

127 FERC ¶ 61,043
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Interstate Power and Light Company

Docket No. EL09-11-000

v.

ITC Midwest, LLC

ORDER ON COMPLAINT

(Issued April 16, 2009)

1. On November 18, 2008, Interstate Power and Light Company (Interstate) filed a complaint against ITC Midwest, LLC (ITC Midwest) pursuant to section 206 of the Federal Power Act (FPA),¹ seeking relief from ITC Midwest's alleged improper implementation of its formula rate for Commission-jurisdictional transmission service for 2009 and beyond. As discussed below, the Commission will deny the relief requested in the complaint.

I. Background

2. Interstate is a public utility that serves approximately 700,000 electric retail customers in Iowa and Minnesota. Interstate is a wholly-owned subsidiary of Alliant Energy Corporation, a holding company that also owns Wisconsin Power & Light Company, a public utility in Wisconsin. ITC Midwest is an independent transmission company (transco) that owns and operates the transmission system formerly owned by Interstate (discussed below). ITC Midwest is a subsidiary of ITC Holdings Corporation (ITC Holdings), a publicly-held company that also owns two other operating transcos, International Transmission Company (ITC*Transmission*) and Michigan Electric Transmission Company (METC). Another subsidiary of ITC Holdings, ITC Great Plains,

¹ 16 U.S.C § 824e (2006).

LLC, is a new transco that was formed to construct and own transmission in Kansas and elsewhere in the Southwest Power Pool, Inc. region.²

3. In January 2007, Interstate entered into an asset sale agreement (Agreement) with ITC Midwest under which Interstate agreed to sell its transmission system to ITC Midwest. Interstate completed the sale of its transmission system to ITC Midwest on December 20, 2007, following receipt of Commission approval of the transaction under section 203 of the FPA;³ approvals from the Illinois Commerce Commission, the Iowa Utilities Board (Iowa Commission), the Minnesota Public Utilities Commission (Minnesota Commission), and the Missouri Public Service Commission; and satisfaction of other conditions.

II. Complaint

4. Interstate states that ITC Midwest is a transmission-owning member of Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and has adopted a formula rate methodology to recover its transmission revenue requirement.⁴ Interstate states that under ITC Midwest's formula rate, ITC Midwest annually projects its transmission revenue requirement and establishes charges for transmission service on the basis of its projections, true up its actual revenue collection with its actual cost of service, and collects or refunds the difference in the following year with interest.⁵

5. Interstate states that before it sold its transmission system to ITC Midwest in 2007, Interstate was a transmission-owning member of Midwest ISO and established its rates

² *ITC Great Plains, LLC*, 126 FERC ¶ 61,223 (2009).

³ *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007) (*ITC Holdings*). In *ITC Holdings*, the Commission also accepted the applicants' proposed rates and certain agreements under section 205 of the FPA, subject to certain conditions.

⁴ *See id.*

⁵ Interstate states that ITC Midwest's formula rate is in Attachment O of Midwest ISO's Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 1365Z.16C-16I. On January 6, 2009, Midwest ISO's Transmission and Energy Markets Tariff was superseded by the Midwest ISO's Open Access Transmission, Energy and Operating Reserves Tariff. This change did not affect ITC Midwest's formula rate, which is contained in Attachment O of the new tariff and designated as FERC Electric Tariff, Fourth Revised Volume No. 1, First Revised Sheet Nos. 2739-2746. In this order, the term "Tariff" is therefore used to refer to both versions of the tariff, without distinction.

for transmission service through a formula rate in Attachment O of Midwest ISO's Tariff.⁶ Interstate states that in connection with ITC Midwest's acquisition of the Interstate system, ITC Midwest agreed to maintain through 2008 the charges for transmission service on the former Interstate system in effect through the Attachment O of Midwest ISO's Tariff as of June 1, 2007. Interstate states that starting January 1, 2008, ITC Midwest's transmission service charges became subject to true-up in the year following the filing of ITC Midwest's FERC Form No. 1 with information as to its actual revenue requirement for 2008.⁷ Interstate states that, starting January 1, 2009, ITC Midwest's charges for transmission service will change to reflect its projected revenue requirement for 2009.⁸

6. Interstate states that it does not object to ITC Midwest's formula rate itself or to ITC Midwest's application of its formula rate on a forward-looking basis. Interstate complains, however, that ITC Midwest's formula rate implementation is improper. Interstate argues that ITC Midwest has included millions of dollars in excess projected operations and maintenance (O&M) and administrative and general (A&G) expenses in its transmission service charges for 2009 (hereinafter, the 2009 Projections). Interstate also states that it understands that ITC Midwest is booking extraordinary cost increases to its O&M and A&G accounts in 2008 that it will charge to customers in 2010 through the true-up component of its formula rate construct (hereinafter, the 2008 True-up). Interstate argues that the inclusion of those excess expenses in the formula rate will cause ITC Midwest to assess unjust and unreasonable transmission service charges in 2009 and later years. Interstate also claims that ITC Midwest has failed to satisfy its obligations under its annual rate calculation and true-up procedures to provide adequate information to Interstate about its expenditures and rate calculations. Lastly, Interstate challenges the methodology ITC Holdings uses to allocate non-directly assigned A&G costs to ITC Midwest.

7. Interstate requests that the Commission set ITC Midwest's transmission service charges established under its formula rate in Attachment O of the Midwest ISO Tariff for investigation and hearing and establish a refund effective date of January 1, 2009. It claims that ITC Midwest bears an ongoing burden to demonstrate that its formula rate produces just and reasonable transmission service charges.⁹ Interstate asserts that if the

⁶ See *ITC Holdings*, 121 FERC ¶ 61,229 at P 50.

⁷ See *id.*

⁸ *Id.*

⁹ In support of its argument, Interstate cites *Virginia Electric and Power Co.*, 123 FERC ¶ 61,098, at P 47 (2008).

Commission does not investigate ITC Midwest's implementation of its formula rate, it will discourage vertically-integrated utilities from transferring their systems to transcos out of concern that they will put themselves and their customers at a disadvantage arising from inattentive regulatory oversight.

8. Specifically, Interstate alleges that the O&M and A&G expenses projected in ITC Midwest's posted transmission rate for the period of January 1, 2009 to December 31, 2009 (i.e., the 2009 Projections) appear to be excessive. Interstate states that ITC Midwest plans to recover O&M expenses in 2009 that are 213 percent greater than the O&M expenses that ITC Midwest projected eighteen months ago, along with A&G expenses that are 309 percent greater than what ITC Midwest projected eighteen months ago, while total net plant increased by only 26 percent.¹⁰ In addition, Interstate alleges that ITC Midwest has failed to satisfy its obligations under its annual rate calculation and true-up procedures to provide adequate information to Interstate about its expenditures and rate calculations.¹¹ Further, Interstate asserts that ITC Midwest's testimony before the Iowa and Minnesota Commissions committed ITC Midwest to the projected O&M and A&G expenditure levels made there. For example, Interstate states that it understood that ITC Midwest planned to invest in capital improvements for the former Interstate system, and that the evidence in the Iowa and Minnesota Commission proceedings made clear that transmission service rates would increase under ITC Midwest's ownership on account of those investments. However, Interstate also asserts that ITC Midwest proffered evidence there that suggested that its O&M cost would

¹⁰ Interstate states that evidence in the Commission's *ITC Holdings* proceeding did not include a forecast of ITC Midwest's future transmission service charges under its Attachment O formula. It goes on to explain, however, that ITC Midwest did proffer evidence about future rate impacts eighteen months ago in the Interstate/ITC Midwest joint applications to the Iowa and Minnesota Commissions seeking those states' regulatory approval for the sale of Interstate's transmission system to ITC Holdings. In those proceedings, Interstate states that ITC Midwest submitted extensive prepared testimony by Edward M. Rahill, ITC Holdings' Chief Financial Officer (Rahill Testimony), and Charles P. Neff, ITC Holdings' Supervisor for Regulatory Accounting and Analysis, in which those witnesses made representations about expected rate impacts. See Interstate Complaint at Attachments A, B, C, and D (including copies of that testimony).

¹¹ As discussed further below, Interstate also argues that the methodology of allocating A&G expenses among ITC Holdings' operating companies was unilaterally changed from a load ratio share method to a modified Massachusetts Formula method, resulting in additional expenses being allocated to ITC Midwest.

remain effectively the same as Interstate's O&M cost, which at the time was approximately \$6.15 million annually.

9. Interstate goes on to argue that ITC Midwest's Attachment O charges would impose a transmission charge on Interstate of approximately \$141.2 million in 2009, representing a \$63.8 million (approximately 82 percent) cost increase over Interstate's current transmission rates of \$77.4 million. Interstate states that a portion of that cost increase is attributable to new transmission investment and is not objectionable to Interstate. Interstate goes on to note, however, that ITC Midwest projects 2009 total O&M and A&G expenses of approximately \$19.2 million and \$24.4 million, respectively, for a total O&M and A&G expense of approximately \$43.6 million. Interstate states that those figures represent increases from 2008 to 2009 of approximately \$12.9 million in O&M expenses (201 percent) and \$19.7 million in A&G expenses (418 percent), for a total increase in O&M and A&G expenses of approximately \$32.5 million (293 percent). Interstate states that, assuming it would bear 92 percent of that total increase based on its share of the load on the ITC Midwest system, Interstate would bear approximately \$29.9 million of the increase in ITC Midwest's O&M and A&G expense (\$40.2 million in 2009 versus \$10.2 million in 2008).

10. Interstate states that upon reviewing ITC Midwest's 2009 charges in its Attachment O postings, those amounts appeared to it to be substantially excessive and far higher than the projected total levels of O&M and A&G expense of \$12.1 million that ITC Midwest had represented in its state regulatory filings in 2007.¹² Interstate states that it sought additional information, but that ITC Midwest has not provided Interstate detailed information about the 2009 Projections that would allow Interstate to make an informed assessment of whether ITC Midwest's projected O&M and A&G spending levels are prudent or reasonable or whether ITC Midwest is providing value to its customers commensurate with the level of its spending.

11. In addition, Interstate expresses concerns about ITC Midwest's actual O&M and A&G spending for 2008. Interstate states that it understands that ITC Midwest is booking "extraordinary" cost increases to actual O&M expenses and A&G expenses through December 31, 2008 that will be used to charge customers in 2010 through the true-up component of the Attachment O formula (i.e., the 2008 True-up), causing an excessive rate in future years. Interstate states that ITC Midwest will collect any 2008 revenue shortfall, calculated under its true-up mechanism, through its 2010 Attachment O formula charges. Interstate states that under the Attachment O true-up mechanism, ITC Midwest will be able to collect dollar-for-dollar (with interest) the shortfall between its actual revenues under its 2008 Attachment O charges and its actual cost of service as

¹² See Interstate Complaint at 8-9.

determined by inputting into ITC Midwest's Attachment O formula its actual costs incurred during 2008, as accounted for in its FERC Form No. 1 annual report for 2008. Interstate understands that such a true-up adjustment will be approximately \$50 million.

12. Interstate also asserts that ITC Midwest's witnesses in the Iowa and Minnesota Commission proceedings testified that, for purposes of collection under the ITC Midwest formula rate, projected A&G expenses would be allocated to each of the three public utility operating subsidiaries of ITC Holdings (ITC *Transmission*, METC, and ITC Midwest) based on a load ratio share.¹³ Interstate argues, however, that ITC Midwest has provided it with information that makes clear that ITC Holdings unilaterally, and without prior notice to Interstate, abandoned its load ratio share allocation methodology for A&G expenses.¹⁴ Interstate claims that ITC Holdings' unilateral decision to allocate A&G expenses among its operating subsidiaries using the Massachusetts Formula has the effect of increasing the percentage of A&G expenses allocated to ITC Midwest from 15.3 percent to 21.5 percent, which yields an increase of over \$4.5 million on an annual basis.

13. Finally, Interstate requests that the Commission establish hearing procedures to investigate whether ITC Midwest's O&M and A&G spending is prudent and whether the Attachment O charges are just and reasonable.

III. Notice of Filing and Responsive Pleadings

14. Notice of the complaint was published in the *Federal Register*, 73 Fed. Reg. 71,630 (2008), with interventions and protests due on or before December 8, 2008. Timely motions to intervene raising no substantive issues were filed by Great River Energy, Dairyland Power Cooperative, Central Iowa Power Cooperative, JO-CARROLL ENERGY, Inc., Southern Minnesota Municipal Power Agency, Detroit Edison Company, Iowa Office of Consumer Advocate, and Midwest Independent Transmission System Operator, Inc.

15. The Iowa Commission filed a timely notice of intervention, which it amended to include comments on December 19, 2009. Timely motions to intervene and comments

¹³ *Id.*, Attachment B at 8.

¹⁴ Specifically, Interstate argues that ITC Midwest has adopted a methodology under which it allocates certain A&G expenses that are not directly assignable to specific ITC Holdings operating subsidiaries using a method ITC Midwest refers to as the Massachusetts Formula. Interstate asserts that the Massachusetts Formula allocates 50 percent of all allocable A&G expenses on a load ratio share and the remaining 50 percent of all allocable A&G expenses on a plant, property, and equipment basis.

were filed by Consumers Energy Company (Consumers Energy), Midwest TDUs,¹⁵ and the Minnesota Office of Energy Security (Minnesota OES) (which supplemented its comments on December 16, 2008). ITC Midwest timely filed its answer to the complaint; Interstate filed an answer to ITC Midwest's answer; and ITC Midwest filed an answer to Interstate's answer. (Interstate filed a letter to advise the Commission that it would not submit a substantive answer to ITC Midwest's second answer.) ITC Midwest also filed answers to the comments of Consumers Energy and the Iowa Commission.

A. ITC Midwest's Contract Interpretation Argument

16. In its answer, ITC Midwest argues that the Agreement bars rate challenges such as the one that is the subject of this complaint for seven years. Section 7.16 of the Agreement states:

After Buyer's rates, rate construct, rate elements, terms and conditions of service are initially set in the FERC 205 Approval ("Buyers Initial Rates"),^[16] and for a period of seven (7) years after the Closing Date, Seller shall not (and shall cause its parent and any wholly owned Affiliates of its parent not to) oppose, contest, challenge or file any complaint before FERC regarding, or takes [sic] any position with any third Person averse to, Buyer's Initial Rates. This prohibition does not apply to the extent that Buyer seeks changes to the Buyer's Initial Rates in a manner averse to Seller....

ITC Midwest argues that, because Interstate's complaint challenges ITC Midwest's O&M and A&G costs (which it believes can be categorized as "rate elements"), the complaint is barred, as section 7.16 prohibits any challenge to any such rate elements for a period of seven years.

17. ITC Midwest also states that to the extent it deems it necessary, the Commission should also find that Interstate has breached the Agreement and require Interstate to indemnify ITC Midwest for all costs associated with its defense against Interstate's complaint, including attorney's fees and disbursements, and any other costs, expenses, losses or damages arising out of or resulting from Interstate's challenge to ITC Midwest's rates, rate construct (including rate formula) and rate elements. ITC Midwest also argues that it should be awarded damages for Interstate's breach of the Agreement.

¹⁵ The Midwest TDUs also filed an erratum to its motion to intervene. The Midwest TDUs in this proceeding consist of the Midwest Municipal Transmission Group, Missouri River Energy Services, and Wisconsin Public Power Inc.

¹⁶ The "FERC 205 Approval" refers to *ITC Holdings, supra* n. 3.

Alternatively, ITC Midwest states that if the Commission finds that section 7.16 is ambiguous, and does not otherwise dismiss the complaint on the merits, it should set the contractual bar issue for an expedited hearing.

B. ITC Midwest's Answer to the O&M and A&G Expense and A&G Allocation Issues

18. ITC Midwest further argues that if the Commission does not dismiss the complaint as barred under section 7.16 of the Agreement, it should dismiss the complaint because Interstate has not met the burden of proof under section 206 of the FPA and has not supported its arguments or submitted evidence such that its complaint can be sustained. ITC Midwest also asserts that if the Commission does not dismiss Interstate's complaint for any of the above reasons, it should nevertheless dismiss Interstate's complaint on the merits. Lastly, ITC Midwest asserts that if the Commission declines to dismiss the complaint, it should make clear that any evidentiary hearing in this proceeding will establish "up front" whether ITC Midwest's anticipated improvements and related activities and projected expenditures will be prudent, and that those issues will not be subject to later challenge by any customer and will provide ITC Midwest finality on its rates.

19. ITC Midwest states that Interstate concedes that it cannot establish that ITC Midwest's O&M and A&G expenses are not prudent and reasonable; Interstate alleges only that it lacks sufficient information to make an assessment. ITC Midwest also argues that Interstate has not shown any serious basis for suggesting imprudence, nor has it made an adequate rebuttal to the presumption that ITC Midwest's expenses and projected costs are reasonable and prudent, nor has it alleged the inaccuracy of ITC Midwest's inputs into its formula rate. ITC Midwest asserts that Interstate's complaint simply argues that O&M and A&G expenses were larger than it expected and, as a result, the costs are greatly excessive and therefore unjust and unreasonable. ITC Midwest asserts, however, that the fact that the costs are greater than Interstate supposedly expected does not in any way prove imprudence. With regard to the 2008 True-up, ITC Midwest asserts that Interstate provides no actual numbers and only states that it "understands" that ITC Midwest is booking extraordinary cost increases to its O&M and A&G accounts in 2008.

20. ITC Midwest argues that Interstate has misrepresented ITC Midwest's statements made before state regulators in 2007. ITC Midwest explains that the cost projections used in that testimony were illustrative only and were not meant to be used for ratemaking purposes in the future. ITC Midwest explains, among other things, that the costs and analysis were meant to explain how ITC Midwest would determine its revenue requirement under Attachment O, but assuming a scope of work that did not reflect ITC Midwest's future plans or the expectations of state regulators.

21. ITC Midwest also argues that Interstate has misrepresented the purported increase in ITC Midwest's rates by comparing them to Interstate's own 2006 O&M and A&G costs. ITC Midwest asserts that the sale of the transmission system to ITC Midwest was premised on the need for more focused care of the system, and therefore, there is a disconnect to assume that ITC Midwest could implement the needed capital and O&M programs to make the needed investments and at the same time incur the same costs as Interstate. Additionally, ITC Midwest asserts that because Interstate was a vertically-integrated company, the true allocable costs of its former transmission function could never be known unless the transmission assets were segregated. Therefore, to use Interstate's transmission costs as a baseline is simply an inappropriate starting point to compare O&M and A&G expenditures with ITC Midwest as a transmission-only company.

22. ITC Midwest also seeks to demonstrate the reasonableness and prudence of its 2009 Projections and 2008 True-up. For example, ITC Midwest explains that it made significant commitments to state regulators to upgrade and improve the system, many of which result in expenses that are one of the drivers of ITC Midwest's O&M and A&G expenses.¹⁷ In fact, ITC Midwest asserts that Interstate was directly involved in the decision leading to higher transmission costs, as Interstate decided to sell its transmission system to ITC Midwest in order to facilitate enhanced reliability through needed O&M and vegetation management, as well as the addition of new grid facilities for transporting Interstate's and other parties' wind generation to market. Moreover, ITC Midwest asserts that Interstate's O&M expenditures were extremely low compared to comparable utilities,¹⁸ and, therefore, percentage increases in O&M and A&G are useless measures for assessing the reasonableness of ITC Midwest's costs. Additionally, ITC Midwest states that once Interstate sold its system and ITC Midwest did a full inspection, it found numerous problems that were neither identified to ITC Midwest nor apparent upon initial due diligence.¹⁹ ITC Midwest asserts that Interstate's past maintenance practices were performed at the most basic level, and as a result, all of the maintenance issues found in the review of the transmission system will need to be addressed and are reflected in ITC Midwest's projected costs.²⁰

¹⁷ ITC Midwest Answer at 36-38 (citing Blair Affidavit at 11-12 (attached as Exhibit 3); Exhibit 10).

¹⁸ *Id.* at 33 (citing Jipping Affidavit at 15-18 (attached as Exhibit 1)).

¹⁹ *Id.* at 14 (citing the Affidavit of Joseph L. Welch, CEO of ITC Holdings at 5 (attached as Exhibit 2)).

²⁰ *Id.* at 41 (citing Jipping Affidavit at 11).

23. ITC Midwest argues that the 2009 Projections and the 2008 True-up O&M and A&G expenses are reasonable and prudent, particularly considering that, in large part, Interstate itself performed ITC Midwest's O&M duties as its contractor in 2008 and therefore has itself caused the O&M costs in question or was at least aware of them.²¹ ITC Midwest notes that the 2009 projected rates and 2008 true-up rates have not been charged to Interstate. ITC Midwest argues that instead of questioning the inputs into the formula, the Interstate complaint essentially questions the prudence of ITC Midwest costs.

24. ITC Midwest asserts that its A&G projections are just and reasonable, because the increase in A&G costs is proportionate to the increase in capital costs and O&M expenditures. In short, ITC Midwest asserts that the A&G services are critical to effectuating the increased capital upgrades and enhanced O&M program needed in order to fulfill ITC Midwest's commitments made to state regulators, and in order to properly improve and maintain the system and meet current reliability and vegetation management standards. ITC Midwest asserts that its number of employees, organizational structures, and expense levels are well within the bounds of the reasonable utility executive standard, as attested to by its affiants, Mr. Welch, Mr. Jipping, and Ms. Blair, and that Interstate has not identified specific departments or functions that could be eliminated.²²

25. ITC Midwest argues that its rates and costs reflect its commitment to restore the transmission system to industry standards for performance and reliability, and that this requires capital investments as well as increased O&M and A&G expenses. Moreover, it asserts that ITC Midwest's rate for 2009 will be trued up against actual expenses incurred in 2009, with resulting refunds (and asymmetrical interest in favor of) to customers if ITC Midwest over-collects based on its projections. ITC Midwest asserts that, in this manner, Attachment O ensures that customers pay only the amounts that correspond to ITC Midwest's revenue requirement (based on actual necessary expenditures). Given this, ITC Midwest states that if the Commission were to find that Interstate's complaint warrants hearing, the Commission should make clear that it is establishing an "up front" prudence determination on ITC Midwest's plans to improve the transmission system and provide finality on that issue now.

26. Lastly, ITC Midwest asserts that the Commission should consider the potential financial market impacts of setting Interstate's complaint for hearing. Interstate asserts that transmission and maintenance investment will be chilled if the associated costs can

²¹ In addition, ITC Midwest states that its projected O&M expenses of \$19.2 million for 2009 are only slightly higher than its 2008 projected O&M expenses of \$18.3 million (for which Interstate was essentially responsible).

²² ITC Midwest Answer at 44.

be called into question by those, like Interstate, that have merely complained about cost increases.

27. Regarding the Massachusetts Formula A&G allocation methodology issue, ITC Midwest states that it is not surprising that Interstate prefers a 100 percent load ratio share allocator, because ITC Midwest serves the lowest amount of load but has the highest percentage of transmission line miles among the three ITC Holdings subsidiaries.²³ ITC Midwest also asserts that ITC Holdings' methodology for allocating non-direct charged A&G among its affiliates has not changed and continues to be just and reasonable.

28. ITC Midwest states that it is important to review how ITC Holdings allocates A&G costs among its operating companies, both in terms of recording actual A&G expenses and for purposes of preparing each of the subsidiaries' 2009 projected rates. ITC Midwest notes that it is a paramount concern that the A&G expenses be allocated on a consistent basis to prevent an opportunity for double recovery or to create a potential under-recovery.²⁴ ITC Midwest states that ITC Holdings, in accordance with prudent utility practice and the Commission's regulations, directly assigns costs to the extent feasible based upon the activity causing the cost.²⁵ Thus, ITC Holdings assigns A&G expenses directly to ITC Midwest, ITC *Transmission*, and METC to the extent that it is rational and reasonably clear to do so.²⁶

29. For those A&G expenses that cannot be assigned to a specific company, i.e., non-direct charged A&G, ITC Midwest states that ITC Holdings allocates those expenses using a variant of the well-accepted Massachusetts Formula.²⁷ This approach utilizes three components as the basis for allocating non-directly assigned A&G expenses: (1) gross book value of property, plant and equipment; (2) revenue; and (3) labor ratios.²⁸ ITC Holdings utilizes the gross book value of transmission assets of ITC *Transmission*, METC, and ITC Midwest to determine the first factor and uses load as the proxy for

²³ *Id.* at 45.

²⁴ *Id.*

²⁵ *Id.* (citing Uniform System of Accounts, 18 C.F.R. Pt. 101 (2008)).

²⁶ *Id.*, Fennel Affidavit at 3 (attached as Exhibit 5).

²⁷ *Id.* at 46. It is called the "Massachusetts Formula" based on the Commission decision in *Distrigas of Massachusetts Corp*, 41 FERC ¶ 61,205 (1987).

²⁸ *Id.*, Fennel Affidavit at 4 (attached as Exhibit 5).

revenue in the second factor. ITC Holdings was unable to include labor as part of the allocator for the 2009 Projections but plans to do so for actual expenditures.²⁹

30. ITC Midwest states that the current allocation of non-direct charged A&G expenses methodology properly reflects the Commission's policy on cost causation.³⁰ It states that load is one driver of A&G costs, but not the exclusive driver.³¹ The size of the existing transmission system, the age and condition of the facilities, the need to reduce congestion, and the ability to support interconnections of new renewable resources also affect O&M and transmission investment costs and related A&G expenditures.³² Accordingly, ITC Midwest states, A&G costs are not exclusively load-dependent.³³

31. Furthermore, ITC Midwest states that Interstate offers no support for its recommendation to allocate A&G costs based on a 100 percent load ratio share. ITC Midwest states that Interstate must demonstrate not only that ITC Midwest's use of the modified Massachusetts Formula is unreasonable, but that its proposed alternative allocator is just and reasonable,³⁴ and that Interstate has failed to do this. It states that Interstate presents neither Commission precedent for its assertion that non-direct charged A&G costs ought to be allocated solely on a load ratio share basis, nor authority that would compel the Commission to require ITC Midwest to change its methodology.

32. ITC Midwest states that Mr. Rahill's testimony in the Iowa and Minnesota Commission proceedings made clear that the modeling assumptions he and other ITC Midwest witnesses used were not projections of actual costs that would subsequently be charged to customers, but instead were an effort to present an "apples to apples" comparison with an Interstate projection using "the same capital investment and O&M used by [Interstate] in its revenue requirement projection."³⁵ ITC Midwest states that Interstate understood that the modeling was specifically designed to show the differences

²⁹ *Id.* at 5-6.

³⁰ *Id.* (citing *Ameren Serv. Co. v. Midwest Indep. Transmission Sys. Operator*, 124 FERC ¶ 61,173, at P 105 (2008)).

³¹ *Id.*, Welch Affidavit at 12-13 (attached as Exhibit 2).

³² *Id.*, Fennel Affidavit at 7 (attached as Exhibit 5).

³³ *Id.* at 48.

³⁴ *Id.* (citing *Ameren Serv. Co. v. Midwest Indep. Transmission Sys. Operator*, 124 FERC ¶ 61,173, at P 14 (2008)).

³⁵ *Id.* at 49 (quoting Interstate Complaint, Attachment A at 10).

in the rate constructs of ITC Midwest and Interstate and their differing impacts on revenue requirements. ITC Midwest states that it is disingenuous for Interstate to imply in its complaint that ITC Midwest's modeling in the state proceedings was predictive of future expenditures or of how indirect A&G expenditures would be allocated. Interstate's witness Mr. Hamsher, ITC Midwest states, clearly understood at the time of the state proceedings that only changes in rate constructs were being modeled.³⁶

33. ITC Midwest states that there is no sufficient issue of material fact that would warrant a hearing over the allocation methodology for the 2009 projection of non-direct charged A&G costs. It states that the question of the reasonableness of the A&G cost allocation is a policy determination for the Commission, and that ITC Midwest strongly believes in the justness and reasonableness of its methodology.³⁷ Further, ITC Midwest states that Interstate has failed to demonstrate that allocation of indirect A&G costs based solely on load ratio share is required. In contrast, it states that ITC Midwest has properly evaluated Commission precedent and appropriately used it to produce a reasonable result for its independent, stand-alone transmission company operations.³⁸ In sum, ITC Midwest states that there is no authority for the Commission to compel the adoption of a simplified allocation used for modeling purposes in a state proceeding into an actual cost allocation methodology for wholesale transmission ratemaking purposes. ITC Midwest asserts that Interstate's complaint is patently deficient on the issue of the proper A&G allocation methodology and should be summarily dismissed.

C. ITC Midwest's Answer to Interstate's Information Sharing Issue

34. ITC Midwest asserts that Interstate has misrepresented its efforts to share information, and that ITC Midwest met all of its obligations to provide Interstate with all of the data it requested. ITC Midwest states that it has provided Interstate with voluminous information in compliance with the Commission-approved process set forth within ITC Midwest's Attachment O formula in Midwest ISO's Tariff. ITC Midwest states that, as the on-file tariff requires, it posted on August 29, 2008 (a month early), the completed Attachment O template using forecasted data for the following year. Then, on October 28, 2008 and October 29, 2008, ITC Midwest hosted customer meetings and made a presentation showing the primary drivers for the projected rate and comparing the Interstate rate (based on a historical 2006 test year) with the posted 2009 Attachment O rate for ITC Midwest. ITC Midwest states that it answered customers' questions at the

³⁶ *Id.* at 50-51.

³⁷ *Id.* at 52-53.

³⁸ *Id.* at 53.

meeting and gave them a contact person at ITC Midwest to whom they could ask follow-up questions.

35. ITC Midwest states that, with regard to its 2009 Projections and 2008 True-up, it answered all of Interstate's questions and follow-ups in full except for a question regarding Interstate load projections, which were not available to ITC Midwest. ITC Midwest states that it also provided Interstate with an additional presentation describing ITC Midwest's plan for its transmission system in 2009, a letter with an attached outline of a responsive rate proposal, and an additional letter. ITC Midwest also states that it never refused to meet with Interstate and points to its Blair Affidavit, which contains a detailed timeline, including several other ITC Midwest-Interstate interactions, such as phone calls and face-to-face meetings. ITC Midwest asserts that these teleconferences and in-person meetings included discussions about ways that ITC Midwest could possibly alleviate Interstate's concerns, such as a deferral or a phase-in plan. ITC Midwest concludes that it has gone well beyond its information-sharing obligations.³⁹

36. In support of its answer, ITC Midwest has submitted, among other things, several affidavits, correspondence with Interstate, a state of the system report, and documentation of various maintenance and reliability issues.

D. Intervenor Comments

37. Consumers Energy states that the transmission facilities serving it are now owned by an ITC Holdings operating company (in Consumers Energy's case it is METC). Consumers Energy states that METC has a formula transmission rate on file with the Commission⁴⁰ that allows METC to recover its transmission revenue requirement on a forward-looking basis.⁴¹ Consumers Energy states that, like ITC Midwest's, METC's transmission formula rate is consistent with the Attachment O rate methodology under the Midwest ISO's Tariff. Further, Consumers Energy states that, like ITC Midwest, METC has included or projected extraordinary increases in A&G expenses for 2008 and 2009, over what had been included in the transmission service charges when Consumers Energy owned the transmission facilities.⁴² Accordingly, Consumers Energy, like

³⁹ *Id.* at 53-56.

⁴⁰ The Commission approved METC's forward-looking Attachment O in Docket No. ER07-95-000. *See Michigan Electric Transmission Company, LLC*, 117 FERC ¶ 61,314 (2006), *order on reh'g*, 118 FERC ¶ 61,139 (2007).

⁴¹ Motion to Intervene and Comments of Consumers Energy Company at 3.

⁴² *Id.* at 4. (Consumers Energy provides a table illustrating the A&G expense increase from 2005 through 2009.)

Interstate, believes that the transmission service rates that it has been paying to an ITC Holdings operating company in 2008, and will pay in 2009 and beyond, may be unjust and unreasonable. As a result, Consumers Energy asserts that the Commission's investigation of the Attachment O transmission charges of ITC Midwest should not be limited to that one ITC Holdings operating company, but should address the Attachment O transmission charges of all of the ITC Holdings operating companies.⁴³

38. The Minnesota OES states that ITC Midwest's A&G and O&M cost levels appear to be significantly higher than those provided in the Minnesota Commission proceeding regarding the transmission sale, and that the method to allocate the A&G costs appears to have changed from a load ratio share method to a Massachusetts Formula method. Minnesota OES would like to see more information to support the A&G and O&M cost levels, a showing that the Massachusetts Formula allocation method is a reasonable or superior allocation method, and ensure that the overall impact of these changes is reasonable for Minnesota ratepayers.⁴⁴

39. The Midwest TDUs state that Interstate's complaint is well-documented and that they support Interstate's requests for relief.

IV. Discussion

A. Procedural Matters

40. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

41. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or an answer, unless otherwise ordered by the decisional authority. We are not persuaded to accept Interstate's answer, ITC Midwest's answer to that answer, nor ITC Midwest's answer to Consumers Energy's comments; we are also not persuaded to accept the late-filed comments of the Minnesota OES and the Iowa Commission (which are answers to ITC Midwest's answer), nor ITC Midwest's answer to the Iowa Commission.

⁴³ *Id.*

⁴⁴ Motion to Intervene and Comments of the Minnesota OES at 1-2 (Dec. 8, 2008).

B. Commission Determination

1. O&M and A&G Expenses, A&G Allocation, and Related Issues

42. Section 206 of the FPA requires a complainant to satisfy a dual burden in order to obtain the relief it seeks.⁴⁵ The complainant must establish that the current rate is unjust and unreasonable and that its alternative rate proposal is just and reasonable.⁴⁶ Based on the information provided, and without prejudice to Interstate filing a new complaint, we find that Interstate has not met its burden of demonstrating that the projected 2009 transmission rate and 2008 true-up rate are unjust and unreasonable, nor that an alternative rate proposal is just and reasonable.⁴⁷ As explained below, we also find that Interstate's complaint does not warrant a hearing, as it consists largely of unsubstantiated allegations.

43. Interstate raises no issues with ITC Midwest's use of the Attachment O formula or its planned capital investments. Rather, it requests that the Commission investigate the prudence of O&M and A&G expenses, which have increased significantly from 2007, and whether such expenses are excessive. These expenses are used to calculate Interstate's transmission rates under the ITC Midwest Attachment O formula rate and, if excessive, may produce unjust and reasonable rates. However, Interstate has not presented any prima facie evidence showing that the proposed O&M and A&G expenses were, or will be, imprudently incurred and therefore should not be chargeable to Interstate.

44. Interstate also has failed to provide sufficient evidence in support of its allegation that ITC Midwest's projected and true-up transmission rates are unjust and unreasonable. It does not specifically identify any unnecessary maintenance activities or redundant facilities. Rather, Interstate seems to rely primarily on the observation that O&M and A&G expenses have increased significantly based on ITC Midwest's Iowa and Minnesota Commission proceedings in 2007 versus the 2009 Projections and 2008 True-up. While Interstate may be correct that its rates and costs will increase significantly, its

⁴⁵ 16 U.S.C. § 824e (2006).

⁴⁶ See, e.g., *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *NRG Energy, Inc. v. Entergy Servs., Inc.*, 126 FERC ¶ 61,053, at P 31 (2009) (*NRG Energy*); and *Michigan Electric Transmission Co.*, 116 FERC ¶ 61,164, at P 12 (2006).

⁴⁷ We note that in *NRG Energy*, the issue presented by the complainant also concerned the expense inputs into the transmission provider's formula rate, and the Commission there made clear that the complainant had the burden of proof in challenging the expense inputs. *NRG Energy*, 126 FERC ¶ 61,053 at P 1, 31.

allegations do not amount to a showing that the rates and charges are unjust and unreasonable.⁴⁸ In addition, as noted above, Interstate has also failed to substantiate its complaint with sufficient evidence, and therefore, a hearing is not warranted.⁴⁹

45. Regarding Interstate's claims that it has not been provided with sufficient information to properly evaluate projected and actual O&M and A&G expenses, Interstate derides ITC Midwest for not supplying it with "sufficiently detailed" information about ITC Midwest's O&M and A&G expenses, but does not specify what information it needs and has been denied access to. Accordingly, we likewise find these unsubstantiated allegations insufficient to warrant a hearing on this issue.⁵⁰

46. In sum, we find that Interstate has not met its burden to demonstrate that the O&M and A&G expenses may be excessive or that the projected and true-up transmission rates may be unjust and unreasonable. In addition, we will deny Interstate's request to set the 2009 Projections and 2008 True-up for investigation and hearing. We also find that Interstate's complaint does not establish that the use of the Massachusetts Formula to allocate non-direct A&G expenses among the ITC Holdings public utility transcos is

⁴⁸ See, e.g., *NRG Energy*, 126 FERC ¶ 61,053 at P 32.

⁴⁹ The Commission has long recognized that a protestor or complainant has a burden to do more than make mere unsubstantiated allegations to warrant a hearing. See, e.g., *San Diego Gas & Electric Co. v. Century Power Corp.*, 50 FERC ¶ 61, 285, at 61,916 (1990) (evidentiary hearing requires more than mere allegations, but rather an adequate proffer of evidence that such a hearing is warranted); *Midwest Indep. Transmission Sys. Operator, Inc.* 117 FERC ¶ 61,108, at P 14 n.16 (2006); *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,052, at P 12 n.10 (2006); *Duke Energy Corp.*, 87 FERC ¶ 61,249, at 61,966 & n.4 (1999); *Central Maine Power Co.*, 60 FERC ¶ 61,285, at 61,964 n.17 (1992); *Philadelphia Electric Co.*, 58 FERC ¶ 61,060, at 61,132 & n.2 (1992); and *Georgia Power Co.*, 52 FERC ¶ 61,321, at 62,278 & n.5 (1990).

⁵⁰ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,108, at P 14 (2006) (mere assertions and articulation of a need for additional information is not enough to warrant the Commission ordering a trial-type hearing to obtain evidence in order to meet a burden of proof). Additionally, while it is unnecessary in order to reach our decision here, we note that it appears that ITC Midwest has provided Interstate with ample opportunity to review and discuss its O&M and A&G expenses. We note references to various meetings and several responses to Interstate's information requests. See, e.g., ITC Midwest Answer, Exhibits 18-19 (meetings), ITCM-16 (responses). We also note that it appears that Interstate itself was contracted for many of the O&M services subjected to the disputed increases, and therefore, should be familiar with at least some of these costs.

unjust and unreasonable. Interstate's complaint merely points out that a load ratio share methodology was used previously for illustrative purposes by ITC Midwest in the 2007 Iowa and Minnesota Commission proceedings, and argues that using the Massachusetts Formula instead to allocate costs to ITC Midwest will cause Interstate's share of allocated costs to increase. Once again, Interstate fails to substantiate its allegations. We reiterate that our findings are without prejudice to Interstate filing another complaint that adequately substantiates its allegations.⁵¹

2. Other Issues

47. We deny Consumers Energy's request to broaden this complaint to include an investigation of the Attachment O transmission charges of all of the ITC Holdings operating companies, including METC. Effectively, Consumers Energy is requesting that it be joined with Interstate's complaint. As we have said in the past, that is improper; allowing a third party to join in a complaint by filing comments would circumvent our public notice requirements and deprive the "respondent" of the opportunity to address the assertions of that third party.⁵² If Consumers Energy seeks Commission action for a perceived violation against it, it is free to file its own complaint alleging each violation, presenting facts in support, and requesting specific relief. Accordingly, we will deny Consumers Energy's request as beyond the scope of Interstate's complaint.⁵³

The Commission orders:

The relief requested in Interstate's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵¹ Because we find that Interstate's complaint does not on its face make an adequate proffer of evidence to warrant further investigation or hearing, it is unnecessary for us to address the arguments raised in ITC Midwest's answer to the complaint. This includes ITC Midwest's argument that Interstate's complaint is barred by section 7.16 of the Agreement.

⁵² See 18 C.F.R. § 385.206 (2008).

⁵³ See *ConocoPhillips Company v. Entergy Services, Inc.*, 124 FERC ¶ 61,085, at P 31 (2008), *reh'g pending*.