

153 FERC ¶ 61,127
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

The Empire District Electric Company
Southwest Power Pool, Inc.

Docket Nos. ER14-2882-001
ER15-1733-000

ORDER ON COMPLIANCE FILING

(Issued October 30, 2015)

1. On May 14, 2015, in response to the Commission's March 19, 2015 order,¹ The Empire District Electric Company (Empire) submitted proposed revisions to its transmission formula rate protocols under Empire's Open Access Transmission Tariff (Empire Tariff). Also, on May 18, 2015, in response to the March 2015 Order, Southwest Power Pool, Inc. (SPP) submitted proposed revisions to its Open Access Transmission Tariff (SPP Tariff), incorporating the changes proposed in the Empire compliance filing. In this order, we conditionally accept Empire's and SPP's compliance filings, effective April 1, 2015, as requested, subject to a further compliance filing.

I. Background

2. In a July 17, 2014 order, the Commission explained that it had undertaken a review of the transmission formula rates and formula rate protocols of jurisdictional public utilities to identify utilities that currently are not required to make annual informational filings of their formula rate updates with the Commission.² Empire was one such utility. The Commission analyzed the formula rate in the Empire Tariff and the

¹ *The Empire District Elec. Co.*, 150 FERC ¶ 61,200 (2015) (March 2015 Order).

² *The Empire District Elec. Co.*, 148 FERC ¶ 61,030 (2014) (July 2014 Order).

SPP Tariff³ using the standards established in the MISO Investigation Order⁴ and MISO Compliance Order⁵ to determine if the Empire formula rate meets the other requirements established in those orders. The Commission found that Empire's proposed formula rate protocols did not conform to the requirements of the MISO Investigation Order and the MISO Compliance Order, which specifically identified three areas of concern: (1) scope of participation (i.e., who can participate in the information exchange); (2) the transparency of the information exchange (i.e., what information is exchanged); and (3) the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange (i.e., how the parties may resolve their potential disputes). The Commission therefore directed Empire to propose formula rate protocols addressing all three areas of concern.⁶

3. On September 15, 2014, in compliance with the Commission's July 2014 Order, Empire submitted revised formula rate protocols. On March 19, 2015, the Commission found that Empire's proposed formula rate protocols generally comply with the Commission's directives in its July 2014 Order directing Empire to propose formula rate protocols to be included in the Empire Tariff and the SPP Tariff, but directed Empire to make a number of revisions. Specifically, the Commission directed Empire to revise its protocols to: (1) include language regarding joint meetings with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects subject to the same regional cost allocation;⁷ (2) provide an adequate time period between the annual update and annual meeting to ensure increased transparency and allow the parties sufficient time to review;⁸ (3) provide notice of the annual update

³ Empire's formula rate protocols are included in the Empire Tariff, and as part of the SPP Tariff. Revisions to Empire's formula rate and formula rate protocols section of the SPP Tariff are filed by SPP on Empire's behalf. *Id.*, n.2.

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *reh'g denied*, 146 FERC ¶ 61,209 (2014).

⁵ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order). The Commission also separately evaluated the compliance filings of two MISO transmission owners. *See Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,210 (2014) (evaluating the compliance filing of Southern Indiana Electric & Gas Company); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,211 (2014) (evaluating the compliance filing of Northern Indiana Public Service Company).

⁶ July 2014 Order, 148 FERC ¶ 61,030 at P 7.

⁷ March 2015 Order, 150 FERC ¶ 61,200 at P 38.

⁸ *Id.* P 40.

within five days of its posting;⁹ and (4) provide the option for remote access for participation at Annual Update meetings and True-Up Adjustment meetings.¹⁰

4. In March 2015 Order, the Commission also found that the provisions in Empire's proposed protocols relating to informal and formal challenge procedures generally comply with the requirements of the July 2014 Order. However, the Commission required an adjustment to the protocols provisions related to the formal challenge filing deadline.¹¹

5. The Commission found that Empire's proposal was inconsistent with the Commission's directives in the MISO Compliance Order, which required that formal challenges be filed "in informational filing docket numbers"¹² and that the MISO Transmission Owners must provide a reasonable amount of time after the informational filing before formal challenges are due.¹³ Therefore, the Commission required Empire to revise its protocols to provide that Empire shall submit its informational filing by January 15 and that Interested Parties shall have until March 1 to submit formal challenges.¹⁴

6. On May 14, 2015, Empire filed revisions to its Tariff in order to comply with the Commission's March 2015 Order. On May 18, 2015, SPP made changes to the SPP Tariff to incorporate Empire's proposed changes.

II. Notices and Responsive Filings

7. Notice of Empire's compliance filing was published in the *Federal Register*, 80 Fed. Reg. 28,991 (2015), with interventions and protests due on or before June 4, 2015. None was filed.

⁹ *Id.*

¹⁰ *Id.* P 41.

¹¹ March 2015 Order, 150 FERC ¶ 61,025 at PP 52-53.

¹² That is, the formal challenge would be filed in the same docket in which the MISO Transmission Owner makes its informational filing rather than as a new complaint in a separate complaint docket.

¹³ *Id.* P 53 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 113).

¹⁴ *Id.*

8. Notice of SPP's compliance filing was published in the *Federal Register*, 80 Fed. Reg. 29,626 (2015), with interventions and protests due on or before June 8, 2015. On May 20, 2015, the Missouri Public Service Commission (Missouri Commission) filed a notice of intervention.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ the Missouri Commission's notice of intervention serves to make it a party to the proceeding in which it was filed.

B. Substantive Matters

1. Empire's Compliance Filing

a. Transparency

10. To comply with the Commission's first directive (include language regarding joint meetings with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects subject to the same regional cost allocation), Empire proposes a new section 2.2 in its protocols which includes language regarding joint meetings with other SPP transmission owners using formula rates to establish revenue requirements for recovery of costs of projects subject to the same regional cost allocation. Empire states that section 2.2 also indicates that Empire will endeavor to coordinate with other transmission owners regarding these meetings.¹⁶

11. Regarding the Commission's second directive (provide an adequate time period between the annual update and annual meeting to ensure increased transparency and allow the parties sufficient time to review), Empire proposes revisions to section 2.1 of its protocols to provide that the Annual Meeting will be held no sooner than 30 days after the Publication Date and no later than June 30. Empire explains that, because the Annual Update must be published on or before June 1, Interested Parties will have at least 30 days to review the Annual Update.¹⁷

¹⁵ 18 C.F.R. § 385.214 (2015).

¹⁶ Empire Transmittal at 3.

¹⁷ *Id.* at 2.

12. In response to the Commission's third directive (provide notice of the annual update within five days of its posting), Empire proposes to revise section 1.3(b) of its protocols to provide notification within five days of posting the Annual Update, instead of the 10 days originally proposed in its September 15, 2014 filing.¹⁸

13. Regarding the Commission's fourth directive (provide the option for remote access for participation at Annual Update meetings), Empire proposes to revise section 2.1 of its protocols to explicitly state that Empire will provide remote access to its Annual Update meetings.

b. Challenge Procedures

14. Empire proposes to revise section VI.1 of its formula rate protocols to provide that Empire shall submit its Informational Filing by January 15. Empire also proposes to revise section IV.7 of its formula rate protocols to provide that Interested Parties shall have until March 1 following the Review Period to submit Formal Challenges.

c. Commission Determination

15. Except as discussed below, we find that Empire's proposed revisions to its formula rate protocols comply with the Commission's directives from the March 2015 Order.

16. We find that Empire's proposed section 2.2 does not comply with the Commission directives addressing joint meetings on regional transmission projects. Empire proposed language in section 2.2 which states:

Each year Empire shall endeavor to coordinate with other Transmission Owners in the SPP using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism and hold a joint informational meeting to enable all Interested Parties to understand how those transmission owners are implementing their formula rates for recovering the costs of such projects.

17. We find that Empire's proposed language does not comply with the Commission directives because it appears to limit coordination to only other transmission owners that are members of the same planning region, in this case SPP. We find that this language does not require Empire to coordinate with transmission owners outside of SPP that own inter-regional projects whose costs are allocated using the same cost sharing mechanism

¹⁸ *Id.* (citing March 2015 Order, 150 FERC ¶ 61,200 at P 40).

to hold joint meetings to enable all interested parties to understand how those transmission owners are implementing their formula rates for recovering the costs of such projects. Therefore, we direct Empire to revise section 2.2 in order to not limit the coordination in the joint meetings to only the transmission owners that are members of SPP.

2. SPP's Compliance Filing

a. March 2015 Order Requirements

18. In the March 2015 Order, the Commission noted that Empire stated that, although Empire filed its proposed protocols in its own tariff, SPP had not made a filing incorporating Empire's proposed protocols into the SPP Tariff. Consequently, the Commission directed Empire to take all necessary steps to have SPP make a parallel filing making the same protocol revisions to the Empire protocols in the SPP Tariff.¹⁹

b. SPP Compliance Filing

19. SPP proposes to incorporate Empire's revised protocols into Addendum 18 to Attachment H of SPP's Tariff. SPP states that the modifications proposed for SPP's Tariff are substantively identical to the modification proposed in the Empire Compliance Filing.²⁰

c. Commission Determination

20. We find that SPP has appropriately incorporated protocols included in the Empire Compliance Filing. Because the protocols submitted by SPP are identical to those submitted by Empire, we will conditionally accept Empire's protocols as submitted by SPP, subject to SPP making a compliance filing with further revisions corresponding to the further revisions required of Empire above. Therefore, we will direct SPP to submit a compliance filing within 60 days of this order, which reflects any changes made by Empire as a result of the directive to Empire above.

21. Based on the determinations above, we will conditionally accept Empire's compliance filing and SPP's compliance filing, effective April 1, 2015, subject to further compliance, as discussed below.

¹⁹ March 2015 Order, 150 FERC ¶ 61,200 at P 57.

²⁰ SPP Transmittal at 2-3.

The Commission orders:

(A) Empire's compliance filing is hereby conditionally accepted, effective April 1, 2015, as requested, as discussed in the body of this order.

(B) Empire is hereby directed to submit a further compliance filing within 60 days of the date of this order, as discussed in the body of this order.

(C) SPP's compliance filing is hereby conditionally accepted, effective April 1, 2015, as requested, as discussed in the body of this order.

(D) SPP is hereby directed to submit a further compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.