various types of O&M expenses associated with Transmission Owner Interconnection Facilities to the interconnection customers that cause them.<sup>21</sup>

The Commission orders:

In response to the Renewable Generation Owners’ request for rehearing, the March 2020 Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>19</sup> *Id.* at 8; *id.* Ex. I at 1.

<sup>20</sup> *Id.* Ex. I at 1.

<sup>21</sup> March 2020 Order, 170 FERC ¶ 61,226 at PP 51, 53.