

150 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. Docket No. ER13-2375-002
Southern Indiana Gas & Electric Company

ORDER ON COMPLIANCE FILING

(Issued January 22, 2015)

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

I. Background

2. On May 17, 2012, the Commission instituted an investigation, pursuant to section 206 of the Federal Power Act (FPA),³ to determine whether the formula rate protocols under Attachment O of the Tariff were sufficient to ensure just and reasonable rates.⁴ In

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,210 (2014) (March 2014 Order).

² MISO FERC Electric Tariff, 25, Vectren Annual Rate Calculation and True-Up Procedures, 31.0.0. MISO states that it joins this filing as the administrator of its Tariff, but takes no position on the substance of the filing.

³ 16 U.S.C. § 824e (2012).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (Hearing Order). In order to address whether MISO's *pro forma* formula rate protocols and the formula rate protocols of independent transmission owners are sufficient to ensure just and reasonable rates, the Commission established paper hearing procedures.

the Hearing Order, the Commission 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).

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

4. On September 13, 2013, in compliance with the Commission's May 2013 Order, MISO and Southern Indiana, as a transmission owning member of MISO, submitted revised forward-looking Attachment O formula rate protocols. In the March 2014 Order, the Commission conditionally accepted the compliance filing, to become effective January 1, 2014.⁶ The Commission required several adjustments to the protocols' provisions related to the scope of participation in the review and challenge procedures, the transparency of the information exchange process, and the ability of customers to challenge transmission owners' implementation of the formula rate.⁷

5. On May 19, 2014, in compliance with the Commission's March 2014 Order, MISO and Southern Indiana filed proposed revisions to Southern Indiana's formula rate protocols under the Tariff. Southern Indiana requests that the Commission accept the Tariff revisions effective January 1, 2014, consistent with the effective date established by the Commission in the March 2014 Order.⁸

II. Notice and Responsive Pleadings

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

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

⁶ March 2014 Order, 146 FERC ¶ 61,210 at P 1.

⁷ *Id.* PP 14, 32-39, 51-55.

⁸ Southern Indiana Compliance Filing at 4.

III. Discussion

A. Substantive Matters

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

B. Scope of Participation

1. March 2014 Order

8. In the May 2013 Order, the Commission found that all transmission owners must revise their protocols to allow for participation by "all interested parties in information exchange and review processes, including but not exclusive to customers under the Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorney[s] general[.]"⁹ In the March 2014 Order, the Commission found that Southern Indiana's protocols failed to include all interested parties by limiting participation in information exchange and review processes to its customers, certain entities within Indiana, and other entities located where Southern Indiana serves wholesale customers or owns facilities.¹⁰ The Commission directed Southern Indiana to revise its protocols to explicitly provide that all interested parties, including those specifically mentioned in the May 2013 Order, may participate in review and challenge proceedings.

2. Southern Indiana's Filing

9. In its May 19 compliance filing, Southern Indiana states that in compliance with the Commission's directive to revise its protocols to explicitly provide that all interested parties, including those mentioned in the May 2013 Order, may participate in review and challenge proceedings, Southern Indiana has revised the definition of "Interested Parties" in section 1(a) to provide that, "the term Interested Party includes, but is not limited to, customers under the Tariff, state utility regulatory commissions, the Organization of MISO States, consumer advocacy agencies, and state attorneys general."¹¹

⁹ May 2013 Order, 143 FERC ¶ 61,149 at P 34.

¹⁰ March 2014 Order, 146 FERC ¶ 61,210 at P 14.

¹¹ Southern Indiana Compliance Filing at 2.

3. Commission Determination

10. We accept Southern Indiana's proposed revision to section 1(a). We find that its revision satisfies the directives of the March 2014 Order by providing that all interested parties, including those mentioned in the May 2013 Order, may obtain information and participate in review processes.

C. Transparency

1. March 2014 Order

11. In the March 2014 Order, the Commission conditionally accepted Southern Indiana's protocols related to the transparency of the information exchange process. However, it required Southern Indiana to propose the following revisions to the protocols to: (1) provide electronic notice of each transmission owner's formula rate update/true-up to interested parties;¹² (2) provide such notice within 10 days of posting the annual update/true-up and provide notice of the annual meeting no less than seven days prior to such meeting;¹³ (3) describe a process for transmission owners with transmission projects that utilize a regional cost sharing mechanism to coordinate and hold joint meetings to enable all interested parties to understand how those transmission owners are implementing their formula rates for cost recovery of such projects;¹⁴ (4) state that if a certain deadline for interested parties falls on a weekend or holiday recognized by the Commission, then the deadline will be extended to the next business day;¹⁵ (5) expressly state that the annual update will identify any changes in the formula references (page and line numbers) to its FERC Form No. 1 and all material adjustments made to its FERC Form No. 1 data in determining formula inputs, including relevant footnotes to and any adjustments not shown in its FERC Form No. 1;¹⁶ (6) note any reorganization or merger transaction noting if such transactions are likely to affect the charges that result from the formula rate calculations;¹⁷ (7) identify any items included in the formula rate at an

¹² March 2014 Order, 146 FERC ¶ 61,210 at P 33.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* P 34.

¹⁶ *Id.* P 35.

¹⁷ *Id.*

amount other than on a historical cost basis (e.g. fair value adjustments);¹⁸ (8) provide that any corrections or adjustments made must be described in the informational filing;¹⁹ (9) remove the word “material” from all instances of the phrase “material accounting changes;”²⁰ (10) include a provision precluding a transmission owner from claiming that responses to information and document requests pursuant to the protocols are subject to any settlement confidentiality provision;²¹ (11) specifically provide that the informational filing include information necessary to determine the five inquiry categories;²² (12) require all MISO transmission owners to submit informational filings in separate docket numbers;²³ and (13) provide notification of transmission owners’ informational filings through the email “exploder” list to be maintained by MISO, and by posting the docket number assigned to each transmission owner’s informational filing on the MISO website and OASIS within five days of such filing.²⁴

2. Southern Indiana’s Filing

12. In response to the Commission’s first two transparency directives, which regard notice for the provision of annual updates or true-ups, Southern Indiana proposes to revise sections 1(a) and 1(b) to state that notification of the posting of the annual true-up on the MISO website and OASIS will be made through an email exploder list maintained by MISO within 10 calendar days of the posting and notice of the annual meeting within seven days of the meeting.²⁵ In response to the Commission’s third transparency directive, to coordinate and hold meetings for transmission projects with regional cost sharing, Southern Indiana proposes to revise section 1(e) to specify that, to the extent that Southern Indiana has a transmission project that utilizes a regional cost sharing mechanism, Southern Indiana shall coordinate with the other transmission owners to establish joint meetings to enable all interested parties to understand how the formula

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* P 36.

²¹ *Id.* P 37.

²² *Id.* P 38.

²³ *Id.* P 39.

²⁴ *Id.*

²⁵ Southern Indiana Compliance Filing at 3.

rates for the cost recovery of such projects are being implemented. In response to the Commission's fourth transparency directive, Southern Indiana proposes revisions to sections 1(b), 2(e), 3(b), and 4(a) stating that deadlines falling on weekends or holidays will move to the next available business day.

13. In response to the Commission's fifth transparency directive, regarding identifying changes to FERC Form No. 1 references, Southern Indiana proposes revisions to sections 1(a)(iv), 1(a)(v), and 1(a)(vi).²⁶ In response to the Commission's sixth transparency directive, regarding disclosing reorganizations or mergers, Southern Indiana proposes revisions to section 1(a)(vii) to provide that Southern Indiana will identify any reorganization or merger transaction and will note if such transaction is likely to affect the charges that result from the formula rate calculations. In response to the Commission's seventh transparency directive, Southern Indiana proposes revisions to section 1(a)(iii) to identify any items included in the formula rate at an amount other than on a historical cost basis. In response to the Commission's eighth transparency directive, Southern Indiana proposes revisions to section 3(f) to explain that it will describe any corrections made during the annual review process.

14. In response to the Commission's ninth transparency directive, to remove the word "material" from "material accounting changes," Southern Indiana proposes to remove "material" from sections 1(a)(iii), 3(a) and 3(b).²⁷ In response to the Commission's tenth transparency directive regarding claiming that information and document requests are subject to settlement provisions, Southern Indiana proposes revisions to section 3(e) to state that it is precluded from asserting confidentiality on the basis of any Commission settlement agreement.

15. In response to the Commission's eleventh transparency directive, Southern Indiana adds language to section 3(f) stating that the informational filings include the information necessary to determine the five inquiry categories.²⁸ Southern Indiana did not propose any Tariff revisions in response to the Commission's twelfth transparency directive. In response to the thirteenth transparency directive, Southern Indiana proposes to add language to section 3(f) to describe how MISO shall provide notice of informational filings.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

3. Commission Determination

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

17. With respect to the Commission's tenth transparency directive regarding settlement privilege, we find that Southern Indiana's proposed Tariff language precluding it from asserting confidentiality on the basis of any FERC settlement agreement is overly narrow. Consistent with the proposed language that the Commission has accepted for the MISO transmission owners,²⁹ we direct Southern Indiana, in a compliance filing due within 30 days of the date of this order, to propose Tariff revisions precluding it from invoking settlement privilege rather than only precluding it from invoking settlement privilege pursuant to a settlement agreement.

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

D. Challenge Procedures

1. March 2014 Order

19. In the March 2014 Order, the Commission found that Southern Indiana's proposed challenge procedures largely complied with the Commission's directives in the May 2013 Order by affording interested parties the opportunity to raise informal challenges for a reasonable period of time after the transmission owner initially proposes its annual update.³¹ The Commission further found that Southern Indiana's proposed protocols required Southern Indiana, where appropriate, to resolve informal challenges.

²⁹ See *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025, at P 20 (2015).

³⁰ *Id.*

³¹ March 2014 Order, 146 FERC ¶ 61,210 at P 51.

20. However, the Commission required Southern Indiana to revise to its protocols to: (1) add language that enables interested parties to present informal challenges after an opportunity to evaluate all responses to information requests;³² (2) propose additional revisions to its formula rate protocols to establish formal challenge procedures that are distinct from the statutory right of the Commission and interested parties to file a complaint pursuant to section 206;³³ (3) clarify that formal challenges should be filed in the informational filing docket;³⁴ (4) revise its description of its burden of proof in the course of a formal challenge to more accurately reflect the Commission's directives in the May 2013 Order, which required transmission owners to bear the burden of demonstrating not only the correctness of the annual update, but also the justness and reasonableness of the rate resulting from its application of the formula;³⁵ and (5) effectuate the commitment it made to revise its protocols to respond to all informal challenges within 20 business days.³⁶

2. Southern Indiana's Filing

21. In response to the first, second, and third challenge procedure directives, Southern Indiana states that its revised protocols adopt a revised timeline that establishes specific deadlines for information exchanges, informal challenges and the filing of formal challenges with the Commission.³⁷ Southern Indiana further claims that its proposed Tariff revisions adopt the same formal challenge procedures as the MISO transmission owners, as detailed in section 4(d) of its revised protocols. Furthermore, Southern Indiana states that it added section 4(c) to direct interested parties to file a formal challenge in the same docket as the annual update informational filing.

³² *Id.* P 52. The Commission noted that the proposed deadline for interested parties' submission of informal challenges could precede the date by which Southern Indiana is required to respond to information requests, thereby impairing the abilities of interested parties to raise informed informal challenges. In addition, the Commission found that the proposal established no firm deadline for Southern Indiana's good-faith effort to respond to information requests within 15 business days.

³³ *Id.* P 53.

³⁴ *Id.* P 54.

³⁵ *Id.* P 55.

³⁶ *Id.* P 57.

³⁷ Southern Indiana Compliance Filing at 4.

22. In response to the fourth challenge procedure directive, Southern Indiana states that the revised formal challenge procedures in section 4(c) provide that Southern Indiana will bear the burden of demonstrating the justness and reasonableness of the rate resulting from the application of the formula, and, consistent with the May 2013 Order, section 4(c) continues to provide that interested parties challenging the prudence of a given expenditure must first create a serious doubt before the burden of proof shifts to Southern Indiana.³⁸

23. Southern Indiana responded to the Commission's fifth challenge procedure directive by adding Tariff language in section 4(c) stating that it will respond to informal challenges no later than February 28 of each year.³⁹

3. Commission Determination

24. We find that Southern Indiana's proposed revisions to the challenge procedures generally comply with the directives of the March 2014 Order and conditionally accept them, subject to further compliance, as described below. We accept Southern Indiana's commitment to adopt the same formal challenge procedures as the MISO transmission owners, which we are conditionally accepting in a concurrent order in Docket Nos. ER13-2379-002 and ER13-2379-003, subject to further compliance.⁴⁰ Specifically, we direct Southern Indiana, in a compliance filing due within 30 days of the date of this order, to revise its protocols as follows: (1) add language to section 4(d) to state that an interested party must submit an informal challenge on *any* issue to submit a formal challenge; and (2) extend the deadline for submitting a formal challenge to April 15.

25. In the March 2014 Order, the Commission directed Southern Indiana to revise its burden of proof in a formal challenge to include the justness and reasonableness of the resulting formula, *as well as* the correctness of the resulting formula. We accept Southern Indiana's proposed additions to section 4(c) with respect to the justness and the reasonableness of the rates resulting from the application of the formula rate. However, we find that Southern Indiana erroneously eliminated language in section 4(c) regarding the correctness of the annual update and any challenge, and we direct Southern Indiana to restore such language in its compliance filing due within 30 days of the date of this order.

³⁸ *Id.* (citing May 2013 Order, 149 FERC ¶ 61,149 at P 121).

³⁹ *Id.*

⁴⁰ *See Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 at PP 25, 49-55.

The Commission orders:

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

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

By the Commission. Commissioner Honorable is voting present.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.