

175 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Duke Energy Indiana, LLC

Docket No. EL20-71-000

v.

AEP Indiana Michigan Transmission Company, Inc.

ORDER GRANTING COMPLAINT

(Issued April 15, 2021)

1. On September 21, 2020, Duke Energy Indiana, LLC (Duke Energy) filed a complaint (Complaint) against AEP Indiana Michigan Transmission Company, Inc. (AEP Indiana) under sections 206, 306, and 309 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² alleging that the formula rate that AEP Indiana uses to calculate transmission rates for American Electric Power Company, Inc.'s (AEP) facilities that are included in Midcontinent Independent System Operator, Inc.'s (MISO) system (Formula Rate), which is the generic transmission formula rate template from Attachment O of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), is unjust and unreasonable. For the reasons discussed below, we grant Duke Energy's Complaint.

I. Background

2. Duke Energy is an Indiana limited liability company and an indirect wholly owned subsidiary of Duke Energy Corporation. Duke Energy is an electric utility that transmits, distributes, and sells electricity at retail and wholesale in Indiana service territories, and is a transmission-owning member of MISO.³

¹ 16 U.S.C. §§ 824e, 825e, 825h.

² 18 C.F.R. § 385.206 (2020).

³ Complaint at 2-3.

3. AEP Indiana is an indirect subsidiary of AEP Transmission Holding Company, LLC, which is a subsidiary of AEP. AEP Indiana develops and owns new transmission facilities and assets in AEP's service territories and is also a transmission-owning member of both MISO and PJM Interconnection, L.L.C. (PJM).⁴

II. Duke Energy's Complaint

4. Duke Energy states that AEP Indiana adopted the Formula Rate for the purpose of recovering AEP Indiana's costs of providing transmission service over the Greentown Indiana substation (Greentown Assets), which AEP Indiana acquired from Duke Energy in 2018.⁵

5. Duke Energy states that the Commission found that AEP Indiana's acquisition of the Greentown Assets was consistent with the public interest, but in doing so, relied upon AEP Indiana's representations that it would incorporate the Greentown Assets into its rate base at net book value. Duke Energy notes that to show that the acquisition would not have an adverse effect on rates, the Commission further relied on the representation that, because these assets "will be incorporated into [AEP Indiana]'s rate base at net book value . . . customers receiving transmission service will be protected from any acquisition premium."⁶

6. Duke Energy adds that AEP Indiana became a transmission-owning member of MISO in connection with its acquisition of the Greentown Assets, that the Greentown Assets are the only assets owned by AEP Indiana in the MISO region, and that they are the only assets with a revenue requirement recovered through the Formula Rate.⁷

7. Duke Energy states that the formula that AEP Indiana selected for its Formula Rate is the generic "Rate Formula Template Utilizing FERC Form 1 Data" in Attachment O to the MISO Tariff. Duke Energy argues that based on the functioning of the Formula Rate, AEP Indiana recovers for the Greentown Assets an amount substantially greater than the revenue requirement associated with the Greentown Assets' net book value, which is contrary to the representations relied upon in the Disposition Order. Duke Energy further contends that AEP Indiana could have, but did not, use a formula rate

⁴ Answer of American Electric Power Service Corporation on behalf of AEP Indiana (AEP Indiana Answer) at n. 4.

⁵ Complaint at 1 (citing *Duke Energy Ind., LLC*, 164 FERC ¶ 62,094 (2018) (delegated order) (Disposition Order)).

⁶ *Id.* at 2 (citing Disposition Order, 164 FERC ¶ 62,094 at 2).

⁷ *Id.* at 5.

template that would have implemented the “zero rate impact commitment reflected in the Disposition Order.”⁸

8. Specifically, Duke Energy states that the Formula Rate calculates AEP Indiana’s annual revenue requirement including the total gross transmission plant owned by AEP Indiana in all regions (i.e., MISO and PJM), then removes from AEP Indiana’s total transmission plant those transmission facilities that are not used to provide transmission service in MISO. Duke Energy adds that the remaining transmission plant is AEP Indiana’s gross investment in the Greentown Assets, reported as \$26,942,059. Duke Energy asserts that because AEP Indiana owns substantially more transmission assets in PJM and owns only the Greentown Assets in MISO, the ratio of transmission plant used in providing MISO transmission service (TP Allocator) is only approximately 1.49%.⁹

9. Duke Energy explains further that AEP Indiana’s Formula Rate calculation of accumulated depreciation uses the total accumulated depreciation for all of its transmission assets in MISO and PJM and multiplies that amount by the TP Allocator. Duke Energy asserts that accumulated depreciation for the Greentown Assets produced by this calculation in the Formula Rate is \$995,295, which is substantially less than the actual accumulated depreciation for the Greentown Assets of \$10,209,452 that was reported at the close of the acquisition transaction. Duke Energy adds that this \$995,295 value of accumulated depreciation is subtracted from AEP Indiana’s total transmission plant in MISO of \$26,942,059 to determine the net transmission plant as \$25,946,764, which is substantially higher than the net book value of \$16,716,516 for the Greentown Assets at the time the transaction closed. As a result, Duke Energy states that the Formula Rate calculates AEP Indiana’s net plant value of the Greentown Assets to be approximately nine million dollars higher than the actual net book value. Duke Energy claims that this occurs because the Formula Rate uses an allocated percentage of AEP Indiana’s total accumulated depreciation for all of its transmission assets in PJM and MISO based on the TP Allocator, instead of the actual accumulated depreciation associated with the Greentown Assets.¹⁰

10. In addition, Duke Energy states that after making a number of further adjustments, such as those for accumulated deferred income taxes (ADIT) and working capital, the Formula Rate calculates AEP Indiana’s MISO transmission rate base as \$21,670,917. Duke Energy adds that because AEP Indiana’s rate base is higher than it would be if actual accumulated depreciation were used and including the estimated adjustments to reflect actual ADIT, the Formula Rate adds nearly \$700,000 to AEP Indiana’s annual

⁸ *Id.* at 5-6.

⁹ *Id.* at 6.

¹⁰ *Id.* at 6-7.

revenue requirement.¹¹ Therefore, Duke Energy argues that the Formula Rate is unjust and unreasonable because it provides for recovery of an annual revenue requirement substantially in excess of the costs that AEP Indiana should recover for the Greentown Assets.

11. Furthermore, Duke Energy states that because the Commission in the Disposition Order relied on AEP Indiana's representation that it would incorporate the Greentown Assets into its rate base at net book value of approximately \$16.7 million, the Formula Rate allows AEP Indiana to recover, in effect, an acquisition premium of approximately nine million dollars¹²; Duke Energy claims that this is inconsistent with the Commission's policy against recovery of an acquisition premium. Duke Energy asserts that the Commission allows such recovery only "in extremely narrow circumstances where an applicant can demonstrate that the acquisition provides specific, measurable, and substantial benefits to ratepayers," and a utility seeking rate recovery of such a premium must make this showing in a request for authorization under FPA section 205.¹³ Duke Energy claims that AEP Indiana has not made this showing and further that the operational benefits of this transaction would not support a finding of specific, measurable, and substantial benefits to warrant recovery of effectively an acquisition premium.¹⁴

12. In addition, Duke Energy argues that AEP Indiana specifically disclaimed recovery of an acquisition premium, and instead relied on the incorporation of the Greentown Assets into its transmission rate base at net book value to show that the transaction would not have an adverse effect on rates. Accordingly, Duke Energy requests that the Commission: (1) find that the Formula Rate is unjust and unreasonable because it permits AEP Indiana to recover an annual revenue requirement in excess of its costs for providing transmission service in MISO; (2) establish a refund effective date no later than September 21, 2020; (3) require AEP Indiana to revise the Formula Rate to provide for the recovery of the Greentown Assets consistent with the Disposition Order; and (4) direct such other relief pursuant to its authority under the FPA as it finds appropriate in these circumstances.¹⁵

¹¹ *Id.* at 7.

¹² *Id.* at 8-9.

¹³ *Id.* at 9 (citing *Duke Energy Progress, Inc.*, 149 FERC ¶ 61,220, at P 67 (2014); *ITC Holdings Corp.*, 139 FERC ¶ 61,112, at P 50 (2012)).

¹⁴ *Id.*

¹⁵ *Id.* at 9-10.

III. Notice and Responsive Pleadings

13. Notice of Duke Energy's Complaint was published in the *Federal Register*, 85 Fed. Reg. 60,777 (Sept. 28, 2020), with interventions and protests due on or before October 13, 2020. On September 30, 2020, the Commission's Secretary issued a notice extending the time for AEP Indiana's answer, interventions and protests to October 30, 2020. Timely motions to intervene were filed by American Municipal Power, Inc., Calpine Corporation, Hoosier Energy Rural Electric Cooperative, Inc., Indiana Municipal Power Agency, and Indiana Office of Utility Consumer Counselor.

14. On October 30, 2020, AEP Indiana filed an answer. On November 16, 2020, Duke Energy filed a motion for leave to answer and answer. On December 1, 2020, AEP Indiana filed a motion for leave to file an answer and answer.

A. AEP Indiana Answer

15. AEP Indiana contends that Duke Energy has failed to meet the burden of proof under FPA section 206 to show that AEP Indiana's use of the Formula Rate is unjust and unreasonable.¹⁶ In response to Duke Energy's claim that the Formula Rate adversely affects rates, AEP Indiana argues that it complied with its FPA section 203 filing commitment by incorporating into its rates the net book value of the Greentown Assets at the original cost of the facilities, less the accumulated depreciation.¹⁷

16. AEP Indiana contends that Duke Energy's Complaint constitutes a collateral attack on the Formula Rate and its application of the TP Allocator.¹⁸ AEP Indiana asserts that it uses the Formula Rate and associated TP Allocator, both of which the Commission has repeatedly found just and reasonable.¹⁹ AEP Indiana additionally argues that Duke Energy's argument is contrary to the Commission's established policy and precedent regarding the reasonableness of the TP Allocator. In this regard, AEP Indiana cites several Commission orders approving the use of allocators and rejecting the argument that certain costs should be allocated on a direct assignment basis instead of an allocation

¹⁶ AEP Indiana Answer at 18.

¹⁷ *Id.* at 15.

¹⁸ *Id.* at 2, 4-6, 11 & n.27.

¹⁹ *Id.* at 1-2, 4.

ratio.²⁰ AEP Indiana further asserts that it is not over-collecting its revenue requirement for the Greentown Assets.²¹

17. AEP Indiana explains that the Formula Rate TP Allocator represents the ratio of a transmission owner's transmission assets located in MISO to its total transmission assets (i.e., inside and outside of MISO, including its PJM assets).²² AEP Indiana argues that Duke Energy does not contend that AEP Indiana did not follow the requirements of its Formula Rate or improperly calculated its revenue requirement. AEP Indiana argues that instead, Duke Energy challenges the Formula Rate as unjust and unreasonable because of how it allocates accumulated depreciation.²³ Specifically, according to AEP Indiana, Duke Energy challenges the allocators used in the Formula Rate. AEP Indiana also states that it acquired the Greentown Assets from Duke Energy at net book value and that there was no acquisition premium associated with the transaction.²⁴

18. AEP Indiana argues that Duke Energy agreed to the use of the Formula Rate, and claims that it discussed with Duke Energy its intention to use the MISO generic formula rate for use as its Formula Rate. AEP Indiana further explains that MISO's March 8, 2019 filing to add AEP Indiana as a transmission owner included an associated Interim Revenue Distribution Agreement between Duke Energy and AEP Indiana that specifically states that AEP Indiana would recover its revenue requirement under Attachment O, and states that no party protested that filing.²⁵ Furthermore, AEP Indiana states that it held a transmission owner/customer meeting on August 23, 2019, at which it again indicated its intention to use the MISO generic formula rate as its Formula Rate and that no party raised objections or concerns.²⁶

²⁰ *Id.* at 11 & nn.23-25 (citing *Consumers Energy Co.*, 86 FERC ¶ 63,004, at 65,029 (1999), *aff'd*, Opinion No. 456, 98 FERC ¶ 61,333 (2002); *PPL Elec. Utils. Corp.*, 136 FERC ¶ 61,101, at P 18 (2011); *Ameren Ill. Co.*, 156 FERC ¶ 61,209, at PP 33, 37 (2016), *reh'g denied*, 162 FERC ¶ 61,025 (2018); *Entergy Servs., Inc.*, 143 FERC ¶ 61,120 (2013); *Cal. Indep. Sys. Operator, Corp.*, 130 FERC ¶ 61,122, at P 131 (2010)).

²¹ *Id.* at 1-3.

²² *Id.* at 3 & nn.5-6.

²³ *Id.* at 3.

²⁴ *Id.* at 5.

²⁵ *Id.* at 9-10.

²⁶ *Id.* at 10.

19. AEP Indiana argues that the use of allocators can drive results in both directions. AEP Indiana states that, for example, under the Formula Rate, a portion of AEP Indiana's pre-existing ADIT was credited as an offset to the 2018 rate base. This resulted in a reduced MISO revenue requirement even though AEP Indiana did not receive any of the ADIT associated with its only MISO assets (i.e., Greentown Assets) because they were purchased at the end of 2018 at net book value without any ADIT discount.²⁷

20. AEP Indiana asserts that if the Commission were to grant the Complaint, it would result in certain costs that are currently allocated to MISO customers instead being allocated to PJM customers. AEP Indiana states that because AEP Indiana recovers its total revenue requirement from customers in both RTOs, AEP Indiana's formula rates must be aligned with respect to the methodology for allocating accumulated depreciation so that AEP Indiana can recover its costs.²⁸ AEP Indiana explains that it uses a formula rate in Attachment H-20 of the PJM Tariff, which uses a transmission plant allocation methodology as contained in the Formula Rate, to develop and recover its revenue requirement for transmission service in PJM. AEP Indiana asks that if the Commission grants the Complaint, it find that any changes should be applied on a prospective basis on a timeline that allows AEP Indiana to make corresponding changes to its formula rate in Attachment H-20 of the PJM Tariff and not require refunds, consistent with Commission precedent.²⁹ Specifically, AEP Indiana states that the Commission should permit AEP Indiana to submit as part of its compliance filing, revisions to its PJM formula rate that, as with its Formula Rate, would use a direct assignment approach for accumulated depreciation to enable AEP Indiana to avoid any shortfall in its overall total revenue requirement.

B. Duke Energy Answer to AEP Indiana Answer

21. In response to AEP Indiana's contention that the Complaint is a collateral attack on the Formula Rate, Duke Energy claims that its Complaint does not challenge the justness and reasonableness of MISO's generic formula rate template, but the way AEP Indiana uses the generic formula as its Formula Rate, which results in AEP Indiana recovering effectively an acquisition premium.³⁰ Duke Energy reiterates that the Commission relied on AEP Indiana's commitment that the transaction would not have an

²⁷ *Id.* at 12.

²⁸ *Id.* at 17.

²⁹ *Id.* at 17-18 & nn.34-35 (citing *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 146 FERC ¶ 61,152, at P 51 (2014); *La. Pub. Serv. Comm'n v. Entergy Servs. Inc.*, 155 FERC ¶ 61,120, at PP 28, 30 (2016)).

³⁰ Duke Energy Answer at 4, 8.

adverse effect on rates in approving the FPA section 203 filing to purchase the Greenwood Assets from Duke Energy.³¹ Duke Energy further asserts that the Commission never specifically reviewed AEP Indiana's use of the Formula Rate, because no filing needed to be made when AEP Indiana opted to use as its Formula Rate the pro forma generic version in the Tariff.³² Duke Energy also argues that it is not just and reasonable that the Formula Rate selected by AEP Indiana requires MISO transmission ratepayers to pay AEP Indiana approximately 55% more than the actual costs of the Greentown Assets over the lives of those assets.³³

22. In response to AEP Indiana's assertion that Duke Energy acquiesced to the use of the Formula Rate, Duke Energy asserts that it only became aware of the rate impact of AEP Indiana's use of the Formula Rate in July 2019. Duke Energy argues that after receiving an invoice from AEP Indiana for the June 2019 revenue sharing amount, Duke Energy requested a copy of the Formula Rate so that it could assess why the invoice reflected greater than expected charges for transmission service over the Greentown Assets. Subsequently, Duke Energy claims it attempted to discuss these cost recovery issues with AEP Indiana.³⁴

C. AEP Indiana Answer to Duke Energy Answer

23. AEP Indiana asserts that the justness and reasonableness of the Formula Rate and the provisions therein does not depend upon which transmission owner uses the formula, and Duke Energy cites no precedent to the contrary.³⁵ AEP Indiana reiterates that the core of the Complaint is Duke Energy's objection to the application of a single allocation factor for accumulated depreciation, while ignoring the effect of this allocation factor on other allocators used in the Formula Rate that can affect the results in both directions.³⁶ As an example, AEP Indiana states that using the Formula Rate results in ADIT and General and Intangible Plant and Administrative & General expenses being lower.³⁷ AEP Indiana additionally asserts that the allocation of accumulated depreciation

³¹ *Id.* at 4-5, 8.

³² *Id.* at 5.

³³ *Id.* at 6.

³⁴ *Id.* at 7-8.

³⁵ AEP Indiana Answer to Answer at 2.

³⁶ *Id.* at 2-3.

³⁷ *Id.* at 3.

will potentially balance out as AEP Indiana installs or purchases additional transmission assets.³⁸ AEP Indiana further argues that the fact that the calculation of the accumulated depreciation is different from that recorded by Duke Energy is not, as Duke Energy asserts, an “effective” or “equivalent” acquisition premium.³⁹ AEP Indiana contends that Duke Energy’s Answer includes no precedent in which the Commission has recognized the concept of an effective or equivalent acquisition premium.⁴⁰

24. In addition, AEP Indiana asserts that both Duke Energy and AEP Indiana agree that the Commission may rule summarily on the Complaint without the need for an evidentiary hearing. AEP Indiana asks that if the Commission grants the Complaint and directs AEP Indiana to revise its formula rate, the Commission should deny Duke Energy’s request for a refund effective date of September 21, 2020, since such changes to the MISO formula rate would require corresponding changes to AEP Indiana’s PJM formula rate. Therefore, AEP Indiana asks that those changes be made prospectively so that AEP Indiana does not under recover its current or past costs.⁴¹ Finally, AEP Indiana reiterates that in accordance with Commission policy and precedent cited in AEP Indiana’s Answer, no refunds are warranted in this case.⁴²

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

26. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept Duke Energy’s and AEP Indiana’s answers because they have provided information that assisted us in our decision-making process.

³⁸ *Id.*

³⁹ *Id.* at 4.

⁴⁰ *Id.*

⁴¹ *Id.* at 4-5.

⁴² *Id.* at 5, 17, 18, nn.34, 35 (citing *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 146 FERC ¶ 61,152 at P 51 and *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 155 FERC ¶ 61,120 at PP 28, 30).

B. Substantive Matters

27. We grant Duke Energy's Complaint, as discussed below. The issue in this proceeding is the justness and reasonableness of AEP Indiana's formula rate methodology, i.e., the use of MISO's generic Attachment O formula rate template with its TP Allocator for its transmission rates in MISO, as applied to the Greentown Assets.

28. We find that Duke Energy has demonstrated that AEP Indiana's use of the MISO generic Attachment O formula rate with its TP Allocator (which includes AEP Indiana's PJM assets in the denominator) significantly reduces the calculated Accumulated Depreciation for the Greentown Assets that AEP Indiana uses to determine the transmission rate base in MISO to a level below the actual accumulated depreciation associated with the facilities prior to their acquisition. This results in AEP Indiana reflecting the Greentown Assets in its MISO transmission rate base at a net book value that is significantly higher than the actual net book value for the Greentown Assets. MISO's transmission customers, including Duke Energy, have paid rates that included costs for the depreciation of the Greentown Assets, thus reducing the Greentown Assets' net book value, and should not be responsible for rates based on an overstated net book value resulting from AEP Indiana's use of the TP allocator. We, therefore, find the resulting rate to AEP's MISO customers to be unjust and unreasonable

29. We do not find persuasive AEP Indiana's argument that its revenue requirement for MISO customers is just and reasonable given that it results from AEP Indiana's use of MISO's approved generic Attachment O formula rate. We do not find that MISO's generic Attachment O formula is unjust and unreasonable. It is AEP Indiana's use of that generic formula as applied to the specific facts associated with its acquisition of the Greentown Assets that produces an unjust and unreasonable allocation of costs to MISO customers.⁴³ A number of MISO transmission owners use entity-specific Attachment O formulas because the generic Attachment O does not properly recover or allocate their costs.⁴⁴ Given the TP Allocator's effect of significantly overstating the net book value of the Greentown Assets for purposes of MISO's rates, we find AEP Indiana's use of MISO's generic formula with its TP Allocator to be unjust and unreasonable for determination of its MISO transmission rates.

⁴³ Cf. *Midcontinent Indep. Sys. Operator, Inc.*, 160 FERC ¶ 61,060, at P 11 (2017) (finding that MISO's use of Commission's *pro forma* Generator Interconnection Agreement, although just and reasonable for most customers, was not just and reasonable to use for the specific customer in that case due to unique circumstances).

⁴⁴ See, e.g., *Xcel Energy Serv., Inc.*, 121 FERC ¶ 61,284 (2007); *Midwest Indep. Transmission Sys.*, 115 FERC ¶ 61,252, *reh'g denied*, 117 FERC ¶ 61,104 (2006).

30. With regard to AEP Indiana's suggestion that there may be offsetting decreases in the revenue requirement as a result of the using the MISO generic formula rate (e.g., ADIT), we note the net effect according to Duke Energy of AEP Indiana's use of the MISO generic formula rate is that it over-recovers AEP Indiana's revenue requirement for the Greentown Assets by approximately \$700,000 annually from customers in MISO, even though, as AEP Indiana asserts, it may not be over-recovering its revenue requirement for its combined MISO and PJM transmission assets. Moreover, we find AEP Indiana's argument that there might be investments in the future that may balance out this over-recovery in MISO over time to be speculative.

31. We find unconvincing AEP Indiana's argument that the Commission has approved the use of allocation factors for assigning costs as opposed to a line-by-line direct assignment of costs. Doing so here would ignore the circumstances of the Greentown Assets. We find that AEP Indiana's use of MISO's generic formula and TP Allocator to calculate its revenue requirement in MISO, leads to unjust and unreasonable over-recovery for the Greentown Assets from MISO customers, including Duke Energy.

32. Accordingly, we direct AEP Indiana to make a compliance filing within 60 days of the date of this order, or have MISO make a compliance filing on its behalf, to propose a revised formula rate to establish MISO transmission rates for use of the Greentown Assets reflecting their current actual net book value in rate base.

33. The Commission's general rule when the Commission takes action under section 206 of the FPA to require a cost allocation change or a rate design change, where there was not an over-recovery of the utility's revenue requirement, is that the required change will take effect prospectively.⁴⁵ Therefore, the changes to AEP Indiana's MISO transmission rates ordered herein will be made effective on a prospective basis, in order to provide AEP Indiana an opportunity to file, or have PJM file on its behalf, pursuant to section 205 of the FPA to adjust AEP Indiana's PJM transmission rates as may be appropriate as a result of reallocating the costs of the Greentown Assets as required herein. We also establish the refund effective date pursuant to section 206 of the FPA as

⁴⁵ See *La. Pub. Serv. Comm'n and the Council of the City of New Orleans v. Entergy Corp.*, 142 FERC ¶ 61,211 (2013); *Occidental Chemical Corp.*, 110 FERC ¶ 61,378, at P 10 (2005). See also *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 146 FERC ¶ 61,152 at P 51; *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 155 FERC ¶ 61,120 at PP 28, 30 (explaining the two primary grounds for the Commission's general policy against retroactive adjustments to rates in cost allocation cases: (1) the unfairness that results from retroactive implementation of a new rate for both utilities and customers who cannot alter their past actions in light of that new rate; and (2) the potential for under-recovery).

the date of this order. We will establish the amount of refunds to be made to MISO customers upon consideration of the compliance filing.

34. We deny AEP Indiana's request for permission to file as part of its compliance filing herein any revisions to its PJM transmission rates, as the present proceeding addresses a complaint about AEP Indiana's MISO rates. However, as noted, AEP Indiana may make a filing pursuant to section 205 of the FPA to propose corresponding revisions to AEP Indiana's PJM transmission rates.

The Commission orders:

(A) Duke Energy's Complaint is hereby granted, as discussed in the body of this order.

(B) The refund effective date established in Docket No. EL20-71-000 pursuant to section 206(b) of the FPA is the date of this order, as discussed in the body of this order.

(C) AEP Indiana is directed to make a compliance filing, or cause MISO to make the compliance filing, as appropriate, within 60 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.