ORAL ARGUMENT NOT YET SCHEDULED

In the United States Court of Appeals for the District of Columbia Circuit

Nos. 20-1262 and 20-1391 (consolidated)

ENTERGY ARKANSAS, LLC, *ET AL.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

BRIEF FOR RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

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CIRCUIT RULE 28(A)(1) CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici

To counsel's knowledge, the parties and intervenors before this Court and before the Federal Energy Regulatory Commission in the underlying agency dockets are as stated in the Brief of Petitioners.

B. Rulings Under Review

1. Order Rejecting Proposed Revisions and Compliance Filing and Establishing Just and Reasonable Rates, *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,242 (Mar. 20, 2020), R. 307, JA ___ (*Second Interregional Order*); and

2. Order on Compliance and Addressing Arguments Raised on Rehearing, *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,101 (July 28, 2020), R. 328, JA ___ (*Interregional Rehearing Order*).

C. Related Cases

This case has not previously been before this Court or any other court.

The petition in Case No. 20-1262 was filed contemporaneously with a separate petition for review (Case No. 20-1261) of companion orders concerning the regional cost allocation of regional transmission projects, *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,241 (Mar. 20, 2020), *on reh'g*, 172 FERC ¶ 61,100 (July 28, 2020); *see infra* pp. 17-19 (discussing *Second Regional* and *Regional Rehearing Orders*). The petitioners in Case No. 20-1261 voluntarily dismissed their appeal in August 2020.

In addition, two other cases concerning cost allocation of regional transmission projects in the Midcontinent region are pending before this Court. *See LSP Transmission Holdings II, LLC v. FERC*, Case Nos. 20-1465 and 21-1004 (D.C. Cir. filed Nov. 23, 2020 and Jan. 5, 2021); *LSP Transmission Holdings II, LLC v. FERC*, Case Nos. 20-1466 and 21-1005 (D.C. Cir. filed Nov. 23, 2020 and Jan. 5, 2021) (on review of *Third Regional Order*, discussed *infra* at pp. 24-25).

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2012 Order	*Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,261 (2012)
2016 Complaint Order	*N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,058 (2016), R. 117, JA ___
2017 Compliance Order	*N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,049 (2017), R. 191, JA ___
Br.	Petitioners' opening brief
Commission or FERC	Respondent Federal Energy Regulatory Commission
First Interregional Filing	Midcontinent's February 2019 proposal to provide for regional cost allocation of the its share of Interregional Economic Projects
First Interregional Order	*Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,259 (2019), R. 232, JA ___
First Regional Filing	Midcontinent's February 2019 proposal to revise cost allocation for certain regional transmission projects in its tariff
First Regional Order	*Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,258 (2019)

GLOSSARY

Interregional Economic Projects	A category of transmission projects in both the Midcontinent and Mid-Atlantic regions, for which those regional operators jointly plan and share the costs
Interregional Rehearing Order	*Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,101 (2020), R. 328, JA ___
JA	Joint Appendix
Local Economic Projects	A category of transmission network upgrades that the Midcontinent proposed, in the First and Second Regional Filings, to adopt for regional planning and cost allocation under its tariff
Market Efficiency Projects	A category of transmission network upgrades that meet certain requirements for regional planning and cost allocation under Midcontinent's tariff
Mid-Atlantic system/ region/operator	PJM Interconnection, L.L.C., the independent system operator for the broad mid-Atlantic region, which engages in joint interregional transmission planning with Midcontinent
Midcontinent	Midcontinent Independent System Operator, Inc. (formerly, the Midwest Independent Transmission System Operator, Inc.), which operates the transmission network in a region extending from Canada to the Gulf of Mexico
P	Paragraph in a FERC order

GLOSSARY

Regional Rehearing Order	*Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,100 (2020)
Second Interregional Filing	Midcontinent's January 2020 proposal to provide for regional cost allocation of its share of Interregional Economic Projects
Second Interregional Order	*Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,242 (2020), R. 307, JA ___
Second Regional Filing	Midcontinent's January 2020 proposal to revise cost allocation for certain regional transmission projects in its tariff
Second Regional Order	*Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,241 (2020)
Third Regional Filing	Midcontinent's April 2020 proposal to revise cost allocation for certain regional transmission projects in its tariff
Third Regional Order	*Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,095 (2020)
Transmission Owners	Petitioners Entergy Arkansas, LLC, *et al.*, which are utilities in the Midcontinent region that own transmission facilities operated by Midcontinent

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FEDERAL ENERGY REGULATORY COMMISSION,
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ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

BRIEF FOR RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT OF THE ISSUES

This case arises from a three-year effort to establish a method for allocating one region's share of costs for high-voltage transmission projects jointly selected by two regional transmission systems. In 2016, the Commission required the system operators for neighboring regions (Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C.) to institute reforms to their joint interregional

transmission planning process. The Commission approved the required planning reforms in 2017 and directed Midcontinent to propose a regional cost allocation method (among Midcontinent transmission customers) for its share of certain interregional project costs. Since then, the Commission has twice determined that Midcontinent's proposals for such cost allocation were not "just and reasonable" under the Federal Power Act.

In the orders challenged here, the Commission rejected Midcontinent's second proposal because it failed to align costs and benefits reasonably. Because the Midcontinent region still had no cost allocation method in place for some types of interregional projects, the Commission, on its own initiative, established a just and reasonable method to satisfy that requirement. *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,242, R. 307, JA ___ (*Second Interregional Order*), *on compliance and reh'g*, 172 FERC ¶ 61,101 (2020), R. 328, JA ___ (*Interregional Rehearing Order*).

These consolidated appeals raise the following issues:

(1) Whether the Commission reasonably found that the proposal for the regional allocation (among Midcontinent transmission

customers) of interregional project costs (between neighboring regional transmission systems) was not consistent with the cost-causation principle, where Midcontinent proposed a method that would identify regional benefits and then disregard those benefits and allocate all of the costs based on the project's location; and

(2) Whether the Commission fixed a just and reasonable cost allocation method for those interregional projects, using a well-established metric to calculate benefits and allocate costs.

STATUTORY AND REGULATORY PROVISIONS

Pertinent statutes and regulations are contained in the attached Addendum. (A Timeline of Relevant FERC Orders and Filings is appended at the back of this Brief, after the Addendum of Statutes and Regulations, and also included in the separate Addendum of Relevant FERC Orders.)

STATEMENT OF FACTS

I. STATUTORY AND REGULATORY BACKGROUND

Section 201 of the Federal Power Act (FPA), 16 U.S.C. § 824, gives the Commission jurisdiction over the rates, terms, and conditions of service for the transmission and wholesale sale of electric energy in interstate commerce. This grant of jurisdiction is comprehensive and

exclusive. *See generally New York v. FERC*, 535 U.S. 1 (2002) (discussing statutory framework and FERC jurisdiction).

Section 205 of the Federal Power Act, 16 U.S.C. § 824d, provides that all rates for or in connection with jurisdictional sales and transmission services are subject to FERC review to assure they are just and reasonable, and not unduly discriminatory or preferential. FPA § 205(a), (b), (e), 16 U.S.C. § 824d(a), (b), (e).

Section 206 of the Federal Power Act, 16 U.S.C. § 824e, authorizes the Commission to investigate whether existing rates are lawful. If the Commission, on its own initiative or on a third-party complaint, finds that an existing rate or charge is "unjust, unreasonable, unduly discriminatory or preferential," it must determine and set the just and reasonable rate. FPA § 206(a), 16 U.S.C. § 824e(a).

II. BACKGROUND: REGIONAL ENTITIES AND TRANSMISSION PLANNING

A. The Midcontinent and Mid-Atlantic Regional Transmission Organizations

The Commission's efforts to foster wholesale electricity competition over broader geographic areas in recent decades have led to the creation of independent system operators and regional transmission organizations. *See Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist.*

No. 1, 554 U.S. 527, 536-37 (2008). These independent regional entities operate the transmission grid on behalf of transmission-owning member utilities and are required to maintain system reliability. *See NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165, 169 & n.1 (2010) (explaining responsibilities of regional system operators).

As relevant to this case, Midcontinent is a regional transmission organization comprising electric utilities in fifteen states and one Canadian province. *See MISO Transmission Owners v. FERC*, 860 F.3d 837, 839 (6th Cir. 2017); *see also Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994, 995 (D.C. Cir. 2013) (noting that, in 2013, the Midwest Independent Transmission System Operator, Inc. was renamed Midcontinent Independent System Operator, Inc.); FERC, *Energy Primer: A Handbook of Energy Market Basics* at 82, 93 (Nov. 2015) (map of Midcontinent region), https://www.ferc.gov/sites/default/files/2020-05/energy-primer.pdf. This appeal concerns interregional transmission projects connecting the Midcontinent region with another regional transmission organization called PJM Interconnection, L.L.C. (for purposes of this Brief, the Mid-Atlantic operator or region). The Mid-Atlantic region spans thirteen mid-Atlantic states, plus the District

of Columbia, stretching as far south as North Carolina and as far west as Chicago. *See Ill. Commerce Comm'n v. FERC*, 756 F.3d 556, 557 (7th Cir. 2014) (*Illinois 2014*) (map of various regional systems); *Energy Primer* at 93 (map of Mid-Atlantic region); *id.* at 40 (map of various regions).

B. Regional and Interregional Transmission Planning and Cost-Sharing

This Court provided a concise overview of the pertinent history of the Commission's transmission planning reforms in *South Carolina Public Service Authority v. FERC*, 762 F.3d 41, 49-54 (D.C. Cir. 2014). In particular, the Court traced the industry changes and the legislative and regulatory developments leading to the Commission's efforts to reform regional transmission planning and cost allocation. *See id.* at 51-54. The Seventh Circuit discussed those developments as they relate to the Midcontinent region in particular in *Illinois Commerce Commission v. FERC*, 721 F.3d 764, 769-72 (7th Cir. 2013) (*Illinois 2013*), and in *MISO Transmission Owners v. FERC*, 819 F.3d 329, 332 (7th Cir. 2016).

The Commission's reform efforts included a rulemaking requiring transmission providers to participate in regional and interregional

planning processes that, among other things, would evaluate more efficient or cost-effective solutions to transmission needs. *See South Carolina*, 762 F.3d at 52-53 (discussing *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011)). The rulemaking also required regional and interregional planning processes to include regional cost allocation methods for new transmission facilities selected through those processes that would satisfy certain principles set forth by the Commission, which focused on cost causation, transparency, and regional flexibility. *See id.* at 53. For those purposes, a key definition is that of "transmission facilities selected in a regional transmission plan for purposes of cost allocation," which means regional or interregional transmission facilities that have been selected "because they are more efficient or cost-effective solutions to regional transmission needs." Order No. 1000, 136 FERC ¶ 61,051 at P 63.

C. Regional Transmission Upgrades in the Midcontinent Region: Market Efficiency Projects

Midcontinent's tariff provides for regional transmission planning and for sharing network upgrade costs across all or parts of the region. Of the various types of cost-shared projects defined in that tariff prior to

the orders on review, only the Market Efficiency Project category is relevant here. This category covers economic upgrades that satisfy certain cost/benefit tests and (until the tariff was revised in 2020) cost more than $5 million and involved 345-kilovolt or higher facilities. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 at PP 5-8 (2007) (*2007 Order*), *on reh'g*, 120 FERC ¶ 61,080 (2007), *on reh'g*, 122 FERC ¶ 61,127 (2008).

From the beginning, the requisite cost/benefit tests were calculated (in part) using the Adjusted Production Cost Savings metric (Production Cost Metric). *See 2007 Order* P 5. That metric "is the calculation of production cost savings (benefits) due to the transmission expansion adjusted to reflect changes in sales and purchases that may occur as a result of the expansion." *Id.* n.6. Midcontinent calculates those savings by considering "generator startup, hourly generator no-load, generator energy and generator operating reserve costs"; savings can come from reductions in transmission congestion and energy losses, as well as through reductions in operating reserve requirements. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,261 at P 14 n.10 (2012) (*2012 Order*). Midcontinent made the Production Cost

Metric the sole measure of benefits for Market Efficiency Projects in 2012. *See id.* at PP 14, 25.

If an upgrade met all those criteria, 20 percent of the project cost was allocated on a system-wide basis to all transmission customers. *See 2007 Order* PP 7, 66. The remaining 80 percent was allocated among defined sub-regions based on an analysis of the relative annual cost-saving benefits. *See id.* (As discussed *infra* at pp. 24-25, the Commission accepted revisions to the criteria, applicable metrics, and cost allocation for Market Efficiency Projects in an order issued the same day as the *Interregional Rehearing Order*.)

III. THE COMMISSION PROCEEDINGS AND ORDERS

A. 2013-2017: The Interregional Transmission Planning Complaint Proceeding

The orders on review stem from the Commission's resolution of an earlier complaint proceeding. *See* Timeline of Relevant FERC Orders and Filings. In 2013, a utility in northern Indiana, whose transmission system connected to other utilities "at the 'seams' of" the Midcontinent and Mid-Atlantic systems, filed a complaint against both regional system operators seeking reforms of their joint process for planning transmission projects between their regions. *N. Ind. Pub. Serv. Co. v.*

Midcontinent Indep. Sys. Operator, Inc., 155 FERC ¶ 61,058 at P 3 (2016), R. 117, JA ___, ___ (*2016 Complaint Order*), *on reh'g and compliance*, 158 FERC ¶ 61,049 (2017), R. 191, JA ___ (*2017 Compliance Order*). The Commission partially granted the complaint, directing the operators to make certain changes to their joint agreement governing the planning process as well as to their own respective tariffs' treatment of interregional projects. *See 2016 Complaint Order* PP 129-33, JA ___-__.

In particular, the Commission found, pursuant to section 206 of the Federal Power Act, 16 U.S.C. § 824e, that the higher voltage and cost thresholds in the regions' joint planning agreement and in Midcontinent's tariff were unjust, unreasonable, or unduly discriminatory or preferential because they "prohibit[ed] from consideration certain transmission projects in the . . . interregional transmission planning process that benefit both regions . . . ." *2016 Complaint Order* P 129, JA ___. Specifically, while the Mid-Atlantic region provided for cost-sharing of economic projects above 100 kilovolts with no minimum cost, Midcontinent required economic projects to be at least 345 kilovolts and to cost more than $5 million. *See id.* at P 96,

JA ___. But an analysis submitted by the regional operators showed interregional economic projects existed that would benefit both regions but that could not be selected because they did not meet Midcontinent's thresholds for Market Efficiency Projects. *See id.* at PP 108-09, 131, JA ___-__, ___. For that reason, the Commission required the Midcontinent operator to revise its Market Efficiency Project thresholds applied to interregional economic transmission projects, lowering the minimum voltage to 100 kilovolts and removing the $5 million cost minimum. *See id.* at PP 129, 131, JA ___, ___.

On rehearing, the Commission concluded that the record in that proceeding "[did] not address what regional cost allocation method" could fill in the gap — that is, how Midcontinent should allocate its "share of the cost of an interregional economic transmission project operating above 100 [kilovolts] but below 345 [kilovolts]." *2017 Compliance Order* P 50, JA ___. Accordingly, the Commission directed Midcontinent to submit a further compliance filing that, with respect to Midcontinent's share of such project costs, would either confirm that the existing cost allocation method for Market Efficiency Projects would

apply or propose tariff revisions to apply a different regional cost allocation. *See id.* at PP 50-51, JA ___-__.

B. 2019 Filings and Orders

Midcontinent eventually submitted that compliance filing (First Interregional Filing) two years later, in February 2019, together with a separate filing to change the thresholds and cost allocation for certain regional network upgrades (First Regional Filing).[1] Because the First Interregional Filing referred to and relied upon provisions in the First Regional Filing, we briefly discuss both filings and both resulting Commission orders. *See* Timeline of Relevant FERC Orders and Filings.

In the First Regional Filing, Midcontinent proposed to modify the conditions, assessment, and cost allocation for Market Efficiency Projects and to create a new category of upgrades called Local Economic

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[1] For each of the regional and interregional filings, Midcontinent, together with the region's transmission owners (Midcontinent Transmission Owners), filed proposed revisions to Midcontinent's tariff as well as to a separate agreement among those owners. For simplicity, this Brief will refer only to Midcontinent's filings to revise the tariff; this shorthand, however, is not intended to distinguish or exclude the role of the Midcontinent Transmission Owners or the companion filings to revise the owners' agreement.

Projects, as well as to make other tariff changes not relevant here. *See Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,258 (2019) (*First Regional Order*).

Under that proposal, a Market Efficiency Project would have a minimum voltage threshold of 230 kilovolts. *See id.* at P 19. Midcontinent would measure the benefit-to-cost ratio using not only the Production Cost Metric but also two additional tests: one that would measure the savings realized because the project would eliminate the need to develop one or more future projects needed for reliability; and one that would measure the project's effect on payments for transmission under an agreement between the Midcontinent region and another neighboring regional system (the Southwest Power Pool). *See id.* at PP 15-17. In addition, Midcontinent would eliminate the 20 percent system-wide cost-sharing and instead allocate 100 percent of the costs based on the calculated benefits to pricing zones. *See id.* at PP 19, 21.

Midcontinent further proposed to create a new category of network upgrades, Local Economic Projects, defined as economic transmission projects at or above 100 kilovolts and below 230 kilovolts.

See id. at P 9. Such a project would be conditioned on meeting a minimum 1.25-to-1 benefit-to-cost ratio both on a regional basis and as to each pricing zone in which the project was located, measured using the same three metrics. *See id.* at P 10. Midcontinent proposed allocating 100 percent of the costs to the zone(s) in which the project was located. *See id.*

In the First Interregional Filing, Midcontinent proposed to define an Interregional Economic Project as a transmission project meeting certain standards under the joint agreement with the Mid-Atlantic operator that also qualified, under Midcontinent's tariff, as either a Market Efficiency Project (if 230 kilovolts or more) or a Local Economic Project (if under 230 kilovolts and above 100 kilovolts). *See Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,259 at P 6 (2019), R. 232, JA ___, ___ (*First Interregional Order*). Midcontinent proposed to allocate its share of the costs of such interregional projects in the same manner as the corresponding regional project categories. *See id.* at PP 8-9, JA ___-__.

The Commission, however, determined that Midcontinent had not shown the proposed cost allocation method for Local Economic Projects

to be just and reasonable. *First Regional Order* PP 1, 56. The Commission found that the proposed benefits test for Local Economic Projects was inconsistent with the principle of cost causation: Midcontinent proposed to require a specified regional benefit for inclusion in that category, but to allocate all of the project's costs based on its location. *See id.* at PP 56-64. Because Midcontinent proposed "metrics that will identify regional benefits for Local Economic Projects, but, for the purpose of imposing its preferred cost allocation method, [it]will ignore the results of its regional benefit metrics analysis" and assign all costs to the local zone, the proposal failed to allocate costs commensurate with benefits. *Id.* at P 63.

The Commission went on to explain that it would have found other aspects of the First Regional Filing just and reasonable, but because Midcontinent had submitted its proposal "as a 'comprehensive package' of reforms," the Commission's finding as to Local Economic Projects required rejection of the entire filing. *Id.* at P 68.

Moreover, because the proposed changes to the tariff in the First Interregional Filing relied on definitions and provisions that the Commission rejected in the *First Regional Order*, the Commission

rejected those changes as well. *First Interregional Order* P 20. Therefore, "[Midcontinent]'s outstanding compliance requirement, as directed in the [*2017 Compliance Order*], remains unfulfilled." *Id.* at P 21, JA ___ (directing Midcontinent to submit a further compliance filing to address allocation of Midcontinent's share of costs for interregional projects between 100 and 345 kilovolts).

C. 2020 Filings and Orders

In January 2020, Midcontinent again submitted a filing to change the thresholds and cost allocation for certain regional network upgrades (Second Regional Filing) and a compliance filing concerning interregional projects (Second Interregional Filing), which again referred to and relied upon provisions in the regional proposal. The Commission again issued companion orders on both filings; though only the interregional orders are on review in this case, those orders referenced and relied upon the Commission's analysis in the companion regional orders. (Midcontinent also submitted a subsequent regional proposal (Third Regional Filing), with no corresponding interregional filing. The Commission orders on that filing are discussed *infra* for purposes of context, but are not directly relevant to this appeal.)

1. Not on Review: Second Regional Filing and Orders

In the Second Regional Filing, Midcontinent again proposed changes to tariff provisions concerning Market Efficiency Projects and creating the category of Local Economic Projects. *See Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,241 at P 9 (*Second Regional Order*), JA ___, ___, *on reh'g*, 172 FERC ¶ 61,100 (2020) (*Regional Rehearing Order*), JA ___. The proposal included elements of the First Regional Filing, but removed the requirement that a Local Economic Project meet a regional cost/benefit standard. *See Second Regional Order* PP 12-16, JA ___. Instead, such a project would need to meet a 1.25-to-1 benefit-to-cost ratio for each pricing zone in which it was located; 100 percent of costs would be allocated to such zone(s). *Id.* at P 16, JA ___.

The Commission issued the *Second Regional Order* on March 20, 2020, again concluding that the proposal was not consistent with the cost causation principle. *Id.* at P 59, JA ___. The Commission found that Midcontinent "propose[d] to apply the same benefits metrics in a more selective and incomplete manner with regard to Local Economic Projects." *Id.* at P 66, JA ___. Specifically, Midcontinent would

"necessarily uncover" regional transmission benefits when applying the metric measuring effects on payments under the settlement with the Southwest Power Pool. *Id.* at P 67, JA ___. Thus, Midcontinent "would still calculate and identify benefits to all zones, but ignore benefits to some zones for purposes of allocating Local Economic Project costs." *Id.* at P 67, JA ___. As a result, the proposed method would "likely require [Midcontinent] to disregard regional transmission benefits." *Id.* In addition, the Commission found it "incongruous" that Midcontinent would apply the Production Cost Metric — which Midcontinent states is the most reliable measure of benefits — only to the zone(s) where the project would be located. *Id.* at P 68, JA ___.

The Commission also concluded that, because Midcontinent had again described its proposal as a "comprehensive package," the entire filing must be rejected even though some aspects would have been just and reasonable on their own. *Id.* at PP 70-71, JA ___.

The Midcontinent Transmission Owners timely filed a request for rehearing. *See Regional Rehearing Order* PP 1-2, JA ___-__.

In addition, the Midcontinent Transmission Owners timely filed a petition for review of the *Second Regional Order* within 60 days after

the date when the rehearing request could be deemed denied by operation of law, *MISO Transmission Owners v. FERC*, Case No. 20-1261 (filed July 17, 2020), but voluntarily dismissed that petition in August 2020. (Though the *Second Regional Order* and *Regional Rehearing Order* are not before this Court on review, the *Second Interregional Order and Interregional Rehearing Order* partially incorporated the Commission's reasoning in those orders, as discussed *infra*.)

On July 28, 2020, the Commission issued the *Regional Rehearing Order* (together with the *Interregional Rehearing Order and the Third Regional Order*, discussed *infra*). The Commission reaffirmed its determination that Midcontinent's proposed cost allocation method for Local Economic Projects was inconsistent with the cost-causation principle and thus was not just and reasonable under Federal Power Act section 205, 16 U.S.C. § 824d. *See Regional Rehearing Order* PP 16-21, JA ___-__.

2. On Review: Second Interregional Filing and Orders

In January 2020, together with the Second Regional Filing, Midcontinent submitted another proposal for a cost allocation method

for its share of certain interregional transmission projects (Second Interregional Filing). *See Second Interregional Order* P 1, JA ___-__. Again, Midcontinent's proposal for interregional projects corresponded to its regional proposal. Specifically, Midcontinent again proposed to create a new Interregional Economic Project category, with differing cost allocation methods depending on voltage level: at 230 kilovolts or higher, Midcontinent's share of costs would be allocated the same way as for Market Efficiency Projects; for a project below 230 kilovolts (at or above 100 kilovolts), costs would be allocated similarly to the category of Local Economic Projects proposed in the Second Regional Filing. *See id.* at PP 9-12, JA ___-__.

On March 20, 2020, the Commission issued the *Second Interregional Order,* again rejecting the interregional filing because it relied on "definitions and provisions" in the companion regional filing. *Id.* at P 29, JA ___-__. The Commission further found, again, that its rejection of the filing meant that Midcontinent's "outstanding compliance requirement, as directed in the [*2017 Compliance Order*], remains unfulfilled." *Second Interregional Order* P 30, JA ___. The Commission acknowledged "the complexity of the [underlying] issues,"

but also "recognize[d] the need for [Midcontinent] to come into compliance" with that 2017 directive "in a timely manner." *Id.* Therefore, rather than require yet another filing, the Commission chose to exercise its authority under Federal Power Act section 206, 16 U.S.C. § 824e, to establish the just and reasonable replacement cost allocation. *See Second Interregional Order* P 30, JA ___.

For that purpose, the Commission determined that it was appropriate "to allocate the entirety of [Midcontinent]'s share of the cost of . . . interregional economic transmission projects above 100 [kilovolts] but below 345 [kilovolts] that qualify as Market Efficiency Projects using [Midcontinent]'s current Adjusted Production Cost Savings Metric." *Id.* at P 31, JA ___.

On April 13, 2020, Midcontinent submitted a compliance filing to implement the replacement cost allocation method. R. 313. Duke Energy Corporation and other parties submitted a response to that compliance filing on April 20 (R. 317); the Midcontinent Transmission Owners submitted a protest to the compliance filing on May 4 (R. 320, JA ___) (May 4 Protest). On May 13, Midcontinent moved for leave to answer those filings (R. 322); and on May 28, Entergy Services, LLC

and Xcel Energy Services, Inc. moved for leave to answer Midcontinent's answer (R. 325, JA ___) (May 28 Answer). (The parties to that May 28 Answer represented all of the Petitioners (Transmission Owners) in this appeal.[2])

The Midcontinent Transmission Owners also filed a timely request for rehearing of the *Second Interregional Order* on April 20, 2020. R. 318, JA ___. (A group of state regulators, who are not parties to this appeal, also sought rehearing. R. 319.)

The Commission issued the *Interregional Rehearing Order* on July 28, 2020. Beginning with procedural matters, the Commission rejected Midcontinent's May 13 answer "to the extent that it responds to the requests for rehearing" but accepted the portion that responded to

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[2] The Petitioners are: Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; Entergy Texas, Inc.; Northern States Power Company (a Minnesota Corporation); and Northern States Power Company (a Wisconsin Corporation). All are members of the larger group of Midcontinent Transmission Owners, who initiated one of these consolidated appeals but subsequently withdrew from the case. For purposes of this Brief, the remaining Petitioners are called the Transmission Owners.

In the May 28 Answer, Entergy Services, Inc. filed on behalf of the five Entergy Petitioners, and Xcel Energy Services, Inc. on behalf of the two Northern States Petitioners. *See* JA ___.

Duke's April 20 protest. *Id.* at PP 13-14, JA ___ (citing 18 C.F.R. §§ 385.213(a)(2), 385.713(d)(1)). The Commission also rejected the Entergy/Xcel filing "because, though it is styled as an answer to [Midcontinent]'s answer, it is, in substance, a late-filed request for rehearing of the [*Second Interregional Order*] and is thus statutorily barred." *Id.* at P 15, JA ___ (citing 16 U.S.C. § 825*l*(a) and 18 C.F.R. § 385.713(d)(1)).

On the merits, the Commission reaffirmed both its rejection of the Second Interregional Filing and its determination that its selected cost allocation method was just and reasonable. *Id.* at PP 1-2, 21, 30-40, JA ___-__, ___, ___-__.

The Midcontinent Transmission Owners filed a petition for review of the *Second Interregional Order* in Case No. 20-1262 (filed July 17, 2020).[3] After some members of that group withdrew from the case, the

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[3] The Commission acknowledged that, pursuant to this Court's intervening decision in *Allegheny Defense Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc), the rehearing request "may be deemed denied by operation of law" because the Commission did not issue an order within 30 days after the request. *Interregional Rehearing Order* P 2, JA ___. On rehearing, the Commission "modif[ied] the discussion in the [*Second Interregional Order*] and continue[d] to reach the same result . . . ." *Id. See also Regional Rehearing Order* P 2 (same).

remaining petitioners — the Transmission Owners here — moved to rename the appeal and filed a second petition for review of the *Interregional Rehearing Order*, in Case No. 20-1391 (filed Sept. 28, 2020). This Court consolidated the appeals in October 2020.

3. Third Regional Filing and Orders

In April 2020, shortly after the Commission rejected the Second Regional Filing, Midcontinent submitted another proposal (Third Regional Filing), which included the same components from that previous iteration, except without the provisions related to the Local Economic Project category. (This time, there was no corresponding proposal regarding interregional projects.) The Commission accepted the proposal in an order issued on July 28, 2020, together with the *Regional Rehearing Order* and *Interregional Rehearing Order*. *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,095 (2020) (*Third Regional Order*), *on reh'g*, 173 FERC ¶ 61,203 (2020), *on appeal sub nom. LSP Transmission Holdings II, LLC v. FERC*, Case Nos. 20-1466 and 21-1005 (D.C. Cir. filed Nov. 23, 2020 and Jan. 5, 2021) (currently pending; briefing is under way). As a result, for Market Efficiency Projects, Midcontinent lowered the minimum voltage

threshold to 230 kilovolts, eliminated the 20 percent system-wide allocation, and adopted the two additional benefit metrics for assessing Market Efficiency Projects. *See Third Regional Order* PP 31, 33, 46.

SUMMARY OF ARGUMENT

This case arises from the Commission's efforts to implement its determination, five years ago, to require reforms of the joint interregional transmission planning process between the two largest regional transmission systems in the country. The orders now on review are just some of the Commission's orders, in response to just some of the filings, in recent years to address regional cost sharing for regional and interregional projects; context and history are key.

In 2016, the Commission found that the Midcontinent region's voltage and cost thresholds for regional cost allocation of economic transmission projects would unreasonably prevent the joint selection of high-voltage transmission facilities that would provide benefits to both regional systems. In 2017, the Commission followed that finding with a directive to Midcontinent to revise its cost allocation method for interregional economic transmission projects between 100 and 345 kilovolts.

In this case, the Commission rejected, under Federal Power Act section 205, Midcontinent's second proposal to revise its cost allocation method for such projects, then acted under Federal Power Act section 206 to establish a "just and reasonable" method to implement the 2017 directive. Both rulings were appropriate, supported by substantial evidence, and consistent with the key principle of cost causation.

First, the Commission properly rejected Midcontinent's proposed revisions. As the Commission explained in companion orders that likewise rejected Midcontinent's revisions for regional projects, the proposed cost allocation methods were not consistent with the cost-causation principle. Midcontinent proposed to use a metric that would necessarily identify specific regional benefits, but would actively disregard those benefits for the purpose of cost allocation. At the same time, Midcontinent would limit application of its most reliable measure of regional benefits to the project's own zone. Therefore, the Commission reasonably concluded that the selective and incomplete application of benefits calculations would fail to align costs with benefits.

Having rejected Midcontinent's second proposal to revise cost allocation for lower-voltage interregional projects, the Commission established the replacement allocation needed for the interregional transmission planning reforms it had previously mandated. The Commission reasonably fixed a method that would employ the well-established Production Savings Metric, which Midcontinent has long considered the most reliable measure of regional benefits. The Commission adopted a just and reasonable cost allocation method, with adequate record support, and explained that choice. The Commission need not demonstrate that its selection is the best possible approach; Midcontinent has the right to propose any other just and reasonable method. Therefore, the Commission appropriately exercised its ratesetting authority and its discretion to manage its proceedings.

ARGUMENT

I. STANDARD OF REVIEW

The Court reviews FERC orders under the Administrative Procedure Act's deferential "arbitrary and capricious" standard. 5 U.S.C. § 706(2)(A); *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 292 (2016). "The 'scope of review under [that] standard is narrow.'" *Elec. Power Supply Ass'n*, 577 U.S. at 292 (quoting *Motor Vehicle Mfrs. Ass'n*

of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). "A court is not to ask whether a regulatory decision is the best one possible or even whether it is better than the alternatives." *Id.* "Rather, the court must uphold a rule if the agency has 'examine[d] the relevant [considerations] and articulate[d] a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.'" *Id.* (quoting *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43) (alterations in original).

"In matters of ratemaking, [the Court's] review is highly deferential, as '[i]ssues of rate design are fairly technical and, insofar as they are not technical, involve policy judgments that lie at the core of the regulatory mission.'" *Alcoa, Inc. v. FERC*, 564 F.3d 1342, 1347 (D.C. Cir. 2009) (citation omitted)); *see also ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 951 (D.C. Cir. 2007) ("In reviewing FERC's orders, we are 'particularly deferential to the Commission's expertise' with respect to ratemaking issues.") (citation omitted). "The Court owes the Commission 'great deference' in this realm because '[t]he statutory requirement that rates be "just and reasonable" is obviously incapable

of precise judicial definition.'" *South Carolina*, 762 F.3d at 55 (quoting *Morgan Stanley*, 554 U.S. at 532).

The Commission's factual findings are conclusive if supported by substantial evidence. Federal Power Act § 313(b), 16 U.S.C. § 825*l*(b). The substantial evidence standard "requires more than a scintilla," but can be satisfied by something "less than a preponderance" of the evidence. *South Carolina*, 762 F.3d at 54 (internal quotation marks and citations omitted). If the evidence is susceptible of more than one rational interpretation, the Court must uphold the agency's findings. *See Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966); *accord Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636, 645 (D.C. Cir. 2010) ("[W]e do not ask whether record evidence could support the petitioner's view of the issue, but whether it supports the Commission's ultimate decision.").

II. MIDCONTINENT'S OWN ANALYSIS SHOWS THAT SOME INTERREGIONAL TRANSMISSION FACILITIES ABOVE 100 KILOVOLTS PROVIDE REGIONAL BENEFITS TO BOTH CONNECTED SYSTEMS

Much of the Transmission Owners' argument depends on the premise that the transmission upgrades at issue are "low-voltage"

facilities (*see*, *e.g.*, Br. xvii, 1-4, 26-29), that provide mostly localized, rather than regional, benefits (*see, e.g.*, Br. 4, 12-13).

First, the Commission never accepted the Transmission Owners' characterization of the relevant interregional projects as "low-voltage"; rather, it consistently stated that they are "lower-voltage" facilities. *See, e.g.*, *Second Interregional Order* PP 17, 29 n.34, JA ___, __; *Interregional Rehearing Order* PP 9 n.28, 31, 39, JA ___, ___, ___. Though they operate at lower voltage than Market Efficiency Projects, transmission facilities above 100 kilovolts nevertheless play a key role in transferring electricity across and between high-voltage transmission networks. *See, e.g.*, *Revision to Elec. Reliability Org. Definition of Bulk Elec. Sys.*, Order No. 743, 133 FERC ¶ 61,150 at P 73 (2010) ("[M]any facilities operated at 100 [kilovolts] and above have a significant effect on the overall functioning of the grid. The majority of 100 [kilovolts] and above facilities in the United States operate in parallel with other high voltage and extra high voltage facilities . . . ."); *cf. Illinois 2013*, 721 F.3d at 774 (noting that another provision in Midcontinent's tariff categorized "high-voltage transmission lines" as "at least 100 [kilovolts]"). Indeed, transmission facilities operating at 345 kilovolts

and higher are sometimes set apart from lower high-voltage facilities by the designation of "extra high voltage." *See*, *e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 at P 42 (2006); Order No. 1000, 136 FERC ¶ 61,051 at PP 713-14.

More important, the regional benefits of some high-voltage interregional projects below 345 kilovolts were the very subject of the *2016 Complaint Order*: The Commission directed Midcontinent to implement cost allocation for Midcontinent's share of costs of interregional projects as low as 100 kilovolts precisely because analysis submitted by Midcontinent demonstrated that some such projects would provide benefits to both regional systems.

Specifically, in the *2016 Complaint Order*, the Commission found, based on an analysis submitted by the Midcontinent and Mid-Atlantic operators (*see id.* at P 108, JA ___), that Midcontinent's voltage and cost thresholds were unreasonably preventing the Midcontinent and Mid-Atlantic systems from being able to select interregional projects that their own analysis had identified as benefitting both regions. *Id.* at P 131, JA ___. Though the Mid-Atlantic operator's tariff provided for regional cost allocation of projects above 100 kilovolts, Midcontinent's

tariff provided no such allocation for economic projects below 345 kilovolts. Accordingly, the Commission required Midcontinent to revise its tariff to allow for such mutually beneficial, but lower-voltage, transmission projects to be selected in that joint planning process. The subject of the subsequent compliance proceedings — including the orders challenged here, ruling on the Second Interregional Filing — is only the cost allocation for those interregional projects that both system operators have already determined will benefit their respective regions. *See* Timeline of Relevant FERC Orders and Filings.

Transmission Owners gloss over this critical point. They note that the Commission stated, in approving the Third Regional Filing, that it had not made a finding that projects between 100 and 230 kilovolts produce significant regional benefits. *See* Br. 41 (citing *Third Regional Order* P 49). But the Commission made clear that it addressed only *regional* projects — not *interregional* ones. *See Third Regional Order* P 49 ("[N]either [Midcontinent] nor the Commission in the [*Second Regional Order*] has made the finding that *MISO projects* between 100 [kilovolts] and 230 [kilovolts] produce 'significant regional benefits.'") (emphasis added and citation omitted); *id.* at P 51 ("the treatment of

[lower-voltage] interregional transmission projects is not before us in this proposal"). The *Third Regional Order* did not revisit the Commission's core finding in 2016 that the *interregional* planning process must be able to select lower-voltage projects that are shown to "provide benefits to each region . . . ." *2016 Complaint Order* P 131, JA ___.

Furthermore, this Court has recognized the Commission's policy judgment that properly valuing the benefits of an interregional project for cost-allocation purposes is vital to encouraging interregional transmission development. *See Ameren Servs. Co. v. FERC*, 893 F.3d 786, 788, 794-95 (D.C. Cir. 2018); *see also id.* at 795 (explaining Commission's "interest in an appropriate allocation of the costs of an interregional project (and the resulting implications for undertaking interregional projects)").

III. THE COMMISSION PROPERLY REJECTED MIDCONTINENT'S PROPOSED COST ALLOCATION METHOD BECAUSE IT WAS NOT CONSISTENT WITH THE COST-CAUSATION PRINCIPLE

A. The Second Interregional Orders Appropriately Relied On The Second Regional Orders

Midcontinent based its proposed method for allocating the costs of interregional projects between 100 and 345 kilovolts on its companion

proposal to revise its cost allocation for regional projects. See Second Interregional Filing at 3-5, JA ___-__. Accordingly, the Commission rejected the interregional proposal based entirely on its analysis of the regional proposal. *See Second Interregional Order* P 29, JA ___; *Interregional Rehearing Order* P 21, JA ___. For that reason, the Commission's rationale depends on the substantive discussion in the *Second Regional Order* and *Regional Rehearing Order*, though those orders are not, themselves, challenged in this appeal (as the Transmission Owners dismissed their petition for review of those orders after the Commission approved the Third Regional Filing, *see supra* p. 24).

The Commission rejected an argument, raised by other parties, that its reliance on the companion orders was not a sufficient explanation for its decision to reject the Second Interregional Filing. *See Interregional Rehearing Order* P 21, JA ___. Though the Transmission Owners, on appeal, now advance that same argument themselves, Br. 46-47, they did not clearly raise this objection in their own request for rehearing, as required by Federal Power Act section 313(b), 16 U.S.C. § 825*l*(b). *See ASARCO, Inc. v. FERC*, 777 F.2d 764,

773 (D.C. Cir. 1985) (petitioner cannot urge objection on appeal that it did not raise in its own rehearing request). In any event, the Commission's decision to address the reasonableness of the proposed cost allocation in one order and to incorporate that analysis in a companion order on the companion filing was within its "broad discretion to determine when and how to hear and decide the matters that come before it." *Tenn. Valley Mun. Gas Ass'n v. FERC*, 140 F.3d 1085, 1088 (D.C. Cir. 1998); *see also Mobil Oil Expl. & Producing Se. Inc. v. United Distrib. Cos.*, 498 U.S. 211, 214 (1991) ("[a]n agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures") (citing *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 524-25 (1978)).

B. The Cost-Causation Principle Requires Reasonable Alignment Of Benefits And Costs

In the *Second Regional Order*, the Commission found that Midcontinent had not demonstrated that its proposed cost allocation method was just and reasonable because it was not consistent with the cost causation principle. *Id.* at P 59, JA ___. That principle holds that rates must "reflect to some degree the costs actually caused by the customer who must pay them." *KN Energy Inc. v. FERC*, 968 F.2d

1295, 1300 (D.C. Cir. 1992); *accord Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *see Second Regional Order* P 59 & n.124. This Court applies that principle "by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party," though it does not require the Commission to "allocate costs with exacting precision." *Midwest ISO Transmission Owners*, 373 F.3d at 1368-69; *see also BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268 (D.C. Cir. 2014) (principle requires that "burden is matched by benefit," so the costs of a project may not be concentrated when its benefits are "diffuse").

In practice, the courts have repeatedly grappled with the proper relation of costs to benefits in regional transmission rate designs, and with the reasonable proportionality of direct, localized benefits compared to widespread, generalized benefits. The Seventh Circuit, in a series of cases about cost-sharing in both the Mid-Atlantic and Midcontinent regions, has held that a project's benefits to those paying must be "at least roughly commensurate" with the costs paid. *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009). Where regional benefits cannot be allocated precisely, "crude" matching of costs

and benefits "will have to suffice." *Illinois 2013*, 721 F.3d at 774-75. But "incidental" benefits will not support broad cost allocation. *Illinois 2014*, 756 F.3d at 564. And, for local projects, a "spillover" of benefits to other zones may be "modest enough" to permit local allocation of costs. *MISO Transmission Owners v. FERC*, 819 F.3d 329, 336 (7th Cir. 2016). *See Regional Rehearing Order* P 18 (discussing cases).

Several recent decisions by this Court have further refined the proper alignment of benefits and costs. In *Old Dominion Electric Cooperative v. FERC*, 898 F.3d 1254 (D.C. Cir. 2018), the Court rejected local cost allocation for facilities that, according to Mid-Atlantic's tariff and undisputed in that proceeding, would have broader benefits. The Commission had approved a tariff provision that eliminated cost-sharing for certain high-voltage transmission lines, but the Court found that denying regional cost allocation for facilities that undisputedly would provide "significant regional benefits" would cause "a severe misallocation of the costs . . . ." *Id.* at 1261. The Court found the provision "a wholesale departure from the cost-causation principle" and faulted the Commission for replacing an established cost-allocation formula "with another one that is less accurate overall, as well as

grossly inaccurate with respect to high-voltage projects . . . ." *Id.* at 1261, 1262. *See First Regional Order* PP 60-61; *Second Regional Order* PP 63-65, 69, JA ___-__, ___.

Conversely, in a case where a project had been caused by and would benefit one group of customers, with no causation by or benefit to another group, the Court agreed with the Commission's denial of cost-sharing. *N. Va. Elec. Coop., Inc. v. FERC*, 945 F.3d 1201 (D.C. Cir. 2019). There, the state of Virginia had required a utility to upgrade transmission lines; the Commission had determined that the utility's Virginia customers — having "uniquely caused and benefited from" the upgrade — would bear all of the costs, with no allocation to its North Carolina customers. *Id.* at 1207. Similarly, earlier this year the Court affirmed the Commission's decision to change the cost-allocation method to be applied to a project, where the record showed that utilities in the zone to which costs would be assigned under the prior method had not caused the project and would not benefit sufficiently from it to support the prior cost allocation. *Pub. Serv. Elec. & Gas Co. v. FERC*, 989 F.3d 10, 18-19 (D.C. Cir. 2021).

C. The Commission Reasonably Determined That The Proposed Cost Allocation Was Not Consistent With Cost Causation

Drawing on this body of precedent applying the cost-causation principle, the Commission concluded that Midcontinent's proposed cost allocation method did not appropriately match benefits and costs. The Commission found that the new project category proposed in the Second Regional Filing was essentially the same as that proposed in the First: though Midcontinent had removed the requirement that a Local Economic Project satisfy a minimum regional benefit-to-cost ratio, it still would analyze such a project's benefits for all pricing zones. That is, Midcontinent still would use one of the metrics to identify benefits throughout the region for purposes of selecting a project, and then would deliberately ignore those benefits in some zones for purposes of cost allocation. *See Regional Rehearing Order* P 19, JA ___ (Midcontinent "proposed to actively identify benefits for . . . selection purposes and to then actively disregard them for cost allocation purposes"); *Second Regional Order* PP 66, 68, JA ___-__ (Midcontinent proposed "to apply the same benefit metrics in a more selective and incomplete manner"; the proposed benefits analysis would "likely

require [Midcontinent] to disregard regional transmission benefits that it will necessarily uncover"); *cf. First Regional Order* P 63 (Midcontinent "proposed metrics that will identify regional benefits . . . but, for the purpose of imposing its preferred cost allocation method, . . . will ignore the results of the regional benefit metrics analysis").

The Commission reasonably compared that combination — the specific identification of regional benefits and conscious exclusion from cost-sharing — to the departure from cost-causation that this Court reversed in *Old Dominion*. *See Regional Rehearing Order* P 19, JA ___. In that case, the Court "fail[ed] to see how a categorical refusal to permit any regional cost sharing" could be squared with the cost-causation principle, which "prevents regionally beneficial projects from being arbitrarily excluded from cost sharing — a necessary corollary to ensuring that the costs of such projects are allocated commensurate with their benefits." *Old Dominion*, 898 F.3d at 1263.

Midcontinent's proposal to employ three different metrics to identify benefits separates this from a case where only a "crude" analysis of costs and benefits would be possible (*Illinois 2013*, 721 F.3d at 775). Contrary to the Transmission Owners' claim (Br. 39) that the

Commission required Midcontinent to calculate costs with "exacting precision" (*Midwest ISO Transmission Owners*, 373 F.3d at 1369), the Commission simply determined that it would not be just and reasonable for Midcontinent to apply its chosen metrics in a "selective and incomplete manner," excluding from cost allocation the regional benefits that it had specifically measured, while deliberately applying its "most reliable measure of benefits" only to the project's own zone. *Second Regional Order* PP 66-68, JA ___-__.[4]

Moreover, the regional benefits that Midcontinent would identify and set aside are "not akin to the modest spillover of benefits" (*Regional Rehearing Order* P 19, JA ___) that the Seventh Circuit found permissible in *MISO Transmission Owners* (819 F.3d at 336), nor are they an "incidental benefits tail . . . wag[ging] the primary-benefits dog"

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[4] The Transmission Owners now argue that the metric that the Commission found likely to identify benefits outside the project's zone — the measure of effects on payments under Midcontinent's settlement with the Southwest Power Pool — is "irrelevant" to interregional projects selected in the joint planning process with the Mid-Atlantic region. *See* Br. 47-48. This argument is jurisdictionally barred by section 313(b) of the Federal Power Act because Transmission Owners failed to raise it on agency rehearing. 16 U.S.C. § 825*l*(b); *see New Eng. Power Generators Ass'n v. FERC*, 879 F.3d 1192, 1198 (D.C. Cir. 2018) ("this prerequisite for review is jurisdictional; we have no discretion to disregard it").

(*Illinois 2014*, 756 F.3d at 564) — because here Midcontinent would "actively identify benefits" in all pricing zones for the very purpose of selecting an economic transmission project. *Regional Rehearing Order* P 19, JA ___; *contrast MISO Transmission Owners*, 819 F.3d at 335-36 (finding local cost allocation reasonable for projects that were selected and built by individual utilities for the sole purpose of resolving their own localized reliability issues); *Illinois 2014*, 756 F.3d at 564 (finding regional cost allocation across the entire Mid-Atlantic region unreasonable for projects that were selected "to address specific reliability violations in the eastern part of [the region]"). For that reason, the benefits that Midcontinent would identify and then "actively disregard" for the purpose of allocating costs are "precisely the type of benefits" that this Court found should not be "'arbitrarily excluded from cost sharing'": regional benefits to the transmission network. *Regional Rehearing Order* P 19, JA ___ (quoting *Old Dominion*, 898 F.3d at 1263); *see also Second Regional Order* P 67, JA ___.

Old Dominion is no less relevant because the projects in that case were higher-voltage (345-kilovolt) transmission lines, as the Transmission Owners suggest (*see* Br. 41). The "significant regional

benefits" of those lines were "undisputed" — assumed due to their voltage level. 898 F.3d at 1260-62; *see First Regional Order* P 64. The Transmission Owners argue that regional benefits cannot similarly be assumed for lower-voltage transmission facilities "as a class." Br. 42; *but see supra* pp. 30-31. But the Commission made no such generic assumptions: here, Midcontinent proposed to identify specific benefits outside of a project's zone and then ignore those *known* regional benefits. *Second Regional Order* P 69, JA ___.

Thus, the violation of cost-causation — arbitrarily disregarding identified regional benefits for purposes of cost allocation — is the same as in *Old Dominion*. For that reason, the Commission reasonably concluded that Midcontinent's revised proposal in the Second Regional Filing was "inadequate to address the principal defect" of the previous First Regional Filing: "inconsistency with the cost causation principle." *Second Regional Order* P 65. Thus, the Commission likewise reasonably rejected the Second Interregional Filing. *Second Interregional Order* P 29, JA ___-__; *Interregional Rehearing Order* P 21, JA ___-__.

IV. THE COMMISSION ESTABLISHED A JUST AND REASONABLE REPLACEMENT METHOD OF COST ALLOCATION FOR CERTAIN INTERREGIONAL TRANSMISSION PROJECTS

In contrast to the rejection of the First and Second Regional Filings — which had the effect of leaving in place the existing tariff provisions that the Commission had previously found just and reasonable — the failure of the First and Second Interregional Filings left Midcontinent without Commission-approved tariff provisions for cost allocation of interregional projects under 345 kilovolts. *See First Interregional Order* P 21, JA ___ ("[Midcontinent]'s outstanding compliance requirement, as directed in the [*2017 Compliance Order*], remains unfulfilled."); *Interregional Rehearing Order* P 33, JA ___ (Commission's determinations in the *2016 Complaint Order* "extend[ed] to the absence of a cost allocation method for" interregional economic transmission projects under the revised thresholds). Therefore, the Commission appropriately established a just and reasonable allocation method for those interregional projects.

A. The Commission Established A Cost Allocation Method That Is Just And Reasonable And Supported By Substantial Evidence

First, the Commission adopted the metric that Midcontinent had used to calculate benefits of Market Efficiency Projects since their inception in 2007 and had used as the exclusive benefits metric for those projects since 2012. *See 2007 Order* PP 5, 28, 30; *2012 Order* P 45, *cited in Interregional Rehearing Order* P 39, JA ___. The selection was consistent with cost causation and supported by substantial evidence, as Midcontinent itself asserted that the Production Cost Metric "has been regarded as one of the most reliable measures of the net economic impact of a planning decision on energy cost" in the Midcontinent region. Second Regional Filing, Transmittal at 15, JA ___, *quoted in Second Interregional Order* P 31, JA ___-__. Midcontinent has previously supported the merits of the Production Cost Metric in similar terms, explaining that the Production Cost Metric particularly captures "the benefit to the system of reduced energy costs" and "congestion relief" — that is, the very purpose of economic transmission projects. *2012 Order* P 14 (summarizing Midcontinent's support for using the Production Cost Metric alone for

Market Efficiency Projects); *see also 2007 Order* P 30 (Production Cost Metric was already an "accepted measure[] of the economic benefits (and costs) of new investments").

Moreover, Midcontinent has long used the Production Cost Metric for cost allocation, to allocate 80 percent of the costs of a Market Efficiency Project to pricing zones. *See Second Interregional Order* P 31 & n.39, JA ___. (In the Third Regional Filing, *see supra* pp. 24-25, Midcontinent kept the Production Cost Metric and added two other metrics to measure benefits and allocate costs for Market Efficiency Projects over 230 kilovolts. *See Third Regional Order* PP 19, 31, 33, JA ___, ___, ___.)

The Transmission Owners argue (Br. 34-38) that the Commission failed to support its determination that the Production Cost Metric is appropriate for allocating the costs of lower-voltage projects. Though Transmission Owners do not dispute that the metric has been a reliable measure of net economic impact, they contend that it "is generally not as reliable when applied" to projects below 230 kilovolts. Br. 35. They point to testimony of Midcontinent's witness explaining a general distinction between higher- and lower-voltage projects in regional

transmission planning. *See* Second Regional Filing, Tab A, Testimony of Jesse Moser at 33, JA ___, ___, *cited in* Br. 35. But that testimony does not, in fact, undermine the metric's reliability.

In that testimony, which supported, and thus focused on, Midcontinent's proposal for regional transmission projects (rather than projects selected in the joint interregional planning process), Mr. Moser explained Midcontinent's proposal to modify the criteria for Market Efficiency Projects to employ the Production Cost Metric, together with two additional metrics, and to lower the minimum voltage to 230 kilovolts. *See* Moser Testimony at 31-35, JA ___-__. In explaining the voltage change, Mr. Moser discussed, in general terms, the roles of transmission projects in regional planning: "Generally speaking, because of their capability to move large amounts of energy long distances efficiently, it is high voltage projects that provide additional increased capacity that improves regional energy delivery." Moser Testimony at 33, JA ___. He stated that "[l]ower voltage projects can provide some economic congestion relief," but noted (again, generally) that "the impacts of those projects tend to stay more localized . . . ." *Id.*; *see also id.* at 34, JA ___ ("projects operating at a voltage below 230

[kilovolts] are less likely to provide benefits that are truly regional in scope"). He further noted that, "because these benefits are generally smaller and more locally concentrated, they are more volatile and sensitive to assumptions used to forecast Adjusted Production Cost Savings." *Id.* at 33, JA ___.

Mr. Moser did not, however, question the metric's accuracy or reliability. Even if the calculated benefits may be "more sensitive to incorrect assumptions" when applied to lower-voltage facilities, that does not support the Transmission Owners' claim that "the . . . metric itself is any less accurate" as a measure of relative benefits. *Interregional Rehearing Order* P 31, JA ___ (addressing Moser Testimony). Put differently, the sensitivity of a benefits calculation refers to how changes in the assumptions used will affect the outcome — i.e., how various sources of uncertainty in a calculation contribute to its overall uncertainty. *Cf. 2012 Order* P 45 (finding that reliance on the Production Cost Metric "represent[ed] a reasonable balance between increased granularity . . . in its calculation of the benefits . . . and the uncertainty arising from the calculation of benefits on a more granular level based on factors that may change over time,

particularly as benefits are calculated farther into the future"). Mr. Moser, however, did not testify that the assumptions themselves are more likely to be incorrect when calculating the benefits of lower-voltage facilities. Therefore, the Commission adequately addressed the Transmission Owners' objection to applying the Production Cost Metric.

In any event, the Commission did not purport to select the only, or even the best, cost allocation method. The Federal Power Act requires only that its selection be just and reasonable. 16 U.S.C. § 824e(a); *see, e.g.*, *Electric Power Supply Ass'n*, 577 U.S. at 295 (Court does not need to discount arguments for a different method, nor to find that "FERC made the better call"); *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) ("FERC is not required to choose the best solution, only a reasonable one"); *see also Electric Power Supply Ass'n*, 577 U.S. at 295 (Court's "important but limited role is to ensure that the Commission engaged in reasoned decisionmaking — that it weighed competing views, selected a compensation formula with adequate support in the record, and intelligibly explained the reasons for making that choice."). The Commission's selection of the well-established Production Cost Metric met that standard.

Of course, Midcontinent has the right to propose its own cost allocation method, subject to the same "just and reasonable" standard under section 205 of the Federal Power Act, 16 U.S.C. § 824d. *See Second Interregional Order* P 31 n.40, JA ___; *Interregional Rehearing Order* P 30, JA ___; *see generally Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9-10 (D.C. Cir. 2002) (utilities have statutory right to propose their own tariff changes under Federal Power Act section 205, 16 U.S.C. § 824d). Because Midcontinent failed to meet that standard with its First and Second Interregional Filings, however, the Commission appropriately established an allocation method that it had found to be necessary, but absent, three years earlier. *See generally Electric Power Supply Ass'n*, 577 U.S. at 277 (if the Commission determines that a rate is unjust and unreasonable pursuant to Federal Power Act section 206, 16 U.S.C. § 824e, the Commission must fix the just and reasonable rate); *Md. Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283, 1285 n.1 (D.C. Cir. 2011) (same).

B. The Transmission Owners' Remaining Arguments Are Without Merit

Finally, the Transmission Owners argue that the Commission "ignored relevant evidence" regarding the application of the

replacement cost allocation method to Midcontinent's share of the costs of one specific interregional project selected in the joint planning process with the Mid-Atlantic region. Br. 48-50. That purported evidence — consisting of calculations allocating Midcontinent's (unspecified) share of the (unspecified) costs of a single transmission project that had been selected by Midcontinent and Mid-Atlantic in the joint planning process (*see* Br. 6-7, 25, 27-28, 48-50) — is not in the administrative record because the Commission properly rejected the late-filed pleading to which it was attached. *See supra* pp. 22-23 (discussing the Commission's procedural rulings).

In any event, the Commission appropriately determined that the rejected Entergy/Xcel pleading, "though . . . styled as an answer to [Midcontinent]'s answer" was, "in substance, a late-filed request for rehearing" of the *Second Interregional Order* and thus was barred by both the Federal Power Act and the Commission's own regulations. *Interregional Rehearing Order* P 15 & n.29, JA ___ (citing 16 U.S.C. § 825*l*(a) and 18 C.F.R. § 385.713(b)); *see also id.* at P 13 (rejecting Midcontinent's May 13 answer, in part, as a prohibited answer to a rehearing request under 18 C.F.R. § 385.713(d)(1)). Similarly, the

Commission determined that the MISO Transmission Owners' May 4 protest was "beyond the scope" of Midcontinent's compliance filing because it "instead repeat[ed] many of the arguments in its rehearing request." *Interregional Rehearing Order* P 55, JA ___. Both findings were manifestly supported by the text of the disputed filings themselves (*see* May 4 Protest at 4-7, JA ___-__; May 28 Answer at 2-4, JA ___-__) and well within the Commission's discretion to order its own proceedings. *See*, *e.g.*, *Vt. Yankee*, 435 U.S. 543 ("administrative agencies should be free to fashion their own rules of procedure") (internal quotation marks and citations omitted); *Tenn. Valley*, 140 F.3d at 1088 ("An agency has broad discretion to determine when and how to hear and decide the matters that come before it.").

CONCLUSION

For the reasons stated, the petitions should be denied and the challenged FERC orders should be affirmed in all respects.

Respectfully submitted,

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April 27, 2021

CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(a)(7)(C)(i), I certify that the Brief for Respondent has been prepared in a proportionally spaced typeface (using Microsoft Word, in 14-point Century Schoolbook) and contains 9,751 words, not including the tables of contents and authorities, the glossary, the certificates of counsel, and the addendum.

/s/ *Carol J. Banta*
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April 27, 2021

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d) and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 27th day of April 2021, served the foregoing via email through the Court's CM/ECF system.

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ADDENDUM

STATUTES
AND
REGULATIONS

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STATUTES: **PAGE**

onstrate a separation of staff cooperating with the Commission under the National Environmental Policy Act[1] (42 U.S.C. 4321 et seq.) and staff participating in the applicable proceeding under this subchapter.

(f) Developing abandoned mines for pumped storage

(1) Workshop

Not later than 6 months after October 23, 2018, the Commission shall hold a workshop to explore potential opportunities for development of closed-loop pumped storage projects at abandoned mine sites.

(2) Guidance

Not later than 1 year after October 23, 2018, the Commission shall issue guidance to assist applicants for licenses or preliminary permits for closed-loop pumped storage projects at abandoned mine sites.

(g) Qualifying criteria for closed-loop pumped storage projects

(1) In general

The Commission shall establish criteria that a pumped storage project shall meet in order to qualify as a closed-loop pumped storage project eligible for the expedited process established under this section.

(2) Inclusions

In establishing the criteria under paragraph (1), the Commission shall include criteria requiring that the pumped storage project—

(A) cause little to no change to existing surface and ground water flows and uses; and

(B) is unlikely to adversely affect species listed as a threatened species or endangered species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.].

(h) Savings clause

Nothing in this section affects any authority of the Commission to license a closed-loop pumped storage project under this subchapter.

(June 10, 1920, ch. 285, pt. I, § 35, as added Pub. L. 115–270, title III, § 3004, Oct. 23, 2018, 132 Stat. 3865.)

REFERENCES IN TEXT

The Fish and Wildlife Coordination Act, referred to in subsec. (c)(2), (3)(A), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, which is classified generally to sections 661 to 666c–1 of this title. For complete classification of this Act to the Code, see section 661(a) of this title, Short Title note set out under section 661 of this title, and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (e), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Endangered Species Act of 1973, referred to in subsec. (g)(2)(B), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§ 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

[1] So in original. Probably should be followed by ''of 1969''.

§ 823g. Considerations for relicensing terms

(a) In general

In determining the term of a new license issued when an existing license under this subchapter expires, the Commission shall take into consideration, among other things—

(1) project-related investments by the licensee under the new license; and

(2) project-related investments by the licensee over the term of the existing license.

(b) Equal weight

The determination of the Commission under subsection (a) shall give equal weight to—

(1) investments by the licensee to implement the new license under this subchapter, including investments relating to redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation or replacement of major equipment, safety improvements, or environmental, recreation, or other protection, mitigation, or enhancement measures required or authorized by the new license; and

(2) investments by the licensee over the term of the existing license (including any terms under annual licenses) that—

(A) resulted in redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation or replacement of major equipment, safety improvements, or environmental, recreation, or other protection, mitigation, or enhancement measures conducted over the term of the existing license; and

(B) were not expressly considered by the Commission as contributing to the length of the existing license term in any order establishing or extending the existing license term.

(c) Commission determination

At the request of the licensee, the Commission shall make a determination as to whether any planned, ongoing, or completed investment meets the criteria under subsection (b)(2). Any determination under this subsection shall be issued within 60 days following receipt of the licensee's request. When issuing its determination under this subsection, the Commission shall not assess the incremental number of years that the investment may add to the new license term. All such assessment shall occur only as provided in subsection (a).

(June 10, 1920, ch. 285, pt. I, § 36, as added Pub. L. 115–270, title III, § 3005, Oct. 23, 2018, 132 Stat. 3867.)

SUBCHAPTER II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

§ 824. Declaration of policy; application of subchapter

(a) Federal regulation of transmission and sale of electric energy

It is declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in

this subchapter and subchapter III of this chapter and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

(b) Use or sale of electric energy in interstate commerce

(1) The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(2) Notwithstanding subsection (f), the provisions of sections 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824*o*–1, 824p, 824q, 824r, 824s, 824t, 824u, and 824v of this title shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this chapter with respect to such provisions. Compliance with any order or rule of the Commission under the provisions of section 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824*o*–1, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title, shall not make an electric utility or other entity subject to the jurisdiction of the Commission for any purposes other than the purposes specified in the preceding sentence.

(c) Electric energy in interstate commerce

For the purpose of this subchapter, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

(d) "Sale of electric energy at wholesale" defined

The term ''sale of electric energy at wholesale'' when used in this subchapter, means a sale of electric energy to any person for resale.

(e) "Public utility" defined

The term ''public utility'' when used in this subchapter and subchapter III of this chapter means any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter (other than facilities subject to such jurisdiction solely by reason of section 824e(e), 824e(f),[1] 824i, 824j, 824j–1, 824k, 824*o*, 824*o*–1, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title).

(f) United States, State, political subdivision of a State, or agency or instrumentality thereof exempt

No provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(g) Books and records

(1) Upon written order of a State commission, a State commission may examine the books, accounts, memoranda, contracts, and records of—

(A) an electric utility company subject to its regulatory authority under State law,

(B) any exempt wholesale generator selling energy at wholesale to such electric utility, and

(C) any electric utility company, or holding company thereof, which is an associate company or affiliate of an exempt wholesale generator which sells electric energy to an electric utility company referred to in subparagraph (A),

wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric service.

(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

(4) Nothing in this section shall—

(A) preempt applicable State law concerning the provision of records and other information; or

(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

(5) As used in this subsection the terms ''affiliate'', ''associate company'', ''electric utility company'', ''holding company'', ''subsidiary company'', and ''exempt wholesale generator'' shall have the same meaning as when used in the Public Utility Holding Company Act of 2005 [42 U.S.C. 16451 et seq.].

(June 10, 1920, ch. 285, pt. II, § 201, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 847; amend-

[1] So in original. Section 824e of this title does not contain a subsec. (f).

ed Pub. L. 95–617, title II, § 204(b), Nov. 9, 1978, 92 Stat. 3140; Pub. L. 102–486, title VII, § 714, Oct. 24, 1992, 106 Stat. 2911; Pub. L. 109–58, title XII, §§ 1277(b)(1), 1291(c), 1295(a), Aug. 8, 2005, 119 Stat. 978, 985; Pub. L. 114–94, div. F, § 61003(b), Dec. 4, 2015, 129 Stat. 1778.)

REFERENCES IN TEXT

The Rural Electrification Act of 1936, referred to in subsec. (f), is act May 20, 1936, ch. 432, 49 Stat. 1363, as amended, which is classified generally to chapter 31 (§ 901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

The Public Utility Holding Company Act of 2005, referred to in subsec. (g)(5), is subtitle F of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which is classified principally to part D (§ 16451 et seq.) of subchapter XII of chapter 149 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of Title 42 and Tables.

AMENDMENTS

2015—Subsec. (b)(2). Pub. L. 114–94, § 61003(b)(1), inserted ''824*o*–1,'' after ''824*o*,'' in two places.

Subsec. (e). Pub. L. 114–94, § 61003(b)(2), inserted ''824*o*–1,'' after ''824*o*,''.

2005—Subsec. (b)(2). Pub. L. 109–58, § 1295(a)(1), substituted ''Notwithstanding subsection (f), the provisions of sections 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824p, 824q, 824r, 824s, 824t, 824u, and 824v of this title'' for ''The provisions of sections 824i, 824j, and 824k of this title'' and ''Compliance with any order or rule of the Commission under the provisions of section 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title'' for ''Compliance with any order of the Commission under the provisions of section 824i or 824j of this title''.

Subsec. (e). Pub. L. 109–58, § 1295(a)(2), substituted ''section 824e(e), 824e(f), 824i, 824j, 824j–1, 824k, 824*o*, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title'' for ''section 824i, 824j, or 824k of this title''.

Subsec. (f). Pub. L. 109–58, § 1291(c), which directed amendment of subsec. (f) by substituting ''political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year,'' for ''political subdivision of a state,'', was executed by making the substitution for ''political subdivision of a State,'' to reflect the probable intent of Congress.

Subsec. (g)(5). Pub. L. 109–58, § 1277(b)(1), substituted ''2005'' for ''1935''.

1992—Subsec. (g). Pub. L. 102–486 added subsec. (g).

1978—Subsec. (b). Pub. L. 95–617, § 204(b)(1), designated existing provisions as par. (1), inserted ''except as provided in paragraph (2)'' after ''in interstate commerce, but'', and added par. (2).

Subsec. (e). Pub. L. 95–617, § 204(b)(2), inserted ''(other than facilities subject to such jurisdiction solely by reason of section 824i, 824j, or 824k of this title)'' after ''under this subchapter''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1277(b)(1) of Pub. L. 109–58 effective 6 months after Aug. 8, 2005, with provisions relating to effect of compliance with certain regulations approved and made effective prior to such date, see section 1274 of Pub. L. 109–58, set out as an Effective Date note under section 16451 of Title 42, The Public Health and Welfare.

STATE AUTHORITIES; CONSTRUCTION

Nothing in amendment by Pub. L. 102–486 to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102–486, set out as a note under section 796 of this title.

PRIOR ACTIONS; EFFECT ON OTHER AUTHORITIES

Pub. L. 95–617, title II, § 214, Nov. 9, 1978, 92 Stat. 3149, provided that:

''(a) PRIOR ACTIONS.—No provision of this title [enacting sections 823a, 824i to 824k, 824a–1 to 824a–3 and 825q–1 of this title, amending sections 796, 824, 824a, 824d, and 825d of this title and enacting provisions set out as notes under sections 824a, 824d, and 825d of this title] or of any amendment made by this title shall apply to, or affect, any action taken by the Commission [Federal Energy Regulatory Commission] before the date of the enactment of this Act [Nov. 9, 1978].

''(b) OTHER AUTHORITIES.—No provision of this title [enacting sections 823a, 824i to 824k, 824a–1 to 824a–3 and 825q–1 of this title, amending sections 796, 824, 824a, 824d, and 825d of this title and enacting provisions set out as notes under sections 824a, 824d, and 825d of this title] or of any amendment made by this title shall limit, impair or otherwise affect any authority of the Commission or any other agency or instrumentality of the United States under any other provision of law except as specifically provided in this title.''

§ 824a. Interconnection and coordination of facilities; emergencies; transmission to foreign countries

(a) Regional districts; establishment; notice to State commissions

For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnection and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

(b) Sale or exchange of energy; establishing physical connections

Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the fa-

Commission's order, or supplemental order, or to any purpose in excess of the amount allowed for such purpose in such order, or otherwise in contravention of such order.

(d) Authorization of capitalization not to exceed amount paid

The Commission shall not authorize the capitalization of the right to be a corporation or of any franchise, permit, or contract for consolidation, merger, or lease in excess of the amount (exclusive of any tax or annual charge) actually paid as the consideration for such right, franchise, permit, or contract.

(e) Notes or drafts maturing less than one year after issuance

Subsection (a) shall not apply to the issue or renewal of, or assumption of liability on, a note or draft maturing not more than one year after the date of such issue, renewal, or assumption of liability, and aggregating (together with all other then outstanding notes and drafts of a maturity of one year or less on which such public utility is primarily or secondarily liable) not more than 5 per centum of the par value of the other securities of the public utility then outstanding. In the case of securities having no par value, the par value for the purpose of this subsection shall be the fair market value as of the date of issue. Within ten days after any such issue, renewal, or assumption of liability, the public utility shall file with the Commission a certificate of notification, in such form as may be prescribed by the Commission, setting forth such matters as the Commission shall by regulation require.

(f) Public utility securities regulated by State not affected

The provisions of this section shall not extend to a public utility organized and operating in a State under the laws of which its security issues are regulated by a State commission.

(g) Guarantee or obligation on part of United States

Nothing in this section shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which the provisions of this section relate.

(h) Filing duplicate reports with the Securities and Exchange Commission

Any public utility whose security issues are approved by the Commission under this section may file with the Securities and Exchange Commission duplicate copies of reports filed with the Federal Power Commission in lieu of the reports, information, and documents required under sections 77g, 78*l*, and 78m of title 15.

(June 10, 1920, ch. 285, pt. II, § 204, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 850.)

TRANSFER OF FUNCTIONS

Executive and administrative functions of Securities and Exchange Commission, with certain exceptions, transferred to Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 824d. Rates and charges; schedules; suspension of new rates; automatic adjustment clauses

(a) Just and reasonable rates

All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) Preference or advantage unlawful

No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Schedules

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Notice required for rate changes

Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Suspension of new rates; hearings; five-month period

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and de-

livering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(f) Review of automatic adjustment clauses and public utility practices; action by Commission; "automatic adjustment clause" defined

(1) Not later than 2 years after November 9, 1978, and not less often than every 4 years thereafter, the Commission shall make a thorough review of automatic adjustment clauses in public utility rate schedules to examine—

(A) whether or not each such clause effectively provides incentives for efficient use of resources (including economical purchase and use of fuel and electric energy), and

(B) whether any such clause reflects any costs other than costs which are—

(i) subject to periodic fluctuations and

(ii) not susceptible to precise determinations in rate cases prior to the time such costs are incurred.

Such review may take place in individual rate proceedings or in generic or other separate proceedings applicable to one or more utilities.

(2) Not less frequently than every 2 years, in rate proceedings or in generic or other separate proceedings, the Commission shall review, with respect to each public utility, practices under any automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.

(3) The Commission may, on its own motion or upon complaint, after an opportunity for an evidentiary hearing, order a public utility to—

(A) modify the terms and provisions of any automatic adjustment clause, or

(B) cease any practice in connection with the clause,

if such clause or practice does not result in the economical purchase and use of fuel, electric energy, or other items, the cost of which is included in any rate schedule under an automatic adjustment clause.

(4) As used in this subsection, the term ''automatic adjustment clause'' means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate.

(g) Inaction of Commissioners

(1) In general

With respect to a change described in subsection (d), if the Commission permits the 60-day period established therein to expire without issuing an order accepting or denying the change because the Commissioners are divided two against two as to the lawfulness of the change, as a result of vacancy, incapacity, or recusal on the Commission, or if the Commission lacks a quorum—

(A) the failure to issue an order accepting or denying the change by the Commission shall be considered to be an order issued by the Commission accepting the change for purposes of section 825*l*(a) of this title; and

(B) each Commissioner shall add to the record of the Commission a written statement explaining the views of the Commissioner with respect to the change.

(2) Appeal

If, pursuant to this subsection, a person seeks a rehearing under section 825*l*(a) of this title, and the Commission fails to act on the merits of the rehearing request by the date that is 30 days after the date of the rehearing request because the Commissioners are divided two against two, as a result of vacancy, incapacity, or recusal on the Commission, or if the Commission lacks a quorum, such person may appeal under section 825*l*(b) of this title.

(June 10, 1920, ch. 285, pt. II, § 205, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 851; amended Pub. L. 95–617, title II, §§ 207(a), 208, Nov. 9, 1978, 92 Stat. 3142; Pub. L. 115–270, title III, § 3006, Oct. 23, 2018, 132 Stat. 3868.)

AMENDMENTS

2018—Subsec. (g). Pub. L. 115–270 added subsec. (g).

1978—Subsec. (d). Pub. L. 95–617, § 207(a), substituted ''sixty'' for ''thirty'' in two places.

Subsec. (f). Pub. L. 95–617, § 208, added subsec. (f).

STUDY OF ELECTRIC RATE INCREASES UNDER FEDERAL POWER ACT

Section 207(b) of Pub. L. 95–617 directed chairman of Federal Energy Regulatory Commission, in consultation with Secretary, to conduct a study of legal requirements and administrative procedures involved in consideration and resolution of proposed wholesale electric rate increases under Federal Power Act, section 791a et seq. of this title, for purposes of providing for expeditious handling of hearings consistent with

due process, preventing imposition of successive rate increases before they have been determined by Commission to be just and reasonable and otherwise lawful, and improving procedures designed to prohibit anticompetitive or unreasonable differences in wholesale and retail rates, or both, and that chairman report to Congress within nine months from Nov. 9, 1978, on results of study, on administrative actions taken as a result of this study, and on any recommendations for changes in existing law that will aid purposes of this section.

§ 824e. Power of Commission to fix rates and charges; determination of cost of production or transmission

(a) Unjust or preferential rates, etc.; statement of reasons for changes; hearing; specification of issues

Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. Any complaint or motion of the Commission to initiate a proceeding under this section shall state the change or changes to be made in the rate, charge, classification, rule, regulation, practice, or contract then in force, and the reasons for any proposed change or changes therein. If, after review of any motion or complaint and answer, the Commission shall decide to hold a hearing, it shall fix by order the time and place of such hearing and shall specify the issues to be adjudicated.

(b) Refund effective date; preferential proceedings; statement of reasons for delay; burden of proof; scope of refund order; refund orders in cases of dilatory behavior; interest

Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the publication date. Upon institution of a proceeding under this section, the Commission shall give to the decision of such proceeding the same preference as provided under section 824d of this title and otherwise act as speedily as possible. If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission may order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force: *Provided*, That if the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding. The refunds shall be made, with interest, to those persons who have paid those rates or charges which are the subject of the proceeding.

(c) Refund considerations; shifting costs; reduction in revenues; "electric utility companies" and "registered holding company" defined

Notwithstanding subsection (b), in a proceeding commenced under this section involving two or more electric utility companies of a registered holding company, refunds which might otherwise be payable under subsection (b) shall not be ordered to the extent that such refunds would result from any portion of a Commission order that (1) requires a decrease in system production or transmission costs to be paid by one or more of such electric companies; and (2) is based upon a determination that the amount of such decrease should be paid through an increase in the costs to be paid by other electric utility companies of such registered holding company: *Provided*, That refunds, in whole or in part, may be ordered by the Commission if it determines that the registered holding company would not experience any reduction in revenues which results from an inability of an electric utility company of the holding company to recover such increase in costs for the period between the refund effective date and the effective date of the Commission's order. For purposes of this subsection, the terms ''electric utility companies'' and ''registered holding company'' shall have the same meanings as provided in the Public Utility Holding Company Act of 1935, as amended.[1]

(d) Investigation of costs

The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no au-

[1] See References in Text note below.

thority to establish a rate governing the sale of such energy.

(e) Short-term sales

(1) In this subsection:

(A) The term ''short-term sale'' means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 31 days or less (excluding monthly contracts subject to automatic renewal).

(B) The term ''applicable Commission rule'' means a Commission rule applicable to sales at wholesale by public utilities that the Commission determines after notice and comment should also be applicable to entities subject to this subsection.

(2) If an entity described in section 824(f) of this title voluntarily makes a short-term sale of electric energy through an organized market in which the rates for the sale are established by Commission-approved tariff (rather than by contract) and the sale violates the terms of the tariff or applicable Commission rules in effect at the time of the sale, the entity shall be subject to the refund authority of the Commission under this section with respect to the violation.

(3) This section shall not apply to—

(A) any entity that sells in total (including affiliates of the entity) less than 8,000,000 megawatt hours of electricity per year; or

(B) an electric cooperative.

(4)(A) The Commission shall have refund authority under paragraph (2) with respect to a voluntary short term sale of electric energy by the Bonneville Power Administration only if the sale is at an unjust and unreasonable rate.

(B) The Commission may order a refund under subparagraph (A) only for short-term sales made by the Bonneville Power Administration at rates that are higher than the highest just and reasonable rate charged by any other entity for a short-term sale of electric energy in the same geographic market for the same, or most nearly comparable, period as the sale by the Bonneville Power Administration.

(C) In the case of any Federal power marketing agency or the Tennessee Valley Authority, the Commission shall not assert or exercise any regulatory authority or power under paragraph (2) other than the ordering of refunds to achieve a just and reasonable rate.

(June 10, 1920, ch. 285, pt. II, § 206, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 852; amended Pub. L. 100–473, § 2, Oct. 6, 1988, 102 Stat. 2299; Pub. L. 109–58, title XII, §§ 1285, 1286, 1295(b), Aug. 8, 2005, 119 Stat. 980, 981, 985.)

REFERENCES IN TEXT

The Public Utility Holding Company Act of 1935, referred to in subsec. (c), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, as amended, which was classified generally to chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 1295(b)(1), substituted ''hearing held'' for ''hearing had'' in first sentence.

Subsec. (b). Pub. L. 109–58, § 1295(b)(2), struck out ''the public utility to make'' before ''refunds of any amounts paid'' in seventh sentence.

Pub. L. 109–58, § 1285, in second sentence, substituted ''the date of the filing of such complaint nor later than 5 months after the filing of such complaint'' for ''the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'', in third sentence, substituted ''the date of the publication'' for ''the date 60 days after the publication'' and ''5 months after the publication date'' for ''5 months after the expiration of such 60-day period'', and in fifth sentence, substituted ''If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision'' for ''If no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision''.

Subsec. (e). Pub. L. 109–58, § 1286, added subsec. (e).

1988—Subsec. (a). Pub. L. 100–473, § 2(1), inserted provisions for a statement of reasons for listed changes, hearings, and specification of issues.

Subsecs. (b) to (d). Pub. L. 100–473, § 2(2), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–473, § 4, Oct. 6, 1988, 102 Stat. 2300, provided that: ''The amendments made by this Act [amending this section] are not applicable to complaints filed or motions initiated before the date of enactment of this Act [Oct. 6, 1988] pursuant to section 206 of the Federal Power Act [this section]: *Provided*, *however*, That such complaints may be withdrawn and refiled without prejudice.''

LIMITATION ON AUTHORITY PROVIDED

Pub. L. 100–473, § 3, Oct. 6, 1988, 102 Stat. 2300, provided that: ''Nothing in subsection (c) of section 206 of the Federal Power Act, as amended (16 U.S.C. 824e(c)) shall be interpreted to confer upon the Federal Energy Regulatory Commission any authority not granted to it elsewhere in such Act [16 U.S.C. 791a et seq.] to issue an order that (1) requires a decrease in system production or transmission costs to be paid by one or more electric utility companies of a registered holding company; and (2) is based upon a determination that the amount of such decrease should be paid through an increase in the costs to be paid by other electric utility companies of such registered holding company. For purposes of this section, the terms 'electric utility companies' and 'registered holding company' shall have the same meanings as provided in the Public Utility Holding Company Act of 1935, as amended [15 U.S.C. 79 et seq.].''

STUDY

Pub. L. 100–473, § 5, Oct. 6, 1988, 102 Stat. 2301, directed that, no earlier than three years and no later than four years after Oct. 6, 1988, Federal Energy Regulatory Commission perform a study of effect of amendments to this section, analyzing (1) impact, if any, of such amendments on cost of capital paid by public utilities, (2) any change in average time taken to resolve proceedings under this section, and (3) such other matters as Commission may deem appropriate in public interest, with study to be sent to Committee on Energy and Natural Resources of Senate and Committee on Energy and Commerce of House of Representatives.

§ 824f. Ordering furnishing of adequate service

Whenever the Commission, upon complaint of a State commission, after notice to each State commission and public utility affected and after opportunity for hearing, shall find that any

ed Pub. L. 113–235, div. H, title I, §1301(b), (d), Dec. 16, 2014, 128 Stat. 2537.)

CODIFICATION

''Sections 1535 and 1536 of title 31'' substituted in text for ''sections 601 and 602 of the Act of June 30, 1932 (47 Stat. 417 [31 U.S.C. 686, 686b])'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

CHANGE OF NAME

''Director of the Government Publishing Office'' substituted for ''Public Printer'' in text on authority of section 1301(d) of Pub. L. 113–235, set out as a note under section 301 of Title 44, Public Printing and Documents.

''Government Publishing Office'' substituted for ''Government Printing Office'' in text on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

§ 825*l*. Review of orders

(a) Application for rehearing; time periods; modification of order

Any person, electric utility, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, electric utility, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any entity unless such entity shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Judicial review

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States court of appeals for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission's order

The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(June 10, 1920, ch. 285, pt. III, §313, as added Aug. 26, 1935, ch. 687, title II, §213, 49 Stat. 860; amended June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §16, Aug. 28, 1958, 72 Stat. 947; Pub. L. 109–58, title XII, §1284(c), Aug. 8, 2005, 119 Stat. 980.)

CODIFICATION

In subsec. (b), ''section 1254 of title 28'' substituted for ''sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)'' on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58 inserted ''electric utility,'' after ''Any person,'' and ''to which such person,'' and substituted ''brought by any entity unless such entity'' for ''brought by any person unless such person''.

1958—Subsec. (a). Pub. L. 85–791, §16(a), inserted sentence to provide that Commission may modify or set aside findings or orders until record has been filed in court of appeals.

Subsec. (b). Pub. L. 85–791, §16(b), in second sentence, substituted ''transmitted by the clerk of the court to'' for ''served upon'', substituted ''file with the court'' for

''certify and file with the court a transcript of'', and inserted ''as provided in section 2112 of title 28'', and in third sentence, substituted ''jurisdiction, which upon the filing of the record with it shall be exclusive'' for ''exclusive jurisdiction''.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted ''court of appeals'' for ''circuit court of appeals''.

§ 825m. Enforcement provisions

(a) Enjoining and restraining violations

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper District Court of the United States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings under this chapter.

(b) Writs of mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(c) Employment of attorneys

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(d) Prohibitions on violators

In any proceedings under subsection (a), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as the court determines, any individual who is engaged or has engaged in practices constituting a violation of section 824u of this title (and related rules and regulations) from—

(1) acting as an officer or director of an electric utility; or

(2) engaging in the business of purchasing or selling—

(A) electric energy; or

(B) transmission services subject to the jurisdiction of the Commission.

(June 10, 1920, ch. 285, pt. III, § 314, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 861; amended June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 109–58, title XII, § 1288, Aug. 8, 2005, 119 Stat. 982.)

CODIFICATION

As originally enacted subsecs. (a) and (b) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted ''the district court of the United States for the District of Columbia'' for ''the Supreme Court of the District of Columbia'', and act June 25, 1948, as amended by act May 24, 1949, substituted ''United States District Court for the District of Columbia'' for ''district court of the United States for the District of Columbia''. However, the words ''United States District Court for the District of Columbia'' have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'', and section 88 of Title 28 which states that ''the District of Columbia constitutes one judicial district''.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 added subsec. (d).

§ 825n. Forfeiture for violations; recovery; applicability

(a) Forfeiture

Any licensee or public utility which willfully fails, within the time prescribed by the Commission, to comply with any order of the Commission, to file any report required under this chapter or any rule or regulation of the Commission thereunder, to submit any information or document required by the Commission in the course of an investigation conducted under this chapter, or to appear by an officer or agent at any hearing or investigation in response to a subpena issued under this chapter, shall forfeit to the United States an amount not exceeding $1,000 to be fixed by the Commission after notice and opportunity for hearing. The imposition or payment of any such forfeiture shall not bar or affect any penalty prescribed in this chapter but such forfeiture shall be in addition to any such penalty.

(b) Recovery

The forfeitures provided for in this chapter shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States, brought in the district where the person is an inhabitant or has his principal place of business, or if a licensee or public utility, in any district in which such licensee or public utility transacts business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures under this chapter. The costs and expenses of such prosecution shall be paid from the appropriations for the expenses of the courts of the United States.

(c) Applicability

This section shall not apply in the case of any provision of section 824j, 824k, 824*l*, or 824m of this title or any rule or order issued under any such provision.

(c) *Answers.* A person who is ordered to show cause must answer in accordance with Rule 213.

§ 385.210 Method of notice; dates established in notice (Rule 210).

(a) *Method.* When the Secretary gives notice of tariff or rate filings, applications, petitions, notices of tariff or rate examinations, and orders to show cause, the Secretary will give such notice in accordance with Rule 2009.

(b) *Dates for filing interventions and protests.* A notice given under this section will establish the dates for filing interventions and protests. Only those filings made within the time prescribed in the notice will be considered timely.

§ 385.211 Protests other than under Rule 208 (Rule 211).

(a) *General rule.* (1) Any person may file a protest to object to any application, complaint, petition, order to show cause, notice of tariff or rate examination, or tariff or rate filing.

(2) The filing of a protest does not make the protestant a party to the proceeding. The protestant must intervene under Rule 214 to become a party.

(3) Subject to paragraph (a)(4) of this section, the Commission will consider protests in determining further appropriate action. Protests will be placed in the public file associated with the proceeding.

(4) If a proceeding is set for hearing under subpart E of this part, the protest is not part of the record upon which the decision is made.

(b) *Service.* (1) Any protest directed against a person in a proceeding must be served by the protestant on the person against whom the protest is directed.

(2) The Secretary may waive any procedural requirement of this subpart applicable to protests. If the requirement of service under this paragraph is waived, the Secretary will place the protest in the public file and may send a copy thereof to any person against whom the protest is directed.

§ 385.212 Motions (Rule 212).

(a) *General rule.* A motion may be filed:

(1) At any time, unless otherwise provided;

(2) By a participant or a person who has filed a timely motion to intervene which has not been denied;

(3) In any proceeding except an informal rulemaking proceeding.

(b) *Written and oral motions.* Any motion must be filed in writing, except that the presiding officer may permit an oral motion to be made on the record during a hearing or conference.

(c) *Contents.* A motion must contain a clear and concise statement of:

(1) The facts and law which support the motion; and

(2) The specific relief or ruling requested.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 225–A, 47 FR 35956, Aug. 18, 1982; Order 376, 49 FR 21705, May 23, 1984]

§ 385.213 Answers (Rule 213).

(a) *Required or permitted.* (1) Any respondent to a complaint or order to show cause must make an answer, unless the Commission orders otherwise.

(2) An answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, unless otherwise ordered by the decisional authority. A presiding officer may prohibit an answer to a motion for interlocutory appeal. If an answer is not otherwise permitted under this paragraph, no responsive pleading may be made.

(3) An answer may be made to any pleading, if not prohibited under paragraph (a)(2) of this section.

(4) An answer to a notice of tariff or rate examination must be made in accordance with the provisions of such notice.

(b) *Written or oral answers.* Any answer must be in writing, except that the presiding officer may permit an oral answer to a motion made on the record during a hearing conducted under subpart E or during a conference.

(c) *Contents.* (1) An answer must contain a clear and concise statement of:

(i) Any disputed factual allegations; and

(ii) Any law upon which the answer relies.

(2) When an answer is made in response to a complaint, an order to show cause, or an amendment to such pleading, the answerer must, to the extent practicable:

(i) Admit or deny, specifically and in detail, each material allegation of the pleading answered; and

(ii) Set forth every defense relied on.

(3) General denials of facts referred to in any order to show cause, unsupported by the specific facts upon which the respondent relies, do not comply with paragraph (a)(1) of this section and may be a basis for summary disposition under Rule 217, unless otherwise required by statute.

(4) An answer to a complaint must include documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts and affidavits. An answer is also required to describe the formal or consensual process it proposes for resolving the complaint.

(5) When submitting with its answer any request for privileged treatment of documents and information in accordance with this chapter, a respondent must provide a public version of its answer without the information for which privileged treatment is claimed and its proposed form of protective agreement to each entity that has either been served pursuant to §385.206(c) or whose name is on the official service list for the proceeding compiled by the Secretary.

(d) *Time limitations.* (1) Any answer to a motion or to an amendment to a motion must be made within 15 days after the motion or amendment is filed, except as described below or unless otherwise ordered.

(i) If a motion requests an extension of time or a shortened time period for action, then answers to the motion to extend or shorten the time period shall be made within 5 days after the motion is filed, unless otherwise ordered.

(ii) [Reserved]

(2) Any answer to a pleading or amendment to a pleading, other than a complaint or an answer to a motion under paragraph (d)(1) of this section, must be made:

(i) If notice of the pleading or amendment is published in the FEDERAL REGISTER, not later than 30 days after such publication, unless otherwise ordered; or

(ii) If notice of the pleading or amendment is not published in the FEDERAL REGISTER, not later than 30 days after the filing of the pleading or amendment, unless otherwise ordered.

(e) *Failure to answer.* (1) Any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted.

(2) Failure to answer an order to show cause will be treated as a general denial to which paragraph (c)(3) of this section applies.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 602, 64 FR 17099, Apr. 8, 1999; Order 602–A, 64 FR 43608, Aug. 11, 1999; Order 769, 77 FR 65476, Oct. 29, 2012]

§385.214 Intervention (Rule 214).

(a) *Filing.* (1) The Secretary of Energy is a party to any proceeding upon filing a notice of intervention in that proceeding. If the Secretary's notice is not filed within the period prescribed under Rule 210(b), the notice must state the position of the Secretary on the issues in the proceeding.

(2) Any State Commission, the Advisory Council on Historic Preservation, the U.S. Departments of Agriculture, Commerce, and the Interior, any state fish and wildlife, water quality certification, or water rights agency; or Indian tribe with authority to issue a water quality certification is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under Rule 210(b). If the period for filing notice has expired, each entity identified in this paragraph must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person seeking to intervene to become a party, other than the entities specified in paragraphs (a)(1) and (a)(2) of this section, must file a motion to intervene.

(4) No person, including entities listed in paragraphs (a)(1) and (a)(2) of this section, may intervene as a matter of right in a proceeding arising from an investigation pursuant to Part 1b of this chapter.

(b) *Contents of motion.* (1) Any motion to intervene must state, to the extent

(d) *Failure to take exceptions results in waiver*—(1) *Complete waiver*. If a participant does not file a brief on exceptions within the time permitted under this section, any objection to the initial decision by the participant is waived.

(2) *Partial waiver*. If a participant does not object to a part of an initial decision in a brief on exceptions, any objections by the participant to that part of the initial decision are waived.

(3) *Effect of waiver*. Unless otherwise ordered by the Commission for good cause shown, a participant who has waived objections under paragraph (d)(1) or (d)(2) of this section to all or part of an initial decision may not raise such objections before the Commission in oral argument or on rehearing.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.712 Commission review of initial decisions in the absence of exceptions (Rule 712).

(a) *General rule*. If no briefs on exceptions to an initial decision are filed within the time established by rule or order under Rule 711, the Commission may, within 10 days after the expiration of such time, issue an order staying the effectiveness of the decision pending Commission review.

(b) *Briefs and argument*. When the Commission reviews a decision under this section, the Commission may require that participants file briefs or present oral arguments on any issue.

(c) *Effect of review*. After completing review under this section, the Commission will issue a decision which is final for purposes of rehearing under Rule 713.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.713 Request for rehearing (Rule 713).

(a) *Applicability*. (1) This section applies to any request for rehearing of a final Commission decision or other final order, if rehearing is provided for by statute, rule, or order.

(2) For the purposes of rehearing under this section, a final decision in any proceeding set for hearing under subpart E of this part includes any Commission decision:

(i) On exceptions taken by participants to an initial decision;

(ii) When the Commission presides at the reception of the evidence;

(iii) If the initial decision procedure has been waived by consent of the participants in accordance with Rule 710;

(iv) On review of an initial decision without exceptions under Rule 712; and

(v) On any other action designated as a final decision by the Commission for purposes of rehearing.

(3) For the purposes of rehearing under this section, any initial decision under Rule 709 is a final Commission decision after the time provided for Commission review under Rule 712, if there are no exceptions filed to the decision and no review of the decision is initiated under Rule 712.

(b) *Time for filing; who may file*. A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.

(c) *Content of request*. Any request for rehearing must:

(1) State concisely the alleged error in the final decision or final order;

(2) Conform to the requirements in Rule 203(a), which are applicable to pleadings, and, in addition, include a separate section entitled ''Statement of Issues,'' listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying; any issue not so listed will be deemed waived; and

(3) Set forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.

(d) *Answers*. (1) The Commission will not permit answers to requests for rehearing.

(2) The Commission may afford parties an opportunity to file briefs or present oral argument on one or more issues presented by a request for rehearing.

(e) *Request is not a stay*. Unless otherwise ordered by the Commission, the filing of a request for rehearing does

not stay the Commission decision or order.

(f) *Commission action on rehearing.* Unless the Commission acts upon a request for rehearing within 30 days after the request is filed, the request is denied.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995; 60 FR 16567, Mar. 31, 1995; Order 663, 70 FR 55725, Sept. 23, 2005; 71 FR 14642, Mar. 23, 2006]

§ 385.714 Certified questions (Rule 714).

(a) *General rule.* During any proceeding, a presiding officer may certify or, if the Commission so directs, will certify, to the Commission for consideration and disposition any question arising in the proceeding, including any question of law, policy, or procedure.

(b) *Notice.* A presiding officer will notify the participants of the certification of any question to the Commission and of the date of any certification. Any such notification may be given orally during the hearing session or by order.

(c) *Presiding officer's memorandum; views of the participants.* (1) A presiding officer should solicit, to the extent practicable, the oral or written views of the participants on any question certified under this section.

(2) The presiding officer must prepare a memorandum which sets forth the relevant issues, discusses all the views of participants, and recommends a disposition of the issues.

(3) The presiding officer must append to any question certified under this section the written views submitted by the participants, the transcript pages containing oral views, and the memorandum of the presiding officer.

(d) *Return of certified question to presiding officer.* If the Commission does not act on any certified question within 30 days after receipt of the certification under paragraph (a) of this section, the question is deemed returned to the presiding officer for decision in accordance with the other provisions of this subpart.

(e) *Certification not suspension.* Unless otherwise directed by the Commission or the presiding officer, certification under this section does not suspend the proceeding.

§ 385.715 Interlocutory appeals to the Commission from rulings of presiding officers (Rule 715).

(a) *General rule.* A participant may not appeal to the Commission any ruling of a presiding officer during a proceeding, unless the presiding officer under paragraph (b) of this section, or the motions Commissioner, under paragraph (c) of this section, finds extraordinary circumstances which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or irreparable harm to any person.

(b) *Motion to the presiding officer to permit appeal.* (1) Any participant in a proceeding may, during the proceeding, move that the presiding officer permit appeal to the Commission from a ruling of the presiding officer. The motion must be made within 15 days of the ruling of the presiding officer and must state why prompt Commission review is necessary under the standards of paragraph (a) of this section

(2) Upon receipt of a motion to permit appeal under subparagraph (a)(1) of this section, the presiding officer will determine, according to the standards of paragraph (a) of this section, whether to permit appeal of the ruling to the Commission. The presiding officer need not consider any answer to this motion.

(3) Any motion to permit appeal to the Commission of an order issued under Rule 604, or appeal of a ruling under paragraph (a) or (b) of Rule 905, must be granted by the presiding officer.

(4) A presiding officer must issue an order, orally or in writing, containing the determination made under paragraph (b)(2) of this section, including the date of the action taken.

(5) If the presiding officer permits appeal, the presiding officer will transmit to the Commission:

(i) A memorandum which sets forth the relevant issues and an explanation of the rulings on the issues; and

(ii) the participant's motion under paragraph (b)(1) of this section and any answer permitted to the motion.

TIMELINE OF RELEVANT FERC ORDERS AND FILINGS				
to	**Month(s)**	**Description of Event/Order/Proceeding**	**Citation**	**JA/F-**
2016	April	*2016 Complaint Order* partially grants complaint of Northern Indiana Public Service Company concerning MISO-PJM interregional transmission planning process and requires MISO to revise voltage and cost thresholds for interregional projects	155 FERC ¶ 61,058	JA ___ F-23
2017	January	*2017 Compliance Order* requires MISO to establish regional cost allocation for interregional projects	158 FERC ¶ 61,049	JA ___ F-103
2019	February	MISO submits First Regional and Interregional Filings		
	June	*First Regional Order* rejects First Regional Filing	167 FERC ¶ 61,258	F-151
		First Interregional Order rejects First Interregional Filing	167 FERC ¶ 61,259	F-206
2020	January	MISO submits Second Regional and Interregional Filings		
	March	*Second Regional Order* rejects Second Regional Filing	170 FERC ¶ 61,241	F-218
		Second Interregional Order rejects Second Interregional Filing and establishes cost allocation method	170 FERC ¶ 61,242	JA ___ F-260
	April	MISO submits Third Regional Filing and Interregional Compliance Filing		
	July	*Third Regional Order* accepts Third Regional Filing	172 FERC ¶61,095	F-274
		Regional Rehearing Order reaffirms analysis in *Second Regional Order*	172 FERC ¶ 61,100	F-303
		Interregional Rehearing Order reaffirms analysis in *Second Interregional Order* and accepts Interregional Compliance Filing	172 FERC ¶ 61,101	JA ___ F-316