

150 FERC ¶ 61,022  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.                      Docket No. ER13-2376-002  
Northern Indiana Public Service Company

ORDER ON COMPLIANCE FILING

(Issued January 22, 2015)

1. On May 19, 2014, in compliance with the Commission's March 20, 2014 order,<sup>1</sup> Midcontinent Independent System Operator, Inc. (MISO) and Northern Indiana Public Service Company (NIPSCO) filed proposed revisions to NIPSCO's Attachment O formula rate protocols under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).<sup>2</sup> In this order, we conditionally accept, subject to further compliance, NIPSCO's proposed protocols, to become effective January 1, 2014.

**I. Background**

2. On May 17, 2012, the Commission instituted an investigation, pursuant to section 206 of the Federal Power Act (FPA),<sup>3</sup> to determine whether the formula rate protocols under Attachment O of the Tariff were sufficient to ensure just and reasonable rates.<sup>4</sup> In the Hearing Order, the Commission identified three areas of concern: (1) scope

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<sup>1</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,211 (2014) (March 2014 Order).

<sup>2</sup> MISO FERC Electric Tariff, [42, NIPSCO Annual Rate Calculation and True-Up Procedures, 31.0.0](#). MISO states that it joins this filing as the administrator of its Tariff, but takes no position on the substance of the filing.

<sup>3</sup> 16 U.S.C. § 824e (2012).

<sup>4</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (Hearing Order). In order to address whether MISO's *pro forma* formula rate protocols

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of participation (i.e., who can participate in the information exchange); (2) the transparency of the information exchange (i.e., what information is exchanged); and (3) the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange (i.e., how the parties may resolve their potential disputes).

3. In an order on May 16, 2013, the Commission found that the formula rate protocols under the Tariff were insufficient to ensure just and reasonable rates, and therefore, directed MISO and its transmission owners to file revised formula rate protocols.<sup>5</sup>

4. On September 13, 2013, in compliance with the Commission's May 2013 Order, MISO and NIPSCO, as a transmission owning member of MISO, submitted revised forward-looking Attachment O formula rate protocols. In the March 2014 Order, the Commission conditionally accepted the compliance filing, to become effective January 1, 2014.<sup>6</sup> The Commission found that NIPSCO's revised formula rate protocols appropriately defined the scope of participation in the information exchange and review process.<sup>7</sup> However, the Commission required several adjustments to the protocols provisions related to the transparency of the information exchange process and the ability of customers to challenge transmission owners' implementation of the formula rate, including requiring application of the enhanced protocols to the process for establishing a transmission owner's net projected revenue requirement.<sup>8</sup>

5. On May 19, 2014, in compliance with the Commission's March 2014 Order, MISO and NIPSCO filed proposed revisions to the NIPSCO annual rate calculation and true-up procedures associated with NIPSCO's forward-looking Attachment O to the

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and the formula rate protocols of independent transmission owners are sufficient to ensure just and reasonable rates, the Commission established paper hearing procedures.

<sup>5</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (May 2013 Order).

<sup>6</sup> March 2014 Order, 146 FERC ¶ 61,211 at P 1.

<sup>7</sup> *Id.* P 12.

<sup>8</sup> *Id.* PP 28-37, 53-64.

Tariff. NIPSCO requests that the Commission accept the Tariff revisions effective January 1, 2014.<sup>9</sup>

## **II. Notice and Responsive Pleadings**

6. Notice of NIPSCO's filing was published in the *Federal Register*, 79 Fed. Reg. 30,115 (2014), with comments due on or before June 9, 2014. None was filed.

## **III. Discussion**

7. As discussed below, we conditionally accept NIPSCO's filing, subject to further compliance, to be effective January 1, 2014.

### **A. Transparency**

#### **1. March 2014 Order**

8. The Commission, in the March 2014 Order, conditionally accepted NIPSCO's transparency-related protocols revisions.<sup>10</sup> However, it required NIPSCO to propose the following revisions to the protocols to: (1) provide electronic notice of each transmission owner's formula rate update/true-up to interested parties;<sup>11</sup> (2) provide such notice within 10 days of posting the annual update/true-up and provide notice of the annual meeting no less than seven days prior to such meeting;<sup>12</sup> (3) describe a process for transmission owners with transmission projects that utilize a regional cost sharing mechanism to coordinate and hold joint meetings to enable all interested parties to understand how those transmission owners are implementing their formula rates for cost recovery of such projects;<sup>13</sup> (4) specify that any delay in the publication date should result in an equivalent extension of time for submission of information requests;<sup>14</sup> (5) state that if a certain deadline for interested parties falls on a weekend or holiday recognized by the

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<sup>9</sup> NIPSCO Compliance Filing at 2.

<sup>10</sup> March 2014 Order, 146 FERC ¶ 61,211 at P 1.

<sup>11</sup> *Id.* P 29.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* P 30.

Commission, then the deadline will be extended to the next business day;<sup>15</sup> (6) remove the requirement in section IV.E of the proposed protocols for interested parties to make a good faith effort to consolidate information requests;<sup>16</sup> (7) modify section II.D.8.c to remove language that mandates identification of only any merger or reorganization requiring submission of a filing under section 203 or 205 of the FPA;<sup>17</sup> (8) remove the word “material” from all instances of the phrase “material accounting changes;”<sup>18</sup> (9) revise section II.D.8.a to eliminate NIPSCO’s additional limiting factors for accounting changes, specifically that changes should be limited to the implementation of accounting standards or policies that are required to be disclosed under the FERC Form No. 1 or corrections of errors and prior period adjustments that alter what is reported in the FERC Form No. 1;<sup>19</sup> (10) add language to section III to make clear that the six factors proposed do not unduly constrain interested parties’ information requests by stating that information and document requests shall be limited to what may be necessary to determine six specific inquiry categories, or “any other information that may reasonably have a substantive effect on the calculation of the rate pursuant to the formula;”<sup>20</sup> (11) include a provision precluding a transmission owner from claiming that responses to information and document requests pursuant to the protocols are subject to any settlement provision;<sup>21</sup> (12) require all MISO transmission owners to submit informational filings in separate docket numbers;<sup>22</sup> and (13) provide notification of transmission owners’ informational filings through the email “exploder” list to be maintained by MISO, and by posting the docket number assigned to each transmission owner’s informational filing on the MISO website and OASIS within five days of such filing.<sup>23</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* P 31.

<sup>17</sup> *Id.* P 32.

<sup>18</sup> *Id.* P 33.

<sup>19</sup> *Id.* P 34.

<sup>20</sup> *Id.* P 35.

<sup>21</sup> *Id.* P 36.

<sup>22</sup> *Id.* P 37.

<sup>23</sup> *Id.*

## 2. NIPSCO's Filing

9. In response to the Commission's first two transparency directives, which relate to notice for the provision of annual updates or true-ups, NIPSCO proposes to revise sections II.B, III.B and IV.B to state that notification of the posting of the annual true-up on the MISO website and OASIS will be made through an email exploder list maintained by MISO within 10 calendar days of the posting and notice of the annual meeting within seven days of the meeting.<sup>24</sup> In response to the Commission's third transparency directive, to coordinate and hold meetings for transmission projects with regional cost sharing, NIPSCO proposes to revise section IV.H to specify that, to the extent that NIPSCO has a transmission project that utilizes a regional cost sharing mechanism, NIPSCO shall coordinate with the other transmission owners to establish joint meetings to enable all interested parties to understand how the formula rates for the cost recovery of such projects are being implemented.

10. NIPSCO proposes no Tariff revisions in response to the Commission's fourth transparency directive regarding the corresponding extension of time for information requests with any delay in the publication date of annual updates or true-ups. NIPSCO proposes to modify sections IV.E. and V.A to comply with the Commission's fifth transparency directive, to specify that if deadlines for interested parties fall on a weekend or holiday recognized by the Commission that the deadline be extended to the next business day.<sup>25</sup>

11. In response to the Commission's sixth transparency directive, removing language requiring a good faith effort for parties to consolidate information requests, NIPSCO proposes to revise section IV.E to remove such a requirement.<sup>26</sup> In response to the Commission's seventh transparency directive regarding the identification of mergers and reorganizations, NIPSCO has removed the phrase "that requires submission of a filing under section 203 or 205 of the [FPA]" from section II.D.8.c. In response to the Commission's eighth transparency directive, to remove the word "material" from "material accounting changes," NIPSCO proposes to remove "material" from sections II.D.8, III.D.9, IV.E.1, and V.D. In response to the Commission's ninth transparency directive regarding the removal of certain Tariff provisions limiting accounting changes, NIPSCO proposes to remove such language from sections II.D.8 and II.D.9.

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<sup>24</sup> NIPSCO Compliance Filing at 3-4.

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

<sup>26</sup> *Id.*

12. With respect to the Commission's tenth transparency directive, to ensure the availability of information to interested parties, NIPSCO proposes to revise section IV.E to include the language required by the Commission.<sup>27</sup> In response to the Commission's eleventh transparency directive regarding claiming that information and document requests are subject to settlement provisions, NIPSCO proposes revisions to section IV.F to state that it is precluded from asserting confidentiality on the basis of any Commission settlement agreement.

13. NIPSCO proposes no Tariff revisions in response to the Commission's twelfth transparency directive, requiring all MISO transmission owners to submit informational filings in separate dockets. In response to the Commission's thirteenth transparency directive, regarding notice of informational filings, NIPSCO proposes to revise sections II.B, III.B, IV.B, and VII.A to describe how MISO shall provide notice of informational filings.<sup>28</sup>

### 3. Commission Determination

14. We find that the provisions in NIPSCO's proposed protocols relating to transparency generally comply with the requirements of the March 2014 Order. We therefore conditionally accept them, subject to further compliance, as discussed below.

15. NIPSCO did not respond to the Commission's fourth transparency directive, to specify that any delay in the publication date should result in an equivalent extension of time for submission of information requests. Accordingly, we direct NIPSCO, in a compliance filing due within 30 days of the date of this order, to propose revisions to its formula rate protocols to respond to this directive.

16. With respect to the Commission's eleventh transparency directive regarding settlement privilege, we find that NIPSCO's proposed Tariff language precluding it from asserting confidentiality on the basis of any FERC settlement agreement is overly narrow. Consistent with the proposed language that the Commission has accepted for the MISO transmission owners,<sup>29</sup> we direct NIPSCO, in a compliance filing due within 30 days of the date of this order, to propose Tariff revisions precluding it from invoking settlement

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025, at P 20 (2015). [Note to OSEC: please cite to the concurrent order in Docket No. ER13-2379-002 and 003, January 22<sup>nd</sup> Agenda Item E-12]

privilege rather than only precluding it from invoking settlement privilege pursuant to a settlement agreement.

17. NIPSCO also did not respond to the Commission's twelfth transparency directive, requiring all MISO transmission owners to submit informational filings in separate dockets. We direct NIPSCO, in a compliance filing due within 30 days of the date of this order, to propose Tariff language, consistent with the language proposed by the MISO transmission owners and accepted by the Commission,<sup>30</sup> specifying that NIPSCO will file its annual informational filing in a separate docket. NIPSCO should file such informational filings in a new docket each year.

## **B. Challenge Procedures**

### **1. March 2014 Order**

18. In the March 2014 Order, the Commission conditionally accepted NIPSCO's challenge procedure-related protocols revisions.<sup>31</sup> However, it required NIPSCO to propose the following revisions to the protocols to: (1) enable interested parties to present informal challenges after a reasonable opportunity to evaluate all of NIPSCO's responses to information requests;<sup>32</sup> (2) modify section V.D to broaden the scope of issues that interested parties may raise in informal and formal challenges to include "any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula;"<sup>33</sup> (3) allow interested parties to raise substantive issues in a formal challenge that they did not raise in their preceding informal challenge;<sup>34</sup> (4) ensure that the Commission and interested parties are not precluded from exercising their rights under section 206 of the FPA;<sup>35</sup> (5) make clear that formal challenges are filed pursuant to the proposed protocols, rather than FPA section 206, and detail the specifying filing requirements that an interested party must satisfy in submitting a formal challenge to the Commission;<sup>36</sup> (6) clarify that formal challenges must be made in the

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<sup>30</sup> *Id.*

<sup>31</sup> March 2014 Order, 146 FERC ¶ 61,211 at P 53.

<sup>32</sup> *Id.* P 54.

<sup>33</sup> *Id.* P 57.

<sup>34</sup> *Id.* P 58.

<sup>35</sup> *Id.* P 60.

informational filing docket;<sup>37</sup> and (7) explain how the protocols' challenge procedures will ensure that customers have access to information that will allow them to effectively challenge the implementation of the formula rate or revise the protocols to ensure that they do.<sup>38</sup>

## 2. NIPSCO's Filing

19. In response to the Commission's first challenge procedure directive, regarding providing adequate time to evaluate responses to information requests before presenting informal challenges, NIPSCO proposes to revise section V.A to specify that interested parties have until January 31 to make informal challenges. This is more than a month after the December 20 deadline for NIPSCO to respond to information requests. NIPSCO also proposes that it will make a good faith effort to respond to any informal challenges within 15 business days of their receipt, to file its annual informational filing on March 1, and to require interested parties to make formal challenges to make formal challenges by the date established by the Commission in the notice of the informational filing. In response to the second challenge procedure directive, regarding the scope of issues that information parties may challenge, NIPSCO proposes to revise section V.D to permit informal or formal challenges on "any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula."<sup>39</sup>

20. In response to the Commission's third challenge procedure directive, allowing interested parties to raise issues in the formal challenge that they did not in the informal challenge, NIPSCO proposes to revise section V.G to only restrict parties from raising formal challenges if they did not raise an informal challenge. To address the Commission's fourth challenge procedure directive, ensuring the preservation of statutory rights for the Commission and interested parties, NIPSCO proposes to add a language to section V.I stating that nothing in the protocols limits the ability of the Commission or interested parties to initiate complaint proceedings pursuant to section 206 of the FPA. In response to the Commission's fifth challenge procedure directive, to make clear that challenges are pursuant to protocols and what requirements they must file, NIPSCO

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<sup>36</sup> *Id.* P 62.

<sup>37</sup> *Id.* P 63.

<sup>38</sup> *Id.* P 64.

<sup>39</sup> NIPSCO Compliance Filing at 4.

proposes revisions to section V.B which state that formal challenges are filed pursuant to protocols and describe the details that a filing party must provide in making a challenge.<sup>40</sup>

21. With respect to the Commission's sixth challenge procedure directive, regarding filing formal challenges in the informational filing dockets, NIPSCO proposes revisions to section V.B to specify that formal challenges should be filed in NIPSCO's informational filing docket. Finally, in response to the Commission's seventh challenge procedure directive, regarding ensuring that customers have access to needed information, NIPSCO proposes revisions to section V.E describing the non-disclosure agreements that customers can sign to obtain certain information.<sup>41</sup>

### **3. Commission Determination**

22. We conditionally accept NIPSCO's proposed revisions to the challenge procedures of its protocols. We find that its revisions meet the Commission's directives as stated in the March 2014 Order. However, consistent with the Commission's directive to the MISO transmission owners,<sup>42</sup> we direct NIPSCO, in its compliance filing due within 30 days of the date of this order, to modify the deadline for submitting a formal challenge with the Commission to April 1 instead of the date established by the Commission in the notice of NIPSCO's informational filing. Consistent with the formal challenge deadline accepted by the Commission for the MISO transmission owners, this date provides customers with one month following NIPSCO's informational filings to make formal challenges. We find that a specific date for formal challenges is necessary to provide certainty and note that the informational filing will not be noticed by the Commission.<sup>43</sup>

The Commission orders:

(A) NIPSCO's filing is hereby accepted, subject to a further compliance filing, to become effective January 1, 2014, as discussed in the body of this order.

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 4-5.

<sup>42</sup> *See Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 at P 55.

<sup>43</sup> March 2014 Order, 146 FERC ¶ 61,211 at P 29.

(B) NIPSCO is hereby directed to submit revisions to the protocols in a compliance filing, due within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Honorable is voting present.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.