

157 FERC ¶ 61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket Nos. ER16-2534-000
EL17-10-000

ORDER ACCEPTING PROPOSED DEPRECIATION RATES, INSTITUTING
SECTION 206 PROCEEDING, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued October 31, 2016)

1. On September 1, 2016, Northern Indiana Public Service Company (NIPSCO) and Midcontinent Independent System Operator, Inc. (MISO) submitted, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² a request for approval of depreciation rates used in the calculation of charges for transmission services provided under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). In this order, we accept NIPSCO's proposed depreciation rates for filing, to become effective October 1, 2016, as requested. Further, because NIPSCO's change in depreciation rates results in a proposed rate reduction and a further decrease may be warranted, we are instituting a hearing and settlement judge procedures pursuant to section 206 of the FPA³ in Docket No. EL17-10-000 to determine whether NIPSCO's depreciation rates are just and reasonable, and we establish a refund effective date.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2016).

³ 16 U.S.C. § 824e (2012).

I. NIPSCO's Filing

2. NIPSCO states that it is an Indiana corporation headquartered in Merrillville, Indiana and is a subsidiary of NiSource Inc. NIPSCO owns and operates approximately 3,300 megawatts of electric generating capacity, approximately 2,800 miles of electric transmission lines and serves approximately 461,000 electric customers across Northern Indiana. NIPSCO states that it is an electric load serving entity and a transmission-owning member of MISO and has transferred functional control of its transmission system to MISO.⁴

3. NIPSCO states that Attachment O of its Tariff contains NIPSCO's forward-looking transmission rate formula pursuant to which NIPSCO recovers its annual revenue requirement and establishes the charges for transmission service over its facilities. In the instant filing, NIPSCO proposes revised depreciation rates to be used in its formula rate and seeks authorization as a limited-scope or single-issue filing under section 205 of the FPA.⁵ NIPSCO states that the Commission has accepted several single-issue section 205 filings involving updated transmission rates.⁶

4. NIPSCO states that it retained an outside consulting firm, Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming), to perform a depreciation study and develop depreciation rates. NIPSCO states that the depreciation study was based on the "straight line remaining life method" of depreciation rate computation, using the Equal Life Group procedure. NIPSCO states that this method would distribute the unrecovered cost of fixed capital assets over the estimated remaining useful life of each unit or group of assets in a systematic and rational method.⁷

5. NIPSCO states that Gannett Fleming first estimated the service life and net salvage characteristics for depreciable groups having similar characteristics. Next, they calculated the annual depreciation accrual rates based on the composite remaining lives

⁴ Transmittal at 2.

⁵ *Id.* at 1.

⁶ *Id.* at 1-3 & n.4 (citing *Ameren Illinois Co.* 141 FERC ¶ 61,264, at P 32 (2012) (citing *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284 (2007)); *Mich. Electric Transmission Co.*, 117 FERC ¶ 61,314 (2006), *order on reh'g*, 118 FERC ¶ 61,139 (2007); *Boston Edison Co.*, 65 FERC ¶ 61,311, at 62,427 (1993)).

⁷ *Id.* at 3.

and estimated service lives for each depreciable group.⁸ NIPSCO submits that this study satisfies the requirements of Order No. 618 which requires utilities to allocate in a systematic and rational manner the cost of property over its estimated useful service life.⁹

6. NIPSCO states that the proposed depreciation rates were approved by the Indiana Utility Regulatory Commission (Indiana Commission) on July 18, 2016 with an effective date of October 1, 2016.¹⁰ NIPSCO estimates that these proposed changes to depreciation rates will reduce annual depreciation by approximately \$10,201,104.¹¹

7. NIPSCO requests waiver of the Commission's 60-day prior notice requirement in order to accept the filing effective October 1, 2016, the same effective date granted by the Indiana Commission. NIPSCO contends that granting this waiver is appropriate because it will, among other things, promote consistency in the depreciation rates used for federal and state ratemaking purposes and result in an overall reduction in annual depreciation rates.¹²

II. Notice and Responsive Pleadings

8. Notice of NIPSCO's filing was published in the *Federal Register*, 81 Fed. Reg. 62,496 (2016), with interventions and protests due on or before September 22, 2016. None was filed.

III. Discussion

9. Our preliminary analysis indicates that NIPSCO's proposed depreciation rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In particular, given that the Commission has previously rejected the use of the Equal Life Group Procedure for calculating depreciation rates, we find that NIPSCO has not demonstrated that the use of

⁸ *Id.*

⁹ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,694 (2000) (Order No. 618).

¹⁰ *See* Indiana Commission, Order of the Commission, Cause No. 44688 (Jul. 18, 2016) (order approving depreciation rates).

¹¹ Transmittal at 6.

¹² *Id.* at 2.

this procedure in this instance is appropriate.¹³ We thus find that NIPSCO's proposed depreciation rates raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

10. Accordingly, as NIPSCO is proposing a change in depreciation rates resulting in a rate reduction, we accept NIPSCO's proposed depreciation rates for filing, to become effective October 1, 2016,¹⁴ as requested, but because a further rate decrease may be warranted, we are instituting a hearing and settlement judge procedures pursuant to section 206 of the FPA in Docket No. EL17-10-000 with respect to the justness and reasonableness of NIPSCO's depreciation rates.

11. 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 the date of 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.¹⁵ We will establish a refund effective date of the earliest date possible in order to give maximum protection to customers, i.e., the date the notice of initiation of the section 206 proceeding in Docket No. EL17-10-000 is published in the *Federal Register*.

12. Section 206(b) of the FPA also requires that if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. Since we are setting the section 206 proceeding in Docket No. EL17-10-000 for hearing and settlement judge procedures, we expect that, if the proceeding does not settle, we would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision.

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

¹³ *Middle South Energy, Inc.*, 31 FERC ¶ 61,305 (1985).

¹⁴ We will waive the Commission's 60-day prior notice requirement because NIPSCO's proposed depreciation rates represent a rate decrease. See *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, at 61,338, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

¹⁵ 16 U.S.C. § 824e(b) (2012).

procedures commence. To aid the participants 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.¹⁶ If the participants desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.¹⁷ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) NIPSCO's proposed depreciation rates are hereby accepted, effective October 1, 2016, as discussed in the body of this order.

(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 the FPA, particularly section 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 in Docket No. EL17-10-000 concerning the justness and reasonableness of NIPSCO's proposed depreciation rates, as discussed in the body of this order. 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 (2016), 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

¹⁶ 18 C.F.R. § 385.603 (2016).

¹⁷ If the participants decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

designates the settlement judge. If the participants 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 participants 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 participants' progress toward settlement.

(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) Any interested person desiring to be heard in Docket No. EL17-10-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), within 21 days of the date of issuance of this order.

(G) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL17-10-000.

(H) The refund effective date established pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (G) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.