

139 FERC ¶ 61,262  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Maine Public Service Company

Docket Nos. ER12-1650-000  
EL12-76-000

ORDER ACCEPTING FOR FILING, SUSPENDING, AND SETTING FOR HEARING  
PROPOSED TARIFF REVISIONS;  
INITIATING INVESTIGATION; CONSOLIDATING PROCEEDINGS; AND  
ESTABLISHING SETTLEMENT JUDGE PROCEDURES

(Issued June 28, 2012)

1. On April 30, 2012, Maine Public Service Company (MPS) filed revisions to its Open Access Transmission Tariff (OATT). These proposed revisions change certain items in its formula rate (MPS Formula Rate) and add Formula Rate Annual Review Protocols (Annual Review Protocols) to its OATT.
2. In this order, we accept MPS's OATT revisions and additions for filing, suspend them for a nominal period, to become effective July 1, 2012, subject to refund, and set them for hearing and settlement judge procedures as ordered below.
3. MPS states that the proposed changes will result in a net decrease in charges to MPS's existing customers when compared to the charges that would result under its currently effective Formula Rate. As discussed below, we are also instituting an investigation pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> in Docket No. EL12-76-000 to determine whether the proposed reduction is just and reasonable. For that investigation, we establish a refund effective date of the date the notice of the initiation of the investigation in Docket No. EL12-76-000 is published in the Federal Register. Finally, given the common issues of fact and law, we will consolidate Docket Nos. ER12-1650-000 and EL12-76-000 for purposes of hearing and decision.

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<sup>1</sup> 16 U.S.C. § 824e (2006).

## I. Background

4. Maine Public Service Company (MPS) is an electric utility providing transmission service to customers in northern Maine.<sup>2</sup> MPS neither owns generation nor engages in wholesale marketing of generation. The MPS transmission system comprises approximately 380 miles of transmission lines with a total load of approximately 125 MW.<sup>3</sup> In 1999, MPS was accepted as a transmission owning member of the Northern Maine Independent System Administrator, Inc.<sup>4</sup>

5. MPS offers its transmission services pursuant to the MPS OATT,<sup>5</sup> which sets forth MPS's formula rate and procedures for revising those rates.<sup>6</sup> In conjunction with the MPS OATT, on June 30, 2000, MPS filed a Settlement Agreement (2000 Settlement Agreement) to establish a formula rate which would result in annual updated charges effective on June 1 of each year. The 2000 Settlement Agreement provided for MPS to inform interested parties and submit informational filings to the Commission regarding those updates on an annual basis. The 2000 Settlement Agreement further established a Triennial Review of the formula rate and provided that MPS would submit a filing pursuant to section 205 of the FPA<sup>7</sup> for purposes of restating or revising the formula rate in the event MPS and interested parties were unable to reach agreement.<sup>8</sup> The 2000 Settlement Agreement was approved by the Commission on September 15, 2000.<sup>9</sup> MPS states that, since the 2000 Settlement, it has conducted three Triennial Reviews, the most

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<sup>2</sup> Transmittal at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Northern Maine Independent System Administrator, Inc.*, 89 FERC ¶ 61,179 (1999).

<sup>5</sup> Maine Public Service Company, FERC Electric Tariff, Second Revised Volume 4(0.0.0), Attachment J Rate Formulas, Rate Schedules and Statements (0.0.0).

<sup>6</sup> Transmittal at 3.

<sup>7</sup> 16 U.S.C. § 824d (2006).

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

<sup>9</sup> *Maine Public Service Co.*, 92 FERC ¶ 61,208 (2000) Letter Order Approving Settlement, Docket No. ER00-1053-000 (September 15, 2000).

recent resulting in a settlement agreement in April 27, 2010 (2010 Settlement Agreement), which established a further Triennial Review for 2012.<sup>10</sup>

## **II. Description of Filing**

6. MPS states that it seeks to implement certain changes to the MPS Formula Rate, including both changes to the adjustments to the formula itself and the development of Annual Review Protocols to govern the process of reviewing the formula rates. MPS further states that, although the 2010 Settlement Agreement required it to use best efforts to meet with its customers to discuss the MPS Formula Rate by March 1, 2012, MPS did not do so because certain of MPS's customers are in the process of becoming affiliates of MPS, and MPS was concerned that meeting with those future affiliates could raise issues related to the Commission's standards of conduct, since such a meeting could include discussion of non-public transmission information.

7. As to the proposed adjustments to its formula rate, MPS states that those adjustments will allow MPS to recover its costs on a more accurate and timely basis. MPS states that its current formula rate is a backward-looking rate which uses inputs from MPS's Annual Report of Major Electric Utility (FERC Form 1). The FERC Form 1 identifies costs that MPS incurred during the previous calendar and MPS uses this information to update its annual rate on June 1 of each year. MPS states that under this method, it may take up to 18 months for MPS to recover its costs. MPS asserts that the proposed changes will allow MPS to ensure that its transmission rates properly recover its costs on a timely basis.

### **A. Outside Regulatory Expenses**

8. MPS proposes to change the recovery of its outside regulatory expenses<sup>11</sup> to a single prior year cost recovery calculation. MPS currently recovers its outside regulatory expenses on a three-year rolling average. MPS states that the use of a three-year rolling average exacerbates the lag between when a cost is incurred and when it is recovered. MPS believes the use of a rolling average cost, rather than actual costs, means that in a given rate year MPS may over- or under-recover the actual outside regulatory expenses incurred in the previous year.

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<sup>10</sup> Transmittal at 4, citing April 2010 Settlement Agreement at Section 2.4.

<sup>11</sup> Outside Regulatory Expenses – Schedules 1.b and 1.b.1.

**B. Rate Base Calculation**

9. MPS proposes to change to an end-of-year rate base to calculate its annual transmission rate. MPS currently uses a 13-month average rate base to calculate its annual transmission rate. MPS states that the use of a 13-month average rate base results in a significant delay between the time when a facility is added to the MPS system and when MPS can include those facilities in its rates. MPS states that an end-of-year rate base calculation will also allow retired facilities to be removed from rate base earlier than if a 13-month rate base calculation is used. Thus, MPS states that using end-of-year rate base calculation will more closely align MPS's rate base with what is actually being used to serve customer needs.

**C. Cost Allocators**

10. MPS proposes to revise Statement AL to incorporate the same transmission plant allocator as used in Statement AK. Statement AL of the MPS Formula Rate is the calculation of the Transmission Wheeling Rate. Statement AK calculates taxes other than income taxes that are included in the Transmission Wheeling Rate. MPS states that using the same plant allocator in Statement AL and Statement AK will ensure that all transmission plant is properly allocated.

**D. Deferred Income Taxes**

11. Analysis of Deferred Income Taxes is provided on Statements AF\_1 and AF\_2 of the MPS Formula Rate. MPS proposes adding a line item to Statement AF\_2<sup>12</sup> to reflect amounts recorded in Account 254, Other Regulatory Liabilities. MPS states that the addition of this account to the MPS Formula Rate results in a reduction in deferred income tax expense.

**E. Formatting Changes**

12. MPS proposes clean-up changes to the formatting and text of the MPS Formula Rate. MPS states that these changes are for consistency only and are not intended to change the calculation of the rate.

**F. Waiver Request and Comparison to Existing Rate Formula**

13. As noted above, MPS's transmission charges automatically update each June 1 based on the MPS Formula Rate. MPS requests that its proposed changes here go into

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<sup>12</sup> Analysis of Deferred Income Taxes is provided on Statements AF\_1 and AF\_2 of the MPS Formula Rate.

effect on July 1, 2012, and, in order to account for the one-month difference, MPS attaches to its filing Exhibit A, which contains a populated version of the currently effective formula rate establishing the update charges to go into effect on June 1, 2012. Exhibit B reflects a populated version of the proposed rate formula. MPS states that a comparison of Exhibit A and Exhibit B shows that for all existing customers and their anticipated usage, transmission rates will go down. MPS states that although there are elements of the overall charges that will increase slightly as a result of the proposed changes, existing customers will experience an overall net decrease in their transmission charges beginning July 1, 2012.

14. MPS requests waiver of the requirement to provide full Period I and Period II cost of service statements, pursuant to 18 C.F.R. § 35.13 (2011), stating that the populated versions of the rate formulae provided as Exhibit A and Exhibit B are sufficient for the Commission and interested parties to determine the impact of the formula rate changes proposed. MPS states that the Commission has granted similar waivers in other cases involving formula rates.

15. MPS states that since 2000 MPS has engaged in annual updates and settlement negotiations with ratepayers and other interested parties, a process that involves extensive negotiations, filings and settlement proceedings. MPS proposes to streamline this process by establishing a set of Annual Review Protocols.<sup>13</sup> The proposed Annual Review Protocols are procedures for reviewing and challenging inputs to the MPS Formula Rate and establishes a process through which parties may seek resolution of disputes both informally and formally before the Commission. MPS states that the proposed Annual Review Protocols will be added to Attachment J of the MPS OATT.

16. Finally, MPS states that the proposed Annual Review Protocols will simplify the current process by which parties may challenge the inputs to the MPS Formula Rate.

### **III. Notice of Filing and Responsive Pleadings**

17. Notice of MPS's Filing was published in the *Federal Register*, 77 Fed. Reg. 27,026 (2012), with interventions and protests due on or before May 30, 2012.

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<sup>13</sup> Most significantly, MPS proposes dates by which (a) MPS will provide copies of the Formula Rate populated with the information used to calculate the charges that will go into effect thereafter; (b) parties may serve MPS with information requests regarding the newly-populated Formula Rate; and (c) parties may notify MPS of specific challenges related to the application of the Formula Rate, and, if those challenges are not resolved, may file a challenge related to the application of the Formula Rate with the Commission. The Annual Review Protocols also provide for dates by which annual updates shall become final, subject to judicial review of Commission orders.

18. Timely-filed motions to intervene were filed by Maine Public Advocate, Eastern Maine Electric Cooperative, and the Northern Maine Independent System Administrator. Van Buren Light and Power District filed a motion to intervene out-of-time.
19. The Maine Public Utilities Commission (MPUC) filed a notice of intervention and comments, and Houlton Water Company (Houlton Water) filed a timely motion to intervene and protest.
20. On June 13, 2012, MPS submitted an answer to the comments and protest, and on June 14, 2012, Houlton Water submitted an answer to MPS's answer.

**A. Protests and Comments**

21. MPUC states that Commission regulations require the use of 13-month average account balances, unless the Commission grants a waiver, for which the utility is required to show that the information required for the 13-month average is either unavailable or unrepresentative of the utility's current plan for plant in service.<sup>14</sup> MPUC states that it does not take a position on whether the end-of-year balance calculation of rate base as proposed by MPS is appropriate, but that it reserves the right to supplement its filing if more information is provided about the need for MPS to deviate from the requirements of the Commission's 13-month average rule for plant balances in rate base.
22. MPUC also states that it reserves the right to supplement its filing once it has more information on the facts surrounding the over-collection of deferred taxes and possible options for flowing back over-collected amounts to customers. MPUC also states that because bond and equity yields and other indicia of expected returns on equity (ROE) have changed substantially since 2006 when MPS's ROE was established, it is appropriate to consider whether MPS's ROE should be adjusted to reflect changed market and financial conditions.
23. MPUC requests that the Commission provide an opportunity for interested persons to work with MPS to ensure that the proposed Annual Review Protocols do not reduce opportunities for interested persons to investigate and comment on the formula rate inputs.
24. Houlton Water requests that the filing be suspended for one day and set for hearing. Houlton Water states that MPS's proposal conflicts with the Commission's regulations and precedent and, absent waiver, require use of 13-month average account

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<sup>14</sup> MPUC comments at 2-3, citing 18 C.F.R. § 35.13(4)(i) (2011).

balances.<sup>15</sup> Houlton Water also challenges MPS's ROE. It believes MPS's proposed Formula Rate is unjust and unreasonable, arguing that the 10.5 percent ROE included in the retail and wholesale sales is excessive, due to current capital market conditions. Houlton Water states that it has performed a Discounted Cash Flow (DCF) cost-of-equity analysis using current financial market data consistent with Commission-approved DCF methodology, which demonstrates that MPS's proposed 10.5 percent cost of equity is excessive.

25. Houlton Water further believes MPS's proposed Formula Rate is unjust and unreasonable, arguing that it adds an unnecessary account instead of simply fixing MPS's error in implementing the Formula Rate. Houlton Water also asks the Commission to reject MPS's proposed new Annual Review Protocols because they would bar customer challenges to the annual update.<sup>16</sup> Houlton Water further asks that the Commission clarify that MPS's proposed new protocols do not apply to MPS's annual update that already took effect on June 1, 2012.

## **B. Answers**

26. In response to Houlton Water's protest, MPS reiterates that it is appropriate to use year-end rate base amounts in its transmission formula rather than a 13-month average rate base, because MPS's formula rate is backward-looking and the cases cited by Houlton Water involve forward-looking formula rates. MPS further states that it is necessary to add Account No. 254, "Other Regulatory Liabilities," as a new line item on Statement AF\_2 on a going-forward basis, in order to effectuate refunds to customers resulting from over-recovery of deferred tax expenses. MPS additionally asserts that its proposed formula rate review protocols are just and reasonable, because they establish a clear process for reviewing and challenging inputs to the formula rate, both on a formal and informal basis.

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<sup>15</sup> Houlton Water protest at 3, citing 18 C.F.R. § 35.13(h)(4)(i) (2011) (requiring the use of 13-month average plant balances). Houlton Water also cites to cases in which, it alleges, the Commission required use of the 13-month averaging method. Houlton Water protest at 3, citing *Xcel Energy Services, Inc.*, 125 FERC ¶ 61,092, at P 17 (2008); *American Electric Power Service Corp.*, 121 FERC ¶ 61,245, at P 12 (2007); and *San Diego Gas & Electric Co.*, 118 FERC ¶ 61,073, at P 29 (2007).

<sup>16</sup> Houlton Water asserts that, among other deficiencies, the proposed new protocols unduly restrict customers' rights to discovery, do not correctly state MPS's burden of proof during a challenge to an annual update, do not allow the Commission and parties to review the formula on a regular basis, and do not accommodate changes in Commission accounting policy. Houlton Water protest at 9-19.

27. MPS also states that it has not proposed to change its stated ROE of 10.5 percent, so Houlton Water inappropriately challenges that ROE here. MPS argues that Houlton Water must make this challenge through a filing under section 206 of the FPA, not as a protest to a section 205 filing, and, in any case, MPS's ROE continues to fall within the zone of reasonableness of a properly constructed DCF analysis. MPS states:

That [10.5 percent ROE] was agreed to in 2006 by settlement [(2006 Settlement Agreement)] executed by, among others, [Houlton Water]. As is relevant here, that settlement provides: “A fixed 10.5% return on common equity shall be used. The formula makes clear that *the return on common equity may not be changed unless pursuant to section 205 or 206 of Federal Power Act*, 16 U.S.C. §§ 824d, 824e.”<sup>17</sup>

MPS states that, even apart from this 2006 Settlement Agreement, Houlton Water may not use MPS's section 205 proceeding involving revisions to MPS's formula rate as a means to question MPS's ROE. MPS asserts that the Commission has held that unchanged tariff provisions (in this case MPS's ROE) are not subject to revision as part of a section 205 filing.<sup>18</sup>

28. MPS similarly argues that its update to its composite tax rate is just and reasonable, resulting from the 2010 indirect acquisition of MPS by Emera Incorporated (Emera), and the higher federal tax rate imposed on MPS as a result of that transaction.

29. In its answer to MPS's answer, Houlton Water states that MPS improperly relies on the 2006 Settlement Agreement. Houlton Water states that the 2006 Settlement Agreement was superseded by the 2010 Settlement Agreement, which does not contain the language prohibiting challenges to the ROE on which MPS relies.

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<sup>17</sup> MPS answer at 17, citing *Me. Pub. Serv. Co.*, Docket Nos. ER00-1053-010, ER00-1053-018, Settlement Agreement dated December 22, 2006, at 3 (emphasis added). The Commission approved the December 22, 2006 settlement by letter order dated February 8, 2007.

<sup>18</sup> MPS answer at 17, citing *Pepco Holdings*, 125 FERC ¶ 61,130, at P 113 (2008); *MidAmerican Energy Co.*, 137 FERC ¶ 61,250, at P 71 (2011) (dismissing complaint included in protest submitted in section 205 proceeding); and *Michigan Electric Transmission Company, LLC*, 116 FERC ¶ 61,164, at P 12 (2006) (“[A]s the proponents of a change in an unchanged component of rates, the protestors bear the burden under section 206 of the FPA to show that the existing ROE is unjust and unreasonable and that a specific replacement ROE and capital structure are just and reasonable.”).

30. Houlton Water reiterates its objections to MPS's proposed use of end of year rate base numbers and Account 254 and its proposed Account Review Protocols.

#### **IV. Discussion**

##### **A. Procedural Matters**

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

32. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant Van Buren Light and Power District's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits answers to a protest and answers to answers unless otherwise ordered by the decisional authority. We will accept the answers here because they have provided information that assisted us in our decision-making process.

##### **B. Hearing and Settlement Judge Procedures**

34. We find that MPS's proposed revisions and additions to its OATT raise 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.

35. Our preliminary analysis indicates that MPS's proposed revisions and additions to its OATT have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept the OATT revisions and additions for filing, suspend them for a nominal period, to become effective July 1, 2012, subject to refund, and set MPS's formula rate for hearing and settlement judge procedures, as ordered below.<sup>19</sup>

36. MPS states in its transmittal letter that "as a result of the changes . . . for all existing customers and their anticipated usage, transmission rates will go down" and that "existing customers will experience an overall net decrease in their transmission charges," although "there are elements of the overall charges that will increase slightly up

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<sup>19</sup> See *NSTAR Electric Company*, 120 FERC ¶ 61,027, at P 47 (2007) (*NSTAR*) ("we set for hearing [certain specific provisions] and any other rate, term, or condition other than what was approved for each subsidiary of NSTAR").

as a result of the changes proposed herein."<sup>20</sup> However, it may be that some of the elements of MPS's formula rate may change in unanticipated ways as a result of the review of MPS's filing in Docket No. ER12-1650-000; thus, it is not clear at this point whether customers will ultimately experience a rate increase or a rate decrease. Therefore, as in previous cases, because a further rate decrease may be appropriate, we will institute a section 206 investigation in Docket No. EL12-76-000 with respect to the justness and reasonableness of MPS's proposed rate decrease.<sup>21</sup> We note that all components of the formula rate, including those not proposed to be changed by MPS or raised in a protest, with the exception of the ROE as discussed below, are the subject of this investigation. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date. We establish as a refund effective date the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL12-76-000 is published in the *Federal Register*. Finally, given the common issues of fact and law, we will consolidate Docket Nos. ER12-1650-000 and EL12-76-000 for purposes of hearing and decision.

37. We will, however, exclude from this consolidated proceeding the issue of the justness and reasonableness of MPS's ROE. As MPS points out in its answer, a settlement that it entered into in 2006 explains that the ROE may not be changed except pursuant to FPA section 205 or 206, and MPS has not sought in its section 205 filing to change its ROE, and correspondingly we will not seek in our section 206 investigation to change MPS's ROE.<sup>22</sup>

38. Houlton Water argues that the most recent settlement between MPS and its customers does not contain language prohibiting customers from challenging the ROE when MPS makes a section 205 filing to change its rates, and that in a prior proceeding, Houlton Water did challenge the ROE and its challenge was incorporated in the settlement approved by the Commission in 2006.<sup>23</sup> However, the parties' 2006 Settlement Agreement clearly prohibits any party from urging a change to ROE except

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<sup>20</sup> MPS transmittal at 7.

<sup>21</sup> *NSTAR*, 120 FERC ¶ 61,027 at PP 58-59. See also *Southwestern Electric Power Company*, 36 FERC ¶ 61081, order on reh'g, 37 FERC ¶ 61,325, at 61,946 (1986) and *Pacific Gas and Electric Company*, 105 FERC ¶ 61,389, at PP 14-15 (2003).

<sup>22</sup> MPS answer at 3.

<sup>23</sup> Houlton Water answer at 2.

through a filing under section 205 or section 206, and although the 2010 Settlement Agreement does not reiterate this language, neither does it specifically repeal or change it. We therefore find Houlton Water's request to change MPS's ROE to be beyond the scope of this proceeding. Moreover, we note that Houlton Water's filing challenges MPS's existing OATT and, therefore, is more appropriately characterized as a complaint on that broader issue than as a protest. As we have noted, "the Commission discourages the combination of complaints with other types of filings, including protests."<sup>24</sup>

39. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid 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.<sup>25</sup> 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.<sup>26</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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.

### C. Other Issues

40. MPS requests waiver of section 35.13 of the Commission's regulations, and waiver of the requirement to provide full Period I and Period II data and work papers and cost of service statements in sections 35.13(a)(2)(iv), 35.13(d)(1), (2), (5) and (6) and 35.13(h) of the Commission's regulations.

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<sup>24</sup> *Otter Tail Power Co.*, 137 FERC ¶ 61,255, at P 23 (2011).

<sup>25</sup> 18 C.F.R. § 385.603 (2011).

<sup>26</sup> 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 (5) days of the date 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>).

41. We will grant MPS's request for waiver of the filing requirements set forth in section 35.13 of the Commission's regulations. Prior Commission orders<sup>27</sup> have granted waiver of cost support in formula rate proceedings because the formula rates used FERC Form 1 data, and therefore, full Period I and Period II data were not needed to evaluate those proposals. MPS has submitted, as Exhibit A, a populated version of the currently-effective formula rate establishing the update charges to go into effect on June 1, 2012 and a populated version of the proposed rate formula as Exhibit B to go into effect on July 1, 2012. Exhibit A and Exhibit B use data generated from MPS's FERC Form 1 and should be sufficient for interested parties to determine the impact of the proposed formula rate changes.

42. We further clarify, as Houlton Water requests, that MPS's proposed new protocols do not apply to MPS's annual update that took effect on June 1, 2012.

The Commission orders:

(A) MPS's revised Formula Rate and Annual Review Protocols are hereby accepted for filing and suspended for a nominal period, to become effective July 1, 2012, subject to refund.

(B) 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 in Docket No. ER12-1650-000 concerning all aspects of MPS's Formula Rate and Annual Rate Protocols, other than its return on equity.

(C) 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 section 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 in Docket No. EL12-76-000 concerning all aspects of MPS's Formula Rate and Annual Rate Protocols, other than its return on equity.

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<sup>27</sup> *Allegheny Power System Operating Companies*, 111 FERC ¶ 61,308, at P 56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009).

(D) Docket No. EL12-76-000 is hereby consolidated with Docket No. ER12-1650-000 for purposes of hearing and decision. However, the consolidated hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), 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.

(F) Within thirty (30) days of the date of this order, 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.

(G) 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.

(H) The presiding administrative law judge shall advise the Commission, no later than fifteen (15) days prior to the refund effective date established in Docket No. EL12-76-000, in the event that the presiding judge has not by that date certified to the Commission a settlement which, if accepted, would dispose of the proceeding or issued an initial decision, as to the status of the proceeding and a best estimate as to when the proceeding will be disposed of by the presiding judge.

(I) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding in Docket No. EL12-76-000.

(J) The refund effective date in Docket No. EL12-76-000, established pursuant to section 206(b) of the Federal Power Act, will be the date that the notice of the initiation of the investigation in that docket is published in the Federal Register.

By the Commission. Commissioner Clark is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.