148 FERC ¶ 61,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Association of Businesses Advocating Tariff Equity
Coalition of MISO Transmission Customers
Illinois Industrial Energy Consumers
Indiana Industrial Energy Consumers, Inc.
Minnesota Large Industrial Group
Wisconsin Industrial Energy Group

Docket No. EL14-12-000

v.

Midcontinent Independent System Operator, Inc.
ALLETE, Inc.
Ameren Illinois Company
Ameren Missouri
Ameren Transmission Company of Illinois
American Transmission Company LLC
Cleco Power LLC
Duke Energy Business Services, LLC
Entergy Arkansas, Inc.
Entergy Gulf States Louisiana, LLC
Entergy Louisiana, LLC
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Texas, Inc.
Indianapolis Power & Light Company
International Transmission Company
ITC Midwest LLC
Michigan Electric Transmission Company, LLC
MidAmerican Energy Company
Montana-Dakota Utilities Co.
Northern Indiana Public Service Company
Northern States Power Company-Minnesota
Northern States Power Company-Wisconsin
Otter Tail Power Company
Southern Indiana Gas & Electric Company

ORDER ON COMPLAINT, ESTABLISHING SETTLEMENT AND HEARING

JUDGE PROCEDURES, AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued October 16, 2014)

Paragraph Numbers

1. On November 12, 2013, pursuant to section 206 of the Federal Power Act (FPA)[1] and Rule 206 of the Commission's Rules of Practice and Procedure,[2] Complainants[3] filed

[1] 16 U.S.C. § 824e (2012).

a complaint (Complaint) against Midcontinent Independent System Operator, Inc. (MISO) and certain of its transmission-owning members (MISO TOs).[4] Complainants contend that the current 12.38 percent base return on equity (ROE) earned by MISO TOs, except ATC, which has a base ROE of 12.2 percent, through the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) is unjust and unreasonable. Complainants contend that the ROE should be set at 9.15 percent (a reduction of 323 basis points). Additionally, Complainants argue that the capital structures of certain MISO TOs feature unreasonably high amounts of common equity such that they are unjust and unreasonable and that MISO TOs' capital structures should be capped at 50 percent common equity. Finally, Complainants contend that the ROE incentive adders received by ITC Transmission for being a member of a regional transmission organization (RTO) and by both ITC Transmission and METC for being

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[2] 18 C.F.R. § 385.206 (2014).

[3] Complainants, a group of large industrial customers, are: Association of Businesses Advocating Tariff Equity (ABATE); Coalition of MISO Transmission Customers (Coalition of MISO Customers); Illinois Industrial Energy Consumers; Indiana Industrial Energy Consumers, Inc.; Minnesota Large Industrial Group; and Wisconsin Industrial Energy Group.

[4] MISO TOs named in the Complaint are: ALLETE, Inc. (for its operating division Minnesota Power, Inc. and its wholly-owned subsidiary Superior Water Light, & Power Company (Superior Water, L&P); Ameren Illinois Company (Ameren Illinois); Union Electric Company (identified as Ameren Missouri); Ameren Transmission Company of Illinois; American Transmission Company LLC (ATC); Cleco Power LLC (Cleco); Duke Energy Business Services, LLC d/b/a Duke Energy Indiana, Inc. (Duke Energy Indiana); Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, LLC (Entergy Gulf States); Entergy Louisiana LLC (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc. (Entergy New Orleans); Entergy Texas, Inc. (Entergy Texas); Indianapolis Power & Light Company (Indianapolis Power & Light); International Transmission Company d/b/a ITC Transmission (ITC Transmission), ITC Midwest LLC (ITC Midwest), and Michigan Electric Transmission Company, LLC (METC) (collectively, the ITC Subsidiaries); MidAmerican Energy Company (MidAmerican); Montana-Dakota Utilities Co. (Montana-Dakota Utilities), Northern Indiana Public Service Company (NIPSCO); Northern States Power Company-Minnesota (Northern States Minnesota); Northern States Power Company-Wisconsin (Northern States Wisconsin); Otter Tail Power Company (Otter Tail); and Southern Indiana Gas & Electric Company d/b/a Vectran Energy Delivery of Indiana, Inc. (Vectren).

independent transmission owners are unjust and unreasonable and should be eliminated. In this order, we grant in part, deny in part and dismiss in part the complaint. First, we grant in part the Complaint with respect to the ROE element. Specifically, with regard to the ROE element of the Complaint, we establish hearing and settlement judge procedures and set a refund effective date of November 12, 2013. Second, we deny in part the Complaint with respect to the transmission incentive and capital structure elements. Finally, we dismiss in part the Complaint as it relates to MISO.

I. Background

2. On December 3, 2001, MISO filed proposed changes to its Tariff to, among other things, increase the base ROE received by MISO transmission owners from 10.5 percent to 13 percent for all MISO pricing zones, except for the ATC transmission zone. The Commission set the ROE for hearing.[5] On September 23, 2003, the Commission affirmed the Initial Decision,[6] which approved a base ROE of 12.38 percent for the MISO transmission owners, but the Commission modified the Initial Decision to include an upward adjustment of 50 basis points for turning over operational control of transmission facilities.[7] On remand from the U.S. Court of Appeals for the District of Columbia Circuit, the Commission re-affirmed its decision to use the midpoint approach for calculating the ROE for MISO transmission owners.[8] Also on remand, the Commission vacated its prior order concerning the 50 basis point adder and stated that the MISO transmission owners may make filings under section 205 of the FPA to include an incentive adder.[9] The 12.38 percent base ROE continues to be the applicable ROE under Attachment O of the MISO Tariff used by all MISO transmission owners except for ATC. ATC's base ROE of 12.2 percent was established as part of a settlement agreement that was filed with the Commission on March 26, 2004.[10]

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[5] *Midwest Indep. Transmission Sys. Operator, Inc.*, 98 FERC ¶ 61,064, *reh'g denied*, 98 FERC ¶ 61,356 (2002).

[6] *Midwest Indep. Transmission Sys. Operator, Inc.*, 99 FERC ¶ 63,011 (2002).

[7] *Midwest Indep. Transmission Sys. Operator, Inc.*, 100 FERC ¶ 61,292 (2003), *order denying reh'g*, 102 FERC ¶ 61,143 (2003).

[8] *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,302 (2004).

[9] *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,355 (2005).

[10] In Docket No. ER04-108-000, the Commission approved the uncontested Settlement. *Am. Transmission Co. LLC and Midwest Indep. Transmission Sys. Operator*,

(continued ...)

3. The capital structures included in the MISO transmission owners' Attachment O formula rates are based on the actual common stock and long-term debt from page 112 of each MISO transmission owner's FERC Form No. 1. The Commission granted ATC a hypothetical capital structure consisting of 50 percent debt and 50 percent equity.[11] In addition, the Commission has granted some MISO transmission owners the ability to use hypothetical capital structures, as authorized by Order No. 679.[12]

4. ITC Transmission's ROE also includes a 100 basis point adder based on its independent transmission owner business model.[13] The Commission, on the same basis, also granted METC a 100 basis point adder.[14] In addition, ITC Transmission's ROE includes a 50 basis point adder for its "participation in [MISO's] RTO."[15]

II. Complaint

A. Return on Equity

5. Complainants assert that the current base ROEs of MISO TOs are unjust and unreasonable and should be adjusted to a just and reasonable ROE of 9.15 percent. Complainants explain that, until recently, under Commission precedent, when a complainant challenged a previously approved rate under section 206 of the FPA and

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Inc., 107 FERC ¶ 61,117 (2004).

[11] *Am. Transmission Co.*, 107 FERC ¶ 61,117.

[12] *See Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at PP 131-134, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007); *see also Dairyland Power Coop.*, 142 FERC ¶ 61,100 (2013); *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,121 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,131 (2011).

[13] *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 68, *reh'g denied*, 104 FERC ¶ 61,033 (2003).

[14] *Mich. Elec. Transmission Co., LLC and Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,164, at PP 17, 20-21 (2006); *Mich. Elec. Transmission Co., LLC and Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,343, at PP 15-19 (2005).

[15] *Midwest Indep. Transmission Sys. Operator, Inc.*, 100 FERC ¶ 61,292 at P 31.

proposed a new one, the Commission needed to find that (1) the existing rate was unjust and unreasonable; and (2) a proposed replacement rate was just and reasonable.[16] However, Complainants further state that, as recently held by the United States Court of Appeals for the District of Columbia, under FPA section 206, a complainant need only demonstrate that the existing rate is unjust and unreasonable; it is the Commission's responsibility to determine a new just and reasonable rate.[17] Moreover, Complainants argue that, in order for the Commission to find that the existing base ROE is no longer just and reasonable, the Commission need not find that the current base ROE is completely outside the zone of reasonableness that was used in the initial setting of the ROE. Thus, the approved ROE is not exempt from review under section 206 simply because it falls within the zone of reasonableness.[18] As a result, Complainants argue that they do not need to show that the current base ROE falls outside of the zone of reasonableness in order to prove that the current base ROE is unjust and unreasonable.

6. To support their claim that the current base ROE is no longer just and reasonable, Complainants filed an affidavit of Michael P. Gorman, a Managing Principal of Brubaker & Associates, Inc., an energy, economic and regulatory consultant. Mr. Gorman performed a discounted cash flow (DCF) analysis to a proxy group of comparable risk companies in accordance with the Commission's policy for establishing a just and reasonable ROE for transmission service.[19] Complainants explain that the DCF analysis employed both regional and national proxy groups of comparable companies. Complainants state that each company in Mr. Gorman's national proxy group met the following criteria: (1) the company must be a domestic publicly-traded electric utility followed by the Value Line Investment Survey (Value Line); (2) the company must own transmission assets; (3) the company must have a Standard & Poor's (S&P) bond rating

[16] Complaint at 11 (citing, *e.g.*, *La. Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,003, at P 28 (2010); *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002)).

[17] *Id*. at 11 (citing *Md. Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283, 1285, n.1 (D.C. Cir. 2011)).

[18] *Id*. at 11-12 (citing *Bangor Hydro-Elec. Co.*, 122 FERC ¶ 61,038, at P 10 (2008)).

[19] *Id*. at 12-13 (citing *N. Pass Transmission LLC*, 134 FERC ¶ 61,095 (2011); *Potomac Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152 (2010); *Atl. Path 15, LLC*, 122 FERC ¶ 61,135 (2008) (*Atlantic Path I*), *order on reh'g*, 133 FERC ¶ 61,153 (2010) (*Atlantic Path II*); *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 (2010); *Golden Spread Elec. Coop.*, 123 FERC ¶ 61,047 (2008)).

in the range of BBB- to A+, which is one notch above and below the MISO TO range; (4) the company must not have been known to be a party to significant merger and acquisition activity in the past twelve months; (5) the company must have consistently paid dividends for two years without any cuts to the dividends; and (6) the company must have at least two growth rate estimates available from www.reuters.com (IBES). Each company in Mr. Gorman's regional proxy group met the same criteria, except that the company must be a transmission owner in MISO or a non-MISO investor-owned utility that directly interconnects with a MISO TO in the Eastern U.S. interconnect.[20]

7. Complainants' state that consistent with recent Commission precedent, Mr. Gorman's DCF analysis, using his national proxy group produced a zone of reasonableness with a range of median high and median low values between 7.97 percent and 10.33 percent. Complainants state that the midpoint of this median range is 9.15 percent.[21] Complainants state that Mr. Gorman's results for his regional proxy group were similar to those of his national proxy group. Accord to Complainants, excluding outliers, Mr. Gorman's regional proxy group produced a zone of reasonableness of 6.75 percent to 10.62 percent. Complainants state that the midpoint of the zone of reasonableness, based on a DCF analysis using a regional proxy group, is 8.69 percent.[22]

8. In addition to performing a DCF analysis, Complainants state that Mr. Gorman performed two risk premium studies to address the reasonableness of the DCF results and to further demonstrate that the current ROEs for MISO TOs are unjust and unreasonable. First, Mr. Gorman performed a bond yield plus risk premium study, which compares the common equity returns demanded by investors to the return on investment in U.S. Treasury bonds. Mr. Gorman's risk premium analyses produced a common equity return estimate of 8.28 percent to 10.51 percent, which Complainants allege supports the recommended 9.15 percent ROE result from the DCF analysis.[23] Second, Mr. Gorman performed a capital asset pricing model (CAPM) study. Complainants explain that the CAPM is based on the theory that the market-required rate of return for a specific security is equal to the risk-free rate (4.2 percent in Mr. Gorman's analysis, based on *Blue Chip Financial Forecasts'* projection of 30-year Treasury bond yields), a market risk premium (6.7 percent in Mr. Gorman's analysis, based on *Morningstar*'s adjusted estimates for S&P 500 companies), and a beta (which measures the systematic or non-

[20] *Id*. at 17.

[21] *Id.* at 16-23.

[22] *Id*. at 23.

[23] *Id*. at 24-28.

diversifiable risks) of 0.71 (in Mr. Gorman's analysis, the average of the companies in the national proxy group). Mr. Gorman's CAPM analysis produced a return of 8.94 percent. Complainants state that, after accounting for investment risk, the CAPM indicates a range of 7.89 percent to 10.57 percent, which Complainants state supports the recommended 9.15 percent ROE from their national proxy group DCF analysis.[24]

9. Complainants state that their DCF analysis demonstrates that, as a result of significantly changed economic circumstances since the MISO TOs' base ROEs were first established: (1) the current base ROEs are unjust and unreasonable; and (2) the just and reasonable base ROE for all assets should be set no higher than 9.15 percent. The present base ROE levels, according to Complainants, result in customers substantially overpaying MISO TOs. Specifically, Complainants allege that, based on the current rate base levels provided in MISO TOs' most recent formula rate updates, electric consumers are overcompensating MISO TOs by approximately $327 million annually under the current base ROEs, as compared to rates using Complainants' recommended base ROE of 9.15 percent. Complainants argue that these overpayments exceed what is "reasonably sufficient to assure confidence in the financial soundness of the [utilities] and should be adequate under efficient and economical management, to maintain and support its credit, and enable it to raise the money necessary for the proper discharge of its public duties."[25]

10. Complainants contend that, if the Commission does not find that the current base ROEs are unjust and unreasonable, and that a base ROE of 9.15 percent is just and reasonable, the Commission should institute a proceeding under FPA section 206 to investigate whether the base ROEs used by MISO TOs are excessive and to determine a just and reasonable base ROE. Furthermore, Complainants state that, consistent with recent Commission proceedings in which utilities' ROEs were the subject of a complaint, the procedures should consist of two phases. First, Complainants state that MISO TOs should be directed to take part in settlement procedures with a Commission settlement judge, with a prescribed deadline (e.g., 60 days). Second, if the settlement process does not yield a certified offer of settlement within a prescribed period of time, then the base ROE should be determined through an evidentiary hearing.[26]

11. Finally, Complainants argue that the Commission should establish the earliest possible refund effective date. Complainants explain that, in cases where the

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[24] *Id*. at 28-33.

[25] *Id*. at 34 (quoting *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692-693 (1923) (*Bluefield*)).

[26] *Id*. at 34.

Commission institutes an investigation on a complaint under FPA section 206, section 206(b) requires the Commission to establish a refund effective date that is no earlier than the date the complaint was filed, but no later than five months after the filing date.[27] Complainants conclude that, given the Commission's policy of providing maximum protection to customers, the Commission should establish the filing date of this Complaint as the refund effective date for the relief to be afforded Complainants in this proceeding.[28]

B. Capital Structure

12. Complainants allege that the capital structures of those MISO TOs that have more than 50 percent common equity are unjust and unreasonable. Complainants argue that transmission companies have low operating risk. Thus, according to Complainants, transmission companies can finance their operations with greater amounts of debt, reflecting lower financial risk, while supporting an investment grade bond rating. Citing an S&P Ratings Direct publication, Complainants assert that utilities with stronger business profiles can have greater amounts of financial risk and still maintain an investment grade bond rating.[29] Accordingly, Complainants contend that it is unreasonable for a low-risk transmission electric utility to finance itself with relatively little financial risk, i.e., a high common equity ratio. Complainants add that transmission owners should have a common equity ratio that is in line with the electric utility industry average because of the low operating or business risk of transmission operations.[30]

13. Complainants report that even though the actual common equity ratio for most MISO TOs over the past five years has been 53 percent or less, certain MISO TOs have common equity ratios well in excess of 55 percent. By contrast, Complainants state that Mr. Gorman's national proxy group had an average common equity ratio of 48.8 percent. This common equity ratio, Complainants add, supported a national proxy group average bond rating of BBB+. Based on these figures, Complainants conclude that capital structures of the electric utility industry have supported investment grade bond ratings and provided adequate access to capital to support large capital programs. Complainants note that more balanced capital structures with more reasonable common equity ratios

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[27] *Id*. at 35 (citing 16 U.S.C. § 824e(b)).

[28] *Id*. (citing *Coakley v. Bangor Hydro-Elec. Co.*, 139 FERC ¶ 61,090, at P 29 (2012) (*Coakley* Hearing Order)).

[29] *Id*. at 35-36 (citing Gorman Aff. at 9-12).

[30] *Id*.

produce lower overall cost of capital to end-use customers relative to companies that have an excessive equity weighted capital structure.[31]

14. Furthermore, Complainants contend that limiting the common equity ratio to 50 percent for ratemaking purposes would have little or no impact on the credit standing of MISO TOs whose actual common equity ratios are greater than 50 percent. Complainants assert that, even if a transmission company with an excessive equity ratio has a slightly stronger bond rating, it is likely that its overall cost of capital would be higher. To illustrate this point, Complainants use the ITC Subsidiaries as an example. Complainants explain that the ITC Subsidiaries have a bond rating of BBB+/A3 and a common equity ratio of 60 percent, which Complainants maintain is well in excess of the equity ratios of other MISO TOs and other integrated electric utility companies. Complainants aver that the ITC Subsidiaries' bond ratings are only marginally better (one or two "notches") than most other MISO TOs. According to Complainants, the interest rate advantage of this higher bond rating is currently approximately 50 basis points and, over time, has averaged about 45 basis points. Complainants allege that, by reducing the ITC Subsidiaries' common equity ratio to 50 percent for ratemaking purposes, and correspondingly decreasing their bond rating by two notches, the ITC Subsidiaries pre-tax rate of return would decrease from 12.5 percent to 12.2 percent, thereby reducing the ITC Subsidiaries' revenue requirement by $40.9 million.[32]

15. Complainants remark that there is evidence that a 50 percent common equity ratio is adequate to support a strong credit standing for MISO TOs. For example, Complainants state that ATC, which entered into a settlement of ratemaking principles for its transmission operations that included a common equity ratio of 50 percent, has an A+ and a "Stable" credit rating by S&P. Complainants add that, since the settlement went into effect, ATC has doubled the size of its gross investment in transmission plant. Moreover, Complainants note that S&P rates ATC's business risk as "Excellent," its financial risk as "Intermediate," and its outlook as "Stable." Complainants conclude that ATC's current Commission-approved common equity ratio of 50 percent, combined with ATC's strong credit rating, demonstrates that a 50 percent common equity ratio will support strong credit and access to capital for other transmission electric utilities.[33]

16. In addition, Complainants allege that, because MISO TOs are currently earning above-market returns on common equity, they have an incentive to increase their use of

[31] *Id*. at 36-37.

[32] *Id*. at 38-39.

[33] *Id*. at 39-40.

equity capital to support investment in transmission assets. Complainants contend that MISO TOs' capital structures have been overly weighted with common equity and the ROEs have been well in excess of current market rates; thus, customers of MISO TOs have not been paying just and reasonable rates for transmission service. In order to balance investor interest and the public interest against excessive rates, Complainants argue that the Commission should require MISO TOs to manage their capital structures in a manner that minimizes the overall cost of capital, while supporting an investment grade bond rating.[34]

17. Finally, Complainants aver that, due to the low business risk that MISO TOs face, the Commission should implement a target capital structure for MISO TOs that consists of a common equity ratio of 50 percent. Complainants explain that, to the extent that an individual MISO TO has a common equity ratio of 50 percent or less, the Commission should require that the transmission owner file its rates with the Commission using its actual capital structure. If, on the other hand, a MISO TO has a common equity ratio in excess of 50 percent, then the Commission should require that the company provide evidence to the Commission showing that its common equity ratio is just and reasonable and consistent with minimizing its cost of capital while preserving its investment grade bond rating. Accordingly, Complainants argue that the Commission should adopt a 50 percent common equity ratio cap for all MISO TOs, without prejudice to individual MISO TOs having the ability to justify, on the basis of substantial evidence concerning their individual circumstance, that a higher common equity ratio is just and reasonable.[35]

C. Incentives

18. Complainants allege that ITC Transmission and METC have ROE adders in place that are no longer just and reasonable. Specifically, Complainants take issue with the 50 basis point adder that ITC Transmission currently receives for RTO membership and the 100 basis point adder that ITC Transmission and METC receive for being independent transmission companies.[36] Complainants allege that these adders are no longer necessary to promote the Commission's policy goals as they relate to RTO participation and transmission independence. Complainants argue that there must be a close nexus between any basis point adders and the net benefits to customers that would not have been achieved absent the increase to the ROE.[37] Complainants add that, because "there

[34] *Id*. at 40-41.

[35] *Id*. at 41-42.

[36] *Id*. at 42.

[37] *Id*. (citing *City of Detroit v. Fed. Power Comm'n*, 230 F.2d 810, 817 (D.C. Cir.

(continued ...)

must be 'symmetry' between the funding and increase" in customer value, the Commission must protect customers from paying substantially more than necessary to achieve the desired outcome.[38]

19. According to Complainants, over the last decade, ITC Transmission and METC have recovered more than enough through their ROE adders to deliver the benefit of being independent transmission companies and, in ITC Transmission's case, the benefit of being a member of an RTO. Complainants assert that, at this point, the ROE adders simply provide ITC Transmission and METC a windfall at the expense of customers. Moreover, Complainants add that no other transmission owners in the MISO region receive these ROE adders and there is no logical justification for allowing ITC Transmission and METC to continue applying the adders. Complainants also point out that, after the Commission's acceptance of the ROE adders for ITC Transmission and METC, it denied ITC Midwest's request for similar ROE incentive adders even though its posture relative to independent transmission operations and RTO participation was substantially similar to that of the other ITC Subsidiaries.[39]

20. Complainants also contend that the Commission has recognized that ROE incentive adders are not meant to continue indefinitely. For example, Complainants note that the Commission, in its 2003 Proposed Pricing Policy for Effective Operation of the Transmission Grid (2003 Proposed Pricing Policy), stated that "[a] public utility would qualify for the [50 point adder for RTO membership] as soon as it has transferred operational control of its transmission facilities to an approved and operating RTO, and would be authorized to receive the incentive for RTO participation until December 31, 2012."[40]

21. Furthermore, Complainants assert that customers are receiving no benefit for continuing to pay incentive ROE adders to ITC Transmission and METC, for two reasons. First, Complainants state that ITC Transmission's and METC's bond ratings are generally consistent with the other transmission owners' bond ratings. Second, Complainants report that credit analyst industry reports indicate that low-risk regulated

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1955) (*City of Detroit*)).

[38] *Id*. (quoting *Pub. Serv. Comm'n of N.Y. v. FERC*, 589 F.2d 542, 552-553 (D.C. Cir. 1978) (*New York Commission v. FERC*)).

[39] *Id*. at 43.

[40] *Id*. (citing *Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid*, 102 FERC ¶ 61,032, at P 28 (2013)).

utility operations have sufficient access to low-cost capital to fund needed utility infrastructure investment. Complainants conclude from this that the ROE adders are not needed to provide MISO TOs access to ample low cost capital and serve no other purpose than to unjustifiably increase the rates charged to transmission users.[41]

22. Finally, Complainants allege that the ROE adders applied by ITC Transmission and METC do not encourage ITC Transmission and METC to manage their capital costs to reduce their overall rates of return. Complainants explain that ITC Transmission's and METC's base ROE adders, coupled with their common equity ratios of 60 percent, produce substantially higher pre-tax rates of return than those of other MISO TOs. According to Complainants, eliminating the ROE adders for these companies would produce lower pre-tax rates of return even if their cost of debt was increased to reflect a reduction in their bond ratings.[42]

III. Notice and Responsive Pleadings

23. Notice of the Complaint was published in the Federal Register, 78 *Fed. Reg.* 69,660 (2013), with protests and interventions due on or before December 2, 2013.[43] On November 18, 2013, MISO TOs and the Organization of MISO States filed a joint motion for an extension of time in this proceeding for filing comments, protests, and interventions up to and including January 6, 2014. The period for interventions and protests regarding this filing was subsequently extended to January 6, 2014.

24. The entities that filed notices of intervention, motions to intervene, protests, comments, and answers are listed in the Appendix to this order. The entity abbreviations listed in the Appendix will be used throughout this order.

25. On December 31, 2013, MISO filed a motion for dismissal of MISO as a party to this proceeding and to postpone the date by which MISO must answer the Complaint. MISO contends that it is not a beneficiary of any ROE and, instead, is simply the billing agent for MISO TOs. MISO maintains that it has a purely administrative role and will comply with any Commission decision in this proceeding. On January 15, 2014, Complainants filed an answer to MISO's motion stating that they do not object to MISO's motion to be dismissed as a party to the proceeding, subject to the Commission

[41] *Id*. at 44.

[42] *Id*. at 44-45.

[43] The Commission subsequently issued an errata notice that corrected the Docket No. to read EL14-12-000.

requiring MISO to (1) remain responsible for administering any refunds; (2) include the appropriate ROE in prospective transmission billings; and (3) waive any right to challenge the results of this proceeding. Complainants state that, in its motion for dismissal of MISO as a party, MISO indicated its willingness to commit to these conditions.[44]

A. MISO TOs Motion to Dismiss

1. Standing

a. Motion to Dismiss

26. MISO TOs argue that the Commission should dismiss the Complaint because it fails to satisfy the procedural requirements of Rule 206 of the Commission's Rules of Practice and Procedure. MISO TOs assert that Complainants have not satisfied the requirement of Rule 206 that a complainant set forth "the business, commercial, economic, or other issues presented by the action or inaction as such relate to or affect the complainant."[45] MISO TOs observe that Complainants state that they are large industrial or commercial business entities located within MISO and that they include the Coalition of MISO Customers, which is a member of MISO. However, MISO TOs aver that Complainants do not describe the relationship between MISO or MISO TOs' rates, or the effect of those rates to Complainants' businesses, individually or collectively. According to MISO TOs, the Complaint does not allege that any Complainant is a transmission customer of MISO that pays, or is adversely affected by, the rates stated in the MISO Tariff that include the base ROE, capital structures, or ROE adders challenged by the Complaint. MISO TOs argue that Complainants' statements that their member organizations are located or have facilities in the MISO region and that one of the Complainants (Coalition of MISO Customers) is a member of MISO are vague and insufficient in their description of adverse effects.[46]

b. Complainants Reply

27. Complainants contend that MISO TOs' argument that Complainants lack standing is baseless. Complainants contend that the Complaint clearly explained that each group

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[44] Complainants January 15, 2014 Reply at 2.

[45] MISO TOs January 6, 2014 Answer at 7 (citing 18 C.F.R. §§ 385.206(a), (b)(3)).

[46] *Id.* at 8-9.

that comprises Complainants is comprised of retail customers with facilities in the MISO region. They further contend that all retail customers in the MISO region pay for transmission service, which is at the heart of this proceeding. Complainants argue that to find that Complainants do not have standing would require the Commission to reach a conclusion that all of the industrial customers comprising Complainants pay nothing for transmission service, which Complainants assert is incorrect.

28. Complainants contend that all of their group members are payers of MISO TOs' revenue requirement, that they are being adversely affected by the out-of-market ROE currently being applied to MISO TOs, and that they will benefit from a realignment of the ROE to current market conditions, correction of MISO TOs' capital structures, and elimination of unjustified ROE incentive adders.[47]

c. Comments and/or Protests

29. Similarly, Iowa Group asserts that Rule 206(a) provides that "[a]ny person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission."[48] It further asserts that Rule 107(d) defines "person" as including "associations and any organized group of persons whether incorporated or not."[49] Iowa Group argues that the Commission has allowed complaints filed by associations on behalf of their members to proceed through its adjudication process without any allegation of harm to the association itself, and that construing Rule 206 in the manner advanced by MISO TOs would effectively read associations and other organized groups out of the Commission's rules.[50]

d. MISO TOs Reply

30. In response, MISO TOs argue that, despite Complainants' and Iowa Group's argument to the contrary, the Complaint does not establish Complainants' standing and should be dismissed. MISO TOs state that Complainants have failed to establish standing to bring their claims because the Complaint fails to allege that any Complainant is a transmission customer of MISO that pays, or it otherwise affected by, the rates stated in

[47] Complainants January 22, 2014 Reply at 5.

[48] Iowa Group Reply at 8 (quoting 18 C.F.R. § 385.206(a)).

[49] *Id*. at 8 (quoting 18 C.F.R. § 385.107(d)).

[50] *Id*.

the MISO Tariff that include the base ROE, capital structures, and ROE incentives that the Complaint purports to challenge. MISO TOs contend that, when a complainant is not a customer of the respondent, the complainant must show that it has been adversely harmed by the actions it challenges in the complaint. MISO TOs state that, here, the Complaint does not set forth facts satisfying the applicable legal standard.[51] Furthermore, MISO TOs take issue with Iowa Group's argument that "the Commission has allowed complaints filed by associations on behalf of their members to proceed through its adjudication process without any allegation of harm to the association itself."[52] MISO TOs respond that, here, Complainants have not shown that their members pay a fully allocated portion of the base ROE and transmission revenue requirement.[53]

2. Good Faith Effort to Quantify Financial Impact

a. Motion to Dismiss

31. MISO TOs further assert that Complainants have not complied with Rule 206 because they have not made "a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction."[54] MISO TOs assert that Complainants' allegations are merely generic assertions about MISO TOs' revenues and that they do not quantify the effect on Complainants, either individually or collectively, of MISO TOs' base ROE, capital structure, or ROE adders.

b. Complainants Reply

32. Complainants assert that FPA section 206(b)(4) states that a complainant must "make a good faith effort to quantify the financial impact or burden (if any) created for the Complaint as a result of the action or inaction."[55] They further assert that, while the quantified financial impact stated in the Complaint does not represent a precise impact, it

[51] MISO TOs February 19, 2014 Reply at 6-8.

[52] *Id*. at 9 (quoting Iowa Group Reply at 8).

[53] *Id*.

[54] MISO TOs January 6, 2014 Answer at 10-12 (quoting 18 C.F.R. §§ 385.206(a), (b)(4)).

[55] Complainants January 22, 2014 Reply at 6 (quoting 18 C.F.R. § 385.206(b)(4)).

does represent a "good faith estimate" of the impact that MISO TOs' excessive transmission rates have on them.[56]

33. Complainants contend that many of the retail customers comprising Complainants' groups pay bundled retail rates, and the precise flow-through of transmission revenue requirements to retail customers would require the burdensome task of "unbundling" all retail rates to isolate the transmission revenue component and then further unbundling the transmission revenue component to isolate the ROE and capital structure impact on the transmission revenue component. Complainants conclude that the overall impact to all transmission customers in the MISO region represents, at this time, a good faith estimate of the impact that MISO TOs' excessive transmission rates have on them.[57]

34. Complainants contend that the fact that industrial customers are adversely impacted by the high ROE and capital structures should be obvious, and that MISO TOs' assertion that the Complaint should be dismissed for failure to demonstrate any quantifiable financial impact is illogical. In addition, Complainants assert that the parties that filed comments in support of the Complaint, including the Organization of MISO States, Illinois Commission, and the Missouri Commission did so because of the material impact of the claims put forth in the Complaint.[58]

c. Comments and/or Protests

35. Furthermore, Iowa Group contends that a "good faith effort" is a reasonable, intellectually honest attempt to quantify the harm caused by the challenged action, and that Complainants have made a good faith effort to quantify the financial impacts and burden created for their members as a result of MISO TOs' unjust and unreasonable rates.[59]

36. Iowa Group asserts that Complainants have shown that electric consumers are overcompensating MISO TOs as a group by $327 million annually under the current base ROE and by $377 million annually using both the recommended base ROE and a 50

[56] *Id*. at 6-7.

[57] *Id*. at 7.

[58] *Id*. at 8.

[59] Iowa Group Reply at 9-10.

percent common equity ratio.[60] Iowa Group asserts that Complainants have also shown how much each MISO TO is being overcompensated.[61] Iowa Group adds that its own comments demonstrated that implementing Complainants' recommendations for 2013 would have reduced its members' Network Integration Transmission Service rate by 22.74 percent.[62]

37. Iowa Group contends that, in *Martha Coakley Mass. Atty. Gen., et al.*, a coalition of public officials, consumer advocates, and business associations filed a complaint challenging a base ROE of 11.14 percent utilized by transmission utilities in the New England region and alleging that reducing the base ROE to 9.20 percent would reduce regional network service costs by $113 million in 2011 and $206 million in 2014.[63] Iowa Group points out that the Commission, noting this broad allocation, accepted the complaint and set it for investigation and a trial-type evidentiary hearing.[64]

d. MISO TOs Reply

38. In response, MISO TOs allege that answering parties' arguments does not refute the Complaint's failure to satisfy Rule 206(b)(4). MISO TOs argue that Complainants' Answer cites no legal basis for its contention that it has provided a satisfactory quantification of its financial impact. In response to Complainants' argument that quantifying the financial impact of MISO TOs' rates would be burdensome, MISO TOs state that Complainants should have said so in the Complaint, as called for by Rule 206(b)(4). MISO TOs add that the Complaint does not even state whether Complainants or their respective members are customers of MISO TOs or of MISO. MISO TOs further note that, unlike in the recent New England Transmission Owners' base ROE complaint, in which the complainants were a coalition of state attorneys general, public utility commissions, public advocates, and non-profit associations, Complainants here do not purport to represent consumers generally.[65]

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[60] *Id*. at 10 (citing Gorman Aff.).

[61] *Id*. (citing Gorman Aff.).

[62] *Id*. (citing Iowa Group Comments at 8).

[63] *Id*. at 10-11 (citing *Martha Coakley Mass. Atty. Gen., et al.*, 144 FERC ¶ 63,012, at P 6 (2013) (*Coakley*).

[64] *Id*. at 11 (citing *Coakley*, 144 FERC ¶ 63,012 at P 6).

[65] MISO TOs February 19, 2014 Reply at 10-12.

39. Furthermore, MISO TOs allege that neither Complainants' nor Iowa Group's answers cure the Rule 206 defects in the Complaint. MISO TOs note that nowhere does the Complaint allege that each of Complainants is comprised of retail customers with facilities in the MISO region. MISO TOs state that, even if it were true that the Complaint "clearly explained that each group that comprises . . . Complainants is comprised of retail customers with facilities in the MISO region," that still would not establish Complainants' standing in this proceeding. MISO TOs allege that there are 26 Commission-jurisdictional transmission-owning utilities within the MISO footprint, but the Complaint names only 24 of them. MISO TOs also state that there are many non-jurisdictional entities that own transmission assets within the MISO footprint and that are not named in the Complaint. Moreover, MISO TOs state that it is fairly common for large industrial customers to have negotiated rates that do not necessarily pass through all transmission costs attributable to or paid by the transmission owner that serves them.[66]

3. Burden of Motion to Dismiss

a. Motion to Dismiss

40. MISO TOs argue that Complainants have failed to meet their burden under FPA section 206 to demonstrate that the MISO TOs' existing base ROE is unjust and unreasonable. Specifically, Complainants allege that the Gorman Affidavit and accompanying DCF analysis are undermined by serious and pervasive errors, and are without probative value. MISO TOs therefore conclude that Complainants fail to make a prima facie case that MISO TOs' existing rates are unjust and unreasonable.[67]

41. Furthermore, MISO TOs contend that Complainants' allegations regarding the MISO TOs' capital structures are facially insufficient to state a claim for relief and should be dismissed with prejudice. In addition MISO TOs argue that Complainants fail to state any basis for removing ITC Transmission's ROE adders for RTO membership and independence, or METC's ROE adder for independence.[68]

b. Complainants Reply

42. Complainants argue that MISO TOs' motion to dismiss should be denied. Complainants assert that the Commission's Rules of Practice and Procedure do not

[66] *Id*. at 13-14.

[67] MISO TOs January 6, 2014 Answer at 4.

[68] *Id*.

provide the legal standard for a motion to dismiss. Instead, the Commission looks to the Federal Rules of Civil Procedure for guidance.[69] Complainants contend that under the Federal Rules of Civil Procedure, in order for a motion to dismiss to be successful, the party submitting the motion, in this case MISO TOs, must prove that there are no issues of material fact and that the complainant fails to state a claim for which relief can be granted.[70] Complainants further contend that the purpose of a motion to dismiss is to allow the respondent(s) to test whether, as matter of law, the complainant(s) is entitled to legal relief even if everything alleged in the complaint is true.[71] Complainants assert that MISO TOs fail to meet that burden.

43. Complainants contend that the issues raised in MISO TOs' motion to dismiss are issues of material fact and, therefore, not grounds for outright dismissal of the Complaint. Complainants contend that under FPA section 206, Complainants bear the "burden of proof . . . and therefore must demonstrate, on the basis of substantial evidence, [] that the rate in effect is unjust and unreasonable."[72] Complainants argue that, taking everything in the Complaint as true, they have met their burden of proof under section 206 and MISO TOs' motion to dismiss should be denied.[73]

c. MISO TOs Reply

44. In response, MISO TOs state that the Federal Rules of Civil Procedure do not relieve Complainants from meeting their FPA section 206 burden. MISO TOs contend that they do not dispute that the Federal Rules of Civil Procedure may provide guidance to the Commission, but that Complainants cannot avoid meeting their burden under FPA section 206 by resorting to the Federal Rules of Civil Procedure. According to MISO TOs, the "no issue of material fact" standard Complainants cite applies to a motion for summary judgment under the federal rules, but no one in this case has invoked the Commission's parallel Rule 217. Consequently, MISO TOs allege that, even taking as true all of the facts asserted in the Complaint regarding Complainants' members and their interests, the Complaint still fails to (1) establish Complainants' standing; (2) make a

[69] Complainants January 22, 2014 Reply at 3.

[70] *Id*. (citing Fed. R. Civ. P. Rule 12(b)(6)).

[71] *Id*. at 3-4 (citing *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993)).

[72] *Id*. at 4 (quoting *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161, at P 9 (2008) (*Ameren Services*)).

[73] *Id.*

good faith estimate of the alleged financial harm to Complainants; or (3) state a claim upon which relief may be granted.[74]

4. Return on Equity

45. MISO TOs also argue that Complainants have not made a prima facie case that MISO TOs' base ROE is unjust and unreasonable. In this regard, MISO TOs aver that Complainants bear the burden to establish by substantial evidence that the present base ROE is unjust and unreasonable.[75]

46. MISO TOs argue that the selection criteria in Complainants' national proxy group are inconsistent with Commission precedent. First, MISO TOs argue that the Commission has rejected the requirement used in Complainants' DCF analysis that proxy group companies must own transmission. MISO TOs cite *Atl. Grid Operations A LLC*,[76] in which, according to MISO TOs, the Commission rejected the contention that companies that are not "electric transmission-owning companies" should be excluded from the national proxy group, allowing inclusion of companies that are classified as electric companies by independent investor services. Second, MISO TOs argue that the Commission requires the inclusion of companies within one rating notch above and below MISO TOs' bond rating range. Given use of this criterion, MISO TOs' expert witnesses, Dr. Avera and Mr. McKenzie, contend that a properly screened national proxy group should include companies with S&P credit ratings as high as AA- (which, in their analysis, would include MGE Energy), rather than as high as A.[77]

47. Third, MISO TOs question Complainants' proxy group screen element that eliminates companies involved in recent merger and acquisition activity. They aver that the Commission has no per se requirement to eliminate such companies from DCF analysis proxy groups. MISO TOs state that in *Bangor Hydro-Electric Co.*[78] the

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[74] MISO TOs February 19, 2014 Reply at 15-18.

[75] MISO TOs January 6, 2014 Answer at 12 (citing, *e.g.*, *Ameren Services*, 125 FERC ¶ 61,161 at P 9).

[76] *Id.* at 14 (citing *Atl. Grid Operations A LLC*, 135 FERC ¶ 61,144, at P 96 (2011) (*Atlantic Grid*)).

[77] *Id.* at 15-16; Avera/McKenzie Test. at 33; Ex. MTO-5.

[78] *Id.* at 16 (citing *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129, at P 68 (2006) (*Bangor I*), *order on reh'g*, 122 FERC ¶ 61,265 (2008) (*Bangor II*), *order granting clarification*, 124 FERC ¶ 61,136 (2008), *petition denied, Conn. Dep't of Pub.*

(continued ...)

Commission specified that companies involved in mergers should only be excluded from the proxy group if the merger affects the DCF calculation so as to have a material effect on the input values reflected in the associated DCF calculations. MISO TOs contend that Complainants have made no such evaluation and, therefore, have failed to make a prima facie case for the validity of this proxy group screen.[79]

48. Fourth, MISO TOs disagree with Complainants' proxy group screen element that includes only companies that have consistently paid dividends with no cuts in the past two years. MISO TOs argue that the Commission rejected a similar criterion in *Portland Natural Gas*.[80] MISO TOs state that the Commission has articulated that it uses only the past six months of data for the dividend screen.[81]

49. Fifth, MISO TOs argue that the Commission has never required that a proxy group company have two earnings growth rate estimates reported in Reuters.com. Rather, the Commission, according to MISO TOs, has a stated preference for using data from Yahoo.com, which is the only site that publishes the number of analysts.[82] MISO TOs contend that this screen improperly removes several companies from the proxy group which would significantly increase the zone of reasonableness range from the DCF analysis.[83]

50. MISO TOs also argue that Complainants' analysis improperly deviates from the Commission's standard DCF methodology in other ways. MISO TOs state that the Commission has articulated that evidence must provide "a substantial basis of fact from

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Util. Control v. FERC, 593 F.3d 30 (D.C. Cir. 2010) (Collectively Bangor)).

[79] *Id*. at 16-17.

[80] *Id*. at 17 (citing *Portland Natural Gas Transmission Sys.*, Opinion No. 510, 134 FERC ¶ 61,129 (2011) (*Portland Natural Gas*), *order on reh'g*, Opinion 510-A, 142 FERC ¶ 61,198 (2013)).

[81] *Id.* at 18 (citing *Portland Natural Gas*, 134 FERC ¶ 61,129 at P 186) (citing *Composition of Proxy Groups for Determining Gas & Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048, at app. A (2008)); *Boston Edison Co.*, 42 FERC ¶ 61,374, at 62,093 (1988)).

[82] *Id*. at 19-20 (citing Avera/McKenzie Test., Ex. No. MTO-1 to MISO TOs Answer at 36).

[83] *Id*. at 21.

which the fact in issue can be reasonably inferred."[84] They argue that the Complaint is deficient because Complainants' DCF analysis is irreparably flawed. Such deficiencies, according to MISO TOs, cause the evidence to fall short of the Supreme Court's standard that evidence must be "enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."[85] Among other flaws, MISO TOs point out that Complainants calculated the weekly high and low dividend yield, whereas the Commission has long required determinations of monthly dividend yields.[86] MISO TOs also argue that the Commission requires use of average forecasted growth rates based on Value Line projections for multiple years, whereas Complainants use only the three to five year growth projections without incorporating projected growth in the intervening years. Further, according to MISO TOs, the Commission found that the proper method for determining the growth rates is to calculate them based on each set of data, which includes the inventing years.[87] MISO TOs explain that more years of data improves model accuracy and credibility.

51. MISO TOs also argue that Mr. Gorman's reliance on the market to book ratio of each company in his national proxy group, rather than the effects of future common stock sales, in calculating the company's sustainable growth rate, is contrary to the purpose of the "sv" component of the growth rate, as well as Commission precedent. In this regard, MISO TOs note that the Commission has explained that "s" in the br + sv[88] sustainable growth calculation is the percent of common equity expected to be issued annually as

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[84] *Id.* at 22 (citing *Gulf Oil Corp.*, Opinion No. 136, 18 FERC ¶ 61,048, at 61,070 (1982)).

[85] *Id.* (citing *Universal Camera Corp. v. Nat'l Labor Relations Bd.*, 340 U.S. 474, 477 (1951)).

[86] *Id.* at 23 (citing *S. Cal Edison Co.*, Opinion No. 445, 92 FERC ¶ 61,070, at 61,265, n.47 (2000); *Portland Natural Gas*, 134 FERC ¶ 61,129 at P 234; *New England Power Co.*, 22 FERC ¶ 61,123, at 61,188 (1983); *Allegheny Generating Co.*, 40 FERC ¶ 61,117, at 61,316 n.6 (1987)).

[87] *Id.* at 24 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 100 FERC ¶ 61,292 at P 17).

[88] For the Projected Price/Book Value br + sv equation, b is the expected retention ratio, r is the expected earned rate of return on common equity, s is the percent of common equity expected to be issued annually as new common stock, and v is the equity accretion rate.

common equity and "v" is the equity accretion rate.[89] Thus, MISO TOs contend that Complainants should have calculated projected, rather than historic, book to market ratios and growth rates of shares outstanding.

52. MISO TOs also criticize Complainants' calculation of the rate of return based on their own calculations. MISO TOs assert that the Commission requires the use of Value Line's published ROE projections, as adjusted by the growth in equity for the period, to derive the equity return.[90] Similarly, MISO TOs criticize Complainants' use of short-term growth rates published in Reuters.com in their DCF analysis. MISO TOs explain that the Commission requires use of IBES numbers posted by Thomson Financial Data on Yahoo.com.[91]

53. MISO TOs also question Complainants' use of 100 basis points above the historic bond yield on Baa rated public utility bonds as a threshold for excluding low-end DCF outliers. MISO TOs contend that such a threshold does not recognize the Commission's policy in favor of flexibility in determining a threshold for low-end DCF outliers.[92] MISO TOs argue that the low interest rates in recent years are unprecedented and do not reflect investors' expectations for the near-term future, which is completely ignored by applying a constant 100 basis to historic bond yields to screen low-end outliers.[93]

54. Finally, MISO TOs argue that Mr. Gorman manipulated the DCF results to compress the size of the zone of reasonableness and thus artificially depress the resulting midpoint ROE. MISO TOs explain that after Mr. Gorman calculated the estimated high and low cost of equity for each proxy group member, he averaged the calculated high costs of equity estimates and the low costs of equity estimates to determine the median value for each group. In this regard, however, MISO TOs argue that the Commission

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[89] MISO TOs January 6, 2014 Answer at 26 (citing *S. Cal. Edison Co.*, 92 FERC at 61,263).

[90] *Id.* at 27 (citing *S. Cal. Edison Co.*, 92 FERC at 61,263; *Bangor II*, 122 FERC ¶ 61,265 at P 19).

[91] *Id.* at 28 (citing *Composition of Proxy Groups for Determining Gas & Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 at P 84).

[92] *Id.* at 28-29 (citing *e.g.*, *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 at P 55; *Coakley v. Bangor Hydro-Elec. Co.*, 144 FERC ¶ 63,012, at P 573 (2013) (*Coakley*)).

[93] *Id.* at 30.

determined the region-wide ROE for transmission owners in ISO New England with the midpoint, finding that the midpoint reflects the entire range of results from the proxy group.[94] Further, according to MISO TOs, by averaging his high estimates and low estimates for each proxy group, Mr. Gorman contravenes the Commission's desire to use the entire range of results to derive the ROE "directly from the endpoints of the range."[95] They point out that averaging the high estimates and low estimates significantly altered Mr. Gorman's range of results, and thus the resulting midpoint. According to MISO TOs, before averaging, Mr. Gorman's range was from 6.75 to 11.88 percent, while, after averaging, the range was compressed to 7.97 to 10.33 percent, reducing the midpoint from 9.32 to 9.15 percent. According to MISO TOs, Complainants' approach lacks support and does not reflect other factors that are preeminent when determining a region-wide ROE.[96]

55. MISO TOs note their agreement with Complainants' consideration of alternative ROE estimation methods, but contend that Mr. Gorman committed significant errors in applying them. Specifically, they note that Mr. Gorman, in his risk premium analysis, ignored all observations prior to 1986. MISO TOs argue that such a cut-off unnecessarily reduces the accuracy of the resulting calculations. Additionally, MISO TOs contend that Mr. Gorman erred in his risk premium analysis by failing to incorporate the inverse relationship between interest rates and equity risk premiums in his analysis of historically authorized rates of return. MISO TOs explain that this decision artificially depresses Complainants' risk premium results.[97]

56. MISO TOs assert that Mr. Gorman's CAPM approach is similarly flawed. They note, for example, that Mr. Gorman used historical data in performing a forward-looking CAPM analysis, which, they assert, is inconsistent with the forward-looking CAPM approach that should be based on projected data. Also, MISO TOs criticize the use of *Morningstar* data in Mr. Gorman's CAPM analysis because *Morningstar* data does not account for observed differences in rates of return attributable to firm size. In addition,

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[94] *Id*. at 30-31 (citing *ISO New England, Inc. v. New England Power Pool*, 109 FERC ¶ 61,147, at P 203 (2004)).

[95] *Id.* (quoting *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 at P 90).

[96] *Id.* at 31-32.

[97] *Id.* at 33.

MISO TOs criticize Mr. Gorman's use of total return in calculating the historic risk premium, instead of using the arithmetic mean of income return.[98]

5. Capital Structure

57. MISO TOs contend that Complainants have not met their section 206 burden to demonstrate that MISO TOs' current capital structures are unjust and unreasonable. They point out that Complainants do not cite any Commission precedent in support of their position and that applicable Commission precedent provides for evaluation of utilities' capital structures on a case-by-case basis,[99] and particularly examines whether a utility's common equity ratio is within the range of capitalizations accepted by the Commission.[100] MISO TOs note that the Commission has stated that an appropriate capital structure can fall within a very broad range, and has often found that capital structures comprised of more than 50 percent common equity yield are just and reasonable.[101]

58. MISO TOs also take issue with Mr. Gorman's assertion that transmission utilities have low operating risks and, therefore, that MISO TOs should have common equity ratios of no more than the electric utility industry average. In this regard, MISO TOs' point out that Value Line, in its three-to-five year forecast horizon, expects 21 of 45

[98] *Id*. at 34-35 (citing Avera/McKenzie Test. at 52-55).

[99] *Id.* at 39 (citing *Transcon. Gas Pipe Line Corp*., Opinion No. 414, 80 FERC ¶ 61,157 (*Transcon. I*), *granting reh'g in part*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,413-61,415 (1998) (*Transcon. II*), *reh'g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *petition for review denied*, *N.C. Utils. Comm'n v. FERC*, 203 F.3d 53 (D.C. Cir. 2000) (*per curiam*)).

[100] *Id.* at 39-40 (citing *ITC Holdings Corp. v. Interstate Power & Light Co.*, 121 FERC ¶ 61,229, at P 49 (2007) (*ITC Holdings v. Interstate Power and Light*) (citing *Transcon. II*, 84 FERC at 61,413-61,415)).

[101] *Id.* at 41 (citing *Mo. Pub. Serv. Co. v. FERC*, 215 F.3d 1, 4 (D.C. Cir. 2000); *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 78 (2013) (finding ITC Midwest's 60 percent target equity ratio just and reasonable); *DATC Midwest Holdings,LLC*, 139 FERC ¶ 61,224, at P 76 (2012) (granting DATC's request to use a hypothetical capital structure consisting of 55 percent common equity); *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,121 at P 51 (stating that the "proposed hypothetical capital structure of 56 percent . . . is within the range of actual capital structures for transmission-owning members of MISO"); *WPPI Energy*, 141 FERC ¶ 61,004 (2012)).

utilities in its national group to maintain common equity ratios of at least 50 percent, with individual equity ratios ranging from 37 percent to as high as 64 percent.[102] They also argue that Mr. Gorman's assertion that higher common equity ratios may increase returns "fails as evidence that any particular common equity component is unjust and unreasonable."[103] MISO TOs argue that market volatility, combined with the need to fund new transmission investments, favors a more conservative financial profile featuring more common equity. They also contend that Mr. Gorman's contention that equity investors are willing to accept the greater financial risks of a lower common equity ratio and a reduction in credit ratings with no compensation in the form of a higher return is unsupported and incorrect.[104]

59. MISO TOs argue that, to prevail on their challenge to MISO TOs' capital structures, Complainants must demonstrate that each TO's capital structure is unjust and unreasonable. MISO TOs point out that, other than the ITC Subsidiaries, Complainants do not discuss the capital structure of any other MISO TO that has a common equity component in excess of 50 percent.[105] MISO TOs also note that Complainants are unclear about what relief they seek, that is, whether they are asking the Commission to dictate the manner in which MISO TOs manage their actual capital structures, or whether they seek to impose a cap on the common equity component of capital structure for ratemaking purposes only.[106] MISO TOs assert that, if the former was intended, the Commission lacks the statutory authority under the FPA to manage the day-to-day operations of utilities in that manner.[107]

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[102] *Id.* at 42-43.

[103] *Id.* at 43.

[104] *Id.* at 44-45.

[105] *Id.* n.158.

[106] *Id.* at 37, 47-48.

[107] *Id.* at 48 (citing *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 403 (D.C. Cir. 2004) (stating that the Commission's authority "to assess the justness and reasonableness of practices affecting rates of electric utilities is limited to [activities] that directly affect the rate or are closely related to the rate")).

6. Incentives

60. MISO TOs contend that Complainants' attack on MISO TOs' right to seek and receive transmission incentive adders is unsupported. MISO TOs contend that this element of the Complaint contradicts Commission precedent without offering any reasons why the Commission should depart from its principles. Specifically, MISO TOs argue that the Commission has acknowledged that the RTO participation incentive is appropriate for membership in an RTO. They contend that Complainants have not established a prima facie case for the elimination of such incentives beyond making unsubstantiated allegations.[108]

B. Contested Motions to Intervene of Trans Bay and Powerlink

1. Motions to Intervene

61. Trans Bay argues that it is interested in protecting the availability of incentive ROEs and other incentive rate treatments to transmission owners and transmission projects. Trans Bay states that it owns and operates a 400 MW high-voltage, direct-current submarine transmission line and associated facilities that connect the eastern portion of the San Francisco Bay with the City of San Francisco. According to Trans Bay, in 2005, the Commission granted Trans Bay an "all-in" incentive ROE, in which the incentives are not specifically stated and separated from the base ROE, "in light of the fact that it is a new project being undertaken by a start-up utility, the benefits stemming from the [p]roject, and the elevated risk levels that Trans Bay will assume."[109] Trans Bay concludes that, because its transmission revenue requirement is based on a Commission-approved incentive ROE and actual capital structure, Trans Bay has a substantial interest in, and will be affected by, the resolution of the Complaint.[110]

62. Powerlink states that, as a company seeking to invest in transmission, it has a substantial interest in the transmission ROEs, incentive rate treatments, and capital

[108] *Id.* at 35-36 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,355 at P 5).

[109] Trans Bay Protest at 2-3 (quoting *Trans Bay Cable LLC*, 145 FERC ¶ 61,151, at P 26 (2013) (*Trans Bay Cable*)).

[110] *Id.* at 3.

structures challenged by the Complaint. Powerlink therefore requests that the Commission permit it to intervene in this proceeding and afford it full rights as a party.[111]

2. Complainants Reply

63. Complainants contend that since Trans Bay and Powerlink have not furnished evidence demonstrating a right to intervene, direct interest, or public interest in this proceeding, no grounds exist for approval of their motions to intervene.[112] Complainants assert that Trans Bay's facilities are located entirely within the State of California and governed by the rules and policies of the California Independent System Operator Corporation, while Powerlink does not own or operate any transmission facilities in the MISO territory.[113] Complainants argue that these facts do not constitute a direct interest in the matters raised by Complainants and that Commission precedent establishes that an "entity seeking the right to intervene must have a direct interest in a proceeding 'and not merely the desire to shape precedent.'"[114]

64. In addition, Complainants assert that the Commission has previously determined that a public interest must be specific to an individual proceeding rather than a generalized interest.[115] Complainants argue that Powerlink's interests lie with speculative investment opportunities that could arise in the United States (or could not), with no tangible or appreciable nexus to the MISO territory,[116] while Trans Bay claims a generalized interest in protecting the availability of incentive ROEs for transmission owners and transmission projects, but establishes no particular MISO transmission ROEs and rate structure issues raised by Complainants.[117] To avoid the result that would provide any transmission owner in the United States adequate grounds to intervene in any

[111] Powerlink Protest at 3-4.

[112] Complainants January 22, 2014 Reply at 34-35.

[113] *Id*. at 35-36.

[114] *Id*. at 36 (citing *PPL Holtwood, LLC*, 140 FERC ¶ 61,038 (2012)).

[115] *Id*. (citing *PPL Holtwood, LLC*, 140 FERC ¶ 61,038).

[116] *Id*. at 37 (citing Powerlink Protest at 3-4).

[117] *Id*. (citing Trans Bay Protest at 3).

Commission matter involving proposed changes to transmission owners' ROE or rate structures, Complainants request that the Commission deny the motions to intervene.[118]

3. Trans Bay and Powerlink Reply

65. In their answers, Powerlink and Trans Bay argue that they should be allowed to intervene in this proceeding for at least two reasons: (1) allowing them to intervene in this proceeding is in the public interest; and (2) they have an interest that may be directly affected by the outcome of this proceeding. First, Powerlink and Trans Bay contend that they seek to intervene in this proceeding to defend existing Commission policy, namely Order No. 679 and its progeny, against Complainants' attacks.[119] Specifically, Powerlink argues that, if the Commission grants Complainants' request to terminate ITC Transmission's and METC's ROE incentives, that action would terminate explicit Commission rules, which would negatively affect the return investors like Powerlink could receive on investments in transmission projects nationwide by making holders of incentive ROEs or capital structures with common equity components in excess of 50 percent vulnerable to FPA section 206 challenges to existing incentive ROEs and capital structures that they and their investors rely on.[120]

66. Second, Powerlink and Trans Bay allege that they will be directly affected by the outcome of this proceeding because a competitor of a party has standing to intervene under Rule 214.[121] They explain that they are companies focused on investing in transmission infrastructure and that they compete directly with several of MISO TOs for investment opportunities in transmission projects. Powerlink and Trans Bay further state that Rule 214 explicitly recognizes that competitors of named parties have standing to intervene in proceedings, and the Commission has concluded that "a potential competitor with a genuine interest in the outcome of the instant proceeding" should be granted party status.[122] Moreover, Powerlink asserts that neither Complainants nor any other party to

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[118] *Id.*

[119] Powerlink Reply at 6-7 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 132, 331; 2012 Policy Statement, 141 FERC ¶ 61,129); Trans Bay Reply at 6-9.

[120] Powerlink Reply at 6.

[121] *Id.* at 7-8 (citing 18 C.F.R. § 385.214(b)(2)(ii)(C)); Trans Bay Reply at 5-6.

[122] Powerlink Reply at 8 (quoting *Columbia Gas Transmission Corp.*, 51 FERC ¶ 61,187, at 61,511 (1990)); Trans Bay Reply at 6 (quoting *Columbia Gas Transmission Corp.*, 51 FERC at 61,511).

this proceeding will be unduly prejudiced or unduly burdened by the Commission granting party status to Powerlink. Powerlink states that it seeks intervention only for the limited purpose of contesting Complainants' attacks on ROE incentives and capital structures. Powerlink states that the Commission has previously concluded that when a movant requests to intervene for a limited purpose that was in the public interest, intervention is appropriate and does not pose an undue burden; Powerlink concludes that the Commission should do the same here.[123]

C. Answers and Comments and/or Protests to the Complaint

1. Return on Equity

a. Answers

67. In their answer, MISO TOs reiterate many of the same arguments they make in support of their motion to dismiss the Complaint. MISO TOs argue that if the Commission does not dismiss the base ROE element of the Complaint, then the Commission should entertain other just and reasonable alternatives, including but not limited to the methodologies described in their witnesses' affidavit.[124] Additionally, MISO TOs urge the Commission to reject Complainants' proposal to reduce MISO TOs' ROE to 9.15 percent.[125] MISO TOs reiterate that Complainants rely on a DCF analysis that deviates from or is in direct conflict with Commission precedent.[126] MISO TOs argue that, because Complainants and their witness do not explain such departures from Commission precedent, and fail to demonstrate that their deviations are necessary to ensure just and reasonable rates, Complainants have presented insufficient grounds for a reduction in the current base ROE.[127] In this regard, MISO TOs note that the Supreme Court has held that the returns of regulated entities must be "commensurate with returns on investments in other enterprises having corresponding risks [, and] sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to

[123] Powerlink Reply at 9-10 (citing *N. Ill. Hydropower, LLC*, 137 FERC ¶ 61,052, at PP 9-10, 13 (2011)).

[124] *Id.* at 51.

[125] *Id.*

[126] *Id.* at 52.

[127] *Id.*

attract capital."[128] MISO TOs argue that Complainants have not addressed or established that MISO TOs' base ROE does not properly balance ratepayer and investor interests. They argue that, even if Complainants' flawed DCF analysis were correctly conducted, it would not satisfy this burden of proof.[129]

68. MISO TOs state that Complainants' position essentially is that, because their witness has produced a set of proxy group DCF numbers that indicate a "zone of reasonableness" that is lower than MISO TOs' current 12.38 percent base ROE, then the current base ROE is therefore unjust and unreasonable. MISO TOs contend that this approach does not consider extraordinary factors leading to the results of Complainants' DCF analysis and improperly disregards both the concept and the principle that whether a regulated company's allowed rate of return is proper "depends upon circumstances, locality, and risk."[130] MISO TOs argue that the recent level of economic uncertainty and market volatility is unprecedented. Further, they criticize Mr. Gorman's analysis for failing to consider the Federal Reserve's ongoing policy of keeping short-term interest rates near zero and long-term interest rates to historically low levels.[131]

69. According to MISO TOs, uncertainty over whether or how long the Federal Reserve will continue to implement policies designed to depress interest rates artificially has added to volatility. Consequently, the low interest rates in current capital markets, MISO TOs argue, do not reflect the true investment and business risks facing equity investors in capital-intensive industries, and that the risk premiums demanded by investors are actually higher when interest rates are low. Further, MISO TOs assert that current capital costs are not representative of what they are likely to be in the near-term future.[132]

70. MISO TOs further argue that their current authorized 12.38 percent base ROE, coupled with transmission incentives, has helped support transmission investment in MISO, providing substantial benefits to consumers in the MISO region. Such

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[128] *Id.* at 53, n.171 (citing *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope*)).

[129] *Id.* at 53-54.

[130] *Id.* at 54-55 (quoting *Bluefield*, 263 U.S. at 693 (citing *Willcox v. Consol. Gas Co.*, 212 U.S. 19, 48-50 (1909))).

[131] *Id.* at 55.

[132] *Id.* at 56-57.

investments include the $6 billion to date of projects completed as part of MISO Transmission Expansion Plan and the nearly $18 billion of such projects that are in various stages of development. MISO TOs also describe the large projected economic and reliability benefits from MISO multi-value projects, whose investment is supported by MISO TOs' base ROE. They contend that the benefits from such investments exceed the MISO TO revenue reductions sought by Complainants through a lower base ROE. MISO TOs also argue that any reductions in the base ROE could have adverse investment consequences.[133]

71. MISO TOs also observe that Congress, in 2005, directed the Commission to establish incentive-based rate treatments through enactment of section 219 of the FPA.[134] While acknowledging that the base ROE is not an incentive rate, MISO TOs nevertheless argue that Complainants' requested reduction of MISO TOs' base ROE runs counter to Congress' intent of inducing greater investment in transmission. They also argue that, were the base ROE reduced, MISO TOs could be forced to allocate their limited capital to mandated local projects to satisfy discrete reliability needs or to satisfy their service obligations without broader regional benefit.[135]

72. MISO TOs explain that their witnesses conducted seven ROE benchmark studies, including the DCF National Group analysis, with implied ROE ranges from 7.5 percent to 15.6 percent. They contend that the results of these studies indicate that Complainants' 9.15 percent ROE recommendation is too low to be considered credible.[136] They also argue that, given such circumstances, it is important to evaluate whether different inputs to the DCF formula, or reasonable adjustments to preferred inputs, and/or setting the base ROE for MISO TOs at the top of the proxy range of returns may provide results that better reflect current market conditions and thus satisfy the *Hope/Bluefield* criteria. For this reason, MISO TOs support use of ROE benchmarks attained from applying the CAPM, Empirical CAPM, and expected earnings methodologies, in addition to the DCF analysis.[137]

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[133] *Id.* at 58-63.

[134] *Id.* at 64 (citing 16 U.S.C. § 824s).

[135] *Id.* at 65-66.

[136] *Id.* at 68-69.

[137] *Id.* at 67.

73. MISO TOs explain that, in their DCF model, their witnesses used different screens and methodologies than those used by Complainants. For example, MISO TOs' DCF model uses earnings per share growth projections from IBES and Value Line, thereby avoiding use of the "sustainable growth" rate (br + sv) factor of the Commission's preferred DCF methodology. They contend that their method avoids often faulty assumptions of the sustainable growth rate equation.[138] MISO TOs state that they also excluded from their analysis DCF cost of equity estimates of 7.42 percent or less, given current economic circumstances. MISO TOs report that their analysis produced a zone of reasonableness ranging from 7.5 to 15.1 percent. They add that this national proxy group DCF analysis does not factor in certain risk factors, such as the credit ratings of certain MISO TOs that are below investment grade, which would require higher ROEs to satisfy investors.[139]

74. MISO TOs conclude that, because their current 12.38 percent base ROE is within the zone of reasonableness established by their calculated DCF analysis, the Commission should deny the Complaint since it has no power to grant the relief that Complainants seek. They point out that, under the FPA, the Commission "may only set aside a rate that is outside the zone of reasonableness, bounded on one end by investor interest and the other by the public interest against excessive rates."[140] Further, the Commission, according to MISO TOs, has acknowledged that "whether prices are just and reasonable depends on whether those prices fall within a 'zone of reasonableness.'"[141] Additionally, MISO TOs state that in Order No. 679, the Commission noted that its favored DCF methodology for establishing ROEs "can result in a range of returns . . . any of which falling within the range are just and reasonable."[142]

75. While acknowledging that the Commission held in *Bangor* that an ROE within the zone of reasonableness may still be unjust and unreasonable, the MISO TOs note that this ruling has not been subject to judicial review and cannot be reconciled with prior

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[138] *Id.* at 73-74.

[139] *Id.* at 75-76.

[140] *Id.* at 78 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002)).

[141] *Id.* (quoting *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs. Into Markets Operated by Cal. Indep. Sys. Operator & Cal. Power Exch.*, 97 FERC ¶ 61,275, at 62,218 (2001)).

[142] *Id.* (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 91-93).

interpretations of the FPA by the Commission and the courts. They contend that *Bangor* was decided incorrectly on this issue, because the Commission came to a conclusion different than that in other rulings. Additionally, MISO TOs point out that the reasoning in *Bangor* is particularly inapt in the section 206 context. That case, according to MISO TOs, observes that the Commission at some point must set a rate at a point in the applicable zone of reasonableness. In a section 206 proceeding, however, the time for such a determination would not come until after the Commission determines that the challenged rate is unjust and unreasonable. MISO TOs argue that the zone of reasonableness is determinative at this initial step and that section 206 only permits the Commission to change a rate that is unjust and unreasonable, that is, a rate that falls outside of the zone of reasonableness. Thus, according to MISO TOs, the *Bangor* view is erroneous, at least in the section 206 context, and should be reversed.[143]

76. In its separate answer, Vectren states that it supports the MISO TOs' response in every respect, but provides additional grounds for denying the Complaint and maintaining the 12.38 percent ROE for its Gibson – Reid 345 kV transmission project (Gibson – Reid Project).[144] Vectren argues that, even if Complainants were correct in every respect, a reduction in the base ROE for Vectren's Gibson – Reid Project would nevertheless result in an unjust and unreasonable ROE. According to Vectren, Commission precedent supports Vectren's continued use of a 12.38 percent ROE for the Gibson – Reid Project. In particular, Vectren relies on *Trans Bay Cable LLC*, in which the Commission stated that "the rationale for granting an enhanced ROE to a project that provides, and is expected to continue to provide, significant benefits and that was undertaken by a start-up entity, remains, even if the zone of reasonableness returns has changed."[145] Vectren explains that several factors made the Gibson – Reid Project unique, including (1) that Vectren did not have any transmission lines above 138 kV; (2) the load flow problems Vectren faced on its 138 kV system when neighboring systems' 345 kV lines were out of service; and (3) the overall magnitude of the investment. Vectren contends that, consistent with *Trans Bay Cable*, the Commission should find that even if the zone of reasonable returns has changed for the MISO TOs, the rationale

[143] *Id.* at 80-81.

[144] Vectren states that, in 2008, it received Construction Work in Progress and Abandoned Plant Recovery incentives for the Gibson – Reid Project. The Gibson – Reid Project is an approximately 63 mile, 345 kV single-current transmission line that cost $107.4 million to construct and place in service. Vectren Answer at 2-3; *see S. Ind. Gas & Elec. Co.*, 125 FERC ¶ 61,124 (2008).

[145] Vectren Answer at 6 (quoting *Trans Bay Cable*, 145 FERC ¶ 61,151 at P 19).

underlying Vectren's transmission revenue requirement, inclusive of a 12.38 percent ROE, remains the same and that the rationale for granting an enhanced ROE for the Gibson – Reid Project remains. Furthermore, Vectren argues that investors should be able to count on regulatory stability and recognition that capital costs, particularly for projects such as the Gibson – Reid Project, do not change on an overnight basis.[146]

77. In addition, Vectren states that Commission precedent supports use of a different ROE for certain MISO TOs. For example, Vectren notes that the Commission allows individual MISO TOs to seek a 50 basis point adder for RTO membership[147] and that the Commission has approved a 100 basis point adder for independent transmission companies in recognition of their impact on transmission investment and to encourage their formation.[148] Vectren concludes that these policies demonstrate the Commission's willingness to allow for an ROE that differs from the ROE applicable to all of the MISO TOs in instances where such a departure is adequately justified.[149]

b. Comments and/or Protests

78. Numerous parties provide comments supporting the Complaint, in varying degrees, with respect to the ROE.[150] Joint Consumer Advocates assert that Complainants' analysis is reasonable and provides a reliable estimate of the current cost of equity capital for MISO TOs.[151] While recognizing that Complainants' DCF methodology was undertaken in a manner that has previously been accepted by the Commission, Joint Consumer Advocates explain that Complainants' analysis is

[146] *Id*. at 7.

[147] *Id*. at 8 (citing *Midwest Indep. Transmission Sys. Operator, Inc*., 111 FERC ¶ 61,355).

[148] *Id*. (citing *Mich. Elec. Transmission Co., LLC*, 113 FERC ¶ 61,343 (2005)).

[149] *Id*.

[150] These parties include: Joint Consumer Advocates, People of the State of Illinois, Illinois Commission, Iowa Group, Southwestern Electric Cooperative, Missouri Commission, Michigan Commission, Joint Customers, Michigan Agencies, Great Lakes Utilities, DTE Electric, the Organization of MISO States, Consumers Energy Company, and Arkansas Electric Consumers.

[151] Joint Consumer Advocates Comments at 9 (citing Hill Aff. at 8-21).

conservative in several aspects and conclude that the 9.15 percent ROE potentially overstates the actual cost of capital for transmission operations.[152]

79. People of the State of Illinois assert that a reduction in allowed rates of return to reflect current market conditions is consistent with regulatory policy, investor expectations, and established law.[153] People of the State of Illinois further assert that the Supreme Court long ago recognized the changing nature of reasonable investor returns in relation to utility rates,[154] and an examination of current market requirements is necessary to reflect the lower current cost of capital as compared to when MISO TOs' ROEs were initially set.[155]

80. Illinois Commission asserts that an excessively high ROE provides utilities with a strong incentive to skew the allocation of resources in the MISO footprint in favor of transmission over generation and/or distribution assets.[156] It asserts that, as a result, incumbent transmission owners have taken positions to strongly protect their rights of first refusal to construct transmission projects from competing alternative transmission developers.[157] Illinois Commission argues that these efforts by MISO TOs foreclose competitors from constructing and owning MISO-approved transmission projects and may indicate that the current allowed rate of return on transmission investments in MISO is excessive.[158]

81. Iowa Group contends that Complainants' recommended 9.15 percent base ROE would allow MISO TOs to earn returns commensurate with returns experienced by other transmission owners and to maintain strong capital market access.[159] Iowa Group asserts that Complainants' analysis is echoed in a recent report by the Edison Electric Institute,

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[152] *Id.*

[153] People of the State of Illinois Comments at 6.

[154] *Id.* at 6-7 (citing *Bluefield*, 262 U.S. 679 at 692-693).

[155] *Id.* (citing *Hope*, 320 U.S. 591).

[156] Illinois Commission Comments at 8.

[157] *Id.*

[158] *Id.*

[159] Iowa Group Comments at 6 (citing Gorman Aff. at 23-44).

which reviewed rates of return granted to regulated retail electric utilities during the third quarter of 2013. According to that report, the average ROE awarded in that quarter was 10.05 percent, which was "consistent with the decades-long trend of declining awarded ROEs."[160] Iowa Group argues that, as a lower-risk transmission-only utility, ITC Midwest's ROE should be less than this average, not higher.[161]

82. Southwestern Electric Cooperative contends that the over 250 basis point differentiation between the current MISO TOs' 12.38 percent ROE and Complainants' suggested industry average of 9.8 percent ROE demonstrates the necessity for expedited Commission action on the Complaint.[162] Southwestern Electric Cooperative, a load-serving entity within the Ameren Illinois footprint, estimates that a reduction in the MISO-wide ROE from 12.38 percent to the just and reasonable ROE of 9.15 percent will result in a reduction of $16.8 million to Ameren Illinois's annual revenue requirement.[163] It also contends that Complainants' proposed ROE would be excessive on an individual company basis for Ameren Illinois, as demonstrated by evidence produced in another case before the Commission in Docket No. ER11-2777-000, *et al*.[164] Southwestern Electric Cooperative asserts that in that case, prior to the parties' settling on an overall cost of capital before the hearing commenced, Commission Trial Staff's DCF analysis fully supported an ROE of 8.62 percent for Ameren Illinois.[165] Therefore, Southwestern Electric Cooperative requests that the Commission reduce the ROE component of Ameren Illinois, a named respondent in the Complaint.[166]

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[160] *Id*. (citing Edison Elec. Inst., *Rate Case Summary - Q3 2013 Financial Update* (2013), 1-2, *available at*: http://www.eei.org/resourcesandmedia/industrydataanalysis/industryfinancialanalysis/QtrlyFinancialUpdates/Documents/QFU_Rate_Case/2013_Q3_Rate_C ase.pdf).

[161] *Id*.

[162] Southwestern Electric Cooperative Comments at 6-7.

[163] *Id*. at 10.

[164] *Id*. at 8.

[165] *Id*. (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 63,014, at PP 328-392 (2012)).

[166] *Id*. at 11.

83. The Missouri Commission asserts that it analyzed the merits of the Complaint using the DCF methodology applied by the Commission in *S. Cal. Edison Co.*[167] The Missouri Commission states that it found a low-point ROE of 8.06, a high-point ROE of 9.8, and a midpoint ROE of 8.93 percent for the proxy group.[168] The Missouri Commission contends that, under Commission precedent, this midpoint of the DCF median figures is presumptively applicable for purposes of calculating a group of transmission owners' cost of capital, and therefore the analysis supports Complainants' testimony and conclusions that the current base ROEs for MISO TOs are unjust and unreasonable.[169]

84. Joint Customers also support the Complaint. Joint Customers' expert, Mr. Solomon, conducted an analysis to determine a just and reasonable ROE for the transmission assets in MISO, applying the same methodology as was used in setting the current MISO ROE, but reflecting current MISO membership and incorporating updated values in the DCF analysis in order to reflect current capital market conditions.[170] Joint Customers assert that, according to Mr. Solomon's analysis, the just and reasonable ROE would be either 9.29 percent or 9.35 percent, depending on whether the median or midpoint is deemed applicable based on the circumstances of MISO TOs.[171] Therefore, Joint Customers support Complainants' conclusion that the 12.38 percent ROE for MISO TOs produces rates that are demonstrably excessive, and therefore unjust, unreasonable, and unlawful.[172]

85. Michigan Agencies contend that the 12.38 percent base ROE is causing all MISO transmission customers, including the Michigan Agencies and their ratepayers, to pay an inflated transmission rate that overcompensates those MISO TOs that develop their rates

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[167] Missouri Commission Comments at 3 (citing *S. Cal. Edison Co.*, 131 FERC ¶ 61,020).

[168] *Id.* at 4.

[169] *Id.* at 6.

[170] Joint Customers Comments at 4.

[171] *Id.* at 7. Joint Customers note that the Solomon Affidavit incorporated information updated as of January 2013, and since then the six-month average Baa utility bond yields have increased by 44 points. They adjusted for the increase. *Id.*

[172] *Id.*

based on the Commission-approved MISO base ROE.[173] Similarly, Michigan Commission states that examining these rate issues at this time is appropriate because doing so complements the significant efforts that the Commission in Order No. 1000 has made to improve the transmission market and send the proper planning and pricing signals to the industry as a whole.[174]

86. DTE Electric Company, Organization of MISO States, Consumers Energy Company, and Arkansas Electric Consumers contend that the Commission should institute a proceeding to set an appropriate base ROE for MISO TOs in light of current market conditions.[175] Great Lakes Utilities notes that while many public utilities subject to the Commission's rate jurisdiction have revised their ROEs in the intervening years between 2002 and 2013, some multiple times, the ROEs of MISO TOs have remained fixed for this period.[176]

c. Answers to Answers and Comments and/or Protests

87. Complainants assert that they have met their section 206 burden of showing that the existing rate in unjust and unreasonable. They assert that by applying the Commission's DCF methodology, Mr. Gorman found that the just and reasonable ROE for MISO TOs is no higher than 9.15 percent, which is well below the current 12.38 percent (and 12.2 percent for ATC), and shows that the current base ROEs for MISO TOs are unjust and unreasonable.[177]

88. Complainants point to the Commission's determination that "[t]he question of which companies should be included in a proxy group is properly resolved based on the

[173] Michigan Agencies Comments at 4-5.

[174] Michigan Commission Comments at 4 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (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)).

[175] DTE Electric Company Comments at 4; Organization of MISO States Comments at 3; Consumers Energy Company Comments at 4; Arkansas Electric Consumers Comments at 2-3.

[176] Great Lakes Utilities Comments at 6.

[177] Complainants January 22, 2014 Reply at 8-9.

facts and circumstances *of each case*."[178] Accordingly, Complainants contend that the question of appropriate proxy group composition and selection criteria is not set in stone, but rather depends on the facts and circumstances of each case. They assert that MISO TOs' contention that the Complaint should be dismissed based on proxy group selection, or that Mr. Gorman's proxy group selection undermines the ability of his DCF analysis to show the unjustness and unreasonableness of the current base ROEs, must be rejected because these are decisions that, if not summarily accepted, at least raise genuine issues of material fact that must be resolved through an evidentiary hearing process.[179] Moreover, Complainants contend that the Commission has approved the use of transmission ownership as a proxy group selection criterion for both regional and national proxy groups.[180] Complainants add that the case that MISO TOs cite for support is not valid because nowhere in the Commission's decision did it state that transmission ownership is an invalid criterion under all facts and circumstances.[181] Further, Complainants assert that, in *Atlantic Path I*, the Commission specifically approved the use of a proxy group of transmission owning investor-owning utilities.[182]

89. Complainants dispute MISO TOs' claim that Mr. Gorman's proxy group selection is flawed in that he used incorrect credit ratings criteria. Complainants state that Mr. Gorman appropriately included companies in his proxy group within one notch above and one notch below MISO TOs' bond range. Complainants disagree with MISO TOs that MGE Energy was inappropriately excluded from Mr. Gorman's proxy group. Complainants argue that not only does MGE Energy not own transmission assets, but it does not meet the credit rating exclusion criterion because it does not have a bond rating. Complainants assert that, while MGE Energy owns a subsidiary that has a bond rating of AA-, this subsidiary is not the publicly-traded entity that must be included in a proxy group, and, therefore, Complainants applied a correct credit rating range of BBB- to AA-.[183]

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[178] *Id.* at 9 (quoting Atlantic Path II, 133 FERC ¶ 61,153 at P 14) (emphasis added by Complainants).

[179] *Id.*

[180] *Id.* at 11 (citing Reply Aff. of Michael P. Gorman at 10 (Jan. 22, 2014) (Reply Gorman Affidavit)).

[181] *Id.* at 10 (citing *Atlantic Grid*, 135 FERC ¶ 61,144).

[182] *Id.* at 10-11 (citing *Atlantic Path I*, 122 FERC ¶ 61,135 at P 19).

[183] *Id.* at 11-12 (citing Gorman Reply Aff. at 15; *S. Cal. Edison Co.*, 131 FERC

(continued ...)

90. Furthermore, Complainants maintain that Mr. Gorman correctly excluded companies from his proxy group that were known to be a party to significant merger and acquisition activity. Complainants contend that MISO TOs' statement that Complainants' exclusion of companies known to be a party to significant merger and acquisition activity in the past 12 months is "contrary to Commission precedent" is not accurate.[184] Rather, Complainants assert that the Commission has stated that it "accept[s] . . . electric utilities that did not announce a merger" as a valid screening criterion.[185]

91. Complainants also dispute MISO TOs' claim that *Bangor* created a test to determine whether the merger "affect[s] the DCF calculation."[186] Rather, Complainants argue that the Commission placed the burden of proof on the opposing party to show that an excluded company's merger and acquisition activity did not affect the DCF calculation in order to include the company in the proxy group. They argue that MISO TOs have made no such showing.[187]

92. Complainants aver that Mr. Gorman's requirement that companies only be included in the proxy group if they have consistently paid dividends without any cuts to dividends is reasonable and consistent with Commission precedent. Complainants contend that a screening criterion to identify companies with stable and predictable dividends, which helps accurately measure future dividend growth, is an important component in accurately measuring an ROE that reflects comparable business and financial risk to that of the subject company or group of companies.[188] Complainants assert that MISO TOs misstate Commission precedent to support their position that the Commission rejects requiring dividends for longer than six months.[189] Complainants assert that in *Golden Spread Electric Cooperative, Inc., et al. v. Southwestern Public Service Commission*, the Commission did not determine that a dividend screening criterion must look back at least three years, but rather that the Commission accepted

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¶ 61,020 at P 51).

[184] *Id.* at 12. (quoting MISO TOs Answer at 16).

[185] *Id.* (quoting *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 at P 51).

[186] *Id.* (citing *Bangor I*, 117 FERC ¶ 61,129 at P 68).

[187] *Id.*

[188] *Id.* at 14 (citing Gorman Reply Aff. at 16).

[189] *Id.* at 13.

three years as reasonable under the facts and circumstances of that proceeding.[190] They also aver that nowhere in *Portland Natural Gas* did the Commission adopt or endorse the notion that the Commission rejects, as a screening criterion, a requirement that a proxy group company pay dividends for periods of more than six months.[191]

93. Complainants assert that Mr. Gorman's requirement that the proxy group include only companies covered by two generally recognized industry analysts is consistent with Commission precedent. According to Complainants, Commission precedent permits the use of a proxy group screening criterion that requires the inclusion of "electric utilities that are covered by two generally recognized utility industry analysts," which contradicts MISO TOs' claim that the number of analysts contributing to the data is immaterial so long as the data is available to investors.[192] In response to MISO TOs' argument that the Commission requires that IBES data be obtained from Yahoo.com, Complainants note that the Commission has recognized and relied on sources other than Yahoo.com for IBES growth rate projections.[193]

94. Complainants state that Mr. Gorman's use of a six-month dividend yield data based on weekly data rather than monthly data does not create an inexact or flawed DCF result. In addition, Complainants maintain that Mr. Gorman appropriately applied the sustainable growth rate (br + sv) estimate. Complainants contend that while MISO TOs cite numerous instances in which the Commission has accepted the use of monthly dividend yields, none of the sources relied upon by MISO TOs actually hold that determinations of monthly dividend yields must be used.[194] Complainants further contend that the Commission has never required that determinations of monthly dividend yields be used in its DCF analysis. In addition, Complainants argue that neither MISO TOs nor their witnesses identify any differences in the DCF results that occur because weekly dividend data is used as opposed to monthly dividend yield data over a six-month period.[195]

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[190] *Id.* (citing *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, 115 FERC ¶ 63,043, at PP 97, 105 (2006)).

[191] *Id.* at 14 (citing *Portland Natural Gas*, 134 FERC ¶ 61,129).

[192] *Id.* at 14-15 (quoting *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 at P 51).

[193] *Id.* at 15-16 (citing *Atlantic Path II*, 133 FERC ¶ 61,153 at P 20).

[194] *Id.* at 16.

[195] *Id.* (citing Gorman Reply Aff. at 20).

95. Complainants assert that Commission precedent on a specific methodology for calculating the sustainable growth estimate is not as clear cut as MISO TOs and their witnesses allege, and that MISO TOs have not cited any precedent that requires the use of all years of Value Line projected data.[196] Mr. Gorman asserts that the three- to five-year growth projections produce a more accurate estimate of sustainable growth based on the companies' conditions.[197] In addition, Complainants note that one of MISO TOs' witnesses, Dr. Avera, has argued in the past for relying on the three- to five-year growth rate projections provided by Value Line.[198]

96. Complainants assert that MISO TOs are unable to cite to any Commission orders that require the use of forecasted data.[199] Complainants assert that their approach is based on the company's current market book ratio and on Value Line's three- to five-year projections of earnings, dividends, earned returns on book equity, and stock issuance. They further assert that, under Mr. Gorman's methodology, which is not contrary to Commission precedent, projected future prices are based on both actual book value and projected market to book ratio, which is a more accurate estimate of market valuation of the proxy group stock than the method proposed by MISO TOs.[200]

97. Complainants state that MISO TOs are unable to cite any Commission precedent that supports their assertion that the Commission *requires the use* of return on equity projections published by Value Line. Instead, according to Complainants, MISO TOs rely on Commission language that simply states that "Value Line also forecasts a return on book value from Edison International, the 'r' in the 'br + sv' equation," but provide no statement, nor even a minor indication, that Value Line's published ROE projections must be used in the calculation of "r." [201]

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[196] *Id.* at 16-20 (citing Gorman Reply Aff. at 22-24; *S. Cal. Edison Co.*, 92 FERC at 61,263).

[197] *Id.* at 17 (citing Gorman Reply Aff. at 22).

[198] *Id.* at 17-18 (citing Gorman Reply Aff. at 23).

[199] *Id.* at 18.

[200] *Id.* at 18-19 (citing Gorman Reply Aff. at 24).

[201] *Id.* at 19 (citing *So. Cal. Edison Co.*, 92 FERC at 61,263).

98. Similarly, Complainants assert that MISO TOs are unable to cite any Commission precedent that requires the use of IBES data from Yahoo.com.[202] They contend that the precedent that MISO TOs cite concerns the composition of the proxy groups used to determine gas and oil pipelines' ROE, and that MISO TOs provide no support as to why the requirement would extend to electric transmission owners' ROEs.[203] Again, Complainants contend that the Commission has relied on sources other than Yahoo! for IBES growth rate projections.[204]

99. Complainants assert that MISO TOs are unable to provide any Commission precedent that has reversed the Commission's policy of excluding companies "whose low-end ROE fails to exceed the average bond yield by about 100 basis points or more."[205] Complainants contend that the Commission has allowed for the 100 basis point adder in the past, and that Mr. Gorman actually applied the most conservative approach available when determining his low-end DCF threshold, because he utilized the highest bond yield over the 26-week period (5.39 percent) instead of the 26-week average of 5.06 percent.[206]

100. Complainants assert that MISO TOs are unable to cite any precedent in support of their contention that the methodology that Mr. Gorman used to calculate his suggested midpoint of the median range (9.15 percent) is never acceptable or that such a methodology was rejected by the Commission.[207] However, Complainants provide, for comparison's sake, the results using MISO TOs' preferred approach. They assert that, under Mr. Gorman's methodology, the zone of reasonableness is 7.97 percent to 10.33 percent, with a midpoint and ROE recommendation of 9.15 percent, while under MISO TOs' preferred approach, the zone of reasonableness is 6.75 percent to 11.88 percent, with a midpoint of 9.32 percent.[208] Therefore, Complainants contend that regardless of

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[202] *Id*. at 20.

[203] *Id.*

[204] *Id*. (citing *Atlantic Path II*, 133 FERC ¶ 61,153 at P 20).

[205] *Id*. at 21 (citing *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 at P 55).

[206] *Id*.

[207] *Id.*

[208] *Id*. at 22.

the method used, the results demonstrate that MISO TOs' current base ROEs are unjust and unreasonable.[209]

101. Complainants assert that whether Mr. Gorman's alternative ROE estimation methods are flawless is of no material concern because the Commission relies only on its approved DCF method to set ROEs.[210] Complainants explain that Mr. Gorman simply used alternative methods to corroborate his DCF results. Regardless, Complainants assert that Mr. Gorman's alternative ROE methods are not flawed as MISO TOs suggest.[211]

102. Xcel alleges that Complainants' proposed base ROE of 9.15 percent is too low to support transmission investment and would be confiscatory under the policy of *Hope* and other applicable precedent.[212]

103. Iowa Group contends that the Complaint presents a well-supported prima facie case that MISO TOs' current base ROE of 12.38 percent is unjust and unreasonable and that Complainants' recommended base ROE of 9.15 percent is just and reasonable.[213] It contends that the soundness of the Complaint is underscored by the fact that three separate studies – those sponsored by the Missouri Commission, Joint Consumer Advocates, and Joint Customers – reached the same conclusions based on slightly different applications of the Commission's preferred DCF methodology. Iowa Group further contends that, even though Dr. Avera and Mr. McKenzie (MISO TOs' own experts) strongly criticize Mr. Gorman's analysis, their DCF analyses produce essentially the same result – a current cost of equity of 9.25 percent (the average of the median high and lows of their DCF results) or 9.10 percent (the overall median of the high and lows of their DCF results).[214]

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[209] *Id.*

[210] *Id.*

[211] *Id.* (citing Gorman Reply Aff. at 28-34).

[212] Xcel Reply at 5 (citing *Hope*, 320 U.S. 591).

[213] Iowa Group Reply at 13.

[214] *Id.* n.47 ("It should be noted that at no point in their analysis do Dr. Avera and Mr. McKenzie identify the mid-point or median of their proxy group's ROE. Iowa Group has calculated the average of high and low medians and overall high and low median based upon their Exhibit MTO-6, excluding the outliers they identify.").

(continued ...)

104. Iowa Group argues that the Commission does not need to decide at this point which DCF analysis best estimates MISO TOs' cost of equity capital. Rather, the question at this stage is whether Complainants have presented a prima facie case that merits further consideration. Iowa Group further argues that the various DCF analyses submitted to date in this proceeding demonstrate beyond a doubt that they have.[215]

105. Iowa Group also contends that Complainants have presented a prima facie case that ITC-Midwest's common equity ratio results in unjust and unreasonable rates. It asserts that Mr. Gorman has shown that ITC Midwest's common equity ratio is higher than the equity ratios approved for other MISO TOs and far higher than the equity ratios awarded other electric utilities over the past five years.[216] Iowa Group further asserts that Mr. Gorman has shown that ITC Midwest's bond ratings (and hence its true cost of capital) reflect the target capital structure set by ITC Holdings, which is approximately 30 percent common equity and 70 percent debt, a marked contrast to the 60 percent common equity ratio used for setting ITC Midwest's rates.[217]

106. Iowa Group asserts that Complainants have not requested that the Commission reduce ITC Midwest's common equity ratio without providing the utility an opportunity to demonstrate that its current 60 percent common equity ratio produces just and reasonable rates. Rather, Iowa Group argues that Complainants have submitted probative evidence showing that ITC Midwest's common equity ratio may be unjust and unreasonable, thereby warranting further investigation by the Commission and additional filings by ITC Midwest.[218]

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[215] *Id*. at 13-14.

[216] *Id*. at 14 (citing Gorman Aff. at 12) ("In comparison, over this same time period, the electric utility industry has been awarded capital structures with common equity ratios between 48 percent and 51 percent.").

[217] *Id*. (citing Gorman Aff. at 15-16) ("S&P rates ITC Holding Corp. and all of its utility subsidiaries as a highly leveraged company. As part of its financial risk assessment of ITC Holdings Corp., ITC [Transmission], ITC Midwest, and Michigan Electric Transmission Company ("METC"), S&P notes the company's objective to maintain an adjusted debt to total capital structure of about 70 percent. Hence, the bond ratings of these companies reflect a common equity ratio of around 30 percent, not the 60 percent used to set ITC [Transmission]'s and METC's FERC transmission rates.") (footnote omitted).

[218] *Id*. at 15.

107. Iowa Group contends that MISO TOs do not present substantial evidence that rebuts Complainants' prima facie case. Rather they simply point out methodological differences between Complainants' analysis and their own analysis.[219] Iowa Group argues that these differences constitute differences in judgment and pose issues of material fact that must be developed and resolved through a section 206 investigation and a trial type hearing.[220]

108. Iowa Group contends that the Commission may reach decisions without holding evidentiary hearings only when there are no material facts in dispute.[221] It lists the following among the issues of material fact that should be developed and resolved through an evidentiary hearing: (1) Should the current base ROE of 12.38 percent be retained if it is within the zone of reasonableness?; (2) What are the appropriate screening criteria for the proxy group used in the DCF analyses?; (3) What are the high-end and low-end outliers for the proxy group, and what DCF results, if any, should be excluded as a consequence?; (4) Should prevailing capital market conditions be taken into account in evaluating the base ROE? If so, how?; and (5) Would Complainants' recommended base ROE of 9.15 percent be so low that it would have a long-term, chilling effect on investors' future willingness to support electric transmission system expansion?[222]

109. In response, MISO TOs contend that Complainants' concession that numerous aspects of Mr. Gorman's DCF analysis have no basis in Commission precedent underscores their failure to meet their section 206 burden of proof. MISO TOs states that, in their motion to dismiss, they demonstrated that Mr. Gorman's DCF study lacks probative value because, without explanation or justification, his analysis diverges in numerous respects from the Commission's precedents regarding the selection of proxy companies and application of the DCF formula. Furthermore, MISO TOs take issue with Complainants' response that Mr. Gorman's DCF study should be deemed acceptable because the Commission has not expressly *prohibited* Mr. Gorman's challenged proxy selection criteria and DCF factors. In response, MISO TOs argue that a proper prima facie case for their claim that the current base ROE is unjust and unreasonable would consist of colorable evidence applying the DCF methodology in a manner that is actually

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[219] *Id*. at 16.

[220] *Id.*

[221] *Id*. at 23 (citing *Vt. Dept. of Pub. Serv. v. FERC*, 817 F. 2d 127, 140 (D.C. Cir. 1987); *Pub. Serv. Co. of N.H. v. FERC*, 600 F.2d 944, 955 (D.C. Cir. 1979); *Citizens for Allegan County, Inc. v. Fed. Power Comm'n*, 414 F.2d 1125, 1128 (D.C. Cir. 1969)).

[222] *Id*. at 16-22.

in accord with Commission precedent, rather than as Mr. Gorman and Complainants prefer to apply the DCF formula.[223]

110. MISO TOs allege that Complainants' post hoc rationalizations do not remedy the flaws in Mr. Gorman's DCF study. MISO TOs state that Mr. Gorman's flawed proxy screening criteria undermine his DCF study. First, MISO TOs take issue with Mr. Gorman's requirement that proxy companies must own transmission assets. As they did in the motion to dismiss, MISO TOs argue that, in *Atlantic Grid*, the Commission rejected exclusion of companies that are not "electric transmission-owning companies."[224] MISO TOs add that Mr. Gorman's transmission ownership screen is superfluous because, to identify risk-comparable proxy companies, the Commission relies in part on S&P and other credit ratings, which consider the overall investment risk of each utility, including the types of operations it conducts and assets it owns. Accordingly, MISO TOs conclude that there is no basis for Mr. Gorman's attempt to defend his transmission ownership criterion for proxy selection on the ground that it helps to identify risk-comparable companies. Likewise, MISO TOs assert that Complainants' reliance on *Atlantic Path I* is misplaced because that case involved the ROE of one, single-asset transmission company, as opposed to the base ROE of a diverse group of utilities, such as MISO TOs, and *Atlantic Path I* relied on regional proxy groups, as opposed to the national proxy group that the Commission now prefers.[225]

111. Second, MISO TOs take issue with Mr. Gorman's requirement of two years of continuous dividend payments. MISO TOs state that, in their motion to dismiss, they demonstrated that the Commission requires only six months of dividend payments without a cut. They argue that Complainants did not even attempt to justify Mr. Gorman's two-year dividend requirement. Moreover, MISO TOs allege that Mr. Gorman's purported explanation of the two-year dividend requirement has no merit because it is inconsistent with the forward-looking character of the DCF analysis.[226]

112. Third, MISO TOs claim that Mr. Gorman inappropriately excluded companies involved in merger activity during his six-month DCF study period. MISO TOs state that Complainants distort the Commission's ruling in *Bangor* about how to treat such

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[223] MISO TOs February 19, 2014 Reply at 18-21.

[224] *Id.* at 22 (citing MISO TOs January 6, 2014 Answer at 14) (quoting *Atlantic Grid*, 135 FERC ¶ 61,144 at P 96).

[225] *Id.* at 24 (citing *Atlantic Path I*, 122 FERC ¶ 61,135).

[226] *Id.* at 25-26.

companies. Specifically, MISO TOs argue that, contrary to Complainants' assertion, *Bangor* does state that merger activity is a valid basis for screening out potential proxies *only* if the activity in question affects the DCF analysis.[227] MISO TOs add that, to the extent that *Bangor* implies anything concerning the burden of proof, it suggests that the burden lies with Complainants. According to MISO TOs, even if Complainants were correct that MISO TOs have a burden to present evidence showing that any disputed proxy company's merger activity had no effect on the DCF calculations, Dr. Avera and Mr. McKenzie testified explicitly that the proposed (and now terminated) merger of ITC Holdings and Entergy, both of which Mr. Gorman excluded from his national proxy group, had no effect on their respective stock prices and other DCF inputs.[228]

113. Fourth, MISO TOs state that Mr. Gorman used an unduly restrictive proxy credit rating range. MISO TOs reject Complainants' position that MGE Energy was properly excluded because it does not own transmission assets and does not have a bond rating. In response, MISO TOs argue that Mr. Gorman's proxy selection criterion requiring ownership of transmission assets has no basis in Commission precedent, and thus cannot be relied upon to meet Complainants' burden of proof under FPA section 206. In addition, MISO TOs contend that Complainants' argument concerning MGE Energy fails because it depends on a misguided attempt to create an artificial distinction between MGE Energy, the publicly traded parent company, and its utility subsidiary, Madison Gas and Electric, an owner of ATC.[229]

114. MISO TOs further argue that Mr. Gorman's application of the DCF methodology is flawed. First, MISO TOs contend that Mr. Gorman's reliance in his DCF study on high and low weekly dividend yields for each proxy company is inconsistent with Commission precedent. MISO TOs note that, in *New England Power Co*., the Commission stated that "to ensure that consistent dividends and prices are used in the dividend yield calculations, we prefer . . . to calculate the dividend yield for each month of the period using the indicated dividend and the average of the high and low stock price for the month."[230]

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[227] *Id*. at 26-27 (citing *Bangor I*, 117 FERC ¶ 61,129 at P 68).

[228] *Id*. at 28.

[229] *Id*. at 28-29.

[230] *Id*. at 30-31 (quoting *New England Power Co.*, Opinion No. 158, 22 FERC ¶ 61,123, at 61,188 (1983) (emphasis added by MISO TOs)).

115. Second, MISO TOs identify three errors by Mr. Gorman in his calculations of "sustainable" growth rates. MISO TOs state that Mr. Gorman first erred by disregarding Value Line's earnings forecasts for the two years preceding the period of its three-to-five-year earnings growth projections. In response, MISO TOs aver that the Commission has held that the "proper" method is to calculate a growth rate for each intervening year and for the three-to-five year estimation period, and then, for each company, to average the rates together.[231] MISO TOs report that Mr. Gorman also erred by using the current, rather than projected, market-to-book ratios to estimate sustainable growth rates. According to MISO TOs, Complainants ignore the Commission's detailed description of the "br+sv" calculation in *Southern California Edison Co.*, in which all the elements pertinent here are described as forecasts.[232] MISO TOs assert that Complainants also ignore the incongruity of combining historic market-to-book ratios with projects earnings and returns on equity to estimate a sustainable growth rate, which by definition is a forecast for a future period.[233] MISO TOs contend that Mr. Gorman's third error was in applying a 100 basis point threshold over current utility bond yields to screen low-end growth outliers. MISO TOs argue that Complainants fail to justify Mr. Gorman's disregard for the atypical circumstances of today's capital markets in favor of deriving low-end screening criterion by mechanically applying a 100 basis point addition to average BBB utility bonds.[234]

116. MISO TOs aver that Mr. Gorman distorted his range of DCF returns by using the median value of each proxy company's high and low returns and then determining the midpoint of those median values to select his recommended ROE for MISO TOs. In response to Complainants' argument that there is no "Commission precedent that determines that such a methodology is never acceptable," MISO TOs state that Mr. Gorman's failure to comply with the Commission's preferred DCF methodology proves that Complainants have not met their burden of demonstrating by substantial evidence that the base ROE is unjust and unreasonable.[235]

117. Likewise, MISO TOs argue that intervenors supporting the Complaint fail to remedy the defects of the Complaint's claim against the base ROE. According to MISO

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[231] *Id.* at 32.

[232] *Id.* at 33-34 (citing *S. Cal. Edison Co.*, 92 FERC at 61,263).

[233] *Id.* at 34.

[234] *Id.* at 35-36.

[235] *Id.* at 37-38 (quoting Complainants January 22, 2014 Reply at 21).

TOs, the Joint Customers provide nothing probative regarding the Complaint's challenge to the current base ROE. MISO TOs contend that Mr. Solomon's analysis is flawed for several reasons. For example, MISO TOs report that Mr. Solomon based his DCF analysis on a proxy group comprised solely of companies in the MISO region, even though Commission precedent favors the use of a national proxy group. In addition, MISO TOs state the Mr. Solomon's affidavit is devoid of any discussion of whether he included only companies that are of comparable risk to MISO TOs. MISO TOs also allege that Mr. Solomon's application of a 100 basis point threshold for eliminating low-end outlier suffers from the same defect as Mr. Gorman's approach.[236]

118. MISO TOs also take issue with the fact that Mr. Solomon's affidavit was prepared more than a year ago for a different Commission proceeding. MISO TOs argue that Joint Customers' effort to rehabilitate their position, which consisted of providing a modest upward adjustment to Mr. Solomon's estimate cost of equity range for MISO TOs by adding 44 basis points to Mr. Solomon's values to account for the latest six months' average yields on Baa rate utility bonds, is overly simplistic and baseless. According to MISO TOs, Joint Customers' manipulation of Mr. Solomon's DCF analysis to account for changes in bond yields assumes a direct correlation between utility bond yields and return on equity required by investors, and assumes no other intervening factors are relevant.[237]

119. MISO TOs allege that Joint Consumer Advocates repeat many of Mr. Gorman's mistakes, and ignore Commission precedent and relevant factors. Specifically, MISO TOs state that Mr. Hill ignores the Commission's perspective on the relative risk of transmission operations compared to other utility operations. Consequently, MISO TOs conclude that, because Mr. Hill's entire affidavit is premised on his erroneous presumption of the relative risk of transmission, his conclusions are fundamentally flawed and provide no support for the Complaint.[238]

120. Similarly, MISO TOs argue that Mr. Hill's analysis ignores factors considered by investment analysts. According to MISO TOs, Mr. Hill's characterization of transmission investment as inherently less risky also fails to take into account the factors that investment analysts consider when determining corporate credit ratings. In this regard, MISO TOs state that the corporate credit ratings that the Commission relies on in establishing the comparable risk of companies within a proxy group consider the overall

[236] *Id*. at 41-42.

[237] *Id*. at 42-44.

[238] *Id*. at 44-46.

investment risks of each utility, including the implications of generation and non-utility activities. MISO TOs further allege that Mr. Hill ignores the advantages of generation assets that mitigate some of the risks in such investments, such as lower cash flow volatility.[239]

121. MISO TOs contend that Mr. Hill's claim that formula rates warrant a lower ROE is untenable. According to MISO TOs, while the Commission in some instances has acknowledged that formula rates can improve cash flow, mitigate risk, and allow for timely and efficient cost recovery, it has rejected claims that the use of formula rates merits a lower ROE, and has found that the use of formula rates and grant of transmission rate incentives are not mutually exclusive.[240] The MISO TOs add that they are unaware of any recent Commission case that has determined that the use of Commission-approved formula rates, such as those employed by MISO TOs, warrants the type of downward adjustment to the allowed ROE that Mr. Hill advocates. Moreover, MISO TOs argue that, contrary to Mr. Hill's suggestion that the Commission requires a downward adjustment in ROE to account for formula rates, the Commission bases its ROE determinations on quantitative analyses applied to proxy groups of other, comparable-risk utilities. For example, MISO TOs note that well-accepted measures of investment risk, such as credit ratings, are the basis for assessing the comparability of proxy groups.[241]

122. MISO TOs argue that the Missouri Commission's DCF analysis should be rejected. At the outset, MISO TOs contend that, though the Missouri Commission states that it retained Mr. Parcell to prepare the DCF cost rates using the Commission's preferred methodology, the Missouri Commission provides no affidavit or sworn testimony of Mr. Parcell, thereby depriving the Commission and MISO TOs the ability to understand Mr. Parcell's analysis and its foundations. In addition, MISO TOs report that Mr. Parcell's DCF analysis suffers many of the same flaws and commits the same errors that undercut the Complaint, such as excluding any companies that had annual revenues of less than $1 billion and employing the "midpoint of medians" method that Mr. Gorman used.[242]

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[239] *Id*. at 46-48.

[240] *Id*. at 48 (citing *Cent. Me. Power Co.*, 135 FERC ¶ 61,136, at P 58 (2011); *Baltimore Gas & Elec. Co.*, 130 FERC ¶ 61,210, at PP 31-32 (2010)).

[241] *Id.* at 49-50.

[242] *Id*. at 51-54.

123. MISO TOs argue that, despite their attempts to bolster Mr. Gorman's analysis, the supporting intervenors reveal its errors. For example, MISO TOs note that, unlike Mr. Gorman, neither Mr. Solomon nor Mr. Parcell limited their proxy groups to companies that own transmission assets. MISO TOs also note that neither Mr. Solomon nor Mr. Parcell appeared to limit their proxy group only to companies that had experienced no dividend cuts in the prior two years. Lastly, MISO TOs note that Mr. Solomon and Mr. Parcell appear not to share Mr. Gorman's view that proxy group eligibility should be limited to companies for which two or more analysts respond to earnings growth surveys reported in Reuters.com.[243]

124. MISO TOs state that Mr. Gorman's alternative ROE studies, which comprise of a study employing the CAPM and an equity risk premium analysis, contain errors and are unreliable. MISO TOs assert that Complainants fail to correct the defects of Mr. Gorman's risk premium study. Moreover, MISO TOs argue that there are two fundamental errors in Mr. Gorman's risk premium study: (1) Mr. Gorman disregarded all data on historical returns prior to 1986; and (2) Mr. Gorman failed to take into account the inverse relationship between interest rates and equity risk premiums.[244]

125. Furthermore, MISO TOs argue that Complainants do not rectify the errors of Mr. Gorman's CAPM study. MISO TOs reject Mr. Gorman's reliance on his CAPM study on historical returns, adjusted by an inflation projection, rather than using investors' forward-looking expectations of future earnings. They also state that Mr. Gorman's omission of a size adjustment for small utilities, is premised on broad generalizations and suppositions.[245]

126. Vectren takes issue with Complainants' position that the 12.38 percent ROE for the Gibson – Reid 345 kV project should be disallowed because Vectren did not seek a life-time 12.38 percent ROE as an incentive for constructing the project and, therefore, Vectren assumed the regulatory risk that the project's ROE would be decreased. In its reply, Vectren contends that a reduction of the 12.38 percent ROE for the Gibson – Reid project at this time and in the current circumstances would be damaging to Vectren, a relatively small utility, detrimental to investors and consumers alike, and contrary to the public interest. Specifically, Vectren reports that, among the facts and circumstances that justify continuation of the project's 12.38 percent ROE include: (1) the magnitude of the project investment relative to the balance of Vectren's transmission investment; (2) the

[243] *Id.* at 54-56.

[244] *Id.* at 57-59.

[245] *Id.* at 59-61.

magnitude of the project's impact on Vectren's transmission revenue requirement; and (3) Vectren's deliberate choice to opt for a 345 kV solution that would address regional issues rather than a lower voltage solution that would address only Vectren issues.[246]

127. The Ameren Companies and NIPSCO contend that the Commission should reject the Complaint or develop a hearing record regarding whether the benefits accruing to customers under the Tariff outweigh any potential base ROE reduction suggested by DCF analyses. First, the Ameren Companies and NIPSCO argue that DCF changes alone do not demonstrate that the MISO ROE has become unjust and unreasonable. According to the Ameren Companies and NIPSCO, the Commission must find that the end result of a rate change is just and reasonable, not just in terms of the range established by the DCF, but in the context of the "broad public interests entrusted to its protection by Congress."[247] Second, the Ameren Companies and NIPSCO argue that the Commission must consider MISO's benefits before it considers eroding the foundation that resulted in those benefits. They note the evidence that MISO TOs provided in their motion to dismiss regarding the benefits accruing to the MISO region as a result of transmission investment and the markets that are supported by the transmission system.[248] Finally, the Ameren Companies and NIPSCO argue that the Commission should not ignore coal-fired generation retirements. The Ameren Companies and NIPSCO argue that, when considering the request to make transmission investment less attractive to investors by lowering ROE, the Commission should consider the operational and reliability challenges presented by changes in the make-up of the generation fleet in the Midwest.[249]

128. In reply, Complainants contend that the Ameren Companies and NIPSCO are claiming that changes need to be made to the Commission's current practice of relying on the DCF method to set the just and reasonable ROE. Complainants argue that, contrary to the Ameren Companies' and NIPSCO's claims, the Commission has a well-developed policy of establishing a just and reasonable ROE for transmission service, which is based on applying a DCF analysis to a proxy group of comparable risk companies. Further, Complainants assert that the Ameren Companies and NIPSCO rely heavily on *Permian Basin Area Rate Cases* to support their claim that the Commission must find that the end result of a rate change is just and reasonable, not just in terms of a range established by

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[246] Vectren Reply at 2-4.

[247] Ameren Companies/NIPSCO Reply at 8-9 (quoting *Permian Basin Area Rate Cases*, 390 U.S. 747, 792 (1968)).

[248] *Id*. at 9-13.

[249] *Id*. at 13-16

the DCF, but also taking into account the broad public interests. In this regard, however, Complainants assert that the Ameren Companies and NIPSCO fail to take into account that the Commission has determined that reliance on the DCF method meets the mandates of cases such as *Permian Basin Area Cases*. According to Complainants, under the Ameren Companies and NIPSCO's view, the Commission could "simply 'pick a number' based on whatever the Commission thinks is right."[250] Concerning the Ameren Companies and NIPSCO's argument that the Commission must consider the benefits that MISO has provided to customers, Complainants assert that, while it may be true that consumers have benefited from the MISO TOs and their investment in the transmission system, the benefits to consumers of a robust transmission system will not be diminished by lowering the ROE to a just and reasonable level, but rather, consumers will benefit more from the decreased ROE.[251]

129. Regarding the Ameren Companies' and NIPSCO's argument that the ROE should not be decreased because environmental regulations are changing the generation portfolio in MISO, Complainants contend that an unreasonably high ROE is not necessary to drive investment in the transmission system. Complainants remark that propping up federal transmission return allowances relative to ROE allowances set by the states would skew utility investment decisions as between transmission and other system needs, such as distribution level infrastructure additions, generation, and demand–side management.[252]

130. Joint Customers contend that MISO TOs' attack on Mr. Solomon's analysis demonstrates the need for a proceeding to determine the currently appropriate ROE for the MISO TOs. According to Joint Customers, if the Commission were to afford any weight to MISO TOs' belief that a year-old DCF analysis is "stale" and "irrelevant," then the logical conclusion is that the twelve-year old analysis upon which the 12.38 percent was based is even more stale and irrelevant, thus requiring a new proceeding to consider current DCF analyses as the basis for the appropriate current ROE. Joint Customers further argue that MISO TOs' arguments regarding various aspects of Mr. Solomon's DCF analysis demonstrate that there are disputed facts and issues regarding the determination of the currently just and reasonable ROE for MISO TOs that require the institution of a FPA section 206 proceeding. In response to MISO TOs' argument regarding Mr. Solomon's use of the publicly traded MISO TOs versus using a nationwide proxy group, Joint Customers contend that Mr. Solomon's approach to the development of the proxy group mirrors the one used by the Commission in establishing the existing

[250] Complainants March 31, 2014 Reply at 5-8.

[251] *Id.* at 9-10.

[252] *Id.* at 11-12.

MISO ROE, but is based on the current MISO membership rather than the membership as it existed in 2002.[253]

2. Capital Structure

a. Answers

131. Reiterating points made in their motion to dismiss the Complaint, MISO TOs contend that Complainants offer only vague assertions and flawed hypotheticals to support their request that the Commission find that capital structures for MISO TOs with over 50 percent common equity are not just and reasonable and cap them at that level. MISO TOs contend that Complainants ignore Commission precedent, as well as financial realities, and dispute Complainants' assertion that transmission companies have low operating risk, a conclusion that is at odds with Commission findings.[254]

132. Xcel (on behalf of its subsidiaries, Northern States Minnesota and Northern States Wisconsin) asserts that Complainants fail to demonstrate that the capital structures of individual MISO TOs are unjust and unreasonable. In particular, Xcel argues that Complainants have not provided specific evidence that the existing capital structures for Northern States Minnesota and Northern States Wisconsin, as set forth in Attachment O of the MISO Tariff, are unjust and reasonable. Xcel observes that the Commission previously accepted Northern States Minnesota's and Northern States Wisconsin's Attachment O as a specific transmission rate formula, which was derived from the Attachment O formula rate template approved for use by MISO TOs in 2001.[255] Xcel explains that, under the Attachment O formula rate, the estimated capital structure for a rate year is replaced by the actual capital structure for purposes of the annual true-up following the availability of actual costs and loads as reported in the FERC Form No.

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[253] Joint Customers Reply at 2-5.

[254] MISO TOs January 6, 2014 Answer at 82-84 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 100 FERC ¶ 61,292 at P 12; *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176, at P 118 (2008); *Bangor I*, 117 FERC ¶ 61,129 at PP 17, 70).

[255] Xcel Answer at 6-7 (citing *Midwest Indep. Transmission Sys. Operator, Inc*., Opinion No. 453, 97 FERC ¶ 61,033 (2001), *order denying reh'g in part and granting reh'g in part, Midwest Indep. Transmission Sys. Operator, Inc.*, Opinion No. 453-A, 98 FERC ¶ 61,141 (2002)).

1.[256] Thus, Xcel argues that the Commission has approved use of the Northern States Minnesota's and Northern States Wisconsin's actual capital structure.

133. Xcel also contends that using Northern States Minnesota's and Northern Sates Wisconsin's actual capital structures is consistent with Commission precedent with respect to formula rates for transmission owners in other RTOs.[257] Xcel further adds that Northern States Minnesota's and Northern Sates Wisconsin's capital structures reflect their actual and specific financial and cash flow requirements related to ongoing operations, including large-scale transmission investment.

134. Xcel adds that, in approving the capital structure to be used for ratemaking, the Commission uses the 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.[258] Xcel notes that the Complaint does not address this precedent.

135. Xcel states that the risk profile of a utility is irrelevant to its capital structure. According to Xcel, the Commission does not consider the risks of the utility relative to other companies in evaluating whether the company's actual capital structure is appropriate for ratemaking purposes. Rather, the relative risk faced by the company is considered in the determination of the company's ROE.[259]

b. Comments and/or Protests

136. Trans Bay filed a protest in which it requests that the Commission deny the Complaint as it pertains to actual or Commission-approved hypothetical capital structures containing in excess of 50 percent equity. Trans Bay notes that Commission policy favors using an operating company's actual capital structure unless (a) the company has requested and received a hypothetical capital structure for a transmission project as a rate incentive under Order No. 679, on a case-by-case basis,[260] or (b) the actual capital

[256] *Id.* at 4-5.

[257] *Id.* at 8 (quoting *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 83 (2007)).

[258] *Id.* at 9 (citing *Transcon. II*, 84 FERC at 61,413-61,415).

[259] *Id.* at 10 (citing *Transcon. I*, 80 FERC at 61,666; *Transcon. II*, 84 FERC at 61,413).

[260] Trans Bay Protest at 13 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at

(continued ...)

structure is beyond generally accepted limits so as to cause "anomalous rates of return."[261] Trans Bay asserts that Complainants have not demonstrated that either of these exceptions to the use of the actual capital structures is applicable. With regard to the first exception, Trans Bay argues that the proposed 50 percent equity cap could not be adopted as a transmission incentive under Order No. 679 because it would not serve as an incentive for investment in transmission. Trans Bay also contends that the second exception does not apply to the MISO TOs because Commission-approved capital structures with more than 50 percent common equity are not beyond generally accepted limits and, indeed, have been approved as recently as 2013.[262] Powerlink filed a protest making essentially the same arguments. Powerlink contends that, to prevail, Complainants would have to show that each MISO TOs' actual or Commission-approved hypothetical capital structure with more than 50 percent common equity is beyond the generally accepted limits or causes anomalous rates of return, a burden that Complainants have not met.[263] Powerlink adds that the Commission has long held that "as a matter of general policy that actual rather than hypothetical capital structures should be used for developing an overall rate of return."[264]

137. Trans Bay also cautions the Commission against anything that would limit transmission owners' flexibility to structure their capital arrangements in a way that suits the entity, investors, and the interest of the transmission project. Capping the common equity percentage, according to Trans Bay, would impact the way in which projects secure financing and what kind of ownership and debt interests that project owners can offer.[265]

138. Midwest Municipal states that, while the Complaint is addressed to the equity component of investor-owned utilities, municipally-owned electric utilities, such as and

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P 132).

[261] *Id.* (citing *Ala.-Tenn. Natural Gas Co.*, 38 FERC ¶ 61,251, at 61,849-61,850 (1987)).

[262] *Id.* at 14 (citing *ITC Holdings Corp.*, 143 FERC ¶ 61,256, at P 124 (2013) (ITC Holdings Merger Order)).

[263] Powerlink Protest at 6.

[264] *Id.* (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306, at P 54, n.44 (2008) (*Startrans*); *Ark. La. Gas Co.*, 31 FERC ¶ 61,318, at 61,726 (1985)).

[265] Trans Bay Protest at 15-16.

including its members, often invest in new, necessary transmission using mostly or entirely debt capital. It contends that in these circumstances, for such municipal transmission financings and transmission investments to be viable payment of debt and debt costs must be assured by some form of municipal guarantees or purchases of services.[266] Midwest Municipal asserts that municipal transmission owners have comparable needs for returns and comparable risks as investor-owned utilities. Midwest Municipal emphasizes that allowing municipal systems, including municipal power supply agencies, hypothetical capital structures that provide for comparable equity tends to be substantially rate reducing for all transmission users compared with financing by investor-owned utilities.[267] According to Midwest Municipal, municipal utilities often require hypothetical capital structures to achieve comparable equity returns to those of privately-owned utilities. It contends that such hypothetical capital structures have been allowed to it or its members in the past and that, without the ability to earn comparable returns, in most cases, municipal utilities simply could not participate in grid expansion.[268]

139. By contrast, multiple parties filed comments in support of the Complaint, in varying degrees, with the respect to the capital structure element.[269] Joint Consumer Advocates state that Complainants' recommended capital structure is sound and would make rates more equitable, if adopted, but suggest that Mr. Gorman's proposed 50 percent equity cap may in fact be too high, recommending, instead, that a common equity ratio that is below 47 percent for market-traded integrated electric utilities would be more appropriate.[270] Joint Consumer Advocates further note Mr. Gorman's conclusion that if a reduction in the common equity ratio for ratemaking were to result in a two-notch downgrade in the transmission company's bond rating, the increased debt costs would be more than offset by a larger savings in reduced in equity capital costs.[271] Joint Consumer

[266] Midwest Municipal Comments at 3.

[267] *Id.* (citing *Cent. Minn. Mun. Power Agency and Midwest Mun. Transmission Grp.*, 134 FERC ¶ 61,115, at P 31 (2011)).

[268] *Id.*

[269] These parties include: Joint Consumer Advocates, Southwestern Electric Cooperative, the Missouri Commission, Michigan Agencies, Arkansas Electric Consumers, Iowa Group, the Illinois Commission; People of the State of Illinois; Organization of MISO States; and Great Lakes Utilities.

[270] Joint Consumer Advocates Comments at 9-10; Hill Aff. at 23-25.

[271] Hill Aff. at 4.

Advocates argue that MISO TOs, most of which are fully-integrated electric utilities, have lower risk corporate structures than the electric industry at large and therefore warrant lower capital ratios.[272] Joint Consumer Advocates also assert that the formula rates through which these utilities recover revenues further reduce risks relative to the industry at large.[273]

140. Southwestern Electric Cooperative states that Ameren Illinois' equity percentage increased from 49 percent in 2008, to 58 percent in 2011, decreased to 53 percent in 2013, and then increased to 55 percent in 2014.[274] Southwestern Electric Cooperative further states that, primarily due to intercompany transfers, Ameren Illinois used these high equity percentages in spite of the fact that its parent's equity percentage rarely exceeds 50 percent.[275] Southwestern Electric Cooperative argues that these artificially increased equity percentages unjustifiably add to the windfall caused by the use of 12.38 percent ROE.[276] According to Southwestern Electric Cooperative, reducing the equity component of Ameren Illinois' capital structure to 50 percent would reduce its revenue requirement by $2.3 million, separate from and independent of the $16.8 million reduction attributable to the reduction in the generally applicable ROE.[277]

141. The Missouri Commission asserts that MISO TOs use the most recent year-end capital structure ratios, as shown in their FERC Form No. 1, in calculating the total cost of capital for the members of this group.[278] It agrees with the use of MISO TOs' actual capital structures as long as they are similar to the capital structure of the proxy companies.[279] The Missouri Commission states that it analyzed the individual average common equity ratios of the proxy companies for the years 2008 to 2013 and projected the same for the years 2016 to 2018. According to the Missouri Commission, the five-

[272] *Id.* at 5.

[273] *Id.* at 7.

[274] Southwestern Electric Cooperative Comments at 9.

[275] *Id.*

[276] *Id.* at 9-10.

[277] *Id.* at 10.

[278] Missouri Commission Comments at 6.

[279] *Id.*

year average for the proxy group is 47.5 percent and the average projected common equity ratio is 50.1 percent.[280] It recommends that MISO TOs' capital structure be capped at a level that approximates the current level of MISO TOs and the proxy companies – 50 percent. Such a cap, according to the Missouri Commission, will ensure that the ROE established in this proceeding will not become inconsistent with the capital structure on which that ROE is, in part, based.[281]

142. The Michigan Agencies request that there be a rebuttable presumption that capital structures containing more than 50 percent common equity are not just and reasonable. The Michigan Agencies assert that such a presumption would be beneficial to ratepayers since long-term debt, such as bonds, is generally less expensive than equity.[282] They contend that, because the MISO base ROE encourages capital structures with high utilization of common equity, ITC Transmission, METC, and other MISO TOs have an incentive to reduce low cost financing, such as bonds, which unnecessarily increases MISO TOs' costs.[283] Similarly, Arkansas Electric Consumers assert that the implementation of a rebuttable presumption against capital structures containing more than 50 percent common ROE would incentivize MISO TOs to manage their capital structures in a manner that minimizes their costs to taxpayers.[284]

143. Iowa Group and Organization of MISO States contend that the high equity ratios of some MISO TOs are unwarranted considering current financial conditions. Organization of MISO States avers that the Complaint provides substantial evidence supporting the conclusion that a 50 percent common equity ratio reduces the overall cost of capital to MISO TOs, while at the same time supporting a strong credit standing for the transmission operations of MISO TOs.[285] In addition, Iowa Group asserts that ITC Midwest's common equity ratio of 60 percent is significantly above the average common

[280] *Id.*

[281] *Id.* at 7.

[282] Michigan Agencies Comments at 5.

[283] *Id.* at 6.

[284] Arkansas Electric Consumers Comments at 3.

[285] Organization of MISO States Comments at 6.

equity ratio for MISO TOs (53 percent) and is far in excess of the common equity ratios awarded electric utilities in recent cases.[286]

144. Several parties contend that high common equity ratios, coupled with a high ROE, can cause unreasonably high charges to customers. For example, the Illinois Commission asserts that, if the Commission adopts a single MISO-wide ROE, a 50 percent common equity ratio cap is reasonable.[287] Similarly, People of the State of Illinois contend that the effect of an unreasonably high ROE is aggravated when a TO's capital structure includes an unreasonably high ratio of common equity to debt.[288] Great Lakes Utilities adds that the capital structures component of the Complaint is also an important customer protection, and therefore supports Complainants' efforts in this regard as well.[289]

c. Answers to Answers and Comments and/or Protests

145. In response to MISO TOs' argument that Complainants failed to meet their section 206 burden in their discussion of capital structure, Complainants assert that section 206 does not require complainants to provide Commission or judicial precedent to meet their burden. They further assert that they laid out a strong, and, therefore, more than sufficient, factual case demonstrating that the capital structures of MISO TOs that are in excess of 50 percent common equity are unjust and unreasonable.[290]

146. Complainants contend that the Commission does not require that a common equity ratio that is within the range of equity capitalizations be accepted by the Commission, and that the Commission does not automatically accept a capital structure just because it falls within the range of capital structures approved by the Commission. They contend

[286] Iowa Group Comments at 6-7 (citing Gorman Aff. at 11-12). According to Mr. Gorman, the company with the highest common equity ratio is Montana-Dakota Utilities at 88.35 percent, followed by Superior Water, L&P at 60.18 percent, and three subsidiaries of ITC Holdings. (ITC at 60.03 percent, ITC-Midwest at 60.01 percent, and METC at 60.00 percent).

[287] Illinois Commission Comments at 12.

[288] People of the State of Illinois Comments at 5-6.

[289] Great Lakes Utilities Comments at 6.

[290] Complainants January 22, 2014 Reply at 30.

that the Commission has simply stated a preference for using a transmission owner's actual capital structure if a multitude of factors are met.[291]

147. Complainants further contend that the fact that MISO TOs' experts disagree with Mr. Gorman's proxy group used to develop a just and reasonable capital structure and with what industry analysts and credit agencies believe is of no importance to MISO TOs' motion to dismiss. Rather, they assert that all that matters is the prima facie case that was put forth in their Complaint, and that they provided substantial evidence to demonstrate that MISO TOs using capital structures with greater than 50 percent common equity employ unjust and unreasonable capital structures.[292]

148. Complainants assert that they provided sufficient evidence to meet their section 206 burden for proposing a cap on MISO TOs' common equity ratios at 50 percent.[293] Further, in response to MISO TOs' assertion that Complainants are suggesting that the Commission should dictate the manner in which individual TOs manage their actual capitalization, Complainants contend that they never made any such request.[294] Rather, Complainants assert that they provided evidence demonstrating that common equity ratios used to calculate the overall rate of return for MISO TOs should not exceed 50 percent, which they contend has no impact on how MISO TOs manage their actual capitalization.[295] In addition, Complainants recognize that unique circumstances could lead to a MISO TO being able to demonstrate that it would be just and reasonable to utilize a common equity ratio above 50 percent to calculate its overall rate of return.

149. In response to MISO TOs' argument that the Complaint offered no probative evidence that their proposed capital structure relief is just and reasonable, Complainants argue that they did, again using ATC as an example of a company that has agreed to a 50 percent common equity ratio and has been able to maintain an A+ and "Stable" credit rating by S&P.[296] Complainants further reiterate their previous arguments, and contend that a just and reasonable rate of return is one that is bounded on one end by investor

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[291] *Id*. at 30-31.

[292] *Id*. at 31 (citing Complaint at 36-37).

[293] *Id*. at 32.

[294] *Id*. (citing MISO TOs January 6, 2014 Answer at 47-48).

[295] *Id*.

[296] *Id*. at 33 (citing Complaint at 93).

interest, and on the other end by the public interest against excessive rates. They contend that they have adequately demonstrated that a 50 percent cap on common equity ratios would go a long way towards swinging the balance back towards equilibrium.[297]

150. Powerlink and Trans Bay state that nothing submitted in this proceeding shows that the Commission should deviate from its existing capital structure policies. They maintain that Complainants provide little evidence to support the institution of a cap on common equity ratios in transmission owners' capital structures at any level, and that, specifically, Complainants failed to show that any specific cap level is just and reasonable. Furthermore, they argue that Joint Consumer Advocates' recommendations—that the 50 percent equity ratio does not go far enough and that the Commission would be justified in finding an even lower allowable equity ratio—must be dismissed because such recommendations are baseless and unreliable.[298]

151. Xcel contends that the answers of Complainants and Iowa Group do not rehabilitate the deficiencies in the Complaint and, in fact, underscore the lack of evidentiary support provided with the Complaint, particularly with respect to the allegations regarding Northern States Minnesota's and Northern States Wisconsin's capital structure. Moreover, Xcel avers that Complainants and Iowa Group do not directly mention Northern States Minnesota or Northern States Wisconsin in their answers or clarify where in their pleadings evidence supporting their claims against the companies may be found.[299]

152. According to Xcel, Complainants must first meet their prima facie burden of proof to warrant the time and expense imposed upon Northern States Minnesota and Northern States Wisconsin to defend their capital structure in a hearing. Xcel states that "the test for whether the prima facie burden of proof has been met is whether there are facts in evidence which if unanswered would justify men of ordinary reason and fairness in affirming the question which the plaintiff is bound to maintain."[300] Xcel argues that there are no facts in evidence that could affirm a conclusion that Complainants have made their case against Northern States Minnesota or Northern States Wisconsin. For example, Xcel

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[297] *Id*. at 34.

[298] Powerlink Reply at 10-11 (citing Joint Consumer Advocates Comments at 9-10); Trans Bay Reply at 10-11 (citing Joint Consumer Advocates Comments at 9-10).

[299] Xcel Reply at 4-5.

[300] *Id*. at 6-7 (quoting *Nantahala Power & Light Co*., 19 FERC ¶ 61,152, at 61,276 (1982)).

states that the only evidence offered by Complainants and Iowa Group pertains to entities other than Northern States Minnesota and Northern States Wisconsin. By contrast, Xcel alleges that its previous Answer demonstrated that the companies' capital structure for Attachment O uses an actual equity capital ratio for 2014 of 53 percent, which is consistent with the company's equity ratios approved by the state regulatory commissions with jurisdiction over the capital structures and debt issuances of the companies.[301]

153. MISO TOs contend that Complainants and the intervenors fail to substantiate any aspect of their claim that the capital structures of MISO TOs that include more than 50 percent common equity are unjust and unreasonable. In response to Complainants' argument that they seek only a modification of capital structures for ratemaking purposes and are not trying to impose a cap on the actual issuance of debt or equity by MISO TOs, MISO TOs argue that Complainants are requesting that the Commission impose a hypothetical capital structure on every MISO TO whose current common equity component exceed 50 percent. Furthermore, MISO TOs allege that the determination of the appropriate capital structure is to be made on a company-specific basis and that Commission precedent does not justify Complainants' proposal to implement an across-the-board cap on the common equity components of MISO TOs capital structures.[302]

3. Incentives

a. Answers

154. In their separate answer, ITC Transmission and METC argue that the Complaint, as it relates to elimination of their approved ROE incentive adders, should be summarily denied for two reasons.[303] First, the ITC Transmission and METC assert that the Complaint represents an impermissible collateral attack on the Commission's policy of promoting transmission investment through pricing reform; and second, Complainants have failed to meet their burden under section 206 to show that the ITC Transmission and METC ROE incentives are unjust and unreasonable. ITC Transmission and METC note that, in December 2005, the Commission reaffirmed the appropriateness of independent

[301] *Id*. at 7-8.

[302] MISO TOs February 19, 2014 Reply at 72-75.

[303] ITC Transmission/METC Answer at 2. As to the base ROE and imposition of a generic, MISO-wide capital structure, issues raised by the Complaint, ITC Transmission, and METC have joined with the other MISO TOs in the Motion to Dismiss Complaint and Answer to Complaint.

transmission company incentives for METC.[304] Further, in July 2006, the Commission reaffirmed ITC Transmission's ROE adders in connection with its filing, which ABATE protested, to revise its Attachment O formula rate under the MISO Tariff. ITC Transmission and METC point out that the Commission rejected ABATE's suggestion that the Commission intended for ITC Transmission's ROE incentive to be temporary.[305] ITC Transmission and METC also argue that the Commission recognized the value of RTO participation and independence incentives in Order No. 679, including for utilities that have already joined RTOs.[306] ITC Transmission and METC add that the Commission reaffirmed RTO participation and independence incentives in its 2012 Policy Statement.[307] Finally, ITC Transmission and METC argue that, in June 2013, the Commission reaffirmed the benefits of the independent transmission company business model in approving the proposed transfer of Entergy Corporation's transmission facilities to subsidiaries of ITC Holdings.[308]

155. Furthermore, ITC Transmission and METC contend that the Complaint is an impermissible collateral attack on the Commission's transmission pricing policy, which the Commission has recently reaffirmed. ITC Transmission and METC note that FPA section 219 directed the Commission to establish by rule incentive-based rate treatments to promote new investment in transmission facilities and participation in RTOs.[309] ITC Transmission and METC add that, in FPA section 219, Congress required that the rule to implement section 219 shall promote capital investment in transmission facilities and "provide a return on equity that attracts new investment in transmission facilities."[310] ITC

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[304] *Id.* at 8 (citing *Mich. Elec. Transmission Co., LLC and Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,343, at P 15 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006)).

[305] *Id.* at 9-10 (citing *Int'l Transmission Co. and Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,036, at PP 35-37 (2006)).

[306] *Id.* (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222).

[307] *Id.* at 12 (citing *Promoting Transmission Investment Through Pricing Reform*, 77 Fed. Reg. 69,754 (Nov. 21, 2012) (2012 Policy Statement)).

[308] *Id.* at 13 (citing ITC Holdings Merger Order, 143 FERC ¶ 61,256 at PP 124-125).

[309] ITC Transmission/METC Answer at 13-14 (citing 16 U.S.C. §§ 824s(b)(1), (2)).

[310] *Id.*

Transmission and METC point out that, in Order No. 679, the Commission specifically declined to "sunset" the RTO participation incentive.[311]

156. ITC Transmission and METC further contend that the Complaint is an impermissible collateral attack on the Commission's RTO participation and independent transmission company incentives policies that were established in orders issued under FPA section 205, continued in Order No. 679, and reaffirmed in the 2012 Policy Statement.[312] ITC Transmission and METC explain that the Commission defines a collateral attack as an "attack on a judgment in a proceeding other than a direct appeal" and that, generally, such attacks are prohibited.[313] ITC Transmission and METC point out that the Commission has previously rejected collateral attacks on elements of the transmission pricing policy in Order No. 679, including the RTO participation adder.[314] ITC Transmission and METC conclude that Complainants' argument that ITC Transmission's and METC's ROE incentives are no longer necessary to promote the Commission's policy goals "flies in the face" of the Commission's decision in the 2012 Policy Statement to continue the transmission and RTO incentives without change.[315]

157. In response to Complainants' contention that the Commission, in its 2003 Proposed Pricing Policy, recognized that ROE incentive adders were not meant to continue indefinitely, ITC Transmission and METC point out that the proposed policy statement was "overtaken by events," specifically, the enactment of FPA section 219 in 2005, in which Congress reaffirmed the need for ROE transmission incentives. ITC Transmission and METC also point out that the Commission again declined a request to "sunset" the RTO incentive in the 2012 Policy Statement.[316] Additionally, ITC Transmission and METC state that the Commission has never limited the duration of the

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[311] *Id.* at 15 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 327).

[312] *Id.* at 17 (citing, *e.g.*, *Startrans*, 122 FERC ¶ 61,306 at P 17).

[313] *Id.* (citing *Louisville Gas and Elec. Co.*, 144 FERC ¶ 61,054, at P 12 (2013)).

[314] *Id.* at 18 (citing *S. Cal. Edison Co.*, 121 FERC ¶ 61,168, at P 159 (2007), *reh'g denied*, 123 FERC ¶ 61,293 (2008), *dismissing review*, *Pub. Utils. Comm'n of Cal. v. FERC*, 2013 WL 4712756 (2013)).

[315] *Id.* at 19.

[316] *Id.* at 19-20 (citing Transmission Access Policy Study Group, Comments, Docket No. RM11-26-000 (filed Sept. 12, 2011)).

independent transmission company incentive and has limited the RTO incentive only to the duration of a company's RTO membership.[317]

158. ITC Transmission and METC state that the Complaint offers no evidence, only argument, to support their claim that the ITC Transmission and METC incentives are no longer just and reasonable, thus failing to meet their FPA section 206 burden. According to ITC Transmission and METC, Complainants posit the existence of a "but for" test requiring a demonstration that the net benefits to customers would not have been achieved absent the proposed ROE incentive.[318] ITC Transmission and METC point out, however, that the Commission has rejected such a test "as improperly requiring proving of a negative."[319] ITC Transmission and METC also allege that Complainants overlook the benefits that the Commission has repeatedly recognized flow from the independent transmission company model and from RTO participation.[320] Moreover, ITC Transmission and METC take issue with Complainants' assertion that customers are not receiving any incremental benefits to offset higher costs and that the incentives serve no purpose. ITC Transmission and METC point to the $1.4 billion and $900 million of transmission infrastructure investment by ITC Transmission and METC, respectively, through the third quarter of 2013, and to their plan to invest between $380 million to $435 million, in the aggregate, in new transmission in 2014. ITC Transmission and METC state that these investments are predicated in their existing rate constructs, including their allowed ROEs that reflect independence incentives and, in the case of ITC Transmission, an RTO incentive.[321] Among other benefits of the independence and RTO incentives, ITC Transmission and METC point to improvements in outage performance, preventative maintenance, and customer responsiveness.[322]

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[317] *Id.* at 20.

[318] *Id.* at 21 (citing Complaint at 98).

[319] *Id.* at 21-22 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at PP 25-26).

[320] *Id.* at 22.

[321] *Id.* at 24 (citing Press Release, ITC Holdings, ITC Holdings Provides Initial 2014 Operating Earnings and Capital Investment Guidance (Dec. 17, 2013), *available at:* http://investor.itc-holdings.com/releasedetail.cfm?ReleaseID=814318).

[322] *Id.* at 25-27.

159. ITC Transmission and METC also take issue with Complainants' assertion that there is no logical justification for ITC Transmission and METC to receive RTO participation and independence incentives because no other MISO TOs receive them. ITC Transmission and METC argue that the independence incentive is intended to encourage recipients' continuation as stand-alone transmission companies, a description that fits ITC Transmission and METC (as well as ITC Midwest) and no other MISO TO. ITC Transmission and METC also note that, because they have received independence incentives, they are subject to additional Commission oversight with respect to their governance structure and service agreements in order to ensure that they remain independent. ITC Transmission and METC also contend that the RTO participation incentive encourages entities to join RTOs, as well as to maintain their RTO memberships, the benefits of which the Commission has recognized.[323]

160. ITC Transmission and METC claim that Complainants' unsubstantiated assertions regarding bond ratings, access to capital, and pre-tax rates of return fail to meet Complainants' FPA section 206 burden. Regarding bond ratings, ITC Transmission and METC point to the recent upgrade in credit ratings of ITC Transmission and METC by S&P, demonstrating that there is a direct link between ITC Transmission's and METC's independent transmission business model and rate construct and their strong bond ratings. ITC Transmission and METC aver that credit rating upgrades, which benefit customers through lower debt financing costs, demonstrate the benefits of Commission's transmission incentives policy. ITC Transmission and METC point out that, in its recent ratings action, S&P recognized the importance of the incentive-based ROEs and the capital structures of the ITC Subsidiaries. ITC Transmission and METC argue that unfavorable changes to their existing rate construct will adversely affect how credit rating agencies view them.[324] ITC Transmission and METC also take issue with Complainants' offer of a hypothetical of how eliminating the ROE adders would reduce the pre-tax rate of return for ITC Transmission and METC, while, at the same time, assuming that the companies' common equity ratios are more than necessary to maintain their bond ratings. ITC Transmission and METC reiterate that Complainants' hypothetical fails to demonstrate that the existing ROE adders are unjust and unreasonable, and assert that the Complaint makes various unsubstantiated assumptions about the effect that eliminating the ROE incentives would have on the companies' cost of debt.[325]

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[323] *Id.* at 28-29 (*Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 31 (2007), *reh'g denied*, 123 FERC ¶ 61,262 (2008)).

[324] *Id*. at 30-31 (citing Research Update: ITC Holdings Corp. and Subs Corporate Credit Ratings Raised to "A-", at 3. (Dec. 6, 2013)).

[325] *Id.* at 32.

161. Finally, ITC Transmission and METC argue that there is no change in circumstances to justify revocation of the ROE incentives. They note that, absent a material change in circumstances, the Commission has not revoked previously-granted transmission incentives, although acknowledging that the Commission has required removal of ROE incentives for RTO membership and project risks when a project receiving the incentives has been canceled or abandoned. In this connection, however, ITC Transmission and METC note that, in *Pacific Gas and Elec. Co.*, the Commission rejected an argument that incentives for a long-completed project were no longer appropriate or necessary. ITC Transmission and METC point out that *Pacific Gas and Elec. Co.* was an FPA section 205 rate proceeding, in which the burden on those challenging the rate was less than it is in an FPA section 206 proceeding.[326]

162. Similarly, MISO TOs aver that MISO TOs are entitled to seek an RTO participation adder. MISO TOs argue that Complainants' criticism of ITC Transmission's 50 basis point adder for RTO participation, as well as their suggestion that the RTO participation adder is no longer valid, lack merit and should be rejected. They point to Complainants' disregard for the Commission's previous finding that an RTO participation adder is appropriate for participation in MISO,[327] and to Complainants' misplaced reliance on a proposed Commission policy statement. MISO TOs also note that Complainants mistakenly rely on the Commission's order denying an RTO incentive for ITC Midwest, noting that the Commission's denial of an RTO incentive adder in that case was due to ITC Midwest's failure to demonstrate that its resulting ROE (including RTO and independence adders) would remain within the zone of reasonableness, and not because of ITC Midwest's lack of eligibility for an RTO membership incentive.[328]

b. Comments and/or Protests

163. Trans Bay and Powerlink filed protests against Complainants' position on ROE incentives. Trans Bay argues that Complainants' attack on ROE incentive adders conflicts with Commission precedent and undermines the Commission's statutory duty to promote transmission investment, as reflected in the Energy Policy Act of 2005 and

[326] *Id.* at 33 (citing *Pac. Gas and Elec. Co.*, 141 FERC ¶ 61,168, at P 12 (2012)).

[327] MISO TOs January 6, 2014 Answer at 81 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,355 at P 5).

[328] *Id.* at 82 (citing *ITC Holdings v. Interstate Power and Light*, 121 FERC ¶ 61,229 at PP 39-45).

Order No. 679.[329] Moreover, Trans Bay asserts Complainants' argument against incentive adders relies on obsolete or inapplicable precedent and unsupported facts. Trans Bay points out that *City of Detroit* and *New York Commission v. FERC*, two cases cited by Complainants to support their argument that ITC Transmission's and METC's incentives are no longer necessary to promote the Commission's policy goals relative to RTO participation and transmission independence, address instances where the Commission was asked to grant a rate increase, not reduce a rate that it had previously approved. Trans Bay notes that both cases pre-date by decades open access transmission, RTOs, and the relevant policy goals.[330]

164. Trans Bay also argues that the long-term nature of transmission investment compels the continuation of incentive adders. Trans Bay asserts that to cut off incentive adders or otherwise reduce incentives only a few years after granting or affirming them would signal that the Commission does not stand behind its incentives for the long-term.[331] Similarly, Powerlink asserts that the Commission has acknowledged the need for such stability in incentives, finding "[i]t can be important to investors making long-term investments in long-lived facilities to be assured that a ratemaking proposal adopted prior to construction of those facilities will not later be altered in a manner that undermines the basis for the financing of those facilities."[332]

165. Conversely, multiple parties filed comments in support of the Complaint, to varying degrees, with respect to ROE incentives.[333] In particular, Michigan Agencies, Organization of MISO States, the Illinois Commission, Arkansas Electric Consumers, and the Missouri Commission all argue that the incentive returns currently allowed for some MISO TOs, while possibly reasonable at the time of the creation of RTOs, are no longer needed to incentivize a business model that has become well established.[334] Joint

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[329] Trans Bay Motion Protest at 5-7.

[330] *Id.* at 7-9.

[331] *Id*. at 11-12.

[332] Powerlink Protest at 13 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 36).

[333] These parties include: Joint Consumer Advocates; Michigan Agencies; Illinois Commission; Organization of MISO States; People of the State of Illinois; Arkansas Electric Consumers; and Missouri Commission.

[334] Joint Consumer Advocates Comments at 10 (citing Hill Aff. at 5, 22-27); Michigan Agencies Comments at 7-8; Organization of MISO States Comments at 5;

(continued ...)

Consumer Advocates also support the relief requested by Complainants, but further submit that an even lower allowable equity ratio would also be justified.[335] People of the State of Illinois also support Complainants' position that ITC Transmission's and METC's ROE adders be eliminated, noting that no other transmission operator in the MISO area receives such adders.[336]

c. Answers to Answers and Comments and/or Protests

166. Complainants assert that they sufficiently explained in the Complaint why ITC Transmission's and METC's ROE adders have become unjust and unreasonable. They reiterate the arguments made in the Complaint, including that ITC Transmission and METC have been receiving the benefits of ROE adders for over a decade, that the adders provide a windfall to MISO TOs, and that the adders are no longer needed to attract capital, as the other MISO TOs, which do not have the ROE adders, have proven.[337]

167. Powerlink and Trans Bay state that nothing in this proceeding shows that the Commission should deviate from its existing incentive ROE policies. According to Powerlink and Trans Bay, the Complaint erroneously relies on the Commission's 2003 Proposed Pricing Policy, which the Commission never adopted. They aver that the non-precedential document should not sway the Commission.[338] In addition, they state that several of MISO TOs have provided answers that helpfully illustrate the many benefits that have resulted from incentive rate treatment, such as ITC Transmission's statement that it has invested approximately $2.3 billion in transmission infrastructure since 2003 and Vectren's statement that the all-in incentive ROE facilitated construction of the Gibson – Reid 345 kV project. Powerlink and Trans Bay conclude that these are the types of benefits that ROEs were intended to yield and the fact that these results are occurring in MISO is reason enough to continue to embrace incentive rate treatment for projects and utilities.[339]

Illinois Commission Comments at 12; Arkansas Electric Consumers Comments at 4; Missouri Commission Comments at 7.

[335] *Id*. at 10 (citing Hill Aff. at 5, 22-27).

[336] People of the State of Illinois Comments at 6.

[337] Complainants January 22, 2014 Reply at 28.

[338] Powerlink Reply at 11; Trans Bay Reply at 9.

[339] Powerlink Reply at 12 (citing ITC Transmission/METC Answer at 3; Vectren

(continued ...)

168. MISO TOs assert that the Complaint, Complainants' answer, and the comments of intervenors, all fail to show that ITC Transmission's and METC's existing ROE incentives are unjust and unreasonable or to state any basis for restricting other MISO TOs from obtaining an ROE incentive for RTO participants. MISO TOs reject Complainants' reliance on *City of Detroit*, which MISO TOs note was decided 50 years before the enactment of FPA section 219. Similarly, MISO TOs take issue with intervenors' argument that MISO's operations and markets have matured to the point that such incentives may not be warranted. In response, MISO TOs assert that the Commission has rejected assertions that an RTO participation incentive should be subject to a sunshine date because such incentives are needed to encourage continued participations in the RTOs, not just to incent a transmission owner to join at RTO.[340] Moreover, MISO TOs contend that the Commission has revoked the award of transmission rate incentives only when there has been a material change in the circumstances underlying approval of the incentive, such as when a project has been abandoned or canceled. In addition, MISO TOs state that the ITC Transmission Answer provided a comprehensive response to the Complaint's challenge to the approved, independent ownership incentives for ITC Transmission and METC. Finally, MISO TOs reject intervenors' argument that ROE incentives are not necessary because transmission investment is being made in MISO even though most of MISO TOs do not have an RTO participation or other RTO incentive. MISO TOs contend that, in Order No. 679, the Commission rejected a proposal to withhold rate incentives unless the applicant could demonstrate that a facility would not be built "but for" the award of the rate incentive.[341]

169. The Ameren Companies and NIPSCO contend that, if the Commission sets this case for hearing, the Commission should affirmatively state that MISO transmission owners are entitled to the RTO participation adder and provide the option of making compliance filings in this case to include the RTO participation adder in rates. First, the Ameren Companies and NIPSCO argue that the RTO participation adder has been a cornerstone of the Commission's market and transmission policy and has been affirmed by Congress. According to the Ameren Companies and NIPSCO, the Commission justified the adder, not based on DCF-related risks, but on the policy benefits of

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Answer at 2, 6-7); Trans Bay Answer at 9-10 (citing ITC Transmission/METC Answer at 3; Vectren Answer at 2, 6-7).

[340] MISO TOs February 19, 2014 Reply at 62-66.

[341] *Id.* at 71 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 48).

participating in MISO. The Ameren Companies and NIPSCO argue that Complainants have not demonstrated why this should change.[342]

170. The Ameren Companies and NIPSCO assert that, with regard to the RTO participation adder, Complainants err in attempting to apply cost-of-service principles to a non-cost rate treatment. Rather, changes in capital market conditions do not warrant eroding this policy. Further, the Ameren Companies and NIPSCO contend that the RTO participation adder is a non-cost element that the Commission considers in determining whether the final rate resulting from the cost analysis is just and reasonable and, therefore, Complainants err when they cite certain transmission owners' access to capital to support large capital investments.[343]

171. In addition, the Ameren Companies and NIPSCO argue that, if the Commission sets this case for hearing, the Commission should clarify that any new DCF range will not cap the availability of the full RTO participation adder. First, they assert that, in the realm of ratemaking, the Commission has substantial discretion to balance various objectives.[344] According to the Ameren Companies and NIPSCO, though the Commission has previously limited the application of certain rate incentives if they would take the resulting ROE beyond the top of the DCF range, the Commission should not be limited by a DCF analysis in its ability to award the RTO participation adder to the Ameren Companies, NIPSCO, and any other transmission owner that might seek it. Second, they state that ensuring that DCF results will not limit the availability of the RTO participation adder is consistent with the fact that the RTO participation adder has always been considered a policy-based, non-cost rate treatment, which a DCF analysis is incapable of quantifying.[345]

172. In response to the Ameren Companies' and NIPSCO's assertions that the Commission should maintain the availability of the RTO participation adder, Complainants argue that conditions have changed since the RTO participation adder was originally granted in 2002 and that the adder is no longer just and reasonable. Complainants cite section 219(d) of the FPA that states "[a]ll rates approved under the

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[342] Ameren Companies/NIPSCO Reply at 16-19 (discussing the RTO participation adder policy origins).

[343] *Id.* at 19-20 (citing Complaint at 44).

[344] *Id.* at 21-22 (citing *Colo. Interstate Co. v. Fed. Power. Comm'n*, 324 U.S. 581, 589 (1945); *Assoc. of Oil Pipe Lines v. FERC*, 83 F.3d 1424, 1431 (D.C. Cir. 1996)).

[345] *Id.* at 22-23.

rules adopted pursuant to this section, including any revisions to the rules, are subject to the requirements of sections 824d and 824e of this title that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential" as support that the Commission can only offer an incentive for RTO participation if the resulting rate is just and reasonable.[346] Complainants contend that MISO is well-established and the benefits of RTO participation to transmission owners have been demonstrated for years such that there is no longer a need for incentive adders. According to Complainants, the point of the adder was to incentivize transmission owners to join MISO so that consumers would benefit from the RTO participation. Complainants assert that the majority of transmission owners found the benefits of joining MISO sufficiently great that they did not apply for the adder for RTO participation.[347]

173. Finally, Complainants claim that the Ameren Companies' and NIPSCO's argument regarding the RTO participation adder as a non-cost rate treatment is incorrect. Complainants contend that the Ameren Companies and NIPSCO ignore the fact that the RTO participation adder is no longer necessary to encourage transmission owners to join MISO. Further, Complainants argue that the Commission should reject the Ameren Companies' and NIPSCO's request to increase the zone of reasonableness to incorporate the RTO participation adder. They contend that the Commission has relied on the DCF method to determine the low and high bounds of the zone of reasonableness, and Complainants argue that expanding this zone to include the adder would lead to an unjust and unreasonable ROE.[348]

4. Procedures

174. MISO TOs request that, if the Commission does not dismiss or reject the Complaint in its entirety, it should nevertheless dismiss the portions of the Complaint challenging the existing ROE incentive adders of ITC Transmission and METC and MISO TOs' capital structures reflecting a common equity component in excess of 50 percent. MISO TOs also request that the Commission impose the latest permissible refund effective date, and set the remaining issues for hearing and settlement procedures. They argue that FPA section 206 allows the Commission discretion in setting the refund effective date, providing that such a date "shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of the Complaint." MISO TOs

[346] Complainants March 31, 2014 Reply at 13 (citing 16 U.S.C. § 824s).

[347] *Id.* at 13-14.

[348] *Id.* at 12-15 (citing *S. Cal. Edison*, 92 FERC ¶ 61,070).

urge the Commission to set a refund effective date of April 12, 2014, which is five months after the date that the Complaint was filed, noting that the base ROE was approved by the Commission after a litigated proceeding and that the current base ROE and capital structures used by MISO TOs have been a part of the fully transparent Attachment O rate computations for years. [349]

175. MISO TOs also ask the Commission to reject Complainants' request to limit the duration of settlement efforts to 60 days. MISO TOs argue that such a limit is inappropriate given the large number of parties likely to participate in the settlement process. Instead, MISO TOs state that the Commission should follow its practice of setting the issues for hearing, but holding the hearing in abeyance for an unspecified period to allow adequate time for settlement procedures, with appropriate periodic reporting by the settlement judge to the Chief Judge.[350]

176. Regarding the refund effective date, the Illinois Commission asserts that the refund effective date should be set for the earliest date possible, which would be November 12, 2013, and to set it at a later date would effectively result in the continuation of a substantial overpayment to MISO TOs.[351] Joint Consumer Advocates, Organization of MISO States, People of the State of Illinois, Iowa Group, the Missouri Commission, and Michigan Agencies all support a November 12, 2013 refund effective date.[352] Great Lakes Utilities asserts that in order for transmission customers to realize the substantial cost savings, the Commission must expeditiously establish a refund effective date and promptly publish that date as required by law.[353] Southwestern Electric Cooperative requests that the Commission act expeditiously in setting a refund effective date.[354]

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[349] MISO TOs January 6, 2014 Answer at 85-86 (citing 16 U.S.C. § 824e(b)).

[350] *Id*. at 86-87.

[351] Illinois Commission Comments at 4-5.

[352] Joint Consumer Advocates Comments at 11; Organization of MISO States Comments at 3; People of the State of Illinois Comments at 4-5; Iowa Group Comments at 9; Missouri Commission Comments at 8; Michigan Agencies Comments at 9.

[353] Great Lakes Utilities Comments at 6.

[354] Southwestern Electric Cooperative Comments at 2

IV. Discussion

A. Procedural Matters

177. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that file them parties to this proceeding. Notwithstanding Complainants' opposition to Trans Bay's and Powerlink's interventions, we find that good cause exists to grant their motions. We are satisfied that they have expressed interests in the outcome of this proceeding that are not represented by any other party, and that their participation may be in the public interest.[355] Accordingly, we shall grant their motions to intervene.

178. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant Wabash Valley's late-filed motion to intervene given its interest in the proceeding, the early state of the proceeding, and the absence of undue prejudice or delay.

179. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers in this case because they provided information that assisted us in our decision-making process.

180. We will grant MISO's motion for dismissal as a party to this proceeding. In doing so, we note that Complainants do not protest the motion,[356] and, we agree with MISO that, with regard to the ROE at issue, MISO is the billing agent for the MISO TOs, not the beneficiary. The MISO TOs are the true parties in interest for purposes of this proceeding.

B. Substantive Matters

1. Standing

181. We find that Complainants have standing to dispute the current 12.38 percent ROE for MISO TOs, the capital structure of those MISO TOs that include more than 50 percent equity, and the ROE incentive adders received by ITC Transmission and METC. Rule 206(a) states that "[a]ny person may file a complaint seeking Commission

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[355] *See Commonwealth Edison Co.*, 34 FERC ¶ 61,115, at 61,167-61,168 (1986).

[356] Complainants January 15, 2014 Reply at 2.

action against any other person alleged to be in contravention or violation of any statute, rule, order or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction."[357] Rule 206(b)(3) requires the complaint to "set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant."[358] As industrial customers within MISO, Complainants either directly pay wholesale transmission rates or pay for transmission through bundled retail rates, such that they are affected by MISO TOs' base ROE, capital structures, and ROE incentive adders.[359] We therefore find that Complainants have satisfied the standing requirement of Rule 206.

2. Good Faith Estimate of Financial Impact

182. We find that Complainants have satisfied the requirement of Rule 206 to "[m]ake a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction." Complainants' estimate of $347 million of additional costs paid by MISO TOs' customers based on their 12.38 percent base ROE as compared to the 9.15 percent base ROE that Complainants propose represents a good faith effort to quantify the claimed financial burdens. We disagree with MISO TOs' contention that Complainants need to more precisely quantify the specific harms to their members. As described by Complainants, many of them pay bundled rates, rendering such precision difficult.

3. Return on Equity

183. We find that, with respect to whether MISO TOs' base ROE has been shown to be unjust and unreasonable, the Complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we will set this element of the Complaint for investigation and a trial-type evidentiary hearing under section 206 of the FPA.

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[357] 18 C.F.R. § 385.206(a).

[358] *Id.* § 385.206(b)(3).

[359] *See S. Union Gas Co. v. Natural Gas Co.*, 71 FERC ¶ 61,198, at 61,717 (1995) ("The Commission has consistently construed rule 206 to permit any person, as defined in rule 102(d) of the Commission's procedural rules, to file a complaint, even where that person is not a direct customer of the pipeline, so long as the person is adversely affected by the actions that are the subject of the complaint.").

184. We deny MISO TOs' motion to dismiss this element of the Complaint. MISO TOs assert that, based on deficiencies in Complainants' analysis, Complainants have failed to make a prima facie case that MISO TOs' base ROE is unjust and unreasonable. We disagree and find that, notwithstanding MISO TOs' criticisms of certain methodologies employed by Mr. Gorman, the analysis provided in the Complaint constitutes substantial evidence that the challenged rates may be unjust and unreasonable, as required by section 206 of the FPA. We note that, after the Complaint was filed, the Commission changed its policy on determining the ROE for public utilities by, among other things, adopting a two-step DCF methodology.[360] While Complainants' DCF studies do not include the two-step DCF methodology, and may have other flaws, Complainants have provided a detailed DCF analysis that is generally consistent with the Commission's one-step DCF methodology that was in place at the time the Complaint was filed, and also used other methodologies to argue that MISO TOs' base ROE is not just and reasonable.[361] We find that such analyses are adequate to establish a prima facie case that the MISO TOs' cost of equity may have declined significantly below the level of their existing 12.38 percent base ROE, which was also established under the one-step DCF methodology. Therefore, we set for hearing the issue whether MISO TOs' base ROE is unjust and unreasonable.

185. In response to Vectren's argument that the Commission should rule that the 12.38 percent ROE continues to be just and reasonable for its Gibson – Reid Project, we disagree. The Commission granted only the following transmission incentive rates for the Gibson – Reid Project: (1) inclusion of 100 percent of prudently incurred Construction Work in Progress in rate base and (2) recovery of 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond Vectren's control.[362] The ROE used by Vectren in its Attachment O is the generic 12.38 percent MISO ROE currently authorized for use by transmission-owning members of MISO to use in calculating their annual transmission revenue requirement, which as discussed, we are setting for hearing and settlement proceedings.

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[360] *See Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014).

[361] *But see infra* P 186.

[362] *S. Ind. Gas & Elec. Co.*, 125 FERC ¶ 61,124.

186. As discussed above, the Commission recently issued Opinion No. 531,[363] in which the Commission changed its practice for determining the ROE for public utilities. Accordingly, we expect the participants' evidence and DCF analyses to be guided by our decision in Opinion No. 531.

187. While we are setting the ROE element of the Complaint for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[364] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[365] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

188. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,[366] we will set the refund effective at the earliest date possible, i.e., November 12, 2013, as requested.

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[363] *See* Opinion No. 531, 147 FERC ¶ 61,234, *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032.

[364] 18 C.F.R. § 385.603 (2014).

[365] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

[366] *See, e.g., Seminole Elec. Coop., Inc. v. Fla. Power & Light Co*., 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co*., 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

189. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within twelve months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by October 31, 2015. Thus, we estimate that, if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by August 31, 2016.

4. Capital Structure

190. We deny the Complaint with respect to certain MISO TOs' use in ratemaking of actual or Commission-approved hypothetical capital structures that include more than 50 percent common equity. Complainants have not demonstrated that such capital structures are not just and reasonable, nor have they cited any precedent for capping, for ratemaking purposes, the level of common equity in such capital structures for individual utilities, much less groups of utilities. In fact, as noted by MISO TOs and other parties, the Commission has not dictated the level of common equity in utility capital structures used in ratemaking beyond very limited and specific circumstances, which Complainants have not demonstrated are present in this case. In approving the capital structure to be used for ratemaking purposes, the Commission uses an operating company's actual capital structure if 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.[367] If the operating company meets these requirements, then the Commission will find that the operating company has demonstrated a separation of financial risks between the operating and parent company.[368]

191. Where these requirements are not met, the Commission uses the consolidated capital structure of the parent company or a proxy capital structure in order to set the overall rate of return for the operating utility company.[369] Use of the parent's market

[367] *See ITC Holdings v. Interstate Power and Light*, 121 FERC ¶ 61,229 at P 49. *See also Transcon. II*, 84 FERC at 61,413-61,415.

[368] *Transcon. I*, 80 FERC at 61,664 (quoting *Ky. W. Va. Gas Co.*, 2 FERC ¶ 61,139, at 61,325 (1978) ("In our opinion a utility should be regulated on the basis of its being an independent entity; that is, a utility should be considered as nearly as possible on its own merits and not on those of its affiliates.")).

[369] *See Transcon. Gas Pipe Line Corp.*, 64 FERC ¶ 61,039 (1993).

driven capital structure when the operating company's own capital structure is outside the range of reasonable capital structures ensures that the operating company receives a reasonable return, while also protecting ratepayers against higher rates resulting from equity ratios outside the reasonable range.[370]

192. Complainants have not demonstrated that MISO TOs, individually or collectively, do not meet the requirement of the Commission three-part test, failure of which would call into question the justness and reasonableness of using their actual capital structures for ratemaking purposes.

193. Moreover, the Commission has never capped the capital structures used for ratemaking at a particular numerical value, either for individual transmission owners or for groups of transmission owners. In this regard, we are not persuaded by Complainants' argument that certain MISO TOs have higher amounts of equity than they *need* to maintain good credit ratings and attract capital, increasing returns for investors and costs for customers. This assertion is unsupported. Furthermore, the Commission has never dictated a utility's capital structure based on how much common equity it *needs* to attract capital and maintain good credit ratings. In any event, Complainants' attempt to show that there is little benefit to consumers if their utility obtains a one notch increase in credit ratings based on having a common equity ratio above 50 percent does not demonstrate that an elevated equity ratio produces anomalous results. Moreover, there are numerous factors that affect a utility's credit rating. Consequently some utilities need to maintain more conservative capital structures than others to attract capital at reasonable terms.

194. In addition, we are not persuaded by Complainants' contention that because 50 percent common equity is sufficient for ATC (which has an A+ and a "Stable" credit rating by S&P), it is sufficient for other MISO TOs. It is reasonable to assume that individual utilities are subject to different risk factors, have different investment needs, and may pursue different business strategies, all of which could affect capitalization decisions.

195. Complainants do not argue that the capital structures employed by MISO TOs in their formula rates are inaccurate, unreflective of their actual capital structures, or inconsistent with capital structures that have been approved by the Commission for rate-making purposes. Additionally, beyond a single unsubstantiated hypothetical on the bond rating and cost of service impact of reducing the common equity percentages in the capital structures of the ITC Subsidiaries, Complainants have not attempted to support why 50 percent is the appropriate maximum common equity amount to apply to all MISO

[370] *Transcon. I*, 80 FERC at 61,665.

TOs. The requested 50 percent cap appears both arbitrary and unduly restrictive. The cap also ignores the numerous capital structures, including those of the ITC Subsidiaries, with more than 50 percent common equity that the Commission has approved.[371] We also reject Complainants' suggestion that, under their proposal, individual MISO TOs could make rate filings to demonstrate that they have just cause to exceed the 50 percent equity cap. Such a right does not alter the conclusion that an across-the-board equity cap is inappropriate.

196. We also disagree with Joint Consumer Advocates' argument that MISO TOs, as vertically integrated utilities with formula rates, are subject to lower risk than typical utilities, thus meriting lower common equity percentages. First, the amount of risk faced by a company contributes to the Commission's determination of its base ROE and not of its capital structure. Second, Joint Consumer Advocates have not provided evidence that vertically-integrated utilities, generally, or MISO TOs, in particular, are subject to lower than normal risk.

197. We also disagree with the Michigan Agencies, as well as Arkansas Electric Consumers, which recommend that the Commission cap MISO TOs' common equity percentages for ratemaking to encourage them to use capital structures that rely more heavily on lower-cost financing, such as bonds, than on equity. We agree with Southwestern Electric Cooperative that reducing the common equity of certain MISO TOs for ratemaking could reduce their overall revenue requirements. However, as noted above, the Commission does not dictate a utility's capital structure for ratemaking purposes other than in the limited and specific circumstances discussed above, which are not presented in the case before us, and, in any event, would not justify imposition of an across-the-board equity cap on a group of companies. Moreover, we recognize that a utility may consider a range of factors beyond simple capital cost minimization in developing their capital structures. Such considerations include, but are not limited to, managing risk and cash flow.

198. In response to Iowa Group's assertion that the equity component in ITC-Midwest's capital structure is inappropriately high, we note that the Commission has approved similar capital structures, as discussed above.

199. The Illinois Commission argues that the Commission should cap the common equity component in MISO TOs' capital structures because of the greater effect of

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[371] *ITC Holdings Corp.*, 143 FERC ¶ 61,257 at P 78; *Mo. Pub. Serv. Co. v. FERC*, 215 F.3d at 4; *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224 at P 76 (55 percent), *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,121 at P 51 (56 percent); *WPPI Energy*, 141 FERC ¶ 61,004 at P 32.

excessive ROEs on customers when utilities also feature equity-rich capital structures. To the extent that parties contend that some of MISO TOs' capital structures cause unjust and unreasonable costs to ratepayers because they compound what they argue is an unjust and unreasonable base ROE for MISO TOs, then such concerns are best addressed with respect to that ROE, which the Commission is setting for hearing.

5. Incentives

200. We deny Complainants' request that the Commission terminate ITC Transmission's 50 basis point RTO participation incentive. The Commission's decision to grant ITC Transmission an incentive ROE adder for participation in MISO is consistent with the stated purpose of FPA section 219 and is intended to encourage ITC Transmission's continued involvement in MISO. Complainants' assertion that ITC Transmission should not be rewarded for its continued participation in MISO is a collateral attack on Order No. 679-A;[372] thus, we reject these arguments. The Commission stated in Order No. 679 that entities that have already joined, and that remain members of, an RTO, ISO, or other Commission-approved transmission organization, are eligible to receive this incentive.[373] The Commission has rejected similar arguments against the grant of RTO participation incentives.[374] Accordingly, we find that continuation of ITC Transmission's RTO participation incentive is just and reasonable based on substantial economic and reliability benefits to consumers whose utilities are RTO members.

201. We also deny Complainants' request that the Commission terminate ITC Transmission's and METC's 100 basis point independence incentive. Just as ongoing participation in an RTO justifies continued provision of the RTO participation incentive, ongoing operation as an independent transmission company justifies continued provision of the independence incentive. The Commission continues to find that this corporate structure provides benefits to consumers that justify the incentive. Complainants make no showing that these benefits have diminished or that ITC Transmission or METC no longer operate as independent transmission companies.

202. Complainants' reliance on the 2003 Proposed Pricing Policy, as demonstrating the Commission's intent for independence and RTO participation incentives to be temporary, is misplaced. That policy statement was not adopted and, as pointed out by MISO TOs,

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[372] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 79.

[373] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 331.

[374] *See S. Cal. Edison Co.*, 121 FERC ¶ 61,168 at P 159.

was overtaken by other events, including the enactment of section 219 and adoption or Order No. 679, which are specifically directed to promoting new investment in transmission and the formation of RTOs. The Commission has not limited the duration of RTO participation or independence incentives, either for transmission owners generally or for ITC Transmission and METC specifically. Complainants' reliance on the Commission's rejection of ITC Midwest's request for transmission incentive ROE adders is also misplaced. The Commission's rejection of incentives in that case was based on ITC Midwest's failure to demonstrate that the resulting ROE, including the incentives, would be within the zone of reasonableness, and not because ITC Midwest was ineligible for such incentives or that such incentives would provide less value to consumers than their costs.[375]

203. Additionally, Complainants have not provided any substantiation for their assertion that allowing ITC Transmission and METC to continue applying their ROE adders causes customers to pay higher transmission rates without receiving any incremental benefits to offset the higher costs. Complainants have not attempted to quantify the benefits of ITC Transmission's continued RTO participation or ITC Transmission's and METC's continuing independence to support the cost-benefit analysis implied in their argument. Regardless, in Order No. 679, the Commission explicitly stated that utilities requesting incentives do not have to provide a cost-benefit analysis,[376] and has held that incentive recipients do not have to pass a cost-benefit analysis for their incentives on an ongoing basis.

204. Similarly, we reject Complainants' contention that there is no benefit to customers for continuing to pay incentive ROE adders to ITC Transmission and METC because: (1) ITC Transmission's and METC's bond ratings are generally consistent with the other MISO TOs bond ratings; and (2) credit analyst industry reports indicate that low risk regulated utility operations, particularly low-industry-risk transmission operations, have ample access to low-cost capital to fund needed utility infrastructure investment. Neither the equivalency of bond ratings or general observations contained in credit analyst industry reports take into consideration the specific risk profiles and circumstances of ITC Transmission and METC. We also find that Complainants' argument that ITC Transmission's and METC's ROE adders do not encourage the utilities to manage their capital costs to reduce their overall rate of return to be unsubstantiated. Finally, while we agree with Complainants that eliminating ITC Transmission's and METC's incentive adders could reduce their overall revenue requirements, elimination of those adders could also result in loss of the benefits that flow from RTO membership and the independent

[375] *ITC Holdings v. Interstate Power and Light*, 121 FERC ¶ 61,229 at PP 39-45.

[376] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 65.

transmission company business model. In that regard, Complainants and other commenters have not provided any evidence that transmission incentives are no longer necessary. The Commission has provided such incentives numerous times to utilities with cost of service rates and section 219 of the FPA directs the Commission to provide transmission incentives without specifying what types of utilities should be eligible. Finally, nothing in the Commission's transmission incentive policy requires periodic reexamination of whether incentives are needed, as suggested by Arkansas Energy Customers.

205. We note, however, that a utility's total ROE, including any incentive ROE, is limited to the zone of reasonableness, and an incentive ROE may not be implemented in full by the utility if the total ROE exceeds the zone of reasonableness.[377] Because we are setting the MISO TOs' base ROE for hearing and settlement judge procedures, as discussed above, it is possible that the MISO TOs' total ROE and zone of reasonableness may change as a result of this proceeding. Therefore, it is possible that the MISO TOs' ability to implement the full amount of incentive ROE the Commission previously granted may be affected by this proceeding.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the base ROE element of this Complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

[377] *E.g.*, Opinion No. 531, 147 FERC ¶ 61,234 at P 164, *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032.

(C) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date in Docket No. EL14-12-000, established pursuant to section 206(b) of the FPA, is November 12, 2013, as discussed in the body of this order.

(F) We deny MISO TOs' motion to dismiss, as discussed in the body of this order.

(G) We deny the capital structure and transmission incentive elements of the Complaint, as discussed in the body of this order.

(H) We grant MISO's motion for dismissal of MISO as a party to this proceeding.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Motions to Intervene

ALLETE, Inc.

Alliant Energy Corporate Services, Inc.

Ameren Services Company

American Municipal Power, Inc.

Arkansas Electric Cooperative Corporation (Arkansas Electric Cooperative)

Arkansas Electric Energy Consumers, Inc. (Arkansas Electric Consumers)

Consumers Energy Company

Dairyland Power Cooperative

DTE Electric Company (DTE Electric)

Duke-American Transmission Company, LLC and DATC Midwest Holdings, LLC

Duquesne Light Company

Entergy Services, Inc.

Exelon Corporation

Great River Energy

Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier Cooperative)

Indiana Municipal Power Agency

Iowa Utilities Board

Jo-Carrol Energy, Inc.

Joint Consumer Advocates[378]

Lafayette Utilities System

Michigan Attorney General Bill Schuette

Mississippi Delta Energy Agency (Mississippi Delta), Clarksdale Public Utilities Commission (Clarksdale Commission), and Public Service Commission of Yazoo City (Yazoo City Commission)

Mississippi Public Service Commission and Mississippi Public Utilities Staff

Missouri Industrial Energy Consumers

Missouri Joint Municipal Electric Utility Commission

Missouri Public Service Commission (Missouri Commission)

Missouri River Energy Services

National Rural Electric Cooperative Association

NRG Companies[379]

Old Dominion Electric Cooperative

Southern Minnesota Municipal Power Agency

[378] Joint Consumer Advocates are: Illinois Citizens Utility Board; Indiana Office of Utility Consumer Counselor; Iowa Office of Consumer Advocate; Michigan Citizens Against Rate Excess; Minnesota Department of Commerce; Missouri Office of Public Counsel; and Citizens Utility Board of Wisconsin.

[379] NRG Companies are: Louisiana Generating LLC; NRG Power Marketing LLC; GenOn Energy Management, LLC; Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; NRG Sterlington Power LLC; Cottonwood Energy Company LP; and NRG Wholesale Generation LP.

South Mississippi Electric Power Association (South Mississippi)

Transource Energy, LLC

Upper Peninsula Power Company and Wisconsin Public Service Corporation

Wisconsin Electric Power Company

Wolverine Power Supply Cooperative, Inc.

WPPI Energy

Notices of Intervention

Arkansas Public Service Commission (Arkansas Commission)

Council of the City of New Orleans, Louisiana

Illinois Commerce Commission (Illinois Commission)

Louisiana Public Service Commission (Louisiana Commission)

Michigan Public Service Commission (Michigan Commission)

Organization of MISO States[380]

Motions to Intervene and Comments and/or Protests

Great Lakes Utilities

[380] The Organization of MISO States includes: Arkansas Commission; Illinois Commission; Indiana Utility Regulatory Commission; the Iowa Utilities Board; Kentucky Public Service Commission; Louisiana Commission; Manitoba Public Utilities Board; Michigan Commission; Minnesota Public Service Commission; Mississippi Public Service Commission; Missouri Commission; Montana Public Service Commission; New Orleans City Council Utilities Regulatory Office; North Dakota Public Service Commission; South Dakota Public Utilities Commission; Public Utility Commission of Texas; and Public Service Commission of Wisconsin.

Michigan Public Power Agency and Michigan South Central Power Agency (together, Michigan Agencies)

Midwest Municipal Transmission Group (Midwest Municipal)

People of the State of Illinois

Powerlink Transmission Company LLC (Powerlink)

Resale Power Group of Iowa (Iowa Group)[381]

Southwestern Electric Cooperative, Inc. (Southwestern Electric Cooperative)

Trans Bay Cable LLC (Trans Bay)

Answers to Complaint

MISO TOs[382] (Motion to Dismiss Complaint and Answer to Complaint)
ITC Transmission/METC

[381] Iowa Group is: Amana Society Service Co.; Anita Municipal Utilities; City of Afton; City of Danville; City of Dike; City of West Liberty; Coggon Municipal Utilities; Dysart Municipal Utilities; Farmers Electric Cooperative-Kalona; Grand Junction Municipal Utilities; Hopkinton Municipal Utilities; La Porte City Utilities; Long Grove Municipal Electric Utilities; Mt. Pleasant Municipal Utilities; New London Municipal Utilities; Odgen Municipal Utilities; Sibley Municipal Utilities; Stanhope Municipal Utilities; State Center Municipal Utilities; Story City Municipal Electric Utility, Strawberry Point Utilities; Traer Municipal Utilities; Vinton Municipal Electric Utility; and Whittemore Municipal Utilities.

[382] MISO TOs joining in the motion to dismiss and answer are: ALLETE for its operating division Minnesota Power (and its subsidiary Superior Water, L&P); Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company, and Ameren Transmission Company of Illinois; ATC; Cleco; Duke Energy Corporation for Duke Energy Indiana; Entergy Arkansas; Entergy Louisiana; Entergy Gulf States; Entergy Mississippi; Entergy New Orleans; Entergy Texas; Indianapolis Power & Light Company; ITC Transmission, ITC Midwest, and METC (collectively, ITC Subsidiaries); MidAmerican; Montana-Dakota Utilities; NIPSCO; Northwestern Wisconsin Electric Company; Otter Tail; Vectren; and Wolverine Power.

Vectren

Xcel Energy Services, Inc. (Xcel) on behalf of its utility operating company affiliates Northern States Minnesota and Northern States Wisconsin

Comments and/or Protests

Consumers Energy Company

DTE Electric

Joint Consumer Advocates

Joint Customers[383]

Missouri Commission

Organization of MISO States

Other Motions

Illinois Commission (Motion to File Comments Out of Time and Comments)

Wabash Valley Power Association, Inc. (Wabash Valley) (Out-of-Time Motion to Intervene)

MISO (Motion for Dismissal and, to the Extent Necessary, to Postpone Answer Date, and Request for Expedited Action)

Answers

Joint Consumer Advocates (January 28, 2014) (Motion for Leave to Answer and Answer in Support of Complainants' Answer and Answer of the Resale Power Group of Iowa)

[383] Joint Customers are: Arkansas Electric Cooperative; Mississippi Delta, Clarksdale Commission; Yazoo City Commission; South Mississippi; and Hoosier Cooperative.

Complainants (January 15, 2014) (Answer of Joint Complainants to the Midcontinent Independent System Operator, Inc.'s Motion for Dismissal)

Complainants (January 22, 2014) (Answer to Motion to Dismiss and Motion to Intervene)

Iowa Group (January 22, 2014) (Answer to Motion to Dismiss Complaint)

Powerlink (February 14, 2014) (Motion for Leave to File Answer and Answer)

MISO TOs (February 19, 2014) (Motion for Leave to Reply to Answers to Motion to Dismiss Complaint and to Supporting Intervenors' Comments)

Vectren (February 19, 2014) (Reply to Complainants' Answer to an Answer)

Xcel (February 19, 2014) (Motion for Leave to Answer and Answer)

Trans Bay (February 21, 2014) (Motion for Leave to File Answer and Answer in Response to Answers and Comments)

Ameren Companies[384]/NIPSCO (February 27, 2014) (Motion for Leave to Answer and Answer)

Joint Customers (March 7, 2014) (Motion for Leave to Answer and Answer)

Complainants (March 31, 2014) (Answer, Motion for Leave to Answer, and Answer of Joint Complainants to the Ameren Companies/NIPSCO's Motion for Leave to Answer and Answer)

[384] Ameren Companies are: Ameren Illinois; Ameren Missouri; and Ameren Transmission Company of Illinois.