

161 FERC ¶ 61,057
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Midcontinent Independent System
Operator, Inc.

Docket Nos. EL16-99-000
EL18-18-000
(consolidated)

ORDER ON PAPER HEARING AND INSTITUTING SECTION 206 PROCEEDING,
ESTABLISHING REFUND EFFECTIVE DATE, AND CONSOLIDATING
PROCEEDINGS

(Issued October 19, 2017)

1. On July 21, 2016, pursuant to section 206 of the Federal Power Act (FPA),¹ the Commission issued an order² which, among other things, instituted a proceeding to examine whether the Midcontinent Independent System Operator, Inc.³ (MISO) Transmission, Energy and Operating Reserve Markets Tariff (Tariff) may be unjust, unreasonable, unduly discriminatory, or preferential because it does not include a refund commitment by non-public utility transmission owners whose revenue requirements are recovered under the MISO Tariff.
2. As discussed below, we will hold the FPA section 206 paper hearing in abeyance pending the ongoing MISO stakeholder process. We also address some issues raised by parties below. Additionally, we institute a proceeding in Docket No. EL18-18-000

¹ 16 U.S.C. § 824e (2012),

² *Ark. Elec. Coop. Corp. v. ALLETE, Inc.*, 156 FERC ¶ 61,061 (2016) (July 2016 Order).

³ Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

pursuant to FPA section 206 to examine the MISO Transmission Owners Agreement and other jurisdictional documents, as discussed more fully below, and consolidate Docket Nos. EL16-99-000 and EL18-18-000.

I. Background

3. On February 12, 2015, certain non-public utilities⁴ filed a complaint in Docket No. EL15-45-000 against certain MISO transmission owners (MISO TOs),⁵ contending that the 12.38 percent base return on equity (ROE) the MISO TOs earn through the MISO Tariff is unjust and unreasonable. All of the MISO TOs named in the complaint were subject to the Commission's jurisdiction as public utilities under the FPA. On June 18, 2015, the Commission established a hearing on the complaint and set a refund effective date of February 12, 2015.⁶ The Commission also found that the issues of the base ROE of non-public utility MISO transmission owners and their refund obligations were not before the Commission in that proceeding, because they were not raised in the complaint.

4. In the July 2016 Order, the Commission generally denied requests for rehearing of the Hearing Order. However, the Commission granted in part a request for rehearing with respect to the issue of refunds by non-public utility transmission owners. The

⁴ Arkansas Electric Cooperative Corporation (Arkansas Electric Cooperative); Mississippi Delta Energy Agency and its two members, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi; and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier Cooperative).

⁵ MISO TOs named in the 2015 complaint are: ALLETE, Inc. (for its operating division Minnesota Power, Inc. and its wholly-owned subsidiary Superior Water Light, & Power Company); Ameren Illinois Company; Union Electric Company (identified as Ameren Missouri); Ameren Transmission Company of Illinois; American Transmission Company LLC; Cleco Power LLC; Duke Energy Business Services, LLC d/b/a Duke Energy Indiana, Inc.; Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, LLC; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission, ITC Midwest LLC, and Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Montana-Dakota Utilities Co., Northern Indiana Public Service Company; Northern States Power Company-Minnesota; Northern States Power Company-Wisconsin; Otter Tail Power Company; and Southern Indiana Gas & Electric Company d/b/a Vectran Energy Delivery of Indiana, Inc.

⁶ *Ark. Elec. Coop. Corp. v. ALLETE, Inc.*, 151 FERC ¶ 61,219 (2015) (Hearing Order).

Commission stated that, while it does not have refund authority over non-public utilities,⁷ when a Regional Transmission Organization (RTO) has proposed under FPA section 205⁸ to include a non-public utility transmission owner's transmission revenue requirement in its tariff, the Commission has conditioned implementation of the proposal, pending completion of the proceeding, upon that non-public utility transmission owner's agreement to make refunds if the rate, as filed, is later found to be not just and reasonable. However, the Commission stated that until recently, the Commission has only required such a refund commitment in the specific FPA section 205 proceeding where the RTO has proposed to include the non-public utility transmission owner's transmission revenue requirement in the RTO's jurisdictional tariff. Thus, the refund commitment has not extended to future FPA section 205 and 206 proceedings where the justness and reasonableness of the RTO's tariff and rates are at issue. The Commission stated that, to reduce this regulatory gap in MISO, the Commission has conditioned approval of FPA section 205 tariff filings by MISO and non-public utility transmission owners to add an RTO adder to their base ROEs on commitments by the non-public utility transmission owners to provide refunds in any proceeding resulting in a new base ROE for MISO TOs, including this Complaint proceeding.⁹

5. However, the Commission stated that despite these decisions:

It is still of concern that the refund commitments provided by the non-public utility transmission owners thus far do not apply to the full range of situations in which they may receive revenue associated with service provided due to their status as transmission-owning [RTO] members based on RTO rates, terms or conditions that are found to be unjust and unreasonable, in the same manner that public utility transmission owners could be required to provide refunds of such revenues under FPA sections 205 or 206.¹⁰

6. Therefore, the Commission instituted an FPA section 206 proceeding, established paper hearing procedures, and noted that MISO might address the Commission's concerns by revising the MISO Tariff to require a prospective refund commitment from non-public utility transmission owners for all manner of refunds that may be ordered in

⁷ *Id.* P 42 (citing *Bonneville Power Admin. v. Fed. Energy Reg. Comm'n*, 422 F.3d 908, 911 (9th Cir. 2005) (*Bonneville*)).

⁸ 16 U.S.C. § 824d (2012).

⁹ July 2016 Order, 156 FERC ¶ 61,061 at P 44.

¹⁰ *Id.* P 45.

FPA section 205 and 206 proceedings related to revenues that they may receive associated with service provided due to their status as transmission-owning RTO members.¹¹ The Commission stated that, if a non-public utility transmission owner chooses not to make such a refund commitment under the tariff revisions, then MISO would remove the non-public utility transmission owner's transmission revenue requirement from the MISO Tariff as of a prospective date determined by the Commission.¹²

II. Notice and Responsive Pleadings

7. On July 28, 2016, notice of the institution of an FPA section 206 proceeding to investigate the justness and reasonableness of MISO's Tariff was published in the *Federal Register*, 81 Fed. Reg. 49,637 (2016). The notice indicated that the refund effective date will be the date of publication of the notice in the *Federal Register*.

8. Timely motions to intervene were filed by: National Rural Electric Cooperative Association (NRECA), American Transmission Company, LLC, Entergy Services, Inc., Arkansas Electric Cooperative Corporation, MISO TOs, South Mississippi Electric Power Association, Prairie Power, Inc., Midcontinent MCN LLC, Basin Electric Power Cooperative, Central Power Electric Cooperative, Inc., Great River Energy, MISO, Dairyland Power Cooperative (Dairyland), American Public Power Association (APPA), Coalition of MISO Transmission Customers (CMTC), Missouri Public Service Commission, American Municipal Power, Inc., Western Farmers Electric Cooperative, the NRG Companies, East Texas Electric Cooperative, Inc., Western Area Power Administration, Nebraska Public Power District, Minnkota Power Cooperative, Inc., Midwest TDUs,¹³ Muscatine Power & Water, East Kentucky Power Cooperative, Inc., Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), and Southern Illinois Power Cooperative (Southern Illinois). Timely notices of intervention were filed by the Organization of MISO States and Arkansas Public Service Commission. Out-of-time interventions were filed by the Council of the City of New Orleans and Missouri River Energy Services.

¹¹ *Id.* P 47.

¹² *Id.*

¹³ Midwest TDUs includes: Missouri Joint Municipal Electric Utility Commission, Southern Minnesota Municipal Power Agency, Midwest Municipal Transmission Group, Missouri River Energy Services, Municipal Energy Agency of Nebraska, and WPPI Energy (WPPI).

9. Timely initial briefs were filed by Dairyland, APPA, CMTC, MISO TOs, NRECA, MISO, and Hoosier and Southern Illinois. Timely reply briefs were filed by Dairyland, MISO TOs, Hoosier and Southern Illinois, WPPI, and NRECA.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), we will grant the late-filed motions to intervene, given the filers' interest in the proceedings and the absence of undue prejudice or delay.

B. Substantive Matters

1. Commission Refund Authority

a. Initial Briefs

11. Dairyland argues that the FPA section 201(f) prohibits the Commission from ordering non-public utilities to make refunds and that the July 2016 Order implies that a non-public utility that joins an RTO either waives FPA section 201(f) or that that section no longer applies.¹⁴ Dairyland argues that abiding by the July 2016 Order would unlawfully require refunds and be inconsistent with *Bonneville Power Administration v. Federal Energy Regulatory Commission* and *Transmission Agency of Northern California v. Federal Energy Regulatory Commission*.¹⁵ While Dairyland recognizes the concerns expressed in the July 2016 Order, it argues that expanding the refund requirement is neither necessary nor lawful.¹⁶

12. NRECA asserts that the Commission must acknowledge that non-public utilities lie outside the Commission's FPA ratemaking and refund authority, and the Commission's actions here must not be seen as an invitation to revisit established

¹⁴ Dairyland Initial Brief at 2-3.

¹⁵ *Id.* at 6 (*Bonneville*, 422 F.3d 908 (9th Cir. 2005); *Transmission Agency of N. Cal. v. Fed. Energy Reg. Comm'n*, 495 F.3d 663 (D.C. Cir. 2007) (*TANC*)).

¹⁶ *Id.* at 7.

precedent.¹⁷ NRECA states that the participation by non-public utilities in Commission-jurisdictional markets does not provide the Commission with refund authority over non-public utilities, and non-public utilities cannot volunteer to be subject to Commission refund authority.¹⁸ NRECA and APPA thus contend that the Commission does not have the authority “to order refunds from” non-public utility transmission owners, which it argues, the Commission did in the July 2016 Order.¹⁹ NRECA argues that “it cannot be deemed unjust and/or unreasonable for the Commission not to do something which it is statutorily barred from doing.”²⁰ Further, it argues that “there can be no undue discrimination because non-public utilities are not similarly situated with public utilities for purposes of [the Commission’s] refund authority.”²¹ NRECA argues that, even if the Commission determines that the MISO Tariff is unjust, unreasonable, unduly discriminatory, or preferential without a refund commitment, it should not reopen debate on fundamental jurisdictional issues.²²

13. NRECA asserts that if the Commission does not change its positions from the July 2016 Order, it must proceed similar to the Order No. 888 reciprocity provision by acknowledging its inability to require refunds and providing that the refund commitment is a condition precedent to non-public utility transmission owners recovering revenues through the MISO tariff “associated with service provided due to their status as transmission-owning RTO members.”²³

14. APPA concedes that the Commission may review a public power utility’s transmission revenue requirement if it is included in an RTO’s rates, but states that any

¹⁷ NRECA Initial Brief at 9.

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 10-11; APPA Initial Brief at 2 (citing *TANC*, 495 F.3d 663, 676 (D.C. Cir. 2007)).

²⁰ NRECA Initial Brief at 11.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 12.

revision of MISO's tariff arrangements should respect the "established limitations on the Commission's authority."²⁴

15. MISO argues that the Commission's FPA rate jurisdiction only applies to public utilities and states that judicial precedent indicates that the Commission has no refund authority over non-public utilities.²⁵ Furthermore, MISO and APPA argue that the Commission cannot indirectly mandate a refund obligation when it cannot do so directly.²⁶ For this reason, MISO has concerns that amending only the Tariff to provide for the desired refund commitment language could expose it to litigation and claims that it "serves as a conduit" for indirect Commission regulation of non-jurisdictional entities.²⁷ However, MISO notes that the Transmission Owners Agreement is a contract governed by Delaware law and thus enforceable in a court of law, regardless of the jurisdictional status of its signatories. MISO states that several federal courts have indicated that a refund commitment in a membership agreement would be enforceable against non-jurisdictional members as a matter of law.²⁸

16. CMTC argues that the Commission maintains authority under FPA sections 206 and 309 to take actions necessary to provide refunds and make entities whole if a rate is found to be unjust, unreasonable, or unduly discriminatory. It argues that the Commission may use this authority to condition the effectiveness of non-public utility transmission owner rate filings and issue orders to provide the Commission with clearer authority to issue refunds when the Commission determines that customers receiving service from transmission owners paid unjust and unreasonable rates.²⁹

²⁴ APPA Initial Brief at 2.

²⁵ MISO Initial Brief at 10.

²⁶ *Id.* (citing *Altamont Gas Transmission Co. v. Fed. Energy Reg. Comm'n*, 92 F.3d 1239 (D.C. Cir. 1996) (*Altamont*), *cert. denied sub nom., Indicated Expansion Shippers v. Fed. Energy Reg. Comm'n*, 520 U.S. 1204 (1997)); APPA Initial Brief at 2 (citing *Richmond Power & Light v. Fed. Energy Reg. Comm'n*, 574 F.2d 610,620 (D.C. Cir. 1978) (*Richmond Power*)).

²⁷ MISO Initial Brief at 10.

²⁸ *Id.*

²⁹ CMTC Initial Brief at 6.

b. Reply Briefs

17. In response to Dairyland, MISO TOs argue that the Commission's inability to order non-public utility transmission owners to provide refunds "can only be bridged by including a refund obligation in the Tariff or MISO governing documents."³⁰ Additionally, MISO TOs argue that Dairyland fails to appreciate that RTO membership is voluntary and that courts have recognized that the Commission may condition its approval of a non-public utility joining an RTO upon that entity agreeing to perform a particular activity.³¹

18. NRECA and Dairyland reiterate that Congress has prohibited the Commission from ordering non-public utilities to make refunds.³² Dairyland further states that the Commission may not indirectly order non-public utilities to make refunds indirectly if it cannot do so directly.³³ For these reasons, Dairyland asks the Commission to decline to order the refund commitment described in the July 2016 Order.

c. Commission Determination

19. The FPA requires the Commission to assure that the jurisdictional rates charged by RTOs, such as MISO, are just and reasonable.³⁴ When a non-public utility becomes a participating transmission owner in an RTO, its transmission revenue requirement becomes a component of the RTO's jurisdictional rate.³⁵ Accordingly, the D.C. Circuit has held that the Commission has jurisdiction under the FPA to "analyze and consider the rates of [non-public] utilities to the extent that those rates affect jurisdictional

³⁰ MISO TOs Reply Brief at 7.

³¹ *Id.* at 7-8 (citing *Xcel Energy Servs. v. Fed. Energy Reg. Comm'n*, 815 F.3d 947, 950 (D.C. Cir. 2016) (*Xcel*)).

³² NRECA Reply Brief at 3-5; Dairyland Reply Brief at 1-3.

³³ *Id.* (citing *Richmond Power*, 574 F.2d at 620; *Altamont*, 92 F.3d at 1248).

³⁴ *Pac. Gas & Elec. Co. v. Fed. Energy Reg. Comm'n*, 306 F.3d 1112, 1114 (D.C. Cir. 2002) (*PG&E*).

³⁵ *TANC*, 495 F.3d at 671-72 (finding that once a municipality becomes a participating transmission owner, its transmission revenue requirement becomes a component of the rate design under which an RTO operates).

transactions” through their inclusion in the RTO’s rates.³⁶ The Commission reviews such non-public utility rates under the statutory just and reasonable standard.³⁷ The reason for applying this standard is that “it is impossible to ensure that [an RTO’s] rates are just and reasonable without reviewing [a member non-public utility transmission owner’s] rates under the same standard.”³⁸

20. However, as the Commission acknowledged in the July 2016 Order, the Commission’s rate jurisdiction under FPA section 205 and its refund jurisdiction under FPA section 206 “expressly apply only to public utilities.”³⁹ Thus, the Commission does not “have refund authority over . . . governmental entities and non-public utilities.”⁴⁰

21. In fact, the Commission’s established policy acknowledges the limits of the Commission’s authority. Pursuant to this policy, when an RTO proposes to include a non-public utility’s revenue requirement in the RTO’s rates, the RTO may not implement that proposal unless the non-public utility makes a voluntary commitment to make refunds if the rate, as filed, is later found to be not just and reasonable. In *Xcel Energy Services, Inc. v. Federal Energy Regulatory Commission*, the D.C. Circuit acknowledged the Commission’s policy in this regard and held that the Commission erred by failing to adhere to its policy and by not providing full retroactive relief to remedy this error.⁴¹

22. The July 2016 Order and the Commission’s policy with regard to non-public utility RTO transmission owners do not extend the limits of the Commission’s authority or provide the Commission with the ability to order non-public utility transmission owners to provide refunds. To this point, we note that, in *TANC*, the D.C. Circuit held that a non-public utility’s voluntary contractual commitment to make refunds does not authorize the Commission to issue an order requiring the non-public utility to make refunds.⁴² Nor does the Commission have authority to enforce the contract. However, as

³⁶ *PG&E*, 306 F.3d at 1114; *TANC*, 495 F.3d at 667.

³⁷ *TANC*, 495 F.3d at 671-72.

³⁸ *Id.* at 672.

³⁹ *Bonneville*, 422 F.3d at 911; *see also TANC*, 495 F.3d at 673.

⁴⁰ *Bonneville*, 422 F.3d at 911.

⁴¹ *See Xcel*, 815 F.3d 947 at 950 (citing, *inter alia*, *Lively Grove Energy Partners, LLC*, 140 FERC ¶ 61,252, at P 47 & n.59 (2012)).

⁴² *TANC*, 495 F.3d at 675.

the Eighth Circuit held in *Alliant Energy v. Nebraska Public Power District*, a court can enforce such a contractual agreement.⁴³ For these reasons, we clarify that the refund commitment described in the July 2016 Order and here must be a contractual commitment that is enforceable by the court, not the Commission.

23. MISO, APPA, and Dairyland have suggested that the refund commitment requirement sought by the July 2016 Order is an attempt by the Commission to achieve indirectly what it cannot do directly. In support of this argument, they cite *Richmond Power*, and *Altamont*. However, the situation at hand is distinguishable from the circumstances underlying those cases.

24. *Richmond Power* involved electricity transfers during the 1970s oil embargo whereby heavily oil-dependent utilities sought electricity from regions with excess non-oil-fired capacity. The Federal Power Commission approved rate schedules for a “series of transfers” with rate structures resembling “those frequently employed for short-term power, including recovery of the replacement cost of fuel, incremental operating costs . . . and a pro rata share of fixed costs.”⁴⁴ *Richmond Power* and Light Company objected to the proposed rates, and the Commission instituted a rulemaking proceeding in which *Richmond Power* and Light Company further complained that the Commission erred by rejecting a “a single joint rate for a transmission crossing two or more systems as opposed to individual rates for each utility or power pool involved in the transaction.”⁴⁵ *Richmond Power* and Light Company acknowledged that establishment of such a rate “would be feasible only if the Commission could order all intervening utilities to wheel electricity.”⁴⁶ The court explained, however, that Congress did not provide the Commission with the authority to mandate wheeling. It was in this context that the court explained that the Commission could not indirectly require wheeling by rejecting proposals that did not mandate wheeling.⁴⁷

25. The situation here is distinguishable because in *Richmond Power*, the court focused on the Commission’s ability to reject rates that were otherwise just and reasonable to accomplish something that Congress did not authorize the Commission

⁴³ 347 F.3d 1046, 1050 (8th Cir. 2003).

⁴⁴ *Richmond Power*, 574 F.2d at 613

⁴⁵ *Id.* at 614.

⁴⁶ *Id.* at 619.

⁴⁷ *Id.* at 620.

to do.⁴⁸ Conversely, the issue here involves rates that, without the establishment of a refund commitment, would be unjust and unreasonable. In the July 2016 Order, the Commission proposed to require non-public utilities to commit to provide refunds in situations where the Commission finds the inclusion of their revenue requirement in MISO's jurisdictional rates has caused some aspect of MISO's jurisdictional rates to be unjust and unreasonable. Just as it would be unjust and unreasonable for a MISO member to continue to collect an unjust and unreasonable rate, it would be unjust and unreasonable for a non-public utility MISO member to take advantage of the limitations of the FPA to avoid having to pay refunds for past collections of unjust and unreasonable rates. For this reason, it is appropriate for MISO to require refund commitments by non-public utility transmission owners consistent with the July 2016 Order.⁴⁹

26. The present case is also distinguishable from the circumstances underlying *Altamont*, where the D.C. Circuit found that the Commission exceeded its jurisdiction under the Natural Gas Act by conditioning the issuance of a certificate to an interstate pipeline on that pipeline lowering its authorized return on equity until the pipeline's interconnecting intrastate affiliate removed certain anti-competitive provisions from its intrastate rates. The court in *Altamont* stated that the Commission's action was intended to influence "rate policies approved or required by the [state commission]" that are wholly "within the jurisdiction of the [state commission]."⁵⁰ Characterizing the Commission's action there, the court stated that, "recognizing that it could not lawfully regulate [an intrastate pipeline's] rates, the Commission moved indirectly but frankly to 'induc[e] a change to a policy beyond [its] jurisdictional purview.'"⁵¹ The court pronounced that "the Commission ordinarily has the authority to consider a matter beyond its jurisdiction if the matter affects jurisdictional sales—at least if there would

⁴⁸ *Id.*; see also *Nat'l Fuel Gas Supply Corp. v. Fed. Energy Reg. Comm'n*, 909 F.2d 1519, 1522 (D.C. Cir. 1990) ("The Commission may not . . . when it lacks the power to promote the public interest directly, do so indirectly by attaching a condition to a certificate that is in, unconditional form, already in the public convenience and necessity").

⁴⁹ See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 93 FERC ¶ 61,294, at PP 62,010-62,011 (2003) ("the Commission may place conditions on its approval of rates where outright approval would not yield just and reasonable results").

⁵⁰ *Altamont*, 92 F.3d 1239 at 1246.

⁵¹ *Id.*

otherwise be a regulatory gap—here there is no such gap.”⁵² The court further pronounced that the Commission was “attempting to . . . intercede in a matter the Congress has reserved to the state.”⁵³

27. The situation here is distinguishable from that in *Altamont* in multiple respects. First, the Commission will not be enforcing any refund commitment to be included in MISO’s Tariff and governing documents; any contractual refund commitment would be enforced in a court of law. Second, here the Commission’s exclusive objective is to include new refund commitments related to non-public utility rates recovered through MISO’s Tariff, a document that falls within the Commission’s FPA jurisdiction and for which the Commission must ensure just and reasonable rates, terms, and conditions. Third, unlike the situation in *Altamont*, the lack of refund commitments for non-public utilities that have collected or will collect unjust and unreasonable rates clearly affects jurisdictional services. Fourth, non-public utilities would only be subject to refund commitments to the extent that they wish to remain or become MISO transmission owners.

28. The proposal as laid out in the July 2016 Order gives non-public utility transmission owners the choice to leave MISO if MISO membership is no longer financially advantageous. The Commission is, however, under no obligation to permit non-public utilities that choose to become members of MISO and to recover revenues through the MISO Tariff to collect unjust and unreasonable rates through an RTO’s jurisdictional tariff without any consequence. We acknowledge, as NRECA requests and as discussed above, that we lack the statutory authority to order non-public utility transmission owners to make refunds. Instead, the refund commitment would serve as a condition precedent for non-public utility transmission owners to recover revenues through the MISO Tariff associated with service provided due to their status as transmission-owning RTO members and based on a choice they made to become members and to recover revenues through the MISO Tariff.

29. For these reasons, we disagree with parties that characterize the requirements of the July 2016 Order as an attempt to extend the Commission’s FPA authority.

⁵² *Id.* at 1248.

⁵³ *Id.*

2. Process

a. Initial Briefs

30. MISO requests that the Commission establish a flexible process to allow MISO and its transmission owners to develop appropriate revisions and amendments to both the Tariff and the Transmission Owners Agreement in order to fully implement the refund commitment requirement in the July 2016 Order.⁵⁴ MISO contends that the Commission's proposal implicates a number of issues, including how to maintain MISO's revenue neutral status and how to implement any removal of a non-public utility's revenue requirements. Accordingly, the Commission should establish a flexible time frame for MISO and the jurisdictional and non-jurisdictional transmission owners to seek a consensual solution through an open process.

31. MISO TOs also contend that the Commission should provide MISO and its transmission owners flexibility to develop a solution that addresses any issues identified by the Commission. They argue that MISO TOs and MISO "are best positioned to develop solutions" to comply with the Tariff and the Transmission Owners Agreement.⁵⁵

32. MISO TOs also argue that the Commission should defer to MISO and its transmission owners to develop a proposal that accounts for MISO's regional characteristics and minimizes any disruption to MISO, its remaining transmission owners, and customers.⁵⁶ In support of this request, MISO TOs note that it might be problematic for MISO to continue to provide service using a transmission owner's facilities and otherwise exercise functional control of a transmission owner's facilities if that transmission owner's revenue requirement has been removed from the Tariff.⁵⁷

33. MISO TOs further argue that the MISO Transmission Owners Agreement obligates MISO "to maximize the revenues for MISO Transmission Owners," a requirement that applies both to jurisdictional and non-jurisdictional transmission

⁵⁴ MISO Initial Brief at 9; *see also* MISO TOs Initial Brief at 9-10.

⁵⁵ *Id.* at 8.

⁵⁶ *Id.* at 13.

⁵⁷ *Id.* at 12.

owners.⁵⁸ MISO TOs argue that it is unclear how MISO can adhere to this obligation if it must remove a transmission owner's revenue requirements.⁵⁹

34. NRECA also argues that the Commission should direct MISO to work with its stakeholders and submit *pro forma* refund commitment language to be included in the appropriate governing documents if the Commission decides to require refund commitments.⁶⁰ NRECA contends that the stakeholder process should consider such critical issues as how to implement the refund commitment without affecting the non-public utilities' jurisdictional status and what procedures would be used for removal of the revenue requirements of non-public utilities who do not agree to a refund commitment.

35. NRECA cautions the Commission "against threatening the 'progress made in transmission-owning [non-public utilities] becoming members of MISO.'"⁶¹ NRECA argues that maintaining non-jurisdictional status is critical for non-public utilities deciding whether to join an RTO. For this reason, NRECA states that the Commission must "take care not to cause [non-public utilities] who are already members of RTOs to rethink their decision[sic] to join, or create a significant concern against additional [non-public utility] cooperative utilities becoming members of RTOs."⁶²

36. Additionally, NRECA argues that the Commission should ensure that its actions do not undermine existing MISO accommodations for non-public utility transmission owners, including provisions in the MISO Transmission Owners Agreement that clarify that provisions regarding FPA section 205 filing rights are not "intended to provide [the Commission] with jurisdiction over Non-Jurisdictional Owners who may rely on MISO to submit filings from them with regard to their individual revenue requirements or rate designs."⁶³ NRECA states that another concern is the impact of the Commission's proposal on non-public utility transmission owners that are subject to state ratemaking jurisdiction, as MISO has adopted Commission-approved provisions to protect these

⁵⁸ *Id.* at 13.

⁵⁹ *Id.*

⁶⁰ NRECA Initial Brief at 3, 12-13.

⁶¹ *Id.* at 6.

⁶² *Id.* at 7.

⁶³ *Id.* at 8.

entities from violating state or federal law or to allow them to terminate their membership if necessary to comply with federal or state law.⁶⁴

37. NRECA contends that, if the Commission proceeds with a refund commitment with removal of revenue requirements for non-public utility transmission owners that do not accept the commitment, the Commission must do so in a manner that prevents undue disruption to transmission service provided by the RTOs, without adversely impacting existing provisions regarding termination and withdrawal from MISO. NRECA asks the Commission to direct MISO to work with stakeholders to develop provisions for the removal of non-public utility transmission owners.⁶⁵

38. NRECA argues that the refund commitment should take into account and accommodate each non-public utility transmission owner's transmission formula rate provisions.⁶⁶

39. Additionally, APPA argues that a generic Commission finding that the MISO tariff must be revised to require the same broad refund commitment by all non-public utility transmission owners is inappropriate and unjustified.⁶⁷ Finally, it argues that if a tariff revision is made, the Commission should enable a public power utility and the RTO to develop a solution that accords with state law and submit that proposal for public comment and Commission review.⁶⁸

b. Reply Briefs

40. MISO TOs argue that the Commission should allow MISO and its transmission owners to develop a solution to resolve the issues identified in the July 2016 Order.⁶⁹ MISO TOs thus asks the Commission to direct MISO and its transmission owners to formulate revisions to the Tariff or other governing documents to include a refund commitment by non-public utility transmission owners, instead of prescribing specific

⁶⁴ *Id.* at 8-9.

⁶⁵ *Id.* at 14.

⁶⁶ *Id.* at 13.

⁶⁷ APPA Initial Brief at 3.

⁶⁸ *Id.*

⁶⁹ MISO TOs Reply Brief at 10-11.

Tariff revisions.⁷⁰ MISO TOs disagree with APPA and argue that a universal refund commitment as a default mechanism is the best and most efficient way to ensure the implementation of the Commission's proposal in a nondiscriminatory manner. MISO TOs further argue that if a particular non-public utility transmission owner requires an individualized solution, nothing prohibits it from working with MISO to address its issues.⁷¹ Finally, MISO TOs argue that the refund commitment should apply to all transmission related revenues.⁷²

41. WPPI also argues that the Commission should defer to MISO and the MISO TOs to develop the needed solution to implement the refund commitment.⁷³ NRECA argues that, if the Commission pursues such a refund commitment, it should allow MISO to develop the necessary provisions to comply with this requirement.⁷⁴

42. Hoosier and Southern Illinois contend that requiring changes to the MISO Transmission Owners Agreement is beyond the scope of this proceeding.⁷⁵ Hoosier and Southern Illinois argue that issues related to the scope of obligations of withdrawing transmission owners are similarly beyond the scope of the proceeding.⁷⁶

c. Commission Determination

43. MISO, MISO TOs, and NRECA have all requested that the Commission permit the parties to conduct a stakeholder process to explore possible changes to the MISO Tariff or governing documents to address the lack of a refund commitment for non-public utilities transmission owners before the Commission takes further action in this proceeding. No party opposes the use of such a process. Such a stakeholder process will give the parties an opportunity to consider how to implement the refund commitment, as well as how to implement removal of the non-public utility transmission owners that do not make refund commitments, including what changes may be necessary to the Tariff or other jurisdictional documents.

⁷⁰ *Id.* at 11.

⁷¹ *Id.* at 12.

⁷² *Id.* at 13.

⁷³ WPPI Reply Brief at 2.

⁷⁴ NRECA Reply Brief at 5-7.

⁷⁵ Hoosier Reply Brief at 9.

⁷⁶ *Id.* at 10.

44. Accordingly, to allow such discussions between MISO and stakeholders, we will hold the section 206 paper hearing in abeyance. MISO is directed to file a report updating the Commission on the status of the stakeholder process by December 15, 2017. In addition, we will require MISO to submit a compliance filing with a proposal to address the lack of a refund commitment for non-public utility transmission owners by February 28, 2018, explaining how its proposal satisfies the Commission's concerns in the July 2016 Order, regardless of the outcome of the stakeholder process, or show cause as to why revisions to the Tariff or other governing documents are not necessary. MISO's proposed revisions, to the extent necessary, should include *pro forma* revisions to the Attachment O and other relevant documents to effectuate the refund commitment.

45. In response to NRECA, we see no need to speculate here as to how this new refund commitment will impact present and future non-public utility membership in RTOs. We note, however, that MISO TOs and NRECA both favor enabling MISO to develop provisions to address the refund commitment concerns identified in the July 2016 Order and that NRECA and APPA ask the Commission to enable a public power utility and MISO to develop a solution that accords with applicable state laws. These concerns and others expressed here also support holding this proceeding in abeyance so that the MISO stakeholder process can account for all relevant considerations.

3. Refund Effective Date

a. Initial Briefs

46. MISO TOs ask the Commission to require any Tariff or other governing document revisions ordered in this proceeding to be effective July 28, 2016, the refund effective date established in the July 2016 Order. They argue that this date provides sufficient notice to non-public utility transmission owners that they must provide a broad refund commitment for any refund that the Commission may order to be effective as of that date, or have their revenue requirements removed from the Tariff.⁷⁷ MISO TOs also request that, to the extent a non-public utility has not voluntarily committed to refunds of the difference between the 12.38 percent ROE they currently collect and any reduction in the Base ROE ordered by the Commission in the Docket No. EL15-45-000 complaint proceeding, those non-public utilities should be subject to the July 28, 2016 refund effective date established in this proceeding for the purpose of any ROE refunds ordered in the Docket No. EL15-45-000 proceeding.

⁷⁷ MISO TOs Initial Brief at 11.

b. Reply Briefs

47. Hoosier and Southern Illinois contend that requiring changes to the MISO Transmission Owners Agreement is beyond the scope of this proceeding. They argue that if the Commission agrees that Transmission Owners Agreement revisions are necessary, the Commission must establish a new refund effective date by issuing a new FPA section 206 notice.⁷⁸

c. Commission Determination

48. In response to MISO TOs, we note that the refund period established in the Docket No. EL15-45-000 proceeding expired on May 11, 2016.⁷⁹ Consequently, public utilities will not be subject to any refund obligations in that proceeding for the period May 12, 2016 until any prospective reduction in ROE that may be ordered in the Docket No. EL15-45-000 proceeding. Since the purpose of this proceeding is to make non-public utility transmission owners subject to the same refund obligations as public utility transmission owners on all matters involving the justness and reasonableness of revenues that they may receive associated with service provided due to their status as transmission-owning RTO members based on RTO rates, it would not be appropriate to require non-public utility transmission owners to provide refunds on any excess ROE recovered effective July 28, 2016.

49. In response to Hoosier and Southern Illinois, we recognize that the July 2016 Order instituting this FPA section 206 proceeding stated that the purpose of this proceeding is “to examine the MISO Tariff,” and the July 2016 Order made no reference to the Transmission Owners Agreement or any other document except the MISO Tariff. However, the refund commitment sought by the July 2016 Order is intended make non-public utility transmission owners “subject to the same refund obligations as public utility transmission owners on all matters involving the justness and reasonableness of revenues that they may receive associated with service provided due to their status as transmission-owning RTO members based on RTO rates.”⁸⁰ It appears from the briefs filed in this proceeding that accomplishing that goal may require revising the Transmission Owners Agreement and other jurisdictional documents, as well as the MISO Tariff. For this reason, MISO and its stakeholders should consider revisions to all Commission-jurisdictional documents, including the Transmission Owners Agreement, that are necessary to effectuate this result.

⁷⁸ Hoosier Reply Brief at 9.

⁷⁹ Hearing Order, 151 FERC ¶ 61,219 at P 1.

⁸⁰ July 2016 Order, 156 FERC ¶ 61,061 at P 47.

50. Accordingly, in order to ensure that all relevant documents may be examined and revised pursuant to FPA section 206, we institute a proceeding in Docket No. EL18-18-000, pursuant to FPA section 206, to examine the MISO Transmission Owners Agreement and any other Commission-jurisdictional MISO documents that must be revised to fully implement the refund commitment concerns identified in the July 2016 Order. The concerns identified by the Commission in the July 2016 Order might be addressed by revising the MISO Transmission Owners Agreement and any other Commission-jurisdictional MISO documents to require a prospective refund commitment from non-public utility transmission owners for all manner of refunds that may be ordered in FPA section 205 and 206 proceedings related to revenues that they may receive associated with service provided due to their status as transmission-owning RTO members. Under the refund commitment, non-public utility transmission owners would be subject to the same refund obligations as public utility transmission owners on all matters involving the justness and reasonableness of revenues that they may receive associated with service provided due to their status as transmission-owning RTO members based on RTO rates, including, but not limited to, refunds (1) to correct any errors in the application of their formula rates, (2) to remedy any other elements of, or costs passed through, their formula rates that are found to be unjust and unreasonable, or (3) to remedy any rules governing allocation of MISO Tariff revenues among transmission owners that are found to be unjust and unreasonable. Additionally, MISO would revise the MISO Transmission Owners Agreement and any other Commission-jurisdictional MISO documents such that any new non-public utility transmission owners must also commit to providing refunds consistent with the terms of this commitment before they may recover their transmission revenue requirement(s) through MISO Tariff rates. As ordered below, any person desiring to participate in the paper hearing must file a notice of intervention or timely motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017).

51. In cases where, as here, the Commission institutes a proceeding under FPA section 206, the Commission must establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of the proceeding in the *Federal Register*, and no later than five months subsequent to that date.⁸¹ Consistent with Commission precedent,⁸² we will establish a refund effective date at the earliest date allowed, i.e., the date the notice of the initiation of the proceeding in Docket No. EL18-18-000 is published in the *Federal Register*. The Commission is also

⁸¹ 16 U.S.C. § 824e(b) (2012).

⁸² See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,1777, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

required by section 206 to indicate when it expects to issue a final order. We expect to issue a final order in this proceeding by April 30, 2018.

52. We will consolidate the new proceeding in Docket No. EL18-18-000 with the current proceeding in Docket No. EL16-99-000 for purposes of the paper hearing established by the July 2016 Order, and, consistent with our determination above, we will hold the proceeding in Docket No. EL18-18-000, along with the proceeding in Docket No. EL16-99-000, in abeyance pending completion of the MISO stakeholder process.

4. Timing to Obtain Refund Commitments and Initiate Removal Process

a. MISO TOs Initial Brief

53. MISO TOs seek clarification on the Commission's proposal that MISO remove from the Tariff the transmission revenue requirements of any non-public utility transmission owner that does not agree to be subject to a refund commitment "as of a prospective date yet to be determined by the Commission"⁸³ MISO TOs state that the language could require that, upon adoption of the Tariff revisions, MISO must seek and obtain a refund commitment from all non-public transmission owners for all future instances in which the Commission makes a determination that an existing Tariff provision is not just and reasonable. Alternatively, MISO TOs state that the language could require MISO to adopt the Tariff revisions now, but not require MISO to seek refund commitments from non-public transmission owners until such time as the Commission makes an initial determination that an existing provision of the Tariff is unjust and unreasonable. MISO TOs contend that the Commission should clarify that, upon adoption of any Tariff or other MISO governing document revision required in this proceeding, MISO is ordered immediately to seek and obtain refund commitments from all non-public utility transmission owners that extend to all future sections 205 and 206 proceedings or else remove any declining transmission owners' revenue requirements from the Tariff.

b. Commission Determination

54. We grant clarification that MISO would obtain refund commitments from all non-public utility transmission owners at the time that it adopts the Tariff revisions establishing the refund commitment, as well as initiate the process to remove any transmission owner's transmission assets from MISO's functional control at that time (rather than requiring MISO to wait until after the Commission orders refunds in a

⁸³ MISO TOs Initial Brief at 17 (citing July 2016 Order, 156 FERC ¶ 61,061 at P 47).

particular case to initiate the process). Such removal must be consistent with the applicable Transmission Owners Agreement provisions for the withdrawal of transmission owners.

5. Other

a. Initial Briefs

55. Hoosier and Southern Illinois argue that non-public utility transmission owners are significantly disadvantaged compared to public utility transmission owners because non-public utilities do not have FPA section 205 filing rights⁸⁴ They argue that their only options are to file an FPA section 206 complaint, which would not provide for a proposed rate to take effect prior to affirmative Commission action and that FPA section 206 imposes no deadline for Commission action. Hoosier and Southern Illinois also argue that they could request that MISO make a FPA section 205 filing on their behalf, but that they are “entirely dependent” upon MISO’s exercise of discretion.⁸⁵ For these reasons, if the Commission imposes the refund condition of the July 2016 Order, Hoosier and Southern Illinois ask the Commission to require MISO revise the Tariff to require MISO to make FPA section 205 filing if requested to do so by a non-public utility transmission owner.⁸⁶

56. MISO states that, if the Commission decides to proceed with the directive from the July 2016 Order, it should not jeopardize MISO’s revenue neutral status due to non-jurisdictional refunds. In support of this argument, MISO points to *Southwest Power Pool, Inc.*, where the Commission stated that it should not require SPP to pay refunds until it has completed any necessary payments to recover the payments made to a third-party that the Commission determined gave rise to the need for refunds.⁸⁷ It asks the Commission to apply the same principles here.

57. MISO also contends that the July 2016 Order’s requirement that MISO remove the non-transmission revenue requirement of a non-public utility transmission owner that does not make a refund commitment could cause MISO to violate the Transmission Owners Agreement and or expose MISO to liability on the grounds that it is using an

⁸⁴ Hoosier Initial Brief at 2.

⁸⁵ *Id.* at 3.

⁸⁶ *Id.* at 4.

⁸⁷ MISO Initial Brief at 11-12 (citing *Sw. Power Pool, Inc.*, 156 FERC ¶ 61,057 at P 26 (2016)).

owner's facilities without compensation.⁸⁸ MISO states that transmission owners are compensated under the Tariff by including their annual transmission revenue requirements in Attachment O and that, if the annual transmission revenue requirement is removed, there is no longer a mechanism to compensate an owner for MISO's use of that owner's transmission facilities.⁸⁹ MISO argues that, if an owner does not withdraw from MISO or remove its transmission facilities from MISO's functional control, MISO could be subject to a variety of legal claims. MISO argues that it is not clear that a refusal to provide a refund commitment would constitute a material or willful violation of MISO's policies, directives, standards, Transmission Owners Agreement, and Tariff provisions that would constitute a permissible ground for MISO to withhold transmission revenues from an owner.⁹⁰ MISO argues that if MISO is subject to claims based on state law tort or contract theories, the potential for disruption could be significant if MISO is required to pay damages, "given its status as a revenue neutral entity, while an uplift to collect the damages from members could raise retroactive ratemaking concerns."⁹¹ For these reasons, MISO asks the Commission to make it clear that a "non-jurisdictional Owner deciding to withdraw from MISO due to the proposed refund commitment requirement will continue to be obligated to comply with the applicable withdrawal provisions of the Transmission Owners Agreement."⁹²

58. MISO TOs also request clarification to ensure that existing provisions in the Owners Agreement and Tariff governing termination of a member are followed if a non-public utility transmission owner decides not to provide a refund commitment and its refund commitments.⁹³ MISO TOs argue that these provisions include requirements of transmission owners that exit MISO to pay all obligations due to MISO, including termination and withdrawal fees, costs for upgrades previously allocated to a withdrawing transmission owner, and transmission contracts executed for the transmission owner provided the notice of withdrawal.⁹⁴

⁸⁸ *Id.* at 12.

⁸⁹ *Id.*

⁹⁰ *Id.* at 13.

⁹¹ *Id.*

⁹² *Id.* at 14.

⁹³ *Id.* at 13.

⁹⁴ *Id.* at 14-15.

59. MISO TOs also state that the Commission should make clear that the refund commitment should apply to any entity that receives transmission related revenues under the Tariff.⁹⁵ MISO TOs argue that the refund commitment should apply to customers receiving credits under section 30.9 of the Tariff, which provides billing credits to network customers that own transmission facilities that are integrated with the transmission system.⁹⁶

60. NRECA argues that the scope of the refund commitment must be limited to “revenues associated with transmission services, not revenues from [non-public utility] participation in other markets or services.”⁹⁷ It further contends that the Commission should direct MISO to work with its stakeholders to identify, with specificity, the sources of revenues associated with service provided due to non-public utilities’ status as transmission-owning members of RTOs. NRECA avers that these sources should include, as applicable, network and point-to-point transmission service, ancillary services, and other services for which non-public utilities receive revenues through the MISO Tariff in their status as transmission owners.⁹⁸

b. Reply Briefs

61. Hoosier and Southern Illinois state that they can appreciate the view that, despite the distinction drawn by Congress, public utility and non-public utility transmission owners should receive comparable treatment to the extent possible. They note that they have already agreed to provide some refunds as a condition of receiving a 50 basis point ROE adder for RTO participation.⁹⁹ Hoosier and Southern Illinois reiterate their contention that if the Commission imposes the refund condition, it should also require MISO to revise its tariff to make filings pursuant to FPA section 205 when a non-public utility transmission owner requests that MISO do so.¹⁰⁰ WPPI also asks the Commission

⁹⁵ *Id.* at 15.

⁹⁶ *Id.*

⁹⁷ NRECA Initial Brief at 13.

⁹⁸ *Id.* at 14.

⁹⁹ Hoosier Reply Brief at 4.

¹⁰⁰ *Id.* at 6.

to direct MISO to formalize a procedure to require MISO to make FPA section 205 filings when requested to do so by a non-public utility transmission owner.¹⁰¹

62. MISO TOs also consider it reasonable for MISO to also revise the Tariff to require it to make FPA section 205 filings when requested to do so by a non-public utility transmission owner.¹⁰²

c. Commission Determination

63. In response to Hoosier, Southern Illinois, and WPPI, while we do not oppose the revision of the MISO Tariff to require MISO to make FPA section 205 filings upon the request of a non-public utility transmission owner, we find that this issue is outside the scope of this proceeding. We therefore take no position on this proposal here.

64. We also note that, among the benefits of allowing MISO to work with stakeholders to implement refunds commitments by non-public utility transmission owners, is that they may find ways to revise the Transmission Owners Agreement and other documents to implement the refund commitments and avoid conflicts with existing Tariff provisions. Such revisions could avoid exposing MISO to legal liability if non-public transmission owners decline to make refund commitments. Nonetheless, we deny MISO's request for clarification that, if the Commission decides to proceed with the directive from the July 2016 Order, it should not jeopardize MISO's revenue neutral status due to non-jurisdictional refunds. In support of its position, MISO cites a recent SPP order directing SPP to bill Tri-County Electric Cooperative, Inc. (Tri-County) to recover transmission revenue improperly given to Tri-County and pass on the amount recovered to ratepayers after it obtained the amount from Tri-County.¹⁰³ In that proceeding, SPP did not have a refund commitment from Tri-County; therefore, the limitation on the pass through of refunds was necessary to protect SPP as a non-profit entity. In this proceeding, by contrast, MISO will be developing a refund commitment. Accordingly, we deny MISO's request for clarification on this issue.

65. We grant MISO's and MISO TOs' request for clarification to make clear that non-public utility transmission owners that withdraw from MISO due to the proposed refund commitment requirement must comply with the applicable withdrawal and termination

¹⁰¹ WPPI Reply Brief at 4.

¹⁰² MISO TOs Reply Brief at 12.

¹⁰³ *Sw. Power Pool, Inc.*, 156 FERC ¶ 61,057.

provisions of the Tariff and Transmission Owners Agreement. We see no reason to create an exception to these provisions here.

66. As the Commission noted in the July 2016 Order, the refund commitment would not relate to revenues or credits that a non-public utility transmission owner may receive as a market participant for sales into the MISO markets or as a transmission customer.¹⁰⁴ Thus, the refund commitment does not extend to revenues provided to transmission customers, including those under section 30.9 of the Tariff.

The Commission orders:

(A) The paper hearing in Docket No. EL16-99-000 is hereby held in abeyance, as discussed in the body of this order.

(B) The requests for clarification are granted in part, and denied in part, as discussed in the body of this order.

(C) MISO is hereby directed to file a report updating the Commission on the status of the stakeholder process by December 15, 2017 after the date of the issuance of this order.

(D) MISO is hereby directed to submit a compliance filing with a proposal to address the lack of a refund commitment for non-public utilities transmission owners by February 28, 2018, explaining how its proposal satisfies the Commission's concerns in the July 2016 Order, regardless of the outcome of the stakeholder process, or show cause as to why revisions to the Tariff or other governing documents are not necessary. MISO's proposed revisions, to the extent necessary, should include *pro forma* revisions to the Attachment O and other relevant documents to effectuate the refund commitment.

(E) 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 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), the Commission hereby institutes a proceeding in Docket No. EL18-18-000, as discussed in the body of this order.

(F) Docket No. EL18-18-000 is hereby consolidated with Docket No. EL16-99-000 and is hereby held in abeyance, as discussed in the body of this order.

¹⁰⁴ July 2016 Order, 156 FERC ¶ 61,061 at n.92.

(G) Any interested person desiring to be heard in Docket No. EL18-18-000 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 (2017)) within 21 days of the date of issuance of this order.

(H) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation under FPA section 206 of the proceeding in Docket No. EL18-18-000.

(I) The refund effective date in Docket No. EL18-18-000 established pursuant to section 206 of the FPA shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (H) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.