149 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

E.ON Climate & Renewables North America LLC, Pioneer Trail Wind Farm, LLC, Settlers Trail Wind Farm, LLC

Docket No. EL14-66-000

v.

Northern Indiana Public Service Company

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 8, 2014)

1. On June 10, 2014, E.ON Climate & Renewables North America LLC (E.ON North America), Pioneer Trail Wind Farm, LLC (Pioneer Trail), and Settlers Trail Wind Farm, LLC (Settlers Trail) (collectively, E.ON) filed a complaint (Complaint) against Northern Indiana Public Service Company (NIPSCO) pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA)[1] and Rule 206 of the Commission's regulations,[2] arguing that the so-called "Multiplier" provisions contained in two Transmission Upgrade Agreements (TUAs) between E.ON and NIPSCO are unjust, unreasonable, and unduly discriminatory.

2. E.ON requests that the Commission direct NIPSCO to revise the TUAs to remove the Multiplier provisions from the TUAs, and require the TUAs to provide solely for the participant funding of the capital costs of the network upgrades. Alternatively, E.ON requests that the Commission direct NIPSCO to revise the TUAs to limit the Multiplier to only those costs that are directly related to the underlying network upgrades and that are actually incurred by NIPSCO. In this order, we grant in part the relief requested in the

[1] 16 U.S.C. §§ 824e, 825e, 825h (2012).

[2] 18 C.F.R. § 385.206 (2014).

Complaint and set certain matters for hearing and settlement judge procedures. As discussed below, we establish hearing and settlement judge procedures to determine the costs that will be incurred by NIPSCO for ownership and operation of the network upgrades covered by the TUAs. Further, we establish a refund effective date of June 10, 2014.

I. Background

3. Pioneer Trail and Settlers Trail, affiliates of E.ON North America, own and operate two 150 MW wind generation facilities located in Illinois and interconnected with the Midcontinent Independent System Operator, Inc. (MISO) by way of generator interconnection agreements (GIAs) with Ameren Illinois Company.[3] E.ON states that almost immediately upon commencing operation, the generators suffered regular and severe curtailments by MISO.[4] E.ON alleges that none of the studies performed by MISO during the interconnection process identified the potential for high levels of curtailment.[5]

4. E.ON states that Pioneer Trail and Settlers Trail, together with nine other generators (collectively, Upgrade Sponsors), commissioned MISO to do an Optional Study (the C010 Study), which identified thermal constraints on the NIPSCO system that prevented the Upgrade Sponsors from dispatching their wind resources at nameplate capacities. The study evaluated two alternative sets of network upgrades that would be able to remove the identified thermal violations. E.ON states that MISO took the position that the transmission system upgrades identified in the C010 Study would require customer funding and that the MISO Tariff does not have a mechanism or a *pro forma* facilities construction agreement that could be used in this instance, and MISO instructed E.ON to deal directly with NIPSCO.[6]

5. E.ON states that NIPSCO proposed two separate TUAs for the network upgrades, one for facilities rated at 69 kV and a second for facilities rated at 138 kV, each of which involved a different group of overlapping counterparties. According to E.ON,

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[3] Complaint at 7.

[4] E.ON states that these curtailments have ranged from 25 to 95 percent for Settlers Trail and a lesser amount for Pioneer Trail. For 2013, E.ON calculated that the generators lost between $9.8 and $11.7 million due to this level of curtailment. *Id.* at 11.

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

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

> [t]hese proposed agreements provided for the Upgrade Sponsors to pay for all of the capital and related costs for the identified projects, and also provided for the Upgrade Sponsors to pay a so-called Multiplier, which included additional costs such as O&M [operation and maintenance] expenses, taxes, return, and depreciation.[] The Multiplier projected expenses for a 35-year term and then reduced that revenue stream to a present value, which would be paid in full prior to the in-service date of the network upgrades. The Multiplier provision increased the total costs to be borne by the Upgrade Sponsors to 171 percent of the projects' capital costs, increasing the cost of the network upgrades from $50,394,638 to $86,174,831.[]**7**

6. E.ON further explains that, in developing the Multiplier,

> NIPSCO borrowed formulas from Attachment N and Attachment N-1 from MISO's Tariff and populated the formulas using numbers from "2013 Forward Looking Attachment O inputs" to calculate a "fixed charge rate."[] Under MISO Tariff Attachment N-1, this charge includes, inter alia, an "[a]pplicable ROE under Attachment O for general use" of 12.38%, depreciation expense, and other traditional cost-of service elements. Under the TUAs, the fixed rate charge, also called the "Facility Carrying Charge," was 14.034%. This factor was then used to calculate an Annual Carrying Charge, which is intended to capture costs projected to be incurred over a 35-year time period, NIPSCO's depreciation period for transmission facilities. This annual charge was then reduced to a lump sum present value payment "using NIPSCO's weighted average cost of capital of 7.55%." This lump-sum value was used to calculate "a present value multiplier of 1.71."[]**8**

All of these costs would be paid in full prior to the in-service date of the network upgrades. E.ON states that the Multiplier provision increased the total costs to be borne by the Upgrade Sponsors to 171 percent of the network upgrades' capital costs, increasing the cost of the network upgrades from $50,394,638 to $86,174,831.28.**9**

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7 *Id.* at 15.

8 *Id.* at 19 (footnotes omitted).

9 *Id.* at 15. Of this $86,174,831.28, which includes the Multiplier, Pioneer Trail and Settlers Trail are expected to pay $4,039,847 for the 138 kV projects and $57,342,132 for the 69 kV projects. *Id.* at 16.

7. E.ON states that the Upgrade Sponsors objected to these pricing policies and asked that NIPSCO file the proposed TUAs on an unexecuted basis so that the Commission could resolve the parties' disputes. E.ON asserts that NIPSCO declined to do so and asserted that it would not go forward with the network upgrades unless the Upgrade Sponsors executed the TUAs. E.ON further asserts that MISO refused to file the TUAs unexecuted.[10] NIPSCO included in the TUAs specific language that required E.ON to waive its rights to protest the TUAs when they were filed with the Commission. E.ON states that given the continuing curtailments, the only avenue was to agree to the terms of the proposed TUAs, and it executed them on February 4, 2014.[11] E.ON notes that the TUAs explicitly state that the agreements do not entitle E.ON to transmission service, and do not guarantee that the E.ON projects will not be curtailed.[12]

8. The two TUAs were filed with the Commission by MISO on February 12, 2014, in Docket Nos. ER14-1314-000 and ER14-1315-000, and E.ON intervened in both proceedings but did not protest the filings.[13] On March 31, 2014, the Commission issued delegated letter orders accepting both TUAs for filing with an effective date of February 13, 2014.

II. The Complaint

9. E.ON asks that the Multiplier be completely removed from the TUAs.[14] E.ON argues that to develop the Multiplier rate of 1.71, NIPSCO borrowed formulas from Attachment N and Attachment N-1 from MISO's Tariff and populated the formulas using numbers from "2013 Forward Looking Attachment O inputs" to calculate a "fixed charge rate," also known as a Facility Carrying Charge.[15] E.ON states that under

[10] *Id.* at 15-16.

[11] *Id.* at 15-16.

[12] *Id.* at 20.

[13] MISO filed the TUAs as service schedules under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), but stated only that "MISO is a signatory but not a Party to the TUA and is submitting this filing solely in its role as administrator of the Tariff." MISO, FERC Electric Tariff.

[14] Complaint at 2. E.ON supports its Complaint with affidavits by two employees of E.ON North America, Jennifer Ayers-Brasher and Mark Frigo.

[15] According to the Tariff, Attachment N (Recovery of Costs Associated with New Facilities Resulting from Requests for Transmission Service) "…sets forth the charges for Direct Assignment Facilities and Network Upgrades, which are needed to

(continued…)

Attachment N-1, the Multiplier includes return, depreciation expense, and other traditional cost-of-service elements.[16]

10. E.ON claims that if the network upgrades had been constructed pursuant to MISO's generator interconnection process, then Upgrade Sponsors would pay 100 percent of the total cost of the upgrades—$50.4 million— up front and nothing else, i.e., no Multiplier. Here, however, NIPSCO wants the Upgrade Sponsors to fund 100 percent of the total cost of the network upgrades, plus 35 years' worth of going-forward costs, increasing the total cost of the upgrades by $35.8 million.[17]

11. E.ON argues that the approach reflected in the TUAs is substantially similar to MISO's "Option 1" pricing mechanism for generator interconnection network upgrades that the Commission previously found to be unjust and unreasonable.[18] Under Option 1, the transmission owner could require an interconnecting generator to initially fund the construction of network upgrades, subject to being reimbursed by the transmission owner for such costs when the upgrades are placed in service, and then the transmission owner would require the interconnecting generator to pay a network upgrade charge that recovered the transmission owner's capital costs, taxes, and other related costs of those facilities. E.ON argues that the pricing provisions of the TUAs are even more egregious than the Option 1 approach because Option 1 provided for the transmission owner to refund the capital costs paid by the generator prior to charging the generators for the capital and other costs of the facilities, while the TUAs require the Upgrade Sponsors to pre-pay the capital costs of the network upgrades and the Multiplier without any comparable reimbursement of the pre-paid capital costs. As with Option 1, E.ON alleges, the TUAs allow NIPSCO to avoid the risks and costs associated with financing and

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accommodate requests for Firm Point-To-Point or Network Integration Transmission Service, or new designation of a Network Resource(s)….These charges are in addition to the base transmission charges which would be applicable under Schedules 7, 8, or 9." MISO, FERC Electric Tariff, Attachment N. Attachment N-1 is the formula rate template for Attachment N, and it provides a detailed formula for developing a fixed charge rate ("Facility Carrying Charge") to be multiplied against the construction costs of the network upgrades being directly assigned under Attachment N to produce an annual revenue requirement.

[16] Complaint at 19.

[17] *Id.* at 22.

[18] *See E.ON Climate and Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,048 (2013).

constructing the network upgrades while retaining the benefits that are based on incurring such costs and risks.[19]

12. In addition, E.ON asserts that the TUAs unduly discriminate between network upgrades that are participant funded after the relevant generation facilities have commenced operation and identical facilities that are identified in the GIA process and constructed prior to the generation resources' commencement of operation. E.ON states that the Commission has noted that participant funding in general "creates opportunities for undue discrimination," and in order to ensure that generators are not being discriminated against, the Commission carefully scrutinizes departures from cost recovery rules in the context of participant funded network upgrades.[20]

13. Additionally, E.ON argues that the specific network upgrades to be constructed pursuant to the TUAs will have system-wide benefits for NIPSCO and MISO transmission customers, and observes that all the network upgrades either replace or add to existing components of NIPSCO's transmission system. E.ON asserts that Commission policy on network upgrades and cost causation holds that where network upgrades provide general, system-wide benefits, it is unjust, unreasonable, and unduly discriminatory for a utility to require the project sponsor(s) to unilaterally pay all ongoing costs associated with the facilities. O&M and other going-forward costs associated with integrated transmission system upgrades are paid for by the transmission customers who benefit from the additional capacity and not the interconnection customers who already paid for the cost to build the upgrades themselves.[21]

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[19] Complaint at 23.

[20] *Id.* at 23-24 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 696 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 374 U.S. App. D.C. 406 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230, 128 S. Ct. 1468, 170 L. Ed. 2d 275 (2008)).

[21] *Id.* at 25 and 26 (citing, *e.g.*, *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,161, at P 19 (2003) (*PJM Interconnection*) (ruling that PJM could not recover O&M costs with respect to network upgrades from the generation interconnection customer); *Duke Energy Corp.*, 95 FERC ¶ 61,279, at 61,980 (2001) (directing transmission provider to recover O&M costs associated with network upgrade costs in transmission rates) (*Duke Energy*)).

14. E.ON further argues that the costs in the Multiplier are unjust and unreasonable because they are not calculated by reference to specific costs incurred by NIPSCO in connection with the operation of the network upgrades. Rather, NIPSCO developed the Multiplier by borrowing the formula from Attachment N-1 from MISO's Tariff and populating that formula with costs contained in NIPSCO's "2013 Forward Looking Attachment O," which, E.ON states, provides only general values associated with NIPSCO's whole system. As a result, the return, depreciation expense, and O&M cost components of the Multiplier are based on a proxy which does not accurately reflect the actual costs associated with the network upgrades to be constructed pursuant to the TUAs, violating the fundamental tenet of cost-based rates, that rates should reflect only the costs incurred to provide service. E.ON argues that a utility is not authorized to earn a rate of return on capital where the facilities have been constructed at customer expense. E.ON also argues that NIPSCO does not incur depreciation expenses associated with the network upgrades, and yet there is a component for depreciation in the formula on which the Multiplier was based.[22]

15. E.ON also asserts that O&M costs derived from the Attachment N-1 formula are unreasonably high. E.ON notes that with new, upgraded transmission facilities, NIPSCO's O&M costs should be reduced or deferred because new facilities have fewer O&M expenses. Applying a proxy O&M value based on NIPSCO's system-wide costs, states E.ON, is likely to overstate substantially the O&M costs associated with the network upgrades.[23]

16. E.ON states that in the event that the Commission does not eliminate the Multiplier altogether, the Commission should review the individual cost components comprising the Multiplier and authorize NIPSCO to recover through the Multiplier only those costs that it is able to show that it actually incurs.[24]

III. Notice and Responsive Pleadings

17. Notice of the Complaint was published in the *Federal Register*, 79 Fed. Reg. 34,522 (2014), with interventions and protests due on or before June 30, 2014. On June 30, 2014, NIPSCO filed a timely motion to dismiss and answer in response to the Complaint (NIPSCO June 30 Answer). MISO, EDP Renewables North America, LLC (EDP), Fowler Ridge Wind Farm, LLC (Fowler Ridge), and Ameren Services Company

[22] *Id.* at 29-33.

[23] *Id.* at 33-35.

[24] *Id.* at 35.

filed timely motions to intervene. Hoosier Wind Project, LLC (Hoosier) filed a timely motion to intervene and comments.

18. On July 15, 2014, E.ON filed an answer to NIPSCO's motion to dismiss and answer (E.ON July 15 Answer). Also on July 15, 2014, Fowler Ridge, EDP and Hoosier each filed answers to NIPSCO's motion to dismiss and answer. On July 25, 2014, NIPSCO filed an answer in response to E.ON's answer (NIPSCO July 25 Answer). On August 11, 2014, E.ON filed an answer in response to NIPSCO's answer (E.ON August 11 Answer).

A. NIPSCO's June 30 Answer

19. NIPSCO's June 30 Answer contains both a motion to dismiss and a substantive response. NIPSCO first argues that the Complaint should be dismissed because E.ON engaged in an abuse of process by filing the Complaint soon after executing the TUAs and raising no objections to their filing at the Commission. NIPSCO asserts that E.ON knew that NIPSCO would not have proceeded with construction if the Multiplier was not included in the TUAs. NIPSCO states that, rather than using available opportunities to challenge the terms of the TUAs or pursue an alternative solution prior to signing the TUAs, E.ON chose to misrepresent its commitments under the agreements and induce NIPSCO to commence construction activities. NIPSCO argues that if the Commission were to grant the Complaint, it would create a "sign and sue" precedent that would undermine confidence in bilateral agreements and discourage transmission owners from entering into similar agreements in the future. NIPSCO maintains that this is not a situation where the circumstances have changed; rather, E.ON knew of its objections when it signed the TUAs, and its failure to object constitutes consent to what is now the filed rate.[25]

20. NIPSCO asserts that E.ON is a sophisticated entity and thus disputes E.ON's allegations of unequal bargaining power. NIPSCO states that the network upgrades governed by the TUAs were not forced upon E.ON; rather, E.ON and the other Upgrade Sponsors commissioned the C010 Study, pursued the network upgrades, and voluntarily elected to assume the payment obligation to increase their revenue opportunities. NIPSCO maintains that E.ON assumed this obligation in response to market price signals resulting from congestion caused by E.ON and other similarly-situated generators, not an inability of the transmission system to meet the needs of load.

21. NIPSCO argues that it did not compel the generators to sign the TUAs, but rather E.ON made the business decision to do so. NIPSCO observes that because the MISO Tariff does not contain a *pro forma* agreement or charge methodology for participant

[25] NIPSCO June 30 Answer at 11-13.

funded upgrades, such upgrades are addressed through negotiated bilateral agreements. NIPSCO states that it insisted on the Multiplier to protect its customers and shareholders. NIPSCO argues that the TUAs were negotiated in good faith and states that it sent E.ON multiple drafts of the TUAs over the course of nearly a year. NIPSCO maintains that, if E.ON disagreed with the prospect of bilateral negotiations, E.ON could have addressed the issue through MISO's stakeholder process; if E.ON objected to the terms of the agreement, it could have filed a Complaint with the Commission prior to signing the TUAs as it was obligated to do.

22. NIPSCO states that it was not willing to file the unexecuted TUAs with the Commission not only because, as NIPSCO asserts, the MISO Tariff does not require it to make such a filing, but also due to the risk and lack of applicable Tariff provisions. According to NIPSCO, it should not have had to bear the burden of justifying contested terms in a voluntary agreement, and its refusal to commence construction was not evidence of unequal bargaining power, but rather its unwillingness to perform under a contract where the terms are unenforceable.[26]

23. NIPSCO maintains that the Commission should apply the highest standard of review, specifically a heightened *Mobile-Sierra* standard of review.[27] NIPSCO argues that the preservation of section 206 rights in the TUAs is not enough to overcome the presumption that the TUAs were just and reasonable bilateral agreements between sophisticated parties engaged in arm's length negotiations. NIPSCO cites to the Commission's decision in *Rail Splitter I*, noting that there, the Commission refused to abrogate a contract when the complaining party objected to certain terms in negotiations but decided to execute the agreement instead of taking advantage of procedural options such as asking that the agreement be filed unexecuted.[28] Further, NIPSCO states that the TUAs were freely executed with full knowledge of the objections E.ON now raises. According to NIPSCO, the Commission should not revise the TUAs lightly and has in fact avoided abrogating contracts under section 206 in the past.[29]

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

[27] The *Mobile-Sierra* doctrine originated in the Supreme Court's decisions in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

[28] NIPSCO June 30 Answer at 20 (citing *Rail Splitter Wind Farm, LLC v. Ameren Servs. Co.*, 142 FERC ¶ 61,047, at P 32 (2013) (*Rail Splitter I*), *reh'g denied*, 146 FERC ¶ 61,017 (2014) (*Rail Splitter II*)).

[29] *Id.* at 19-20.

24. On the substantive issues, NIPSCO argues that E.ON has not met its section 206 evidentiary burden against the use of the Multiplier. NIPSCO observes that E.ON has alleged no Tariff violation or other basis for relief. NIPSCO argues that participant funding in this case is not governed by MISO's generator interconnection pricing methodology.[30] NIPSCO also states that E.ON largely takes Energy Resource Interconnection Service (ERIS) which provides for interconnection service on an "as available" basis and has not paid for network upgrades that may have been required for 100 percent Network Resource Interconnection Service (NRIS).[31] NIPSCO notes, however, that even if E.ON had been awarded 100 percent NRIS, it would not have guaranteed the market outcomes E.ON now seeks because NRIS does not convey transmission service.[32] Nonetheless, NIPSCO observes that at present E.ON has chosen not to submit a queue request to be awarded 100 percent NRIS.[33]

25. Even if MISO's generator interconnection pricing methodology applies, however, NIPSCO argues that the use of the Multiplier would still be supported because the Commission found that the upgrades identified in the originally executed GIAs for Settlers Trail and Pioneer Trail are subject to Option 1 pricing. According to NIPSCO, if the network upgrades identified in the C010 Study had been identified in the interconnection process, they would have been subject to the Multiplier under Option 1 as well. Therefore, since the costs included in Option 1 are the same elements that E.ON opposes in the Multiplier, NIPSCO asserts that E.ON's arguments applying interconnection pricing precedent to avoid its TUA obligations fail.[34]

26. NIPSCO argues that E.ON's commercial problems are misrepresented and have nothing to do with the justness or reasonableness of the Multiplier. According to NIPSCO, E.ON characterizes its curtailments as instances when it is asked to decrease generation to avoid thermal overloads, and also when E.ON has decided to generate less than what it believes it could have either because of dispatch instructions or low/negative price signals. NIPSCO observes that the upgrades, however, will simply reduce the likelihood of thermal overloads and not address market pricing issues, also noting that

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

[31] At the time of E.ON's interconnection request, MISO assumed a capacity factor of 20 percent for wind generators and thus would only study wind interconnection requests for 20 percent NRIS and 80 percent ERIS.

[32] NIPSCO June 30 Answer at 26-27.

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

[34] *Id.* at 29-30.

organized markets are designed to send negative price signals when generation outstrips demand, and this is not uncommon for wind generation.[35]

27. NIPSCO maintains that E.ON's claim of system-wide benefits from the network upgrades is unfounded. According to NIPSCO, it is not experiencing any reliability issue that would be addressed by the network upgrades identified in the agreements, and E.ON acknowledges that these upgrades were not identified in the MISO Transmission Expansion Plan (MTEP). Because these network upgrades are solely for the benefit of the Upgrade Sponsors, the costs should be allocated to them rather than NIPSCO's customers.[36]

28. NIPSCO argues that the Multiplier remains just and reasonable because the proxy used in developing it resulted in a just and reasonable rate. Since the MISO Tariff does not contain a *pro forma* formula to develop this type of charge, NIPSCO asserts that the Multiplier was a reasonable method by which to ensure an adequate contribution to the transmission provider's cost of service. NIPSCO further argues that E.ON is incorrect in suggesting that the components of the Multiplier could be avoided if MISO's interconnection policy applied, presumably under Option 2 funding.[37] Citing to Attachment N-1 and Attachment GG,[38] NIPSCO maintains that direct assignment of facility upgrades are generally subject to Multiplier-type charges and also that the O&M and taxes other than income taxes being recovered under this Multiplier are lower than what could have been recovered under Attachment GG. NIPSCO states that Attachment N-1 is comprised of well-understood cost-of-service elements that result in a higher rate than would result if customers were charged based solely on capital invested in construction, but this should not render the Multiplier unjust and unreasonable. NIPSCO concludes that the Multiplier is appropriate in this situation given that the network

[35] *Id*. at 32-33.

[36] *Id.* at 33-34.

[37] Under Option 2, "the Transmission Owner retained the interconnection customer's initial payments for the costs of network upgrades subject to participant funding as a contribution in aid of construction and assessed no further charges to the interconnection customer." *E.ON Climate & Renewables N. Am., LLC v. Midwest Indep. Transmission Sys. Operator, Inc.* 142 FERC ¶ 61,048, at P 4 (2013).

[38] The Attachment GG "Network Upgrade Charge" establishes the network upgrade charge associated with the Option 1 generator interconnection pricing that was available for interconnection agreements effective prior to March 22, 2011, and would include operation and maintenance expense, general and common depreciation expense, taxes other than income taxes, income taxes, and return.

upgrades are driven solely by E.ON's commercial interests, and O&M and other costs related to the operation of these facilities should not be borne by NIPSCO's customers.[39]

29. NIPSCO also argues that E.ON's attempts to parse the components of the Multiplier lack merit. According to NIPSCO, the Multiplier was designed to recover a contribution to costs that are reasonably commensurate with the costs NIPSCO will bear in constructing and maintaining these network upgrades. NIPSCO asserts that the question before the Commission is whether the Multiplier is a reasonable proxy for recovering NIPSCO's costs. NIPSCO also states that the Facilities Carrying Charge was a way to estimate a just and reasonable contribution to the operating costs above the actual capital costs of the network upgrades to ensure these costs did not fall on other customers, and the Multiplier is not the same as Option 1 funding because the TUAs do not provide interconnection service. Finally, NIPSCO notes that both NIPSCO and E.ON agree that if the income tax element is removed, which is being sought, the Multiplier will be lowered to 1.44 percent.[40]

30. NIPSCO argues that E.ON's assertions that Commission precedent dictates that O&M costs are not properly assigned to interconnection customers is invalid. NIPSCO states that interconnection policy does not apply here, but even if it did, the Commission has not applied that precedent in MISO, where O&M charges have been included in generator interconnection network upgrade charges under Option 1. NIPSCO also asserts that it will incur additional O&M costs, and Attachments N-1, GG and MM[41] all provide for recovery of O&M.[42]

31. NIPSCO also argues that granting the Complaint could create disparate treatment among E.ON and the other Upgrade Sponsors because, if a refund effective date of the

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[39] NIPSCO June 30 Answer at 34-37.

[40] *Id.* at 37-38. E.ON and NIPSCO both agree that if NIPSCO receives a private letter ruling from the Internal Revenue Service that the funding provided by the Upgrade Sponsors constitutes contributions to capital and not income, the income tax component of the Multiplier would be removed. In addition, E.ON observes that, if granted this private letter ruling, one of the conditions would be that NIPSCO would not be permitted to recover depreciation expenses. Complaint at 32.

[41] Attachment MM provides a method for collecting charges associated with Multi-Value Projects (MVP) and for distributing the revenues associated with these charges.

[42] NIPSCO June 30 Answer at 38-40.

date of the Complaint is established, several parties paid in full before the Complaint was filed and would not benefit from relief granted by the Commission.

32. Finally, if the Commission does not reject the Complaint, NIPSCO requests that the Commission grant a limited waiver regarding NIPSCO's performance under the TUAs pending a resolution to the Complaint. NIPSCO argues that it should not be required to continue construction while there is uncertainty regarding these agreements, and a waiver will ensure that costs are not incurred. NIPSCO also observes that the Commission has broad remedial authority to determine appropriate remedies.[43]

B. E.ON's July 15 Answer

33. E.ON argues that NIPSCO's motion to dismiss should be denied because NIPSCO's assertions that the Complaint is an "abuse of process" are specious. E.ON states that it expressly reserved its rights in the TUAs to file a complaint pursuant to section 206. E.ON states that if the parties intended to limit their prospective rights, they could have done so. According to E.ON, NIPSCO attempts to convert the waiver of the right to protest the TUAs into an obligation to waive all rights concerning the TUAs.[44]

34. E.ON asserts that the TUAs' express terms authorize the procedural approach taken by Complainants in this case. It quotes the reservation of rights clause at section 8.1 of the TUAs:

> Nothing contained in this Agreement shall be construed as affecting in any way, the right of a Party acting under this agreement to unilaterally make application to FERC for a change in rates, terms, conditions, charges, classifications of service, rule or regulation, or contract under Sections 205 or 206 of the FPA for any services over which FERC has jurisdiction.

Thus, E.ON argues, the TUAs expressly reserved the parties' FPA section 205 and section 206 rights and that arguments that exercising such rights amount to an abuse of process are without foundation or merit and should be rejected.[45]

35. E.ON further asserts that, contrary to NIPSCO's arguments, E.ON was not required to file its Complaint prior to executing the TUAs or take another action in lieu of

[43] *Id.* at 41.

[44] E.ON July 15 Answer at 8-9.

[45] *Id.* at 8.

exercising its section 206 rights.[46] E.ON argues that NIPSCO's reliance on *Rail Splitter I* is misplaced because there, the wind generator could have requested, but did not, that the agreement be filed unexecuted, but here, E.ON asked for the agreements to be filed unexecuted, and NIPSCO refused.[47]

36. Further, E.ON asserts that NIPSCO's argument that E.ON could have reentered the interconnection queue would not have been an effective remedy because the interconnection study process does not guarantee that all constraints would have been identified. Finally, E.ON maintains that NIPSCO's suggestion that E.ON could have resolved these issues through the MISO stakeholder process is meritless because NIPSCO fails to explain why a theoretical remedy constitutes grounds for dismissal of the Complaint.[48]

37. E.ON further argues that E.ON has met its burden of proof and NIPSCO misstates the section 206 standard. According to E.ON, the burden is demonstrating that the Multiplier is unjust and unreasonable, not that it has become unjust and unreasonable as NIPSCO states. E.ON adds that the burden does not change simply because the TUAs were accepted for filing under section 205, and the fact that the parties agreed to the TUAs does not change the burden because parties cannot agree to unjust and unreasonable terms. According to E.ON, the Complaint contains substantial evidence that the Multiplier violates cost causation principles and the Commission's rules governing rates that may be charged to generators' participant funded network upgrades and is therefore unjust and unreasonable.[49]

38. According to E.ON, NIPSCO's assertion that Option 1 pricing would have applied to these network upgrades under MISO's interconnection policies is incorrect because the Commission held that incremental network upgrades such as those under the TUAs would be governed by Option 2. E.ON argues that the only difference between the network upgrades in the TUAs and other interconnection network upgrades is whether the upgrades were identified prior to or after commencement of commercial operation, and disparate cost responsibility on this basis would be unjust and unreasonable. E.ON further asserts that NIPSCO's statements that the network upgrades identified under the TUAs are for E.ON's commercial advantage is unpersuasive because all network upgrades associated with generator interconnection are designed to facilitate delivery of

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[46] *Id.* at 10.

[47] *Id.* at 12-13.

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

[49] *Id.* at 15-17.

energy produced by the interconnecting resource to improve economic viability. In addition, E.ON states that the optional studies conducted for the TUAs are essentially equivalent to studies conducted in connection with generator interconnection network upgrades.[50]

39. E.ON further disputes NIPSCO's suggestion that pricing differences between participant funded network upgrades and network upgrades associated with generator interconnection are appropriate because the former were not previously identified in the MISO planning process as necessary to serve load or for reliability reasons. According to E.ON, this logic would disqualify all network upgrades associated with new generator interconnections which agree to fund network upgrades to remedy system impacts resulting from the interconnection, and such upgrades, among other things, facilitate the delivery of energy produced by the generator to reach load. E.ON states that need for such network upgrades is identified in the system impact analysis that follows the interconnection request and not in a prior analysis of reliability-based projects or projects needed solely to serve existing load.[51]

40. E.ON argues that NIPSCO's claim that the network upgrades identified in the TUAs offer no reliability or other system benefits is contradicted by another complaint filed by NIPSCO regarding MISO's transmission planning process. There, according to E.ON, NIPSCO argues that the Monticello-East Winamac 138 kV Line, which is also an upgrade identified in one of the TUAs, "would have both operational and economic benefits." According to E.ON, NIPSCO should not be able to complain on the one hand about flaws in the MISO planning process by identifying the benefits of the Monticello—East Winamac 138 kV Line and then on the other state that the network upgrades under the TUAs offer no reliability or system benefits.[52]

41. E.ON also disputes NIPSCO's assertion that because there are no identifiable standards applicable to the network upgrades identified in the TUAs, the Multiplier is just and reasonable because the parties agreed to it. E.ON goes on to identify instances where there are other relevant standards. For example, E.ON notes that MISO's Business Practice Manual on Transmission Planning defines "Market Participant Funded Upgrades" and states that if a customer decides to mitigate a constraint identified in an

[50] *Id.* at 19-22.

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

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

optional interconnection study and a construction agreement is in place, the network upgrades would be included in the MTEP.[53]

42. E.ON states that NIPSCO's characterization of the curtailments impacting E.ON and other Upgrade Sponsors as being due to negative price signals from the market is baseless. According to E.ON, the curtailments are actually due to constraints on NIPSCO's system – these constraints cause the congestion component of the locational marginal price to increase substantially and also cause the curtailments, even if there is demand for energy and prices in unconstrained locations are high. E.ON also observes that NIPSCO states in its answer that the network upgrades would resolve thermal limits on its system. E.ON also points to MISO's OASIS postings of the most severe wind curtailment constraints where it stated that three of the six network upgrades being constructed under the TUAs were in the "top 20" curtailment-causing constraints for all of MISO.[54]

43. E.ON asserts that it is baseless for NIPSCO to state that E.ON made a decision to avoid paying for additional network upgrades that could have been required had MISO granted 150 MW of NRIS. According to E.ON, when it entered the interconnection queue, MISO limited wind generators to a maximum of 20 percent NRIS, which is why the E.ON generators each have 120 MW of ERIS and 30 MW of NRIS. Further, E.ON argues that the distinction between ERIS and NRIS is irrelevant where the Upgrade Sponsors are now funding 100 percent of the capital costs of the desired network upgrades. If E.ON had been able to receive 150 MW of NRIS and had it funded the network upgrades identified in the TUAs, E.ON states that it would not be required to pay the Multiplier and instead, consistent with the Tariff, NIPSCO would recover its operating costs through transmission rates and not charging them to E.ON.[55]

44. E.ON argues that NIPSCO does not explain how it identified or quantified any costs in the Multiplier. E.ON observes that NIPSCO concedes that the Tariff formula only serves as a proxy of NIPSCO's actual costs, and E.ON asserts that the Multiplier therefore violates the fundamental principal of cost-based rates that rates should reflect only costs incurred to provide service. According to E.ON, NIPSCO has avoided addressing which costs are included in the Multiplier by stating that the portion not attributable to income taxes is solely O&M costs. E.ON, however, argues that this reasoning is inconsistent with the Attachment N-1 formula which also includes

[53] *Id.* at 25-26 (citing MISO Business Practices Manual, Transmission Planning, § 4.3.4, effective April 10, 2014).

[54] *Id.* at 27-29.

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

depreciation, taxes other than income taxes, and return, and the inputs into this formula are taken from Attachment O which similarly contains a cost-of-service formula. E.ON also observes that NIPSCO denies the inclusion of depreciation and return, and NIPSCO appears to not have adhered to any specific formula or inputs. To the extent that NIPSCO has not identified a path from its costs to the rate it proposes, E.ON asserts that the Multiplier cannot be found to be just and reasonable. [56]

45. E.ON notes that NIPSCO asserts that O&M is primarily comprised of vegetation management and responding to storm damage. If this is the case, E.ON argues that, since the network upgrades are to existing facilities, NIPSCO should already be incurring a certain level of these same costs, and in fact the upgrades should either reduce or defer O&M expenses. E.ON therefore argues that NIPSCO's estimate of $22 million for O&M for these facilities is wholly unsupported. Finally, E.ON states that NIPSCO has failed to respond to E.ON's assertions that the network upgrades provide system-wide benefits, and NIPSCO's argument that it is not experiencing any reliability issues that would be alleviated by the network upgrades is without basis.[57]

46. Finally, E.ON argues that NIPSCO's claims that granting the Complaint may result in disparate treatment of the E.ON generators and the other Upgrade Sponsors provides no basis for denying the Complaint. According to E.ON, it is well-established that a difference in rates among parties in and of itself does not constitute undue discrimination, and there is nothing unduly discriminatory about one party choosing to litigate where another party decides not to litigate.[58]

47. Regarding NIPSCO's request for waiver of its performance obligations under the TUAs, E.ON states that the Commission has never granted a waiver like this and should not do so here. E.ON argues that NIPSCO's position lacks any credible legal basis because the TUAs are jurisdictional agreements on file with the Commission pursuant to section 205 and 18 C.F.R. § 35.12 which governs the filing of initial rate schedules, and if the Commission concludes that the TUAs are unjust and unreasonable, the parties would comply on a prospective basis. E.ON characterizes NIPSCO's request as an attempt to avoid the Commission's section 206 jurisdiction which was preserved in the TUAs. E.ON further distinguishes the cases cited by NIPSCO as providing no basis or

[56] *Id.* at 31-33.

[57] *Id.* at 33-35.

[58] *Id.* at 35 (citing *Cities of Bethany v. FERC*, 727 F.2d 1131, 1139 (D.C. Cir. 1984)).

support for NIPSCO's position and states that third parties will be harmed if the waiver is granted.[59]

C. Other Pleadings

48. Hoosier commented that it is also a party to the 69 kV TUA with NIPSCO, and has a strong interest in timely completion of the network upgrades to eliminate curtailments it has experienced. It states this proceeding should not be a cause of delay in completing the network upgrades. Hoosier also answered and opposed NIPSCO's request for waiver of its construction obligation under the TUAs. Likewise, Fowler Wind and EDP answered and opposed NIPSCO's request for waiver of its construction obligation.

IV. Discussion

A. Procedural Matters

49. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

50. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers of E.ON, Fowler Ridge, EDP and Hoosier to the extent they respond to NIPSCO's motion to dismiss. We will, however, reject NIPSCO's answer to E.ON's answer and E.ON's answer in response to NIPSCO's answer.

B. Substantive Matters

1. Standard of Review

51. We deny NIPSCO's motion to dismiss the Complaint and its request that the Multiplier provision be evaluated under the public interest standard for *Mobile-Sierra* contracts. The Commission has long respected the sanctity of contracts and continues to do so. However, given that NIPSCO refused E.ON's request that the TUAs be filed unexecuted,[60] NIPSCO's reliance on *Rail Splitter I* is misplaced.[61] Further, as the

[59] *Id.* at 36-39.

[60] NIPSCO June 30 Answer, Holtz Aff. at P 25.

[61] *Rail Splitter I*, 142 FERC ¶ 61,047 at P 32. ("That provision also authorized MISO to file such a service agreement with the Commission unexecuted. Rail Splitter

(continued…)

Commission explained in *Rail Splitter II*, it has also recognized that the inclusion of language in a contract that allows either party to ask the Commission to change the rate pursuant to sections 205 and 206 of the FPA presumes that the parties agreed that the provisions of the contract, even though executed, are subject to change.[62] The Commission has found that the ordinary just and reasonable standard applies when the parties "explicitly reserve their rights to seek modifications to their contracts," which indicates that they "specifically negotiated and contemplated that their contracts could be modified" based upon the ordinary just and reasonable standard.[63] A reservation of rights to file under sections 205 and 206 to change the terms of an executed contract is as much a provision agreed to by the parties as other terms of the contract. Because Section 8.1 in the TUAs allows either party to file under section 205 or 206 to change the terms of the agreements, we will evaluate the Multiplier provisions under the ordinary just and reasonable standard.

2. Multiplier

52. We grant that part of E.ON's Complaint that requests that the Multiplier be limited to those incremental costs that will be incurred by NIPSCO for ownership and operation of the network upgrades covered by the TUAs. However, we deny E.ON's request to remove the Multiplier in its entirety because it is reasonable for the TUAs to provide for the recovery of non-capital costs. As explained below, we establish hearing and

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states that it initially raised concerns regarding Ameren's election of Option 1, but it acknowledges that it nevertheless executed the FSA, rather than bringing its objection to the Commission in a proceeding on an unexecuted FSA. Consequently, we agree with MISO that Rail Splitter's execution of the FSA and its failure to avail itself of the procedural options available to it is an important factor in our denial of the complaint. Thus, even if we assume that Ameren's election of Option 1 required Rail Splitter to pay significantly more for the network upgrades in question than it could have paid under Option 2, the obligation to pay according to Option 1 under the contract was insufficient to dissuade Rail Splitter from executing the FSA without protest or objection, and is insufficient now to persuade us to relieve Rail Splitter from its obligation to pay the Monthly Charge.").

[62] *Rail Splitter II*, 146 FERC ¶ 61,017 at P 22.

[63] *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,042 (2005); *see also Rail Splitter II*, 146 FERC ¶ 61,017 at P 22 (citing *Duke Hinds, LLC v. Entergy Services, Inc.*, 117 FERC ¶ 61,210, at P 28 (2006) (the existence of a reservation of rights to make changes pursuant to sections 205 and 206 allows a contract to be modified under the ordinary just and reasonable standard even if executed)).

settlement judge procedures to determine the costs that will be incurred by NIPSCO for ownership and operation of the network upgrades covered by the TUAs.

53. E.ON and NIPSCO agree that the Multiplier was derived from formulas in MISO Attachments N and N-1 as populated with data from MISO Attachment O data.[64] E.ON argues that by using these inputs, the Multiplier represents NIPSCO's system-wide costs rather than costs of these specific upgrades, and that it includes general revenue requirement inputs such as O&M, depreciation, taxes other than income, income taxes and return on equity.[65] E.ON argues that it is unjust and unreasonable for NIPSCO to charge E.ON return and depreciation on an investment that E.ON paid for.

54. NIPSCO does not attempt to justify the Multiplier with any cost studies specific to the network upgrades here. NIPSCO takes the position that the Attachment N-1 formula is a proxy for just and reasonable rates – "a reasonable way to ensure an adequate contribution to the transmission provider's cost of service by those who voluntarily take on transmission upgrades for commercial gain," and a "means to estimating a just and reasonable contribution."[66] At several places in its answer, NIPSCO argues that it wants to ensure "that other customers are not unduly subsidizing the Complainants."[67]

55. In evaluating whether the Multiplier is just and reasonable, we find that the pricing under the TUAs need not conform to MISO's Tariff methodologies for pricing network upgrades associated with interconnection or transmission delivery services.[68] Although the upgrades here are related to enabling interconnected generators to transmit their output, they are not the result of a specific interconnection request. We also note that the

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[64] Complaint at 6; Holtz Aff. at P 3; 69 kV Transmission Upgrade Agreement and 138 kV Transmission Upgrade Agreement at Appendix E.

[65] Frigo Aff. at P 12; Complaint at 28-33.

[66] NIPSCO June 30 Answer at 34, 38.

[67] *Id*. at 37.

[68] Accordingly, we can distinguish the precedent cited by E.ON above. In *PJM Interconnection*, the Commission reached its determination based upon the application of the existing PJM Tariff. *See PJM Interconnection, LLC*, 104 FERC ¶ 61,154, at PP 17-19 (2003). In *Duke Energy*, the Commission was addressing the default interconnection pricing, not participant funding. Participant funding has, however, been approved in MISO. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 (2009). *See supra* n.21.

TUAs do not provide for transmission delivery service, i.e. either Point-to-Point or Network Integration Transmission Service.

56. We believe that it is just and reasonable for NIPSCO to recover from E.ON the costs it will incur under the TUAs (i.e., NIPSCO's cost-of-service). The Commission's authority pursuant to section 205 requires that all rates must be just and reasonable and not unduly discriminatory or preferential. The application of such principles will ensure that NIPSCO will recover its costs and NIPSCO's customers will not subsidize E.ON's activities.

57. Under cost-of-service principles, a utility would be allowed to earn a return on its investment, depreciation, and recover its costs of providing the service. In this case, because the customer pays for the network upgrades through up-front lump-sum payments, NIPSCO will not make an investment in the capital costs of the network upgrades, and thus its recovery of the capital costs of the upgrades should just reflect the actual costs incurred up-front to construct them, and not include additional costs based on an assumption that it finances the capital costs of the upgrades and recovers the costs of the upgrades ratably over their service life through depreciation and return on the undepreciated plant balances.[69] NIPSCO would, however, be allowed to recover the cost of O&M, taxes other than income taxes, and any other substantiated cost of ownership of the network upgrades. Under the MISO Tariff, Attachments N-1 and GG utilize the fixed charge rate approach that uses system average costs as a proxy for the incremental cost of individual facilities. However, given that the network upgrades identified in the TUAs either replace or improve existing facilities, we find that the fixed charge rate approach underlying the Multiplier may not properly reflect the incremental costs of these upgrades. We find that the Complaint raises issues of material fact regarding the basis for the Multiplier 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. Therefore, we establish hearing and settlement judge procedures to determine what incremental costs will be incurred by NIPSCO for ownership and operation of the network upgrades covered by the TUAs.

58. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing

[69] We note that, while the Attachment N-1 formula has been accepted for pricing network upgrades associated with transmission delivery service, the formula calculates an annual revenue requirement to be recovered each year over the life of the upgrade, including a ratable recovery of the capital costs of the upgrades through an annual depreciation component and a return on the undepreciated plant balances. Because E.ON is required to pay for the capital costs up front, NIPSCO has not applied Attachment N-1 as it is intended to be applied.

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.[70] 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.[71] The settlement judge shall report to the Chief Judge and the Commission within 30 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.

59. 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, we will set the refund effective date at the earliest date possible, i.e., June 10, 2014, the date the complaint was filed.

60. 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 12 months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by November 30, 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 September 30, 2016.

3. Other Issues

61. NIPSCO argues that relief should be denied to E.ON because other Upgrade Sponsors paid their full charges up front and thus would not be entitled to refunds under

[70] 18 C.F.R. § 385.603 (2014).

[71] 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 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).

section 206. NIPSCO asserts that this would result in disparate treatment.[72] However, no entity other than E.ON filed a complaint under the TUAs. We will not deny E.ON relief to which it may be entitled under the FPA because similarly-situated entities did not or could not request such relief.

62. There is no justification for NIPSCO's request for waiver of its performance obligations under the TUAs until the Complaint is resolved, and we deny it. The only issue in the Complaint concerns the compensation E.ON must pay for having network upgrades built on NIPSCO's system. There is no issue concerning NIPSCO's obligation to build the network upgrades, so there is no reason to postpone that obligation.

The Commission Orders

(A) The relief requested in E.ON's Complaint is granted in part, as discussed in the body of this order.

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

(C) 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.

(D) 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.

[72] NIPSCO June 30 Answer at 40.

(E) 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.

(F) The refund effective date established in Docket No. EL14-66-000 pursuant to section 206(b) of the FPA will be June 10, 2014, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.