

154 FERC ¶ 61,004
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Midcontinent Independent System Operator, Inc.

Docket Nos. ER15-945-001
ER15-945-002

ORDER ON COMPLIANCE, CLARIFICATION, AND REHEARING

(Issued January 6, 2016)

1. On March 31, 2015, the Commission conditionally accepted¹ revisions submitted by ITC Midwest LLC (ITC Midwest) to the ITC Midwest formula rate in Attachment O of the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to implement an incentive adder reflecting ITC Midwest's status as an independent transmission company, or Transco, (Transco Adder), subject to reduction of the Transco Adder from 100 basis points, as proposed by ITC Midwest, to 50 basis points, subject to the proposed Transco Adder being applied to a base rate of return on equity (ROE) that has been shown to be just and reasonable based on an updated discounted cash-flow (DCF) analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, as those may be determined in the pending complaint proceeding in Docket No. EL14-12-002 (Complaint Proceeding), and subject to the outcome of the Complaint Proceeding.² The Commission conditionally accepted the proposed revisions for filing and suspended them for a nominal period, to become effective April 1, 2015, subject to refund, and subject to the outcome of the Complaint Proceeding. The Commission also accepted ITC Midwest's request to defer collection of the Transco Adder pending the outcome of the Complaint Proceeding.

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,252 (2015) (March 31 Order).

² *See Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014) (Complaint Hearing Order).

2. On April 29, 2015, ITC Midwest submitted revisions to the ITC Midwest formula rate in Attachment O of the MISO Tariff to modify the Transco Adder from 100 to 50 basis points.³ On April 30, 2015, ITC Midwest submitted a request for clarification and rehearing of the March 31 Order, and Resale Power Group of Iowa submitted a request for rehearing of the March 31 Order. For the reasons discussed below, we accept ITC Midwest's compliance filing, grant ITC Midwest's request for clarification, and deny ITC Midwest's and Resale Power Group of Iowa's requests for rehearing.

I. Background

3. On November 12, 2013, a group of large industrial customers (Complainants) filed a complaint against MISO and certain of its transmission-owning members (including ITC Midwest) in the Complaint Proceeding.⁴ Complainants contended that the current 12.38 percent base ROE allowed for MISO Transmission Owners is unjust and unreasonable. Complainants also contended that the ROE incentive adders received by International Transmission Company d/b/a *ITCTransmission* (*ITCTransmission*) for being a member of a regional transmission organization (RTO) and by both *ITCTransmission* and Michigan Electric Transmission Company, LLC (METC) for being independent transmission owners are unjust and unreasonable and should be eliminated.

4. In the Complaint Hearing Order, the Commission granted in part the complaint with respect to the ROE and established hearing and settlement judge procedures.⁵ The Commission denied Complainants' challenges to *ITCTransmission*'s and METC's incentive adders.⁶ In the Complaint Hearing Order, the Commission established a refund effective date of November 12, 2013, for MISO Transmission Owners' base ROE.

³ MISO is also a party to the filing but states that it joins the filing solely as the administrator of the MISO Tariff.

⁴ Complainants are Association of Businesses Advocating Tariff Equity (ABATE); Coalition of MISO Transmission Customers; Illinois Industrial Energy Consumers; Indiana Industrial Energy Consumers, Inc.; Minnesota Large Industrial Group; and Wisconsin Industrial Energy Group.

⁵ Complaint Hearing Order, 149 FERC ¶ 61,049 at P 183.

⁶ *Id.* P 200.

5. On November 6, 2014, MISO Transmission Owners⁷ and MISO submitted in Docket No. ER15-358-000 proposed revisions to the Attachment O formula rate template of the Tariff to implement a 50-basis point adder (RTO Adder) to the Commission-approved ROE for MISO Transmission Owners' participation in MISO.⁸ For purposes of that filing, MISO Transmission Owners proposed to rely on the zone of reasonableness to be established by the Commission in the Complaint Proceeding and committed to restrict their total ROE in accordance with any new range of reasonable returns adopted by the Commission in the Complaint Proceeding. MISO Transmission Owners requested waiver of the portion of the Commission's rules that requires cost of service information and statements regarding the tariff changes, testimony, and exhibits to support the tariff changes, because the information would duplicate the exhibits and testimony that have been or may be filed in the Complaint Proceeding.⁹ In addition, MISO Transmission

⁷ MISO Transmission Owners for purposes of the filing in Docket No. ER15-358-000 are: ALLETE, Inc. for its operating division Minnesota Power (and its subsidiary Superior Water, L&P); Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Cleco Power LLC; Duke Energy Corporation for Duke Energy Indiana, Inc.; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Indianapolis Power & Light Company; ITC*Transmission*; ITC Midwest; METC; MidAmerican Energy Company; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; 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; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wolverine Power Supply Cooperative, Inc.

⁸ MISO Transmission Owners' filing consisted of a revision to Note P of Attachment O of the Tariff, which describes how the base ROE is established, and provides notice that the RTO Adder may be added to the base ROE up to the upper end of the zone of reasonableness approved by the Commission. The filing also contained company-specific Attachment O formulas for each MISO Transmission Owner that has a company-specific formula rate.

⁹ MISO Transmission Owners, Transmittal Letter, Docket No. ER15-358-000, at 11 (filed Nov. 6, 2014).

Owners requested to defer collection, but not the effectiveness, of the RTO Adder until after issuance of a final order in the Complaint Proceeding.¹⁰

6. On January 5, 2015, the Commission granted MISO Transmission Owners' request to implement the RTO Adder and accepted the proposed Tariff revisions for filing, suspending them for a nominal period, to become effective January 6, 2015, subject to refund. The Commission granted the RTO Adder subject to it being applied to a base ROE that has been shown to be just and reasonable based on an updated DCF analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, as those elements may be determined in the Complaint Proceeding.¹¹ The Commission also granted MISO Transmission Owners' request for waiver of the portions of the Commission's section 35.13 requirements that require the submission of cost of service information, statements, testimony, and exhibits to support the requested tariff changes, including the required DCF analysis.¹² The Commission also granted MISO Transmission Owners' request to defer collection of the RTO Adder pending the outcome of the Complaint Proceeding.¹³

7. On February 12, 2015, Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency and its two members, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi; and Hoosier Energy Rural Electric Cooperative, Inc. (collectively, Customer Complainants) filed a complaint against certain MISO Transmission Owners (including ITC Midwest) in Docket No. EL15-45-000 alleging that the MISO Transmission Owners' base ROE is unjust and unreasonable and should be reduced. On June 18, 2015, the Commission set the complaint filed by Customer Complainants for hearing.¹⁴

¹⁰ *Id.* at 10-11.

¹¹ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004, at P 39 (2015) (RTO Incentive Order).

¹² *Id.* P 45.

¹³ *Id.* P 48.

¹⁴ *Arkansas Elec. Coop. Corp. v. ALLETE, Inc.*, 151 FERC ¶ 61,219 (2015).

II. Requests for Clarification and/or Rehearing

8. ITC Midwest requests that the Commission clarify that the Complaint Proceeding also may establish the base ROE effective as of April 1, 2015, to which the Transco Adder will be applied. In its initial Transco Adder request, ITC Midwest sought approval of the Transco Adder to be made subject to the outcome of the Complaint Proceeding.¹⁵ ITC Midwest states that the Commission addressed the effect of the Complaint Proceeding on this proceeding stating that “the Commission has not ruled on the complaint. However, [the Commission] note[s] that if that proceeding results in an updated zone of reasonableness, ITC Midwest’s ROE will be bound by the zone of reasonableness established in that proceeding.”¹⁶ ITC Midwest asserts that, while the Commission identified the Complaint Proceeding as the potential source of the zone of reasonableness that will bound ITC Midwest’s Transco Adder, the Commission did not state that the Complaint Proceeding could establish the base ROE to which the Transco Adder will be applied. Therefore, ITC Midwest seeks clarification that the Complaint Proceeding may also establish the base ROE effective as of April 1, 2015, to which the Transco Adder will be applied.

9. ITC Midwest requests rehearing of the Commission’s decision to reduce the requested Transco Adder to 50 basis points without a reasoned explanation for its departure from prior precedent of awarding a 100-basis point Transco Adder for fully independent transmission companies.¹⁷ ITC Midwest states that the Commission in the March 31 Order rejected every argument raised by protesters against granting ITC Midwest the Transco Adder. Specifically, ITC Midwest notes that the Commission rejected challenges to ITC Midwest’s independence; arguments that the incentive was not needed for ITC Midwest; arguments that ITC Midwest needed to demonstrate that it would not make investments but for the Transco Adder or that the adder would ultimately serve to reduce rates or improve reliability; arguments that the Transco Adder should be held to a different standard than the RTO Adder; and a request to reevaluate its overall transmission ROE incentives policies.¹⁸ Further, ITC Midwest states that the Commission found that ITC Midwest was a fully independent, stand-alone transmission company. ITC Midwest also states that the Commission continued to find that the

¹⁵ ITC Midwest Answer at 11.

¹⁶ ITC Midwest Request for Clarification and Rehearing at 4 (quoting March 31 Order, 150 FERC ¶ 61,252 at P 50).

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 6-7 (citing March 31 Order, 150 FERC ¶ 61,252 at PP 43, 46, 47, 52).

Transco business model provides benefits.¹⁹ ITC Midwest argues that, despite the Commission's findings in the March 31 Order, the Commission summarily concluded that a 50-basis point Transco Adder would suffice instead of the 100-basis point incentive that it has awarded to other Transcos.

10. ITC Midwest notes that, in the March 31 Order, the Commission acknowledged that prior orders granting 100-basis point adders were based on the "specific circumstances of the applicants and market conditions at the time of their applications."²⁰ ITC Midwest argues, however, that the Commission's precedents do not support the Commission's review of "market conditions" in determining whether to approve the 100-basis point Transco Adder. According to ITC Midwest, the Commission never mentioned "market conditions" in approving 100-basis point Transco Adders for New York Regional Interconnect, Inc. and Green Power Express LP.²¹ ITC Midwest also argues that "market conditions" has never been part of the basis for granting other 100-basis point independence incentives for ITC *Transmission*, METC, and ITC Great Plains.²² ITC Midwest argues that the Commission has considered "market conditions" in the establishment of the base ROE and the range of reasonable returns, but never before as the basis for approving, let alone rejecting, an ROE incentive for a fully independent transmission company.

11. Further, ITC Midwest argues that the Commission's reliance on "market conditions" is inconsistent with the Commission's determination elsewhere in the March 31 Order that "[a]pplicants need not provide additional justification as to the necessity or benefits of the incentive or pass a cost-benefit analysis."²³ ITC Midwest

¹⁹ *Id.* at 7 (citing March 31 Order, 150 FERC ¶ 61,252 at PP 43-45).

²⁰ *Id.* at 8 (quoting March 31 Order, 150 FERC ¶ 61,252 at P 45).

²¹ *Id.* at 8-9 (citing *N.Y. Regional Interconnect, Inc.*, 124 FERC ¶ 61,259, at PP 40-41 (2008); *Green Power Express LP*, 127 FERC ¶ 61,031, at PP 86-87 (2009), *order denying clarification and reh'g*, 135 FERC ¶ 61,141 (2011)).

²² *Id.* at 9-10 (citing *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 68, *reh'g denied*, 104 FERC ¶ 61,033 (2003); *Mich. Elec. Transmission Co., LLC*, 113 FERC ¶ 61,343, at PP 15, 17-19 (2005) (*Michigan Electric*), *order on reh'g*, 116 FERC ¶ 61,164 (2006); *ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at P 93 (2009) (*ITC Great Plains*), *order on reh'g*, 150 FERC ¶ 61,225 (2015)).

²³ *Id.* at 8 (quoting March 31 Order, 150 FERC ¶ 61,252 at P 46).

argues that reducing the Transco Adder based on “market conditions” represents a never-before applied Commission policy with respect to independence or Transco incentives.

12. ITC Midwest also argues that there is no basis to distinguish ITC Midwest from the other companies that have received 100-basis point Transco Adders. Further, ITC Midwest argues that the Commission reduced the requested 100-basis point incentive to 50 basis points without any indication of what “specific circumstances” or “market conditions” existed.²⁴

13. ITC Midwest points out that, while the Commission noted that the size of the Transco Adder was not specified in Order No. 679, there is no indication that the Commission considered ITC Midwest’s full independence, as required by Order No. 679, in determining to award a 50-basis point Transco Adder.²⁵ As a result, ITC Midwest claims, the Commission awarded ITC Midwest, a fully independent Transco, the same incentive that has been authorized for affiliated Transcos, contrary to statements in Order No. 679 that it would consider the level of independence.

14. Citing arguments in the dissents issued by Commissioners Moeller and Clark, ITC Midwest asserts that the Commission’s decision is not based on the record, is arbitrary and capricious, and provides no guidance on what showing would justify a 100-basis point Transco Adder.²⁶ ITC Midwest argues that if the Commission chooses not to apply its longstanding precedent, it must at least provide a reasoned analysis for its departure from that precedent. ITC Midwest argues that the Commission has failed to do so here and therefore should grant rehearing.

15. Resale Power Group of Iowa argues that, notwithstanding the Commission’s assertion in the March 31 Order that granting ITC Midwest a Transco Adder is “consistent with section 219 of the FPA,” consistency with FPA section 219 “requires

²⁴ *Id.* at 10-11.

²⁵ *Id.* at 11 (quoting *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at PP 239-240, *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007) (“[W]e will consider the level of independence of a Transco as part of our analysis when we determine the proper ROE for the Transco, and evaluate the specific attributes of a particular proposal, including the level of independence, to determine appropriate incentives.”)).

²⁶ *Id.* at 12 (quoting March 31 Order, 150 FERC ¶ 61,252 (Moeller and Clark, Comm’rs, dissenting)).

that the Transco Adder be an incentive that both encourages Transco formation and is sufficient to attract investment.” In that regard, however, Resale Power Group of Iowa argues that the approved Transco Adder is not an incentive and does not meet either of the criteria of encouraging Transco formation or attracting investments.²⁷

16. Resale Power Group of Iowa asserts that the plain meaning of “incentive” under FPA section 219 is a “payment or concession to stimulate greater output or investment,” not a reward or bonus for doing something already accomplished or in progress. According to Resale Power Group of Iowa, Commission precedent recognizes that incentives must be prospective and linked to new customer benefits.²⁸ Resale Power Group of Iowa argues that the Commission departed from these precedents by adopting an incentive that accomplishes nothing new for transmission customers because ITC Midwest has already undertaken transmission infrastructure projects without the Transco Adder. Resale Power Group of Iowa argues that ITC Midwest’s application contained no evidence that ITC Midwest would provide new benefits to customers if granted the Transco Adder.²⁹

17. Further, Resale Power Group of Iowa argues that the Commission violated its own regulations by granting the Transco Adder because the incentive is not required to encourage ITC Midwest’s formation. Resale Power Group of Iowa asserts that the Commission’s regulations and precedent clearly state that the Transco Adder be granted only where it *both* encourages Transco formation *and* is sufficient to attract investment.³⁰ Resale Power Group of Iowa contends that ITC Midwest, a seven year-old Transco, does not need an incentive to encourage its formation. Resale Power Group of Iowa argues

²⁷ Resale Power Group of Iowa Request for Rehearing at 6.

²⁸ *Id.* at 7-9 (citing *Policy Statement on Incentive Regulation*, 61 FERC ¶ 61,168, at 61,589-90 (1992) (*Policy Statement*); *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at P 537 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001); *New England Power Pool*, 97 FERC ¶ 61,093, at 61,477 (2001); *Trans-Elect, Inc.*, 98 FERC ¶ 61,368, at 62,596 (2002); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 6, 26).

²⁹ *Id.* at 9-10.

³⁰ *Id.* at 11-14 (citing 18 C.F.R. § 35.35(d)(2)(i) (2015); 18 C.F.R. Part 35 *Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid*, 102 FERC ¶ 61,032 (2001); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 221; Order No. 679-A, FERC Stats & Regs ¶ 31,236 at P 78).

that the Commission's granting of the Transco Adder in a situation like this allows Transcos to qualify for a Transco Adder at any point during their existence and thus essentially eliminates "encourages Transco formation" from the Commission's regulations.³¹

18. Resale Power Group of Iowa further asserts that ITC Midwest is also not eligible for the Transco Adder under the second factor in the Commission's regulations and precedent, that a Transco incentive be "sufficient to attract investment."³² Resale Power Group of Iowa argues that ITC Midwest's projected rate base has grown by over \$1.42 billion since 2008³³ and that ITC Midwest has been able to attract capital and finance these significant capital investments with only the base ROE generally applicable to MISO Transmission Owners. Resale Power Group of Iowa argues that, presumably, the new base ROE that will be set in the Complaint Proceeding will be at a level sufficient to attract capital in accordance with the Supreme Court decisions in *FPC v. Hope Natural Gas Co.* and *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia.*³⁴ According to Resale Power Group of Iowa, these circumstances and ITC Midwest's financing record makes ITC Midwest ineligible for the Transco Adder.

19. Resale Power Group of Iowa further argues that the Commission neither explained its approval of the Transco Adder as consistent with precedent nor justified it as a reasonable and permissible shift in policy.³⁵ Resale Power Group of Iowa argues that the Commission instead relies on Order No. 679's generic findings that "because [the Transco] business model promotes increased investment in new transmission, *which in turn reduces costs and increases competition* . . . ROE incentives are appropriate to encourage Transco formation and new transmission infrastructure investment."³⁶ Resale

³¹ *Id.* at 17-18.

³² *Id.* at 15-16 (citing 18 C.F.R. § 35.35(d)(2)(i) (2015)).

³³ *Id.* (citing Resale Power Group of Iowa Protest at 2; Latham Aff. ¶ 9).

³⁴ *Id.* at 16 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope*); *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692-93 (1923)).

³⁵ *Id.* at 17.

³⁶ *Id.* at 18-19 (quoting March 31 Order, 150 FERC ¶ 61,252 at P 44 (emphasis added by Resale Power Group of Iowa)).

Power Group of Iowa does not dispute that the Transco business model, as implemented by ITC Midwest, has promoted increased investment in new transmission facilities, but Resale Power Group of Iowa disputes that this investment has reduced costs and increased competition.³⁷

20. Moreover, Resale Power Group of Iowa asserts that the Commission has misplaced reliance on generic findings in Order No. 679 that “[b]y eliminating competition for capital between generation and transmission functions and thereby maintaining a singular focus on transmission investment, the Transco business model responds more rapidly and precisely to market signals.”³⁸ However, according to Resale Power Group of Iowa, ITC Midwest’s claimed ability to maintain a “singular focus” on transmission investment is in question given that, according to Resale Power Group of Iowa, in 2014 ITC Midwest formed ITC Interconnection LLC (ITC Interconnection) for the exploration of generator interconnection investment opportunities.³⁹ Resale Power Group of Iowa asserts that ITC Interconnection may have interests that conflict with those of ITC Midwest and may compete for capital with ITC Midwest.⁴⁰

21. Resale Power Group of Iowa also argues that the Commission’s approval of a 50-basis point Transco Adder is not based on any evidence, and that the Commission’s reasoning raises more questions than it answers.⁴¹

22. Resale Power Group of Iowa asserts that in its protest it submitted evidence demonstrating that the “double leveraging” of ITC Midwest’s capital structure was enabling ITC Holdings to realize equity-level returns for holding company debt, but that the Commission summarily rejected this evidence, characterizing it as being part of an argument about ITC Midwest’s lack of need for the Transco Adder. Instead, Resale Power Group of Iowa argues that this evidence demonstrates that approving the Transco

³⁷ *Id.* at 19 (citing Resale Power Group of Iowa Protest at 10-17 (describing members’ increased costs of delivered power since 2008)).

³⁸ *Id.* at 20 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 274).

³⁹ *Id.* at 20-21 (citing “About ICI Interconnection LLC” fact sheet posted on ITC Midwest’s website).

⁴⁰ *Id.* at 21-22.

⁴¹ *Id.* at 22-23.

Adder exacerbated an already unjust and unreasonable situation, and enhanced an inflated return for a company that has outperformed the industry for years.⁴²

23. Finally, Resale Power Group of Iowa argues that the Commission did not consider the Transco Adder in the context of ITC Midwest's formula rate, which represents another incentive ITC Midwest received to encourage new transmission investment and which removes much of the risk of equity investment. Resale Power Group of Iowa argues that the Commission failed to address these incentives or articulate its reasoning for approving the Transco Adder, and therefore did not engage in reasoned decision-making.⁴³

III. Compliance Filing

24. Notice of ITC Midwest's compliance filing was published in the *Federal Register*, 80 Fed. Reg. 26,027 (2015), with interventions and protests due on or before May 20, 2015. None was filed.

25. ITC Midwest's compliance filing revises Note P to the ITC Midwest Attachment O formula rate to change the Transco Adder from 100 basis points to 50 basis points.⁴⁴

IV. Discussion

26. We grant ITC Midwest's request for clarification. We note, however, that while paragraph 41 of the March 31 Order was unclear, the Commission did state in paragraph 1 and Ordering Paragraph (A) that its acceptance was subject to the proposed Transco Adder being applied to a base ROE that has been shown to be just and reasonable based on an updated DCF analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, as *those* may be determined in the Complaint Proceeding, and subject to the outcome of the Complaint Proceeding.⁴⁵

27. We deny the requests for rehearing. We disagree with ITC Midwest's contention that the Commission's grant of a 50 basis point Transco Adder rather than the requested

⁴² *Id.* at 23-24.

⁴³ *Id.* at 24-25.

⁴⁴ ITC Midwest Filing at 1.

⁴⁵ March 31 Order, 150 FERC ¶ 61,252 at P 2 and Ordering Paragraph (A).

100-basis point adder is not based on the record, is arbitrary and capricious, and provides no guidance on what showing would justify a 100 basis point Transco Adder beyond unsupported references to “specific circumstances” and “market conditions.” Order No. 679 did not specify a generic size for the Transco Adder or for any other ROE transmission incentive. Rather, the Commission explained that it would analyze proposals to determine appropriate incentives and would leave for future proceedings to authorize a unique ROE appropriate to the facts and circumstances of each applicant.⁴⁶ Critically, the Commission has never subsequently stated that 100 basis points is the appropriate size of the Transco Adder in all cases. The Commission has conducted independent analysis for each requested ROE incentive, and has not based or justified its granting of such incentives solely on the prior approval of ROE incentives. Accordingly, granting a 50-basis point Transco Adder based on a case-by-case analysis of the interests of consumers and applicants, as well as current market conditions and concerns regarding the rate impacts of such adders, is consistent with the Commission’s precedent.

28. We also disagree with ITC Midwest’s argument that the Commission’s reliance on market conditions is inconsistent with determination elsewhere in the March 31 Order that an applicant need not provide additional justification as to the necessity or benefits of the incentive or pass a cost/benefit analysis. The Commission explained in the March 31 Order that to be eligible for the Transco Adder, utilities did not need to provide additional justification other than their status as Transcos. However, the Commission must still determine on a case-by-case basis whether a Transco Adder is appropriate.

29. We disagree with ITC Midwest that the Commission failed to consider ITC Midwest’s full independence in granting only a 50-basis point Transco Adder. The Commission found, as a preliminary matter, that ITC Midwest is a fully independent, stand-alone transmission company member of MISO pursuant to Appendix I of MISO’s Tariff.⁴⁷ However, ITC Midwest’s level of independence is just one consideration in the Commission’s analysis of an applicant’s request for ROE incentives.

30. We also disagree with Resale Power Group of Iowa’s assertion that the Commission’s grant of a Transco Adder violated FPA section 219 and the Commission’s regulations because the 50-basis point Transco Adder is not an incentive and because it does not both encourage Transco formation and attract investments. First, as FPA

⁴⁶ See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 239 (determining that the Commission will not establish a specific methodology or precise formula to factor in the level of independence into a ROE-based incentive for Transcos); Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 65.

⁴⁷ March 31 Order, 150 FERC ¶ 61,252 at P 43.

section 219 states, a transmission incentive should “benefit[] consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.”⁴⁸ The Commission in Order No. 679-A rejected arguments that additional incentives for Transcos are unjustified because Transcos already have sufficient investment. The Commission found that reasons such as the singular focus on transmission investment by transmission-only companies, the elimination of competition for capital between generation and transmission investments, and the access to capital markets support the value in the Transco business model and the importance of both encouraging Transco formation and attracting investment.⁴⁹ Accordingly, we disagree with Resale Power Group of Iowa that, just because ITC Midwest has succeeded in raising capital, granting a 50-basis point Transco Adder violates FPA section 219 and the Commission’s regulations.

31. The Commission’s statement in Order No. 679 that adoption of the final rule would “provide to Transcos a ROE that both encourages Transco formation and is sufficient to attract investment after the Transco is formed,”⁵⁰ was not a requirement that a Transco Adder encourage Transco formation and be sufficient to attract investment, but was instead merely referring to them as two primary potential benefits of the Transco Adder. That is, when the Commission in Order No. 679 stated that “it will permit suitably structured Transcos to receive an ROE that both encourages Transco formation and is sufficient to attract investment,” the Commission was *not* stating that the Transco Adder may only be granted to applicants for whom both benefits will be realized.⁵¹ Although in many cases both benefits are realized, FPA section 219 does not require that an applicant must be able to realize both benefits to justify receiving the Transco Adder.

32. We also disagree with Resale Power Group of Iowa’s argument that the amount of capital ITC Midwest has been able to raise makes it undeserving of the Transco Adder. The Commission in Order No. 679 recognized the value in *continued* development and operation of transmission projects by transmission-only companies, such as ITC Midwest, so long as such companies continue to provide the benefits that the

⁴⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 6 (quoting 16 U.S.C. § 824s).

⁴⁹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 77.

⁵⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 221.

⁵¹ *Id.* P 206.

Commission is trying to incentivize.⁵² Resale Power Group of Iowa has not persuaded us that ITC Midwest is failing to provide the benefits of Transcos that the Commission intended to incentivize in Order No. 679. In this regard, the issue is not whether ITC Midwest has succeeded in raising capital in the past without the Transco Adder.⁵³ Rather, the issue is whether ITC Midwest has demonstrated that the Transco Adder will assist it in raising capital in the future.

33. Resale Power Group of Iowa argues that Transco investments have not reduced costs or increased competition, but it merely reiterates previously raised arguments that its rates have gone up since 2008. Regardless of whether Resale Power Group of Iowa's rates have increased, such an increase does not itself demonstrate that costs would be lower or competition higher absent such Transco incentives or why such incentives would no longer confer such benefits.

34. We also disagree with Resale Power Group of Iowa's argument that ITC Midwest's ability to maintain a "singular focus" on transmission investment is unclear given the ownership mix between ITC Midwest and its affiliate, ITC Interconnection. The Commission evaluates the level of independence according to the factors set out in Order No. 679.⁵⁴ The Commission has already determined that ITC Midwest is a fully independent, stand-alone transmission company.⁵⁵ Resale Power Group of Iowa's evidence does not persuade us that ITC Midwest or its affiliates (including ITC Interconnection) engages in any material business activity other than developing and operating transmission.

35. We also disagree with Resale Power Group of Iowa's arguments with respect to potential double leveraging based on the capital structure of ITC Midwest's parent corporation ITC Holdings. The Commission evaluates ROE, capital structure, and potential incentives based on the capital structure of the applicant operating company and not that of the corporate parent. The Commission explained in the March 31 Order that it

⁵² See *id.* P 226 (encouraging Transcos to measure performance and justify continuation of ROEs that were provided for the purpose of attracting and sustaining transmission investments).

⁵³ The Commission did not previously grant the Transco Adder because the total ROE would not be within the zone of reasonableness. *ITC Midwest, LLC*, 121 FERC ¶ 61,229, at PP 42-44 (2007).

⁵⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 239-241.

⁵⁵ March 31 Order, 150 FERC ¶ 61,252 at P 43.

“remains reluctant to make a subjective judgment of a parent company’s motivations” and instead “continues to prefer to examine objective, concrete considerations, such as whether the applicant issues its own non-guaranteed debt and has its own bond rating separate from that of its corporate parent.”⁵⁶ The Commission has previously addressed double leveraging issues and found that the motivations of a parent company are irrelevant, assuming the operating company can meet the Commission’s three-part test. In evaluating the Transco financial model, and the impact that double leveraging may have on rates, the Commission’s policy is to use an operating company’s actual capital structure where the operating company: (1) issues its own debt without guarantees; (2) has its own bond rating; and (3) has a capital structure within the range of capital structures approved by the Commission.⁵⁷ ITC Midwest passes each of these three criteria such that the Commission can rely solely on ITC Midwest’s capital structure.

36. Finally, we disagree with Resale Power Group of Iowa’s argument that the Commission should consider the risk-reducing benefit of ITC Midwest’s formula rate. Risk-reducing attributes like formula rates may inform where in the zone of reasonableness the base ROE should be, but they are not appropriate for evaluating the appropriateness of non-generic incentives, the granting of which is based solely on whether applicants meet the requisite Transco criteria. Additionally, the Commission has granted the Transco Adder incentive to other applicants with formula rates.⁵⁸ The Commission appropriately has not considered formula rates when evaluating past requests, therefore we dismiss Resale Power Group of Iowa’s request for rehearing.

37. We find that ITC Midwest’s compliance filing, as described above, complies with the directives of the March 31 Order.

The Commission orders:

(A) ITC Midwest’s compliance filing is hereby accepted, effective April 1, 2015, as discussed in the body of this order.

⁵⁶ See *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414, 80 FERC ¶ 61,157 (1997), *order on reh’g*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,414 (1998).

⁵⁷ See, e.g., Opinion No. 414-A, 84 FERC at 61,413-15; *ITC Midwest, LLC*, 121 FERC ¶ 61,229 at P 49.

⁵⁸ See, e.g., *Michigan Electric*, 113 FERC ¶ 61,343; *ITC Great Plains*, 126 FERC ¶ 61,223.

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(B) The request for clarification is hereby granted and the requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Clark is dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.

Docket Nos. ER15-945-001
ER15-945-002

(Issued January 6, 2016)

CLARK, Commissioner, *dissenting*:

Consistent with my joint dissent with Commission Moeller in the underlying proceeding,⁵⁹ I continue to disagree with the decision to reduce the ROE Transco Adder for ITC Midwest from 100-basis points to 50-basis points.

It will be unsurprising if stakeholders are left wondering on what basis the Commission reversed precedent and reduced the ROE adder. On rehearing, the Commission fails to offer additional insight, support or an adequate record upon which to justify its decision.

Given the significant ongoing changes in the delivery of electricity, driven in no small part by a changing resource mix and a slew of environmental regulations, I believe ROE stability would better serve consumers. The trend in the electricity industry points towards a consumer-driven need for more investment in transmission infrastructure, not less. While I do not dispute there may be times in which the Commission is justified in lowering ROEs for utilities based on a fully developed record, such is not the case here. Lowering ROEs on the basis of this scant record sends the wrong signal to investors, sowing uncertainty about the direction the Commission is heading with regard to infrastructure policy, and creating a chilling effect during a time in which we will likely most need that very investment.

Accordingly, I respectfully dissent.

Tony Clark
Commissioner

⁵⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,252 (2015).

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