

Northern States Power Company, a Wisconsin Corporation
Northwestern Wisconsin Electric Company
Otter Tail Power Company
Southern Illinois Power Cooperative
Southern Indiana Gas & Electric Company
Southern Minnesota Municipal Power Agency
Tipton Municipal Utilities
Wabash Valley Power Association, Inc.
Wolverine Power Supply Cooperative, Inc.

ORDER ON THE INVESTIGATION OF FORMULA RATE PROTOCOLS

(Issued May 16, 2013)

1. On May 17, 2012, the Commission instituted an investigation pursuant to section 206 of the Federal Power Act (FPA)¹ to determine whether the formula rate protocols under the Midwest Independent Transmission System Operator, Inc. (MISO) Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) are sufficient to ensure just and reasonable rates.² In order to address whether MISO's *pro forma* formula rate protocols and individual MISO transmission owners' formula rate protocols on file with the Commission³ are sufficient to ensure just and reasonable transmission rates, the Commission established paper hearing procedures. In this order, we find that the MISO and individual company formula rate protocols are insufficient to ensure just and reasonable rates and, therefore, direct MISO and the above-captioned transmission owners to file revised formula rate protocols within 60 days of the date of this order.

¹ 16 U.S.C. § 824e (2006).

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (May 17 Order).

³ MISO's *pro forma* formula rate protocols and individual MISO transmission owners' formula rate protocols on file with the Commission are collectively referred to as the MISO formula rate protocols.

I. Background

2. Our inquiry into the sufficiency of the MISO formula rate protocols stems from several recently issued orders involving recovery of transmission rate incentives through formula rates. Most notably, on December 30, 2011, the Commission issued orders in *MidAmerican Energy Co.*⁴ and *Otter Tail Power Co.*,⁵ where the Illinois Commerce Commission (Illinois Commission) and the Indiana Utility Regulatory Commission (Indiana Commission) argued that the transmission owners' formula rates were insufficient to ensure just and reasonable rates. In *MidAmerican*, MidAmerican proposed, among other things, a transition from a historical-based formula rate to a forward-looking formula rate and new formula rate protocols for the forward-looking formula rate. In *Otter Tail*, Otter Tail already had a Commission-accepted forward-looking formula rate and protocols that would provide for recovery of the requested incentives and, accordingly, had not proposed any changes to its formula rate protocols.

3. In support of its position that MidAmerican's protocols were insufficient, the Illinois Commission argued that the proposed protocols did not provide an opportunity for interested parties to evaluate and challenge the inputs or prudence of the costs to be recovered by MidAmerican. The Illinois Commission averred that it is not sufficient for MidAmerican to simply explain how it calculated its revenue requirement and the corresponding rate. Rather, the Illinois Commission argued that MidAmerican must allow an opportunity to review the inputs and calculations and to challenge the prudence of the costs that MidAmerican seeks to recover. To this end, the Illinois Commission recommended a series of prescriptive changes to the formula rate protocols. Similarly, the Indiana Commission argued in both proceedings that MidAmerican's and Otter Tail's formula rate protocols did not allow for interested parties, such as state utility commissions, that are not customers of the transmission owners, to receive information regarding the status of projects, the prudence of the costs being incurred, and the annual true-up, and it recommended that both transmission owners be required to adopt more expansive formula rate protocols.

⁴ 137 FERC ¶ 61,250 (2011) (*MidAmerican*).

⁵ 137 FERC ¶ 61,255 (2011) (*Otter Tail*).

4. On February 29, 2012, the Commission addressed Ameren Transmission Company of Illinois' (Ameren Illinois) formula rate protocols where the Illinois Commission and a group of customers argued, in pertinent part, that the proposed protocols were deficient relative to other formula rate protocols on file with the Commission.⁶ In *Ameren*, customers argued that Ameren Illinois' protocols did not provide customers, state regulators, or other interested parties with any real opportunity to evaluate the formula rate input data or to challenge either the correctness or reasonableness of the inputs, including the true-up, or to challenge the prudence of the costs to be recovered.⁷ The Illinois Commission added that Ameren Illinois' protocols lacked the necessary transparency and other features critical to ensuring that ratepayers and other interested parties are reasonably informed of rate input changes and true-up adjustments and can adequately investigate and potentially challenge costs and formula rate inputs.

5. In each case, the Commission rejected the challenges to the transmission owners' formula rate protocols on procedural grounds, finding that the protests were more appropriately characterized as complaints than protests and therefore were inappropriately filed in those proceedings.⁸

6. Subsequently, in the May 17 Order, having reviewed MISO's *pro forma* formula rate protocols and the formula rate protocols of individual MISO transmission owners, the Commission determined that the concerns raised in the context of the prior challenges to the transmission owners' formula rate protocols in *MidAmerican*, *Otter Tail*, and *Ameren*, may have merit.⁹ Specifically, the Commission identified three areas of concern with the MISO formula rate protocols: (1) scope of participation—who can participate in the information exchange; (2) the transparency of the information exchange—what is exchanged; and (3) the ability to challenge the transmission owners' implementation of

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,147 (2012) (*Ameren*).

⁷ *Id.*

⁸ *MidAmerican*, 137 FERC ¶ 61,250 at P 71; *Otter Tail*, 137 FERC ¶ 61,255 at P 23; *Ameren*, 138 FERC ¶ 61,147 at P 34.

⁹ May 17 Order, 139 FERC ¶ 61,127 at P 8.

the formula rate as a result of the information exchange—how the parties may resolve their potential disputes.¹⁰

7. Thus, having instituted an investigation into the MISO formula rate protocols, the Commission found that a paper hearing is the appropriate procedure to resolve the matter.¹¹ The May 17 Order provided that any entity desiring to participate in the paper hearing must file a timely notice of intervention or a motion to intervene with the Commission. The Commission ordered that parties may file initial briefs no later than 30 days after the Commission's initiation of this section 206 proceeding, and that parties may also file reply briefs in response to parties' initial briefs, due within 21 days after the due date of initial briefs. The Commission required that all parties' briefs should separately state the facts and arguments advanced by that party and include any exhibits upon which that party relies. Here we review those briefs filed in response to the Commission's order, and find that the MISO and individual company formula rate protocols are insufficient to ensure just and reasonable rates.

II. Notice and Responsive Filings

8. Notice of initiation of this proceeding was published in the *Federal Register*, 77 Fed. Reg. 30,522 (2012), with motions to intervene and initial briefs due on or before June 22, 2012, and reply briefs due on or before July 13, 2012.

9. Timely motions to intervene and initial briefs were filed by the MISO Transmission Owners (MISO TOs);¹² Indiana Municipal Power Agency (IMPA);

¹⁰ The May 17 Order also established a refund effective date of the date of publication of initiation of the proceeding in the *Federal Register*, i.e., May 23, 2012.

¹¹ Section 206(b) of the FPA requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision. *See* 16 U.S.C. § 824e(b). In this case, the volume of cases pending before the Commission since the issuance of the May 17 Order did not allow for the Commission to render an earlier decision.

¹² For the purpose of this filing, MISO TOs consist of: Ameren Services Company, as agent for Union Electric Company, d/b/a/ Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC (ATC); Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Indianapolis Power & Light Company; International Transmission

(continued...)

Arkansas Electric Cooperative Corporation, et al. (collectively, Arkansas Electric);¹³ Interstate Power and Light Company (Interstate Power); Illinois Industrial Energy Consumers (Industrial Consumers); Jo-Carroll Energy, Inc. (Jo-Carroll); MISO;¹⁴ ATC; Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative (collectively, Hoosier Energy); ITC Companies;¹⁵ Southern Indiana Gas & Electric Company (Southern Indiana); Southwestern Electric Cooperative, Inc. (SWEC); and Illinois Municipal Electric Agency (IMEA). Indiana Commission filed a notice of intervention and initial brief. An initial brief was filed by Organization of MISO States (OMS).¹⁶

10. Illinois Commission filed a notice of intervention.

Company, Michigan Electric Transmission, LLC, and ITC Midwest, LLC (collectively, ITC Companies); Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Minnesota

Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

¹³ Arkansas Electric consists of: Arkansas Electric Cooperative Corporation; East Texas Electric Cooperative, Inc.; Tex-La Electric Cooperative of Texas, Inc.; Conway Corporation; West Memphis Utilities Commission; the Arkansas Cities of Prescott, Osceola and Benton; Hope Water & Light Commission; and Sam Rayburn G & T Electric Cooperative, Inc.

¹⁴ MISO amended its initial brief on June 25, 2012.

¹⁵ ITC Companies consist of International Transmission Company; Michigan Electric Transmission Company, LLC; and ITC Midwest, LLC.

¹⁶ For the purpose of this proceeding, the pleadings filed by OMS are generally supported by: Illinois Commission; Indiana Commission; Iowa Utilities Board; Michigan Public Service Commission; Minnesota Public Utilities Commission; Missouri Public Service Commission; Montana Public Service Commission; North Dakota Public Service Commission; South Dakota Public Utilities Commission; and Wisconsin Public Service Commission.

11. Timely motions to intervene were filed by NextEra Energy Resources, LLC; The Detroit Edison Company; Ameren Services Company; MidAmerican Energy Company; Consumers Energy Company; Prairie Power, Inc.; Michigan Public Power Agency; Michigan South Central Power Agency; Entergy Services, Inc.; American Municipal Power, Inc.; Iowa Utilities Board; DATC Midwest Holdings, LLC; E.ON Climate & Renewables North America LLC; Dairyland Power Cooperative; Integrys Energy Group, Inc.; Transource Energy, LLC; and Missouri Joint Municipal Electric Utility Commission; Wisconsin Electric Power Company; as well as Minnesota Large Industrial Group and Wisconsin Industrial Energy Group.

12. Motions to intervene out-of-time were filed by Duke Energy Indiana, Inc. (Duke); and the Mississippi Delta Energy Agency, the Clarksdale Public Utilities, and the Public Service Commission of Yazoo, Mississippi (collectively, Mississippi Intervenors).

13. Reply briefs were filed by OMS, MISO TOs, IMEA, Jo-Carroll, Industrial Consumers, MISO, Arkansas Electric, ITC Companies, Hoosier Energy, Southern Indiana, and the Indiana Commission.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the late-filed motions to intervene filed by Duke and the Mississippi Intervenors given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

16. The Commission initially accepted the MISO formula rate protocols in 1998, among the earliest protocols filed with the Commission, addressing filings by a group of transmission owners that sought authorization to establish MISO as a new independent system operator.¹⁷ Moreover, the Commission did so without specifically addressing the

¹⁷ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231 (1998). While initially filed and accepted in 1998, the formula rate protocols were

proposed protocols. Since that time, however, various other protocols governing transmission owners' formula rates have developed to the benefit of transmission customers and other stakeholders. For instance formula rate protocols that have been accepted since 1998 generally permit a broad scope of stakeholders to participate in the applicable transmission owner's update and true-up processes and grant such stakeholders access to the information that serves as the basis of the transmission owner's revenue requirement.¹⁸ Modern formula rate protocols also typically provide procedures by which stakeholders can challenge the transmission owner's implementation of the formula rate. As discussed further below, almost 15 years after they were initially proposed, we find that the MISO formula rate protocols have become insufficient to ensure just and reasonable rates.

17. Finding that the MISO formula rate protocols are now insufficient to ensure just and reasonable rates, we will require MISO and the transmission owners to submit revised formula rate protocols that include all interested parties as eligible participants in formula rate information exchange and review processes. Furthermore, we will require revisions to these processes to improve transparency by making revenue requirements, inputs, calculations and other information publicly available and providing interested parties with the opportunity to review the information. We will also require MISO and the transmission owners to make an annual informational filing with the Commission.

18. We also require that the formula rate protocols afford parties the opportunity to engage in a well-defined informal challenge process. If parties engaged in this informal challenge process are further unable to consensually resolve their differences, the MISO formula rate protocols must provide a formal challenge procedure in which the transmission owner would bear the burden of demonstrating the correctness of its update or true-up. Transmission owners are obliged to demonstrate the rate resulting from the application of the formula rate complies with the directives of section 205 of the FPA, i.e., that the rate is just and reasonable, by demonstrating that it has correctly implemented the filed formula rate; however, complaining parties will still bear the burden of proof in challenging both the reasonableness of the filed formula rate itself and the prudence of particular expenses that are input to the formula rate. To this end, the Commission's determinations in this order, as discussed below, seek to provide a balance between allowing timely recovery of costs incurred to provide jurisdictional transmission service through the use of formula rates, and providing open and transparent ratemaking

ultimately approved in 2001 through a trial staff stipulation in Opinion No. 453. *Midwest Indep. Transmission Sys. Operator, Inc.*, Opinion No. 453, 97 FERC ¶ 61,033 (2001).

¹⁸ See, e.g., *Green Power Express LP*, 135 FERC ¶ 61,141 (2011); *Xcel Energy Servs. Inc.*, 115 FERC ¶ 61,011 (2006).

to ensure that the rates ultimately charged are just and reasonable consistent with the transmission owner's filed formula rate.

19. In accordance with these directives, we will require MISO and the transmission owners captioned above to submit revised formula rate protocols in a compliance filing within 60 days of the date of this order.

1. Scope of Participation

20. In the May 17 Order, the Commission found that the exclusion of interested parties such as customers and state regulatory commissions may be unjust and unreasonable.¹⁹ Moreover, the Commission observed that it may be necessary for MISO and the MISO transmission owners to provide the Commission with all information reasonably necessary to review and evaluate the implementation of the transmission owners' formula rates. As a result, the Commission stated that the MISO formula rate protocols may need to be revised to provide all interested parties as well as the Commission with access to information concerning transmission owners' annual updates.

a. Initial Briefs

21. Several intervenors support broadening the scope of entities which are permitted by the MISO formula rate protocols to participate in the annual update and true-up processes.²⁰ The Indiana Commission notes that the MISO formula rate protocols only provide notice and information to transmission owners' customers. Indiana Commission states that this may have been sufficient when only the transmission owner's customers were paying the costs of the transmission. However, when the costs of that transmission are being allocated to a broader spectrum, i.e., to all retail ratepayers in the MISO footprint, under the existing protocols those ratepayers receive no notice or information regarding the transmission costs that they are now paying.²¹ Similarly, OMS asserts that the lack of provisions for interested parties to review formula rate updates is particularly relevant in the case of transmission projects that tend to span several transmission pricing

¹⁹ May 17 Order, 139 FERC ¶ 61,127 at P 12.

²⁰ See, e.g., OMS Initial Brief at 9-11; SWEC Initial Brief at 3 (arguing that MISO's current review and challenge procedures in its annual update process is limited to two participants—MISO and the transmission owner itself); Arkansas Electric Initial Brief at 13-14; Hoosier Energy Initial Brief at 8-10; Industrial Consumers Initial Brief at 3-4; IMEA Initial Brief at 7; Indiana Commission Initial Brief at 11-12.

²¹ Indiana Commission Initial Brief at 11.

zones or have their costs either spread across all of the MISO zones or allocated to parties outside of the MISO footprint.²² OMS also argues that MISO's *pro forma* protocols in Attachment O provide formal notice of proposed formula rate updates to no one. OMS contends that after-the-fact posting of transmission rates on the MISO Open Access Same-Time Information System (OASIS) website does not constitute adequate notice.²³ Some intervenors support expressly permitting state utility commissions and consumer advocate organizations to participate in the annual update and true-up processes.²⁴ Additionally, Interstate Power recommends including retail customers in the annual update process.²⁵ Others support broadening the scope of participation even further to include all interested parties.²⁶

²² OMS Initial Brief at 10.

²³ *Id.*

²⁴ *See, e.g.*, IMEA Initial Brief at 7; Industrial Consumers at 4; Indiana Commission Initial Brief at 12; Interstate Power Initial Brief at 5; *cf.* Southern Indiana Initial Brief at 3-4 (“[Southern Indiana] . . . has modified its formula rate protocols to add the Indiana Utility Regulatory Commission . . . as an ‘Interested Party’ that may participate in the annual update of [Southern Indiana’s] estimated charges and true-up adjustment . . .”).

²⁵ Interstate Power Initial Brief at 5.

²⁶ *See* OMS Initial Brief 9, 11; Industrial Consumers Initial Brief at 4. Indiana Commission recommends that the Commission require any affected party to be allowed to participate in the annual update and true-up processes. Specifically, Indiana Commission supports the definition of “interested parties” contained in the protocols of Pioneer Transmission Company, L.L.C. and Green Power Express LP (Green Power). Indiana Commission Initial Brief at 12. Green Power’s formula rate protocols define an interested party as “1) any Eligible Customer [as defined under the MISO Tariff] under [the Green Power tariff]; 2) a state public utility commission of a state with consumers potentially affected by the rates, terms, and conditions of [the Green Power tariff] or where [Green Power] facilities are located or proposed to be located; 3) a state consumer advocate of such state described in 2) authorized by state law to review and contest the rates for public utilities; or 4) any party with standing under section 206 of the [FPA] to bring an action against [Green Power].” *Green Power Express, LP*, 135 FERC ¶ 61,141.

22. A number of parties also point out that formal notice of proposed formula rate updates is a critical prerequisite to participation.²⁷ In this respect, some suggest that it is insufficient for transmission owners to hold informational meetings and post information concerning their annual updates and true-ups.²⁸ Rather, some parties suggest that the best means of providing such notice would be requiring transmission owners to file information regarding their annual updates with the Commission, possibly on an informational basis.²⁹ Arkansas Electric explains that only the Commission can provide the type of notice to the public contemplated by the FPA and provided in the Commission's regulations.³⁰ Similarly, Jo-Carroll argues that ITC Midwest's formula rate protocol, specifically, does not allow for adequate participation by the Commission that an annual informational filing would provide.³¹

23. Southern Indiana proffered sample formula rate protocols, in response to the May 17 Order. Specifically, Southern Indiana notes that its sample formula rate protocols include the Indiana Commission and "all of [its] customers" as interested parties.³²

24. Nevertheless, some parties contend that the MISO Formula Rate Protocols are just and reasonable and provide for broad stakeholder participation. In general, these parties argue that the MISO formula rate protocols permit a sufficiently broad scope of entities to participate in the annual update and true-up processes, as evidenced by the fact that no

²⁷ See, e.g., OMS Initial Brief 10; Arkansas Electric Initial Brief at 14; Hoosier Energy Initial Brief at 8-9.

²⁸ OMS Initial Brief at 11; Arkansas Electric Initial Brief at 14; Hoosier Energy Brief at 9.

²⁹ OMS Initial Brief at 17; Arkansas Electric Initial Brief at 13-14; Hoosier Energy Initial Brief at 8-10; cf. Jo-Carroll Initial Brief at 9 (arguing that an informational filing is necessary to make annual cost-projection information available to Commission staff).

³⁰ Arkansas Electric Initial Brief at 14.

³¹ Jo-Carroll Initial Brief at 9.

³² Southern Indiana Initial Brief at 3-4. Southern Indiana states that it uses the term "Interested Parties" to collectively define all of its customers and the Indiana Commission. *Id.*

party is explicitly excluded from the process.³³ Moreover, MISO TOs point out that information related to historical and forward-looking formula rates is posted in publicly available spaces, such as MISO's website and the transmission owner's OASIS site, and consequently is available for review by any interested party.³⁴ Similarly, MISO TOs assert that state commissions and Commission staff are free to submit questions to MISO and individual transmission owners and to participate in transmission owners' annual meetings.³⁵ Further, MISO TOs explain that the Commission has "previously examined the level of participation in reviewing several . . . proposals to adopt forward-looking formula rates, and has determined that the procedures under these protocols provided sufficient opportunities for parties to participate."³⁶

25. ATC defends its formula rate protocols, noting that the Commission has previously approved ATC's protocols pursuant to a settlement,³⁷ and, therefore is subject to the *Mobile-Sierra* public interest standard.³⁸ ATC argues that the Commission's concerns regarding the scope of participation are misplaced with respect to ATC's protocols.³⁹ Under its formula rate protocols, ATC points out that it is required to make information available to all stakeholders. ATC additionally states that all information required by the protocols is posted on MISO's OASIS and that ATC conducts meetings

³³ See, e.g., MISO TOs Initial Brief at 14-16; MISO Initial Brief at 10; ATC Initial Brief at 7-8.

³⁴ MISO TOs Initial Brief at 14-15; MISO Initial Brief, Gudeman Aff. at 3 (stating that populated historical rates are posted on the MISO website); MISO Initial Brief, Sem Aff. at 2 (stating that populated forward-looking rate templates with the projected net revenue requirement, load, and supporting work papers are posted on Otter Tail's page on MISO's OASIS); MISO Initial Brief at 10.

³⁵ MISO TOs Initial Brief at 14-15.

³⁶ *Id.* at 15-16 (citing *Xcel Servs., Inc.*, 121 FERC ¶ 61,284 (2007); *Mich. Elec. Transmission Co.*, 117 FERC ¶ 61,314 (2006); *Int'l Transmission Co.*, 116 FERC ¶ 61,036 (2006); *Otter Tail Power Co.*, 129 FERC ¶ 61,287 (2009); *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007)).

³⁷ ATC Initial Brief at 4.

³⁸ *Id.* at 6 n.7 (citing *Amer. Transmission Co. LLC*, 107 FERC ¶ 61,117 (2004)).

³⁹ *Id.* at 7-8.

that interested parties are permitted to attend. ATC claims that no party has ever been prevented from participating in such a meeting.

26. Similarly, the ITC Companies assert that through the posting of information on OASIS, and holding annual meeting and separate “Partners in Business” stakeholder meetings,⁴⁰ their protocols already ensure that state commissions and customers can participate in the formula rate update process.⁴¹ Furthermore, the ITC Companies note that they offer to meet separately with state commissions after posting rate projections, further enabling participation.⁴²

b. Reply Briefs

27. MISO TOs assert that MISO’s independent review does not exclude other interested parties from reviewing Attachment O formula rates or submitting questions to obtain additional information.⁴³ Additionally, MISO TOs state that a host of information is available on MISO’s website and populated Attachment O formula rate templates and true-up calculations are publicly available on MISO’s OASIS for all interested parties to view.⁴⁴ Furthermore, MISO TOs assert that nothing in the existing protocols precludes participation of the Commission’s staff, which has the same access to information as other interested parties.⁴⁵

28. In contrast, IMEA and Industrial Consumers disagree with MISO’s characterization of the process as providing broad participation.⁴⁶ Industrial Consumers point out that while nothing precludes customer participation, nothing requires MISO or a transmission owner to include other parties in the annual update or true-up process.⁴⁷

⁴⁰ The term, “Partners in Business,” refers to meetings held by ITC Companies intended to, among other things, foster a greater exchange of information and identifying challenges to their solutions. *See* ITC Companies Initial Brief at 9.

⁴¹ *Id.* at 9, 12-13.

⁴² *Id.* at 12-13.

⁴³ MISO TOs Reply Brief at 19-22.

⁴⁴ *Id.* at 11, 19-22.

⁴⁵ *Id.* at 21.

⁴⁶ Industrial Consumers Reply Brief at 2-3; IMEA Reply Brief at 4-6.

⁴⁷ *Id.* at 2-3.

Similarly, IMEA maintains that the formula rate protocols, as written, do not clearly define which parties are eligible to participate in the annual update process.⁴⁸

29. IMEA contends that the MISO TOs' argument that the Commission's acceptance of certain forward-looking formula rate protocols in 2006, 2007, and 2009 removes any need to revise these protocols implies that nothing has changed since that time and that this argument cannot be supported. Additionally, IMEA argues that such logic would essentially read section 206 of the FPA out of existence by suggesting that once a provision is found just and reasonable, it will always be just and reasonable.⁴⁹

30. Observing that pursuant to section 206 of the FPA, the Commission or complainants bear the burden of demonstrating that a rate or charge is not just and reasonable,⁵⁰ ITC Companies contend that arguments raised by several parties that the Attachment O formula rates provide insufficient participation because MISO's review of populated formula rate templates is restricted to two participants ignores the broad scope of participation provided for in ITC Companies' company specific protocols.⁵¹ ITC Companies argue that transmission owners' protocols are part of Attachment O and must be read together with the MISO *pro forma* protocols. Thus, ITC Companies conclude that the Commission should not grant weight to overstatements about the perceived weakness of the MISO protocols that fail to acknowledge that certain company-specific protocols, such as ITC Companies', contain considerable opportunities for participation.

31. ITC Companies argue that Jo-Carroll has no standing to argue that ITC Companies' protocols are deficient because Jo-Carroll does not participate in ITC Companies' "Partners in Business" stakeholder process. ITC Companies add that it is not aware of Jo-Carroll submitting a single follow-up question or data request about any rate projection or true-up.⁵²

32. Southern Indiana states that in response to comments submitted by the Indiana Commission, it has modified the sample protocols submitted in its initial brief to include

⁴⁸ IMEA Reply Brief at 4.

⁴⁹ *Id.* at 4.

⁵⁰ ITC Companies Reply Brief at 1-4.

⁵¹ *Id.* at 4-5.

⁵² *Id.* at 16.

Indiana Office of Utility Consumer Counselor, the state consumer advocate agency, as an interested party that may participate in the annual update process.⁵³

33. The Indiana Commission contends that arguments by MISO and transmission owners that there have not been significant complaints as of yet ignore the important fact that before MISO Transmission Expansion Plan 2011 (MTEP) and the Multi Value Project (MVP) Portfolio, the costs of very few transmission projects were allocated across multiple states. Thus, according to the Indiana Commission, there was little reason for states to be concerned about projects being built in other states. The Indiana Commission asserts that it is no longer just and reasonable to limit access and participation when costs are allocated across multiple states and zones. Indiana Commission also contends that given that MTEP 2011 and the MVP Portfolio were just recently approved, the time is ripe for the Commission's investigation and for adequate protocols to be adopted.⁵⁴

c. Commission Determination

34. In the May 17 Order, the Commission found that the MISO historical protocols give only MISO the opportunity to participate in the exchange of information and that, while the forward-looking protocols allow greater participation, they generally exclude state commissions and other interested parties.⁵⁵ Upon review of the pleadings filed in response to the May 17 Order, we conclude that, as currently structured, the MISO formula rate protocols, in fact, inappropriately limit the ability of certain interested parties to obtain information and participate in review processes and are, thus, unjust and unreasonable. The Commission, therefore, directs MISO and the MISO transmission owners to revise the formula rate protocols to include all interested parties in information exchange and review processes, including but not exclusive to customers under the Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorney generals.⁵⁶

⁵³ Southern Indiana Reply Brief at 3.

⁵⁴ Indiana Commission Reply Brief at 3-4.

⁵⁵ May 17 Order, 139 FERC ¶ 61,127 at P 11.

⁵⁶ The annual informational filings we require below will further promote broad participation by interested parties, including the Commission, as several intervenors suggest. Such informational filings will both increase the availability of and provide a central location for necessary information.

35. While many transmission owners note that the Commission previously determined that the procedures under their formula rate protocols provide adequate participation opportunities, we note that circumstances surrounding any approved formula rate protocol have not remained fixed and that the Commission has authority under section 206 of the FPA to ensure that the protocols remain just and reasonable. Accordingly, we reject any arguments which suggest that prior Commission approval of *pro forma* or individual formula rate protocols' participation provisions *per se* exempts any MISO entity from further evaluation.⁵⁷

36. Although ATC suggests that, because its formula rate protocols were approved pursuant to a settlement agreement, modification of those protocols is governed by the *Mobile-Sierra* public interest presumption, we find that that presumption, as defined by the Supreme Court, does not apply to ATC's formula rate protocols.⁵⁸ ATC's formula rate protocols do not establish "contract rates," but rather they establish generally-applicable tariff provisions—establishing the procedures for ATC's rate recovery for open access transmission service.⁵⁹ The Commission has recognized that, where agreements such as the ATC formula rate protocols are "incorporated into the service agreements of all present and future customers, those terms are properly classified as

⁵⁷ See, e.g., *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 112 & nn.98-101 (2009), *order granting clarification and denying reh'g*, 130 FERC ¶ 61,044 (2010); *Southern Company Servs., Inc.*, 57 FERC ¶ 61,035, at 61,125 (1991) ("The Commission . . . has a continuing obligation . . . to ensure that all rates, including all applicable terms and conditions, filed with the Commission are just and reasonable."); *Massachusetts Mun. Wholesale Elec. Co. v. Northeast. Utils. Serv. Co.*, 58 FERC ¶ 61,202, at 61,629 & n.59 (1992) ("It is well established that the Commission has the general obligation to promote and respect the sanctity of contracts. However, we cannot ignore our statutory mandate . . . to assess the continuing justness and reasonableness of existing rates"), *reh'g denied*, 63 FERC ¶ 61,217 (1993).

⁵⁸ See *Morgan Stanley Capital Grp. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 546 (2008); *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 130 S.Ct. 693, 700 (2010); see also *MidAmerican Energy Co.*, 138 FERC ¶ 61,028 (2012).

⁵⁹ See *Panhandle Eastern Pipe Line Company, LP*, 143 FERC ¶ 61,041 at P 84 (2013).

tariff rates and the *Mobile-Sierra* presumption would not apply.”⁶⁰ While ATC’s formula rate protocols allow for greater participation than the MISO *pro forma* formula rate protocols, we find that all MISO transmission owners’ protocols do not meet the standards set forth in this order and, thus, are subject to the aforementioned directives.

37. MISO and many MISO transmission owners suggest that their protocols already allow for participation by any interested party through public posting of information and open meetings, or, alternatively, they express a willingness to answer questions from any party. As currently written, though, the MISO formula rate protocols do not provide the broad participation that we believe is necessary. Moreover, given their view that in practice these utilities already provide for broad participation, the codification of eligible participants that we order here in the utilities’ information exchange and review processes should not place an undue burden on MISO or the MISO transmission owners and would correspondingly avoid the confusion noted in many of the briefs submitted by customers and state commissions. With regards to informational filings, we do not view the submission of this information to the Commission to be a burden because it is already compiled and submitted to MISO.

2. Transparency

38. In the May 17 Order, the Commission found that the MISO formula rate protocols, and the resulting rates, may not be just and reasonable because they do not provide interested parties with the information necessary to understand and evaluate the implementation of the formula rate with respect to either the correctness of the inputs and the calculations or the reasonableness and prudence of the costs to be recovered in the formula rate, which, in turn, would form the basis of any challenge.⁶¹ Specifically, the Commission noted that the MISO formula rate protocols may need to be revised to require that, in the annual update, the transmission owners provide interested parties with information about their implementation of the formula rate in sufficient detail and with sufficient explanation to demonstrate that each input to the formula is consistent with the requirements of the formula, without requiring interested parties to serve extensive information requests to understand the transmission owner’s implementation of the formula and verify its correctness. Additionally, the Commission stated that transmission

⁶⁰ See, e.g., *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014, at P 17 (2011) (holding that the *Mobile-Sierra* presumption does not apply to a settlement agreement “[b]ecause the terms of the Settlement, if approved, will be incorporated into the service agreements of all present and future shippers”); *High Island Offshore Sys. LLC*, 135 FERC ¶ 61,105, at P 19 (2011) (same).

⁶¹ May 17 Order, 139 FERC ¶ 61,127 at P 15.

owners may also need to identify any changes in accounting policies, practices, and procedures that took effect during the calendar year which could impact the formula rate or the resulting rates under the formula rate. Furthermore, to allow the Commission to perform its duty to ensure just and reasonable rates, such information may need to be filed with the Commission in the form of an annual informational filing. Lastly, the Commission observed that there was no formal discovery process and procedures to require the transmission owner to answer a party's reasonable information requests.

a. Initial Briefs

39. MISO TOs argue that MISO's historical and forward-looking protocols ensure adequate transparency and thus require no revision. MISO and MISO TOs state that the vast majority of formula rate inputs derive from FERC Form No. 1, which is a comprehensive financial report which major utilities are required to file.⁶² MISO TOs explain that completed formula rate templates for historical formula rate protocols are publicly posted on MISO's website.⁶³ According to MISO and MISO TOs, FERC Form No. 1 must be completed and verified annually and include a CPA Certification Statement.⁶⁴

40. According to MISO, in Order No. 715, the Commission explained that if companies have formula rates, but do not make regular informational filings with the Commission, they must maintain sufficient records to explain the changes to their formula rate inputs and provide that information to the Commission, state commissions, and affected customers upon request. MISO suggests that Order No. 715 was intended to better ensure a ready source of data to assist in evaluating the justness and reasonableness of rates, not to turn FERC Form No. 1 reporting requirements into a full rate case filing.⁶⁵

41. MISO also argues that its current practices provide a transparent rate calculation.⁶⁶ MISO states that the resulting spreadsheets are publicly available and stakeholders have access to information needed to verify many of the inputs, most of which is verifiable

⁶² MISO Initial Brief at 11-12; MISO TOs Initial Brief at 17-18.

⁶³ MISO TOs Initial Brief at 17-18.

⁶⁴ *Id.*

⁶⁵ *Id.* at 13 (citing *Revisions to Forms, Statements and Reporting Requirements for Electric Utilities and Licensees*, Order No. 715, FERC Statutes and Regulations ¶ 31,277, at P 40 (2008)).

⁶⁶ *Id.* at 13-14.

public data. In addition, MISO states that transmission owners with forward-looking formula rates meet with stakeholders. MISO argues that the vast majority of stakeholders have access through FERC Form No. 1 to publicly available, audited, and verified data that can be used to confirm the correct implementation of the formula in question. Finally, MISO states that the fact that Attachment O only expressly provides for MISO's review of the accuracy of formula rate inputs is consistent with MISO's role as the transmission provider and the reporting approach established by Order No. 715.⁶⁷

42. MISO TOs argue that the Commission has already determined that the information sharing provisions in MISO's existing protocols provide sufficient opportunity to monitor transmission owners' implementation of their formulas, and are adequate to ensure just and reasonable rates.⁶⁸ Concerning forward-looking formula rate protocols, MISO TOs state that each transmission owner's costs and other inputs included in the projected revenue requirement and annual true-up are posted on each company's page on MISO's OASIS.⁶⁹ According to MISO TOs, this information is provided with necessary detail and in an accessible format to allow interested parties to evaluate the correctness of the inputs and calculations. In addition, MISO TOs assert that all MTEP projects are reported on a project level basis in MISO's annual MTEP reports, and that the timeline provided in Attachment O, for both historical and forward-looking formula rates, allows sufficient time for interested parties to review and evaluate the relevant information. Further, MISO TOs state that supplemental information is made available, to the extent necessary, to interested parties through public meeting or upon request.

43. ITC Companies argue that their existing protocols work well and allow for effective communication with all customers and stakeholders.⁷⁰ In addition, based on their experience with their non-MISO affiliate, ITC Great Plains, which is required to file rate updates on an informational basis, ITC Companies contend that it is not apparent that an informational filing provides stakeholders with additional information to warrant the burden on the filing utility.⁷¹ ITC Companies warn that requiring formula rate updates to

⁶⁷ *Id.* at 14.

⁶⁸ MISO TOs Initial Brief at 19-20 (citing *Xcel*, 121 FERC ¶ 61,284 at PP 24-28).

⁶⁹ *Id.* at 18-19.

⁷⁰ ITC Companies Initial Brief at 16.

⁷¹ *Id.*

be filed with the Commission, even on an informational basis, could erode the efficiencies of formula rates.⁷²

44. ITC Companies also argue that the Commission should not require “formal” discovery procedures on a generic basis throughout MISO.⁷³ ITC Companies contend that their current protocols facilitate an effective exchange of information without the trappings of litigation that could accompany a formal discovery process. ITC Companies state that such a formal process could require transmission owners and their customers to assume a permanent litigation posture that would decrease communication and erode productive relationships.

45. ATC contends that its company-specific protocols approved by the Commission address the Commission’s concerns with respect to transparency, by requiring ATC to: (1) review capital budgets and pre-certification expenditures and activities in detail; (2) provide a detailed budget-to-actual review for capital expenditures and pre-certification expenditures and activities for the previous calendar year; and (3) provide a detailed budget-to-actual and forecast review of expenditures and activities for the current year.⁷⁴ In addition, ATC asserts that it has addressed the issue of transparency by holding annual meetings to discuss the annual revenue requirement and the development of the line item entries in its Attachment O. ATC also states that it posts on its webpage of the MISO OASIS its forecasted revenue requirement as well as the determination of any amounts to be refunded to customers. Further, ATC also states that its protocols were specifically approved by the Commission and concludes that ATC fulfills the Commission’s concerns regarding transparency.

46. ATC states that it entertains numerous questions regarding the development of its revenue requirement and provides additional information to interested parties. In addition, ATC states that it provides a forecast of its revenue requirement for a five-year period “in a comparative manner” that allows interested parties to determine the changes from year to year over a significant period of time. ATC argues that it has addressed all questions raised by any stakeholder.

47. Hoosier Energy adds that while historic cost information that forms the basis for the calculation of formula rates was often publicly available from a transmission owner’s FERC Form No. 1, a transmission owner’s projection of its costs and the basis for that

⁷² *Id.* at 12.

⁷³ *Id.* at 17-18.

⁷⁴ ATC Initial Brief at 5-6.

projection, is not publicly available.⁷⁵ Consequently, interested parties have no means of testing whether such projections and the resultant charges are just and reasonable unless the Commission requires discovery procedures and challenge rights to be put in place. Absent such a requirement, inaccurate projections may force transmission customers to serve as an unwilling source of working capital.

48. Arkansas Electric argues that the formula rate protocols should require transmission owners to submit annual updates and true-up filings, where appropriate, in informational filings. According to Arkansas Electric, formula rate updates should be treated as analogous to changes to stated rates.⁷⁶ Arkansas Electric adds that merely having an annual update posted in MISO's website reduces the ease with which the Commission can perform its duty to ensure lawful rates. Further, in absence of a requirement to file rate adjustments and true-up filings with the Commission, interested parties are forced to assume what should be transmission owners' burden of proof in filing a complaint to obtain the Commission's scrutiny of the proposed changes. Arkansas Electric asserts that such a shift violates the basic principles of ratemaking.⁷⁷

49. In order to provide sufficient transparency, Arkansas Electric states that the MISO formula rate protocols should contain several minimum requirements, and provides a model formula rate protocol which includes these proposals.⁷⁸ Arkansas Electric suggests that each MISO transmission owner be required to make an annual informational filing with the Commission providing the transmission owner's projected transmission revenue requirement for the next rate year.⁷⁹ Arkansas Electric states that the Commission should require transmission owners to provide the filing to its customers, all applicable state commissions, and MISO, which should be required to post the filing on its website and OASIS.

50. Arkansas Electric states that transmission owners should be required to hold public meetings with interested parties to discuss the annual update, and if applicable, a

⁷⁵ Hoosier Energy Initial Brief at 8.

⁷⁶ Arkansas Electric Initial Brief at 13-14; *see also* Hoosier Energy Initial Brief at 8-10.

⁷⁷ Arkansas Electric Initial Brief at 14.

⁷⁸ *Id.* at 15-17; *see also* Hoosier Energy Initial Brief at 10-13.

⁷⁹ Arkansas Electric Initial Brief at 15-16.

separate meeting to discuss the necessary true-up adjustment.⁸⁰ Arkansas Electric also argues that transmission owners should be required to respond to reasonable information requests from interested parties within a specified time period, one that allows sufficient time for several rounds of discovery.⁸¹

51. Arkansas Electric argues that if a transmission owner determines that corrections to the annual update or true-up adjustment are necessary, the owner should be required to notify its customers and the affected regulatory commissions, to file a correction with the Commission, and to provide a copy to MISO for posting.⁸² Further, Arkansas Electric states that interested parties should have the right to seek discovery regarding such corrections. Arkansas Electric also argues that the Commission should also ensure that formula rates remain just and reasonable in light of changes to the underlying predicates on which the formula rates were originally developed.⁸³

52. Jo-Carroll states that current formula rate protocols are “woefully inadequate” because transmission owners provide insufficient information to customers and state regulators and the current protocols provide no discovery rights to obtain additional supporting information.⁸⁴ Jo-Carroll argues that transmission owners should be required to make separate informational filings annually containing their respective projected revenue requirements and true-up adjustments. In addition, Jo-Carroll argues that transmission owners should be required to continue holding open meetings with customers and state commissions. Jo-Carroll recommends that the Commission require transmission owners to respond to reasonable information requests by customers and state commissions within a specified time frame.

53. OMS states that MISO’s review of historical formula rates is limited to a minimalist verification process.⁸⁵ Although OMS acknowledges that forward-looking formula rates generally increase transparency by adding elements such as annual customer meetings to the process, OMS avers that these minor additions to the *pro forma*

⁸⁰ *Id.* at 16.

⁸¹ *Id.* at 16-17.

⁸² *Id.* at 17.

⁸³ *Id.* at 20.

⁸⁴ Jo-Carroll Initial Brief at 9-11.

⁸⁵ OMS Initial Brief at 6-8.

protocols are no longer sufficient to ensure that charges produced by these formula rates are just and reasonable.

54. OMS agrees with the May 17 Order's statements concerning the importance and requirements of transparency.⁸⁶ OMS argues that all formula rate protocols should allow interested parties to challenge transmission owners' FERC Form No. 1 data. OMS explains that FERC Form No. 1 data is the primary data source for both forward-looking and historical protocols, but it is generally accepted by the Commission as filed, but not reviewed. OMS also asserts that, in the context of forward-looking formula rates, all interested parties should have the opportunity to challenge or be included in the development of transmission owners' projections. Finally, OMS contends that the protocols should require in detail the cost data that MISO and the transmission owners should be required to collect and provide to interested parties. OMS argues that such a policy would implement a reasonable measure for controlling costs and provide a meaningful forum to assess the prudence of costs.

55. In the absence of the Commission requiring (1) detailed and comprehensive information provisions and (2) challenge and dispute resolution procedures, OMS recommends that each transmission owner be required to file its annual rate update as a section 205 filing.⁸⁷

56. OMS also argues that the Commission's obligations under the FPA extend beyond ensuring that the formula itself is just and reasonable.⁸⁸ In particular, OMS asserts that the Commission has an obligation to ensure that the charges flowing from the formula rate are and remain just and reasonable. To fulfill this requirement, OMS states that the Commission must take additional steps.⁸⁹ First, OMS suggests that the Commission could direct its staff to participate in the annual formula rate update. Second, OMS suggests that the Commission could commit to conducting audits on each MISO transmission owner's FERC Form No. 1 submittal. Third, OMS states that the Commission could commit to conducting an after-the-fact audit on the charges produced by each transmission owner's annual formula rate update. Fourth, OMS states that the Commission could commit to conducting a thorough review of each transmission

⁸⁶ *Id.* at 11-13.

⁸⁷ *Id.* at 17.

⁸⁸ *Id.* at 20-21.

⁸⁹ *Id.* at 21-22.

owner's annual formula rate informational filing against pre-established criteria and publishing the results of its findings.⁹⁰

57. Industrial Consumers argue that MISO's formula rate protocols do not provide for transparent information exchange.⁹¹ Industrial Consumers argue that stakeholders should be allowed to issue discovery requests to investigate underlying data, calculations, and methodologies supporting the proposed formula inputs. In addition, Industrial Consumers state that workshops should be used to help transmission owners and stakeholders discuss data and inputs.

58. IMEA argues that the formula rate protocols should require that a transmission owner provide all work papers used to derive the net revenue requirement, the details behind all elements of its cost-of-service, as well as a detailed explanation of the transmission owner's accounting policies and practices (which are not provided on FERC Form No. 1).⁹² IMEA cites Commonwealth Edison Company's protocols as illustrative of how MISO's procedures are lacking.⁹³

59. The Indiana Commission argues that the data provided in the annual update and true-up should be enhanced to facilitate analysis by interested parties.⁹⁴ Specifically, the Indiana Commission argues that MISO's formula rate protocols should be revised to include a requirement to report methods for procuring equipment, materials, rights-of-way, and labor at the lowest reasonable cost as well as cost control methodologies employed. In addition, the Indiana Commission recommends that such information be provided in the form of an Excel spreadsheet, be posted on the MISO website, and include a report describing the methods used by transmission owners to assure that the costs of the project were prudently incurred.

60. Interstate Power explains that its transmission service is substantially delivered through the transmission system of ITC Companies, and contends that it is difficult to determine the reasonableness of ITC Companies' formula rate components. Interstate Power states that it projects ITC Companies' rates to increase substantially over the next few years, and expresses concern that the benefits Interstate Power experiences as the

⁹⁰ *Id.* at 22.

⁹¹ Industrial Consumers Initial Brief at 4-5.

⁹² IMEA Initial Brief at 7.

⁹³ *Id.* at 8-9.

⁹⁴ Indiana Commission Initial Brief at 12-14.

transmission customer are not commensurate with these increasing costs. Interstate Power states that more information is necessary to understand the benefits customers receive in exchange for the transmission rates they pay.⁹⁵ To increase transparency, Interstate Power recommends that transmission owners provide customers with detailed reviews and analyses of their formula rates, in addition to non-binding five-year projections of their formula rates. Interstate Power adds that transmission owners should provide an annual analysis of reliability data to determine a performance trend. Further, Interstate Power argues that independent transmission owners be subject to a management audit every two to three years to ensure that transparency goals are met.

61. IMPA argues that regardless of the outcome of this proceeding, the Attachment O formula rate protocols must continue to accommodate ownership arrangements that differ from the investor-owned utility model.⁹⁶ Specifically, IMPA argues that the protocols must continue to recognize the different sources of information used to complete the formula rate templates and not require inappropriate references to forms that are not applicable to some transmission owners.

62. SWEC argues that the current formula rate protocols' lack of transparency impairs the ability of customers to determine whether charges comport with the formula rate.⁹⁷ In particular, SWEC states that it is unclear whether MISO or the transmission owner is responsible for providing cost data to transmission customers requesting support for the annual update and rate for the upcoming year.

63. SWEC urges the Commission to impose several requirements in order to ensure greater participation of interested parties in the annual projection and true-up procedures.⁹⁸ For instance, SWEC asserts that transmission owners should be required to post annual updates on the MISO website, thereby permitting direct interaction between transmission owners and other interested parties. Further, SWEC recommends that the Commission require that transmission owners provide information concerning annual projections and true-ups and require that interested parties receive sufficient time to submit reasonable data requests.⁹⁹ Further, SWEC proposes that the Commission require

⁹⁵ Interstate Power Initial Brief at 6-11.

⁹⁶ IMPA Initial Brief at 2-3.

⁹⁷ SWEC Initial Brief at 78.

⁹⁸ *Id.* at 3-6.

⁹⁹ Also, SWEC cites an instance in which it claims that a MISO transmission owner conditioned its provision of information concerning an annual update on the

transmission owners to submit annual updates to the Commission in the form of an informational filing. In addition, SWEC advocates requiring transmission owners to post their annual updates on the MISO website and to be responsible for the cost support for the posted rate.

64. In order to address the Commission's transparency concerns, Southern Indiana recommends that transmission owners provide interested parties with supporting information for the annual update, including a data-populated version of the formula rate template setting forth the net revenue requirement and load for the following year; supporting workpapers; an explanation of any changes in the transmission owner's accounting policies and practices, as reported in the transmission owner's SEC Form 10-Q; and supporting documentation for the true-up adjustment.¹⁰⁰ In addition, Southern Indiana recommends that transmission owners be required to file annual updates with the Commission on an informational basis that will not require action by the Commission. Southern Indiana also recommends the establishment of a more formal discovery process through which interested parties may request more information and seek clarification regarding the annual update, including information concerning (1) the extent and effect of material accounting changes; (2) the proper allocation of the formula rate; (3) the accuracy of data and consistency with the formula rate of the charges shown in the annual update; (4) the prudence of the transmission owner's costs and expenditures; and (5) the prudence of actual costs and expenditures.

b. Reply Briefs

65. MISO TOs argue that the Commission's authority pursuant to section 205 of the FPA is not ongoing or unlimited.¹⁰¹ MISO TOs argue that utilities are the only parties with rights under section 205 and the Commission has no power to force a utility to file a particular rate unless it first finds that the rate is unlawful.¹⁰² Thus, MISO TOs conclude that, after its initial review, the Commission has no authority under section 205 to review a formula rate or the formula inputs. Consequently, MISO TOs assert that many of the improvements proposed by intervenors (such as requiring informational filings, greater

agreement of SWEC not to use the information in any challenge of the update, in effect marking every document and response it provided as confidential. *Id.*, Kumar Aff. at 14.

¹⁰⁰ Southern Indiana Initial Brief at 4-6.

¹⁰¹ MISO TOs Reply Brief at 5-8.

¹⁰² *Id.* at 7 (citing *Atl. City Elec.*, 295 F.3d 1, 9-10 (D.C. Cir. 2002)).

staff participation and additional audits) are not valid extensions of the Commission's authority under section 205.

66. In addition, MISO TOs state that Commission precedent makes clear that informational filings do not receive the same scrutiny as section 205 filings.¹⁰³ Hence, MISO TOs state that an informational filing requirement would not trigger a section 205 proceeding, and in this regard, interested parties may only resort to a formal complaint to challenge cost data. MISO TOs add that most information relating to annual updates is posted on public websites or is otherwise available.¹⁰⁴

67. Regarding OMS's proposal for the Commission to conduct audits of transmission owners' FERC Form No. 1s, MISO TOs argue that such a requirement is unnecessary.¹⁰⁵ MISO TOs point out that audits are already being conducted and that Attachment O requires transmission owners to have their financial statements independently audited. Additionally, MISO TOs state that the Commission already has authority to audit transmission owners' implementation of their formula rates and the resulting charges.

68. MISO explains its review of transmission owners' populated formula rate templates.¹⁰⁶ MISO states that it ensures that the populated Attachment O is populated in conformance with the Tariff by verifying that the amounts reported on the Attachment O correspond to the amounts reported on the FERC Form No. 1, Rural Utilities Service (RUS) Form 12 and Energy Information Administration (EIA) Form 412 financial statements. MISO states that it also verifies that any amounts not reflected in these financial statements are supported by other worksheets and will also require a transmission owner to provide supporting information in the event that there is a significant anomalous change in a line item as compared to the prior year. However, MISO states that any further review of accounting treatment of the inputs to FERC Form No. 1 is beyond the scope of MISO's review.

69. Industrial Consumers contend that MISO's review of the populated protocols is insufficient because it appears to be limited to verifying that the inputs match the relevant FERC Form No. 1. Industrial Consumers argue that this is insufficient because there

¹⁰³ *Id.* at 8-9 (citing *Maine Pub. Serv. Co.*, 132 FERC ¶ 61,061, at PP 8, 10 & n.11 (2010)).

¹⁰⁴ *Id.* at 9.

¹⁰⁵ *Id.* at 10-11.

¹⁰⁶ *Id.* at 8-9.

could be questions regarding the appropriateness of booking a particular cost to a given account and regarding whether a particular cost was prudently incurred.¹⁰⁷

70. Industrial Consumers argue that the issue at hand is not whether the Attachment O inputs have been completed accurately to reflect publicly available inputs, but whether the costs making up those inputs were reasonably booked to particular accounts and whether those costs were prudently incurred.¹⁰⁸ Industrial Consumers posit that interested parties need the opportunity to conduct reasonable discovery on information and calculations used to develop updated inputs.

71. OMS disagrees with characterizations of FERC Form No. 1 data as objective and providing significant safeguards against improper implementation and, instead, argues that the fact that FERC Form No. 1 data is publicly available does not necessarily ensure just and reasonable rates.¹⁰⁹ OMS states that the figures and expenditures that make up FERC Form No.1 data are not subject to challenge and are simply accepted by the Commission as filed. OMS argues that this runs counter to the Commission's previous findings that customers should have the ability to challenge the prudence of costs.¹¹⁰ OMS asserts that the ability of customers to challenge the underlying figures in an update filing is critical because the population of FERC Form No. 1 is, to a degree, subject to the interpretation of the company producing the document. Specifically, the manner in which the company arrives at these company-specific figures is subject to subtleties and nuances. Though MISO reviews the populated formula rate templates, OMS contends that such review is insufficient.

72. OMS argues that while it is good that many utilities have voluntary procedures, such procedures only work when the utility is willing to provide its customers with the information.¹¹¹ Moreover, OMS adds that voluntary provisions are unlikely to address the informational needs of interested parties located outside the transmission owner's zone that are subject to regional cost allocations. Without formalized discovery procedures, OMS asserts that customers could be left relying on the goodwill of the

¹⁰⁷ Industrial Consumers Reply Brief at 2-3.

¹⁰⁸ *Id.* at 3-4.

¹⁰⁹ OMS Reply Brief at 4-6.

¹¹⁰ *Id.* at 4-5 (citing *Northeast Utils. Serv. Co.*, 62 FERC ¶ 61,294, at 62,906 (1993)).

¹¹¹ *Id.* at 7-10.

transmission owner to obtain necessary information, as demonstrated by the experiences of Interstate Power and SWEC.¹¹² In addition, OMS argues it is unreasonable to allow transmission owners to condition the release of information on commitments by customers not to use such information in any challenge of the annual update. According to OMS, all interested parties must have a right documented in a formula rate protocol to obtain information so they can determine not only that the transmission owner has properly entered in FERC Form No. 1 data in its formula rate but also that the expenditures reflected in the FERC Form No. 1 data were reasonable and prudently incurred.

73. Hoosier Energy states that while MISO may have no incentive to favor a transmission owner, it also has no incentive to protect transmission customers.¹¹³ While MISO's review is limited to consistency with transmission owners' financial reporting forms, Hoosier Energy argues that customers have an interest in understanding the costs and calculations that comprise the financial reporting data to ensure that the recorded costs are prudent and reasonable. Further, Hoosier Energy argues that the public availability of related data is insufficient to enable customers to test the reasonableness and prudence of a transmission owner's expenditures and resulting rates. Hoosier Energy argues that transmission owners' claim that they allow customers to participate in the update and true-up processes is distinct from providing interested parties with a right to ask questions and a right to insist on receiving answers.¹¹⁴

74. IMEA states that the argument that there are sufficient opportunities for participation by customers fails on several grounds.¹¹⁵ First, IMEA states that it is in MISO's and the transmission owners' interest to avoid the imposition of additional procedures, because under the current protocols, the transmission owners have wide discretion as to what information to divulge and when and how to respond to ratepayers' and other interested parties' concerns. Further, IMEA states that the public availability of data belies the point that customers need access to detailed information including the cost and accounting adjustments that support the inputs. IMEA states that the burden of proof for rate changes lies with the utility; however, the current protocols allow the transmission owners to escape most, if not all of the statutory burden. IMEA also asserts that the fact that errors can be corrected later is no solution because finding such errors is

¹¹² *Id.* at 8-9.

¹¹³ Hoosier Energy Reply Brief at 3-4.

¹¹⁴ *Id.* at 2-3.

¹¹⁵ IMEA Reply Brief at 5-6.

“difficult at best” and the appropriate time for identifying such errors is when the changes are made.

75. IMEA argues that MISO and the MISO transmission owners are essentially attempting to prevent the Commission and ratepayers from exercising a legally guaranteed right to closely inspect rate changes. Further, IMEA states that the regulated utilities should not be heard to argue that because there has been (as yet) no serious problem brought to light, change is not needed. According to IMEA, one reason no problem has come to light might well be that efficient means to expose and correct such problems is lacking.¹¹⁶

76. Jo-Carroll argues that more detailed protocols pose no threat to ITC Companies because such revisions would merely require ITC Companies to do what they claim to be doing voluntarily.¹¹⁷ Further, Jo-Carroll states that ITC Companies offer no evidentiary support at all for their assertion that more detailed protocols would be burdensome. Finally, Jo-Carroll argues that, contrary to the assertion of ITC Companies, additional procedures would facilitate effective communication by providing as much equality of information as possible and leverage for all parties.¹¹⁸

77. Arkansas Electric argues that requiring additional protections to be provided in the formula rate protocols would not be overly burdensome.¹¹⁹ Arkansas Electric contends that, contrary to ITC Companies’ assertion, even requiring transmission owners to submit their annual updates in their formula rates would not create additional burdens without a corresponding improvement in transparency. Arkansas Electric argues that requiring annual updates to be submitted as informational filings is critical to ensuring that participation is not inappropriately limited. Arkansas Electric further argues that given ITC Companies’ claim that it has responded to hundreds of initial and follow-up questions, it is unclear what the incremental burden of doing so under a formal process would be.¹²⁰ To avoid disputes, Arkansas Electric suggests that that the protocols be

¹¹⁶ *Id.* at 8-9.

¹¹⁷ Jo-Carroll Reply Brief at 4.

¹¹⁸ *Id.*

¹¹⁹ Arkansas Electric Reply Brief at 2-4.

¹²⁰ *Id.* at 5.

revised to give customers the formal right and impose a corresponding obligation upon transmission owners to answer questions regarding the annual updates and true-ups.¹²¹

78. ITC Companies argue that those parties that propose to require transmission owners' annual updates and true-ups to be filed with the Commission on an informational basis have not adequately supported their proposed revisions.¹²² ITC Companies contend that subjecting informational filings to notice, comment, and eventual adjudication by the Commission would transform those filings into the functional equivalent of full cost-of-service rate cases, which would constitute an unjustified departure from the Commission's formula rate precedent.¹²³ ITC Companies further assert that none of the parties advocating revision of the protocols have articulated any meaningful benefit that would be provided by an informational filing. Specifically, ITC Companies state that they are unclear how requiring annual updates and true-ups to be filed as informational filings would provide any party with information it is not otherwise able to receive under the normal course of the existing process, thereby improving the scope of participation.

79. ITC Companies argue that Jo-Carroll has no standing to argue that ITC Companies' protocols are deficient because Jo-Carroll does not participate in ITC Companies' "Partners in Business" stakeholder process, adding that it is not aware of Jo-Carroll submitting a single follow-up question or data request about any rate projection or true-up.¹²⁴ ITC Companies argue that the other changes requested by Jo-Carroll are either already provided as part of the existing protocols or are otherwise unwarranted.

80. ITC Companies argue that Interstate Power's criticism of ITC Companies' protocols represent an attempt to re-litigate a previous complaint.¹²⁵ ITC Companies add

¹²¹ *Id.* at 5-6.

¹²² ITC Companies Reply Brief at 6-7. ITC Companies recall that, pursuant to section 206 of the FPA, the burden of demonstrating that any rate or charge is unjust and unreasonable shall be upon the Commission or the complainant. *Id.* at 1-4.

¹²³ *Id.* at 6-7 (citing *Maine Pub. Serv. Co.*, 132 FERC ¶ 61,061 (2010)). ITC Companies argue that the Commission has historically refused to act on or notice informational filings because formula rate protocols provide specific procedures for notice, review and challenges.

¹²⁴ *Id.* at 16.

¹²⁵ *Id.* at 12-14 (citing *Interstate Power & Light Co. v. ITC Midwest, LLC*, 135 FERC ¶ 61,162 (2011)).

that the Commission should reject estimated revenue requirements for ITC Companies provided by Interstate Power because: (1) those rate estimates are not germane to this proceeding; (2) Interstate Power's rate estimates are entirely unsupported; and (3) Interstate Power has never brought its alleged discrepancy to ITC Companies for assistance in order to gain a better understanding.

c. Commission Determination

81. We find that MISO's formula rate protocols provide insufficient transparency with respect to information about the transmission owners' costs and revenue requirements. Having reviewed and considered the various arguments raised in the briefs filed, we find that the transparency currently provided by the MISO formula rate protocols is insufficient to ensure that transmission customers pay just and reasonable rates. The Commission, therefore, directs MISO and the MISO transmission owners to revise the formula rate protocols to provide greater transparency, as discussed below.

82. MISO's protocols for its historical formula rates give only MISO the opportunity to review the transmission owner's completed formula rate template. The forward-looking formula rate protocols generally provide that the transmission owner will make available its projected net revenue requirement and the inputs in sufficient detail to identify the components of the transmission owner's net revenue requirement. Under the forward-looking protocols, the transmission owner is also generally required to hold a customer meeting explaining the formula rate projections and cost detail, and to post the true-up adjustment, frequently-asked questions, and related calculations on MISO's OASIS no later than June 1 following the submittal of the FERC Form No. 1 for the previous year.

83. Both a formula rate and its inputs must be transparent; it is essential to their being just and reasonable.¹²⁶ The formula rate's inputs, including supporting documentation and allocations, should be either taken directly from publicly available data such as the

¹²⁶ Cf., e.g., *NSTAR Elec. Co.*, 123 FERC ¶ 61,270, at P 12 & n.14 (2008) (stating that the requirement to have all sheets of a formula rate template filed, not only the summary data sheet, promotes formula rate transparency); *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,194, at P 47 & n.36 (2005); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053, at P 120 & nn.104-05 (2005) (explaining that a formula is sufficiently clear when all parties can determine what costs go into the rate and how it will be calculated); *accord Illinois Power Co.*, 52 FERC ¶ 61,162, at 61,621-25 (1990) (explaining that a fuel adjustment clause, a type of formula rate, is to be strictly construed, and the costs permitted to be recovered are only those costs expressly specified; cost recovery does not encompass any cost "not patently precluded.").

FERC Form No. 1, or be reconcilable to publicly available data such as FERC Form No. 1, by the application of clearly identified and supported documentation.¹²⁷ To this end, to be just and reasonable, the MISO formula rate protocols must be revised to provide interested parties with the information necessary to understand and evaluate the implementation of the formula rate for either the correctness of inputs and calculations, or the reasonableness of the costs to be recovered in the formula rate.¹²⁸ Such revisions should enable interested parties to replicate the formula rate as implemented by the transmission owners. Regarding those entities who do not file FERC Form No. 1, we agree with IMPA that the protocols should continue to recognize, as they currently do, the different sources of information used to complete the formula rate templates and not require inappropriate references to forms that are not applicable to some transmission owners.

84. We reject the arguments made by certain parties that, after its initial review, the Commission has no authority under section 205 of the FPA to review a formula rate or the formula rate inputs, as well as the arguments that it is beyond the Commission's authority to require informational filings, additional audits, etc.¹²⁹ Transmission owners are responsible under the FPA for demonstrating that the charge produced by a formula rate complies with the requirements of section 205. Further, the Commission has discretion to prescribe the manner in which public utilities are to make available their books and records to the Commission.¹³⁰ We find that, pursuant to the FPA, and

¹²⁷ Order No. 715, FERC Stats. & Regs. ¶ 31,277 at P 34 (requiring formula rates for which no informational filing is required to provide explanatory information when formula rate inputs differ from FERC Form No. 1 reported amounts). We note that utilities that are required to make regular informational filings by their formula rates, a Commission-approved settlement, or other Commission order need not provide footnotes. *Id.* P 37.

¹²⁸ See *PPL Elec. Utils. Corp.*, 149 FERC ¶ 61,231, at PP 70-82 (2012) (finding that PPL has not fully explained or supported certain proposed annual updates to its formula rate).

¹²⁹ See *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053 at P 120 & n.105 (explaining that although the Commission's acceptance of a formula rate authorizes a utility to use the formula rate on an ongoing basis, the costs used in applying the formula rate are not part of the rate and are subject to both challenge and review).

¹³⁰ See, e.g., 16 U.S.C. §§ 825, 825h (2006) (providing that public utility books and records shall be kept as the Commission prescribes, and that the Commission shall at all times have access and the right to inspect and examine them, and also providing that the Commission may prescribe the form of all statements and reports to be filed with the

(continued...)

exercising such discretion, the Commission does, in fact, have the authority to require utilities to make available detailed information regarding their formula rates and inputs.¹³¹

85. We also reject the arguments that the annual informational filings constitute stated rates and therefore require Commission approval. The Commission has explained that annual formula rate updates and informational filings are not themselves rates and do not constitute changes in the underlying rate itself (that is, the formula, which is the rate) and thus are not section 205 filings that require Commission approval.¹³²

86. To be just and reasonable, we find that MISO's protocols for both historical and forward-looking formula rates must require transmission owners to post their revenue requirements and relevant information, on both MISO's website and OASIS, and then hold an annual meeting open to all interested parties, where the transmission owners can explain and those parties can review and discuss the transmission owner's calculations.¹³³

Commission and the information which they shall contain as well as their timing); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197, at P 52 (2005) (finding that Congress granted the Commission the discretion to prescribe the manner in which holding companies and their associated and affiliate companies are to "maintain" and "make available" their books and records to the Commission and to prescribe "the form or forms of all statements, declarations, applications, and reports to be filed with the Commission"), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, *order on reh'g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007); *accord Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005*, Order No. 684, FERC Stats. & Regs. ¶ 31,229 (2006).

¹³¹ See *Idaho Power Co.*, 115 FERC ¶ 61,281, at P 29 (2006) (requiring Idaho Power Company to provide tariff requirements for an informational filing with the Commission detailing protocols for information exchange and provide the transmission owners' customers with the ability to review and challenge the inputs to the formula, along with supporting workpapers).

¹³² See *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,544-545 (1994).

¹³³ See *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 30 (2008) (stating that Virginia Electric and Power Company's process provides opportunity for (1) parties to review company-provided data relating to annual update and true-up adjustment in a timely manner, (2) parties to discuss costs during public customer meetings and

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The MISO formula rate protocols must include greater detail regarding the financial and cost information upon which a transmission owner's rates are developed.¹³⁴ Specifically, the protocols must require utilities to provide underlying data and calculations supporting all inputs that are not supported in the FERC Form No. 1 or in other Tariff schedules in formula rate annual updates and, where applicable, true-ups.¹³⁵ In addition, the protocols for forward-looking formula rates must continue to clearly specify the transmission owner's true-up procedures. Further, the annual update must provide interested parties information about the transmission owners' implementation of the formula rate in sufficient detail and with sufficient explanation to demonstrate that each input to the formula rate is consistent with the requirements of the formula rate, without forcing interested parties to make extensive information requests to understand the transmission owner's implementation of the formula rate and to verify its correctness.¹³⁶

87. In addition, to ensure that the appropriate level of transparency regarding the financial and cost information from which the charges are developed, the Commission finds that the MISO formula rate protocols must require transmission owners to disclose any change in accounting during the rate period that affects inputs to the formula rate or the resulting charges billed under the formula rate. Specifically, a change in accounting may involve: (1) the initial implementation of an accounting standard or policy; (2) the initial implementation of accounting practices for unusual or unconventional items where

(3) company responses to requests for further information, before challenges are made to the Commission).

¹³⁴ See *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 74 (2007) (stating that Duquesne must post on its website updates to its formula rate and provide detailed accounting of costs).

¹³⁵ For instance additional data and calculations must be provided for formula rate items, such as accumulated deferred income taxes, that require adjustments from FERC Form No. 1 data. Utilities must also provide underlying data for formula rate inputs that require greater granularity than is required in the FERC Form No. 1. For example, taxes other than income taxes and prepayments formula rate inputs may require identification of plant-and labor-related sub-amounts for application of different allocators. Similarly, greater granularity is typically required for certain administrative and general expense inputs, revenue credits, and rate divisors. Additionally, utilities must provide data underlying all thirteen-month average balances used in formula rate updates and true-ups.

¹³⁶ All populated formula templates and underlying workpapers should be provided in their native format, including all worksheets with all formulas and links intact (i.e., workable).

the Commission has not provided specific accounting direction; (3) corrections of errors and prior period adjustments; (4) the implementation of new estimation methods or policies that change prior estimates; and (5) changes to income tax elections. The formula rate protocols must also provide for identification of items included in the formula rate at an amount other than on a historical cost basis, e.g., fair value adjustments. In addition, the formula rate protocols must provide for identification of any reorganization or merger transaction and explain the effect of the accounting for such transactions on inputs to the formula rate. To the extent these accounting changes and other matters affect a transmission owner's inputs to its formula rate, the transmission owner must provide a narrative explanation of the individual impact of those items on charges billed under the formula rate.

88. The added transparency provided by enhanced formula rate protocols will assist interested parties' and the Commission's abilities to understand and evaluate the correctness of inputs and calculations, and the reasonableness of the costs to be recovered in the formula rate. We also note that Commission staff will continue to conduct FERC Form No. 1 and formula rate audits to ensure consistency with Commission rules and regulations, orders and policies, and individual companies' formula rate tariffs.¹³⁷ However, based on the experience of prior audits and the enhanced transparency that can be achieved from implementation of formula rate protocols with the elements discussed above, the Commission does not find it necessary at this time to annually audit every transmission owner's FERC Form No. 1 and formula rate within MISO as suggested by OMS.¹³⁸ In addition the Commission's staff reviews informational filings that the Commission requires be made.

¹³⁷ See 16 U.S.C. § 825 (2006) (Commission may prescribe accounting requirements, and has the right to inspect and examine company accounts and records). For the past 4 years, the Commission's audit program has included audits of companies with formula rate recovery mechanisms as one of its top priorities. Currently, ongoing audits evaluating the formula rates of MISO transmission owners include audits of Ameren Illinois Company (FA13-1-000), Union Electric Company (FA13-2-000), Southern Indiana Gas and Electric Company (PA13-2-000), Southwestern Public Service Company (FA13-4-000), and Exelon Corporation (PA 13-15-000).

¹³⁸ Commission staff has completed formula rate audits of MISO transmission owners through comprehensive formula rate audits and other audits where findings of non-compliance affect formula rate billings, e.g. audits of the FERC Form No. 1, merger transactions, transmission rate incentives, and fuel adjustment clauses. Recently Commission staff has completed audits that evaluated the formula rates of Xcel Energy Services, Inc. (PA11-11-000), Interstate Power and Light Company (FA11-14-000), ITC

(continued...)

89. The Commission also finds that interested parties must be afforded the opportunity to request further information regarding transmission owners' accounting practices to the extent the accounting impacts items included in the determination of the annual revenue requirement. However, we will not adopt commenter proposals that transmission owners be required to revise their formula rate protocols to require submission of detailed explanations of all of their accounting practices, in addition to disclosures currently required in the FERC Form No. 1.¹³⁹ All public utilities' accounting practices are already required to follow the Uniform System of Accounts (USofA),¹⁴⁰ and are subject to audit by the Commission.¹⁴¹ Consequently, the need for more detailed disclosure and the ability to challenge accounting practices is limited to accounting practices that impact inputs to the formula rate, including changes in accounting practices about which transmission owners will be required to submit information pursuant to the revised formula rate protocols.

90. We will not require transmission owners to provide five-year rate projections, or provide an annual analysis of reliability data. Such requirements go beyond a review of the formula rate's inputs and thus beyond the scope of this proceeding. However, in response to Indiana Commission's concerns, we find that during the review period, interested parties must be allowed to obtain upon request information on procurement methods and cost control methodologies used by transmission owners in order to facilitate interested parties' analysis of whether the transmission owners' costs were prudently incurred.

91. We will require MISO to specify in its protocols an adequate time period for interested parties to review information following its posting on OASIS and MISO's website. During this review period, interested parties must have the right to serve reasonable information and document requests on the transmission owner, provided that they are relevant to the implementation of the formula rate. MISO must also include a

Holdings Corp. (PA10-13-000), and American Transmission Systems, Inc. (FA11-8-000).

¹³⁹ Public utilities subject to the FERC Form No. 1 reporting requirements must disclose information on significant accounting practices and principles. *See* Instructions to the Notes to the Financial Statements, schedule pages 122 -123.

¹⁴⁰ 18 C.F.R. Part 101 (2012).

¹⁴¹ *See Procedures for Disposition of Contested Audit Matters*, Notice of Proposed Rulemaking, FERC Stats. & Regs., Proposed Regulations 2004-2007 ¶ 32,592, at P 3 (2005) (describing the types of accounts and records subject to audit by FERC staff).

requirement that the transmission owner make a good faith effort to respond to information requests within a set, reasonable period of time. In the event that a dispute arises that cannot be resolved during the review period, parties must be allowed to initiate challenge procedures, to be discussed in the following section.

92. Further, we will require that MISO's formula rate protocols include a requirement that transmission owners make annual informational filings of their formula rate updates with the Commission.¹⁴² This informational filing must be made following the time period allowed for parties to review the updates and for transmission owners to respond to information and document requests, and must include any corrections or adjustments made during that period. The informational filing must also make note of any aspects of the formula rate or its inputs that are the subject of an ongoing dispute under the challenge procedures. The MISO formula rate protocols must specifically provide that the informational filing include the information that is reasonably necessary to determine: (1) that input data under the formula rate are properly recorded in any underlying workpapers; (2) that the transmission owner has properly applied the formula rate and the procedures in the protocols; (3) the accuracy of data and the consistency with the formula rate of the actual revenue requirement and rates (including any true-up adjustment) under review; (4) the extent of accounting changes that affect formula rate inputs; and (5) the reasonableness of projected costs included in the projected capital addition expenditures (for forward-looking formula rates). These criteria must also apply to the information transmission owners are required to provide to customers during the review period.

3. Challenge Procedures

93. In the May 17 Order, the Commission observed that the historical and forward-looking protocols in Attachment O of the MISO Tariff do not contain specific provisions for parties to challenge a transmission owner's implementation of the formula rate.¹⁴³ Rather, customers must either utilize the generic dispute resolution procedures under Attachment HH of the Tariff or file a complaint with the Commission pursuant to section 206 of the FPA. As a result the Commission explained that, in order to be just and reasonable, the MISO formula rate protocols may need to provide specific procedures by which interested parties could challenge disputes related to a transmission

¹⁴² Except as provided otherwise in the utilities' tariffs or protocols, the Commission will consider these informational filings to be just that, informational. Challenges to the implementation of the formula rates or to the formula rates themselves should be made through the challenge procedures discussed below or in a separate complaint, as appropriate.

¹⁴³ May 17 Order, 139 FERC ¶ 61,127 at P 18.

owner's revenue requirement without needing to file a complaint with the Commission pursuant to section 206 of the FPA.¹⁴⁴

a. Initial Briefs

94. Several intervenors observe that section 206 of the FPA and Attachment HH of the Tariff are the only procedural avenues through which customers can challenge implementation and costs reflected in a transmission owner's formula rate.¹⁴⁵ Industrial Customers, for example, contend that the absence of informal and formal challenge procedures in the MISO formula rate protocols calls their justness and reasonableness into question.¹⁴⁶

95. Moreover, intervenors contend that neither avenue provides sufficient protection to ratepayers. For instance, OMS argues that requiring interested parties to file a complaint with the Commission in order to challenge a transmission owner's annual update or true-up imposes an "exceedingly high informational hurdle on an interested party."¹⁴⁷ OMS also contends that requiring interested parties to rely on section 206 complaints would improperly shift the burden of proof concerning the justness and reasonableness of the annual update from the transmission owner to the customer or pertinent interested party.¹⁴⁸ Similarly, Hoosier Energy and the Indiana Commission point out that section 206 complaint proceedings are both expensive and time-consuming, and thus induce an additional burden on interested parties that challenge a transmission owner's annual update.¹⁴⁹

¹⁴⁴ *Id.* PP 18-20.

¹⁴⁵ *See, e.g.*, Hoosier Energy Initial Brief at 13-15; IMEA Initial Brief at 9-10; Indiana Commission Initial Brief at 14; Jo-Carroll Initial Brief at 14; *cf.* Arkansas Electric Initial Brief at 18 (arguing that the MISO formula rate protocols include no challenge procedures).

¹⁴⁶ Industrial Consumers Initial Brief at 5.

¹⁴⁷ OMS Initial Brief at 15; *see also* Indiana Commission Initial Brief at 14; Interstate Power Initial Brief at 13.

¹⁴⁸ OMS Initial Brief at 15-16 (citing *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,068, at P 63 (2012)); *see* Indiana Commission Initial Brief at 14.

¹⁴⁹ Hoosier Energy Initial Brief at 13; Indiana Commission Initial Brief at 14.

96. OMS and the Indiana Commission additionally take issue with the dispute resolution procedures provided in Attachment HH of the Tariff.¹⁵⁰ Indiana Commission argues that Attachment HH appears to be designed to resolve disputes between MISO and its members or, alternatively, disputes between MISO members.¹⁵¹ OMS asserts that Attachment HH appears to be designed to address unusual conflicts, requiring the use of committees and other procedural steps that are tailored to each individual dispute. OMS observes that the practicality of relying on Attachment HH to resolve disputes arising from formula rate updates is, therefore, questionable. Further, because “the rules and procedures under Attachment HH are not explicit or codified,” OMS explains that the arbiter or judge charged with overseeing the process is bestowed with a great deal of discretion. As a result, OMS concludes that “a transmission owner facing multiple challenges to its formula rate update could be involved in a different process for each challenge and receive a different outcome in cases sharing the same set of facts.”¹⁵² Interstate Power adds that the process set forth in Attachment HH does not provide for challenges to be resolved in a binding manner efficiently.¹⁵³

97. A variety of intervenors propose improvements to the challenge procedures provided in the MISO formula rate protocols. OMS, Arkansas Electric, Hoosier Energy, and Jo-Carroll all advocate the creation of a dispute resolution process overseen by the Commission or an Administrative Law Judge.¹⁵⁴ Further, several of the proposals combine an informal process by which interested parties could challenge a transmission owner’s annual update and a formal challenge procedure before the Commission or a Commission-appointed Administrative Law Judge.¹⁵⁵ For instance, Interstate Power recommends that the MISO formula rate protocols require MISO and transmission owners to attempt in good faith to resolve informal challenges raised by interested parties. If, after 60 days, the dispute cannot be resolved, Interstate Power supports

¹⁵⁰ OMS Initial Brief at 16-17; Indiana Commission Initial Brief at 13-14.

¹⁵¹ Indiana Commission Initial Brief at 13-14.

¹⁵² OMS Initial Brief at 16-17.

¹⁵³ Interstate Power Initial Brief at 13-14.

¹⁵⁴ OMS Initial Brief at 17; Arkansas Electric Initial Brief at 18; Hoosier Energy Initial Brief at 13; Jo-Carroll Initial Brief at 12-13.

¹⁵⁵ *See, e.g.*, Industrial Consumers Initial Brief at 5; Indiana Commission Initial Brief at 14; Interstate Power Initial Brief at 14; SWEC Initial Brief at 9; Southern Indiana Initial Brief at 6-7.

permitting the interested party to file a complaint at the Commission in which the transmission owner would bear the burden of proving that it has reasonably applied the terms of the formula rate and the true-up calculations.¹⁵⁶ OMS, Industrial Consumers, and Jo-Carroll all similarly support the prospect of requiring the transmission owner or MISO to bear the burden of proof in the context of formal challenge procedures.¹⁵⁷

98. SWEC describes specific difficulties it has experienced in attempting to challenge costs recovered through a transmission owner's formula rate. In particular, SWEC states that it discovered errors in the transmission owner's formula rate submissions to MISO and initiated dispute resolution procedures under the Tariff. SWEC further explains that it experienced significant confusion because the applicable protocol did not specify a timeline for such a challenge. To eliminate such difficulties faced by transmission customers and other interested parties, SWEC suggests that the addition of specific procedures for challenging the costs recovered through a formula rate will spare interested parties the confusion in challenging transmission owners' annual updates.¹⁵⁸

99. Southern Indiana, however, warns that interested parties may not challenge the prudence of a transmission owner's annual update as an alternative to the section 206 process.¹⁵⁹ According to Southern Indiana, Commission policy regarding prudence reviews provides that managers of a utility have broad discretion in incurring the costs necessary to provide services to their customers. As a result, Southern Indiana states that costs incurred by a transmission owner are presumed to be prudent unless a party raises a reasonable doubt about them.¹⁶⁰ Furthermore, Southern Indiana claims that the initial

¹⁵⁶ Interstate Power Initial Brief at 14.

¹⁵⁷ OMS Initial Brief at 17; Industrial Consumers Initial Brief at 5; Jo-Carroll Initial Brief at 12-13. IMEA also supports requiring MISO or the relevant transmission owner to bear the ultimate burden of proving it has reasonably applied the terms of the formula rate and adhered to the procedures set forth in the pertinent formula rate protocols. IMEA Initial Brief at 13.

¹⁵⁸ SWEC Initial Brief at 910.

¹⁵⁹ Southern Indiana Initial Brief at 8.

¹⁶⁰ *Id.* at 8 (citing *New England Power Co.*, Opinion No. 231, 31 FERC ¶ 61,047 (1985); *Public Service Co. of Colorado*, 90 FERC ¶ 61,285, at 61,960 (2000)).

burden of proof as to whether a utility's costs are excessive rests with the party making the allegations.¹⁶¹

100. IMEA states that the MISO formula rate protocols "should be designed to ensure that, if errors are made, as for example to entries to FERC Form No. 1, the corrections and revisions to the rates will be assessed back to the date the error was made."¹⁶²

101. Some parties, in contrast, suggest that the MISO formula rate protocols establish sufficient challenge procedures.¹⁶³ As an initial matter, MISO notes that the Tariff was not designed to offer a procedural alternative to a formal complaint proceeding in order to resolve disputes. Thus, MISO points out that the addition of detailed challenge procedures could create a substantial new burden on all transmission owners, including small municipals and cooperatives. Moreover, MISO notes that such an imposition may be unnecessary because many transmission owners already work closely with state utility commissions.¹⁶⁴ ITC Companies argue that the MISO formula rate protocols need not be revised because interested parties may already utilize the procedures set forth in Attachment HH of the Tariff and file a complaint pursuant to section 206 of the FPA.¹⁶⁵ MISO and MISO TOs each point out that the Attachment HH dispute resolution procedures can be used to address any interested party's challenge to a transmission owner's annual update.¹⁶⁶ Furthermore, some argue that the existing protocols allow

¹⁶¹ *Id.* (citing *Indiana and Michigan Mun. Distributions v. Indiana Michigan Power Co.*, 62 FERC ¶ 61,189, at 62,239 (1993)).

¹⁶² IMEA Initial Brief at 10. IMEA also argues that requiring transmission owners to revise their formula rate protocols would not be unduly burdensome because detailed protocols that exist in other regions. Further, IMEA claims that revision will benefit both transmission owners and customers by establishing a better means to identify errors that may otherwise go uncorrected. *Id.* at 12.

¹⁶³ See MISO TOs Initial Brief at 21-23; MISO Initial Brief at 15-16; ATC Initial Brief at 8-9; ITC Companies Initial Brief at 19-20.

¹⁶⁴ MISO Initial Brief at 15-16.

¹⁶⁵ ITC Companies Initial Brief at 19. ITC Companies additionally argues that the possibility that a customer could resort to filing a complaint pursuant to section 206 of the FPA provides transmission owners with an important incentive to address and resolve any concerns. *Id.*

¹⁶⁶ MISO TOs Initial Brief at 21, 23; MISO Initial Brief at 15.

interested parties ample time to review data, ask questions, receive answers, and resolve whatever disputes may arise.¹⁶⁷ MISO TOs further assert that interested parties are free to contact either MISO or the relevant transmission owner informally to discuss questions and address possible concerns regarding a transmission owner's implementation of its formula rate.¹⁶⁸ MISO TOs additionally note that customers and other entities can either contact the Commission's hotline or utilize the Commission's alternative dispute resolution services.¹⁶⁹ Finally, MISO TOs posit that the fact that no customer has filed a complaint despite the Commission's express invitation to do so belies any concerns regarding the implementation of the historic formula rate template in Attachment O of the Tariff.¹⁷⁰

102. ATC argues that its formula rate protocols provide adequate challenge procedures. In support of this position, ATC states that it entertains numerous questions regarding the development of its revenue requirement and provides additional information to interested parties. Additionally, ATC states that it provides a forecast of its revenue requirement for a five-year period "in a comparative manner" that allow interested parties to determine the changes from year to year over a significant period of time. ATC argues further that it has addressed all questions raised by any stakeholder. ATC contends that the fact that no disputes of any kind have arisen relating to its protocols in the time since they were approved by the Commission demonstrates that the lack of specific dispute resolution provisions does not render its rates unjust and unreasonable.

103. Finally, ITC Companies warn against adding unnecessary layers of process and formality to the existing annual update procedures.¹⁷¹ ITC Companies explain that the existing protocols are governed by a timeline that allows load-serving entities to incorporate the projected rate into their retail rate, budgeting processes, and financial planning. ITC Companies add that significant revision to the challenge procedures in the MISO formula rate protocols could disrupt the temporal alignment of these respective wholesale and retail rate processes.

¹⁶⁷ See MISO TOs Initial Brief at 22; ITC Companies Initial Brief at 19.

¹⁶⁸ MISO TOs Initial Brief at 21, 23.

¹⁶⁹ *Id.* at 21.

¹⁷⁰ *Id.* at 21-22 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,147, at P 34 (2012), *Otter Tail Power Co.*, 137 FERC ¶ 61,255, at P 23 (2011); *MidAmerican Energy Co.*, 137 FERC ¶ 61,250, at P 71 (2011)).

¹⁷¹ ITC Companies Initial Brief at 20.

b. Reply Briefs

104. MISO TOs argue that the Commission should reject the requests of OMS and others to require a company-specific process for interested parties to challenge input data and prudence because such a proposal is inconsistent with the Commission's policy on prudence reviews and there is a process already provided for such challenges under MISO's protocols.¹⁷² According to MISO TOs and ITC Companies, the Commission's long-standing policy governing prudence review requires the costs incurred by a utility to be presumed prudent unless a party raises a reasonable doubt about those costs.¹⁷³ MISO TOs contend that interested parties that are unable to resolve disputes with the transmission owners informally must bring a complaint pursuant to section 206 of the FPA to challenge the prudence of formula rate inputs formally.¹⁷⁴ ITC Companies conclude, therefore, that adoption of the formal challenge procedures requested by parties in this proceeding would shift these traditional burdens.

105. MISO TOs refute the allegation that the formula rate protocols lack challenge procedures. MISO TOs state that the existing protocols provide several avenues for interested parties to challenge a transmission owner's implementation of the formula rate, including informal discussions with the transmission owner or MISO, Attachment HH dispute resolution procedures, the Commission's Enforcement Hotline and Alternative Dispute Resolution Service, and section 206 complaint proceedings. Finally, MISO TOs point out that IMEA's repeated reference to transmission owners changing the formula rates are incorrect because annual changes to rate inputs do not constitute changes to the rate, which is comprised of the formula.¹⁷⁵

¹⁷² MISO TOs Reply Brief at 15-19. MISO TOs state that their existing protocols and MISO's current practices for both the historical and forward-looking formula rates permit interested parties to obtain the information necessary to evaluate whether to make a formal prudence challenge under section 206 of the FPA. *Id.* at 17 (citing MISO TOs Initial Brief at 17). MISO TOs also argue generally that the Commission bears the burden of proof to demonstrate that the MISO formula rate protocols are unjust and unreasonable. *Id.* at 14-15.

¹⁷³ *Id.* at 16 (citing *RITELine Illinois, LLC*, 137 FERC ¶ 61,039, at P 127 (2011); *Pub. Serv. Co. of Colorado*, 90 FERC ¶ 61,285, at 61,960 (2000)); ITC Companies Reply Brief at 10-11.

¹⁷⁴ *Id.* at 16-17. MISO TOs add that the existing protocols give interested parties both formal and informal options for resolving their concerns.

¹⁷⁵ MISO TOs Reply Brief at 24.

106. MISO argues that the experience detailed by SWEC supports a finding that MISO's existing process actually worked. MISO states that SWEC's ability to raise issues under the existing process supports a finding that the existing Attachment O process satisfies the Commission's concerns.¹⁷⁶ According to MISO, SWEC successfully utilized MISO's process to obtain information and to institute dispute resolution procedures. In the course of those dispute resolution procedures, it was determined that the transmission owner had not adhered to the Uniform System of Accounts when recording its transactions in the general ledger. Though SWEC did not pursue its issue further, SWEC's experience supports a finding that MISO's current Attachment O process contains adequate standards for participation, transparency, and an adequate challenge procedure, according to MISO. Consequently, MISO maintains that its current practices are just and reasonable. Further, MISO adds that if the Commission finds that the formula rate protocols require modification, such revisions should be made consistent with the MISO Transmission Owners Agreement and the MISO Tariff.¹⁷⁷ In particular, MISO highlights provisions of the Tariff and the MISO Transmission Owners Agreement that require MISO not give preferential access to transmission information to any third party.¹⁷⁸

107. Jo-Carroll disputes ITC Companies' argument that more formal discovery procedures would force transmission owners to assume a permanent litigation posture with its customers. Jo-Carroll argues that if ITC Companies in fact answer all stakeholders' questions completely and in a timely fashion, then revised protocols would pose no threat to ITC Companies because ITC Companies' customers would only resort to the formal protocol procedures if their concerns were not alleviated voluntarily.¹⁷⁹

108. ITC Companies contend that the Commission should not adopt "formal challenge" procedures. First, ITC Companies assert that it is not clear that formal challenge procedures would give customers rights that they do not already have, unless such a proposal is intended to modify the Commission's well-established precedent regarding burdens of proof. According to ITC Companies, while the Commission has occasionally required a transmission owner to maintain the burden of proof in the course of a

¹⁷⁶ MISO Reply Brief at 7-9.

¹⁷⁷ *Id.* at 4-5.

¹⁷⁸ *Id.* at 5-7.

¹⁷⁹ Jo-Carroll Reply Brief at 3.

challenge to its implementation of the formula rate,¹⁸⁰ the Commission and courts have long recognized that a complainant must do more than make unsubstantiated allegations.¹⁸¹ Further, ITC Companies maintain that complainants must provide an adequate proffer of evidence that a hearing is warranted, regardless of which party bears the burden at the hearing.¹⁸² ITC Companies also contend that it is unnecessary to provide for the appointment of a Commission administrative law judge as a “discovery master” because customers may already resort to the Commission’s Alternative Dispute Resolution service.¹⁸³

109. Several parties, in contrast, reject the notion that the challenge procedures under Attachment HH of the Tariff are sufficient. For example, OMS contends that the mediation and arbitration proceedings under the Tariff are entirely voluntary, and therefore, do not allow for effective and efficient resolution of disputes.¹⁸⁴ IMEA also takes issue with the procedures under Attachment HH because those procedures are administered by MISO, which is the same entity responsible for reviewing the changes at issue.¹⁸⁵ Hoosier Energy argues that MISO’s generic dispute resolution procedures are likely to produce inconsistent decisions and deprive owners and customers of certainty.¹⁸⁶ Industrial Consumers assert that there is no evidence suggesting that requiring revision of the MISO formula rate protocols would impose a substantial or unwarranted burden.¹⁸⁷

110. IMEA states that the argument that customers can ultimately resort to a complaint pursuant to section 206 is “totally inappropriate” because customers should not be

¹⁸⁰ ITC Companies Reply Brief at 10 (citing *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 36 (2008); *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098 (2008)).

¹⁸¹ *Id.* (quoting *Interstate Power & Light Co. v. ITC Midwest, LLC*, 135 FERC ¶ 61,162 (2011)).

¹⁸² *Id.* (citing *Interstate Power & Light Co. v. ITC Midwest, LLC*, 135 FERC ¶ 61,162 (2011)).

¹⁸³ *Id.* at 9.

¹⁸⁴ OMS Reply Brief at 9-10.

¹⁸⁵ IMEA Reply Brief at 7-8.

¹⁸⁶ Hoosier Energy Reply Brief at 4-5.

¹⁸⁷ Industrial Consumers Reply Brief at 4-5.

required to file a complaint to challenge rate updates.¹⁸⁸ Arkansas Electric also states that arguments claiming that customers may resort to section 206 demonstrate a fundamental misunderstanding of the role of section 206 in the context of formula rates. Specifically, Arkansas Electric states that section 206 only allows customers and the Commission to challenge the rate itself, which precedent dictates is the formula. Arkansas Electric thus argues that section 206 is not an appropriate mechanism for challenging annual updates and true-ups. Arkansas Electric further states that the Commission has repeatedly opined that the burden remains on the seller public utility to demonstrate that charges resulting from the application of the formula are just and reasonable.¹⁸⁹ Arkansas Electric and IMEA each contend that customers and the Commission should not be required to resort to complaints pursuant to section 206 in order to ensure that transmission owners adhere to their filed rates.¹⁹⁰

111. IMEA also asserts that reliance on the Commission's Enforcement Hotline and alternative dispute resolution procedures is inadequate because they are "gauged to informal dispute resolution."¹⁹¹ IMEA adds that while rate cases are frequently settled through such means, such procedures are typically back-stopped by an ongoing or the threat of a formal Commission proceeding in which the utility would bear the burden of proof.

112. Finally, Industrial Consumers dispute the assertion by MISO that there is no need to modify the challenge provisions provided in the MISO formula rate protocols because transmission owners are subject to state regulation.¹⁹² According to Industrial Consumers, it is well known that state commissions have no jurisdiction over unbundled transmission rates in interstate commerce. To the extent that MISO suggests that state commissions should leverage authority over retail rates to address the implementation of FERC jurisdictional rates, Industrial Consumers argue that such an assertion itself illustrates that "there is something seriously wrong with the current process." Industrial

¹⁸⁸ IMEA Reply Brief at 8. IMEA adds that the Commission has recognized that rate changes are to be reviewed under section 205. *Id.*

¹⁸⁹ Arkansas Electric Reply Brief at 7 (citing *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 47 (2008); *Am. Elec. Power Co., Inc.*, 124 FERC ¶ 61,306, at P 36 (2008)).

¹⁹⁰ *Id.*; Hoosier Energy Reply Brief at 5 (citing *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 47 (2008)).

¹⁹¹ IMEA Reply Brief at 8.

¹⁹² Industrial Consumers Reply Brief at 5.

Consumers add that even if state commissions could utilize such leverage, transmission customers lack any such leverage.

c. Commission Determination

113. Having reviewed and considered the various arguments raised in the briefs filed, we find that the challenge procedures set forth in MISO formula rate protocols are insufficient to ensure that transmission customers pay just and reasonable rates.

114. In failing to set forth specific challenge procedures, the MISO formula rate protocols effectively require interested parties to traverse an ad hoc system of procedures to raise issues with transmission owners' annual updates. MISO and MISO TOs reference a number of procedures through which interested parties may challenge a transmission owner's annual update. Specifically, in addition to section 206 of the FPA and the procedures under Attachment HH, MISO and MISO TOs explain that interested parties may submit questions to MISO or to the pertinent transmission owner, or utilize the Commission's Enforcement Hotline and Alternative Dispute Resolution Service. Such arguments, however, neglect to take account of the fact that none of those procedures are referenced in Attachment O of the MISO Tariff. Given the absence of any specific procedures in Attachment O, the MISO formula rate protocols are incapable of satisfying the FPA's just and reasonable requirements. The deficiency of the MISO formula rate protocols, however, is not limited to their failure to reference any of the aforementioned procedures.

115. Even assuming that Attachment O explicitly referenced the procedures cited by MISO and MISO TOs, those procedures alone are inadequate in this context. For instance, any entity that files a complaint pursuant to section 206 of the FPA is required to demonstrate that the current rate, charge or practice in question is not just and reasonable. As several parties point out, this framework imposes significant informational and financial obstacles that interested parties must overcome in order to raise issues with a transmission owner's implementation of its formula rate.¹⁹³ Such a burden could be particularly onerous for smaller entities. Further, such impediments could discourage interested parties from raising issues of less financial significance, even when their concerns are valid.

116. Moreover, we agree with the various parties that suggest that the generic procedures provided in Attachment HH appear ill-suited to resolve disputes regarding

¹⁹³ See, e.g., OMS Initial Brief at 15; Indiana Commission Initial Brief at 14; Interstate Power Initial Brief at 13.

transmission owners' annual formula rate updates.¹⁹⁴ OMS aptly explains that the Attachment HH procedures seem to be designed to resolve unusual events. Attachment HH requires parties to engage in two separate rounds of negotiation as well as mediation, unless the Alternative Dispute Resolution Committee determines that mediation would be unproductive. Should those efforts fail, parties may choose to enter arbitration or proceed to file the appropriate pleading with a court or with the Commission. In this respect, Attachment HH embodies a considerable degree of flexibility, which facilitates its application to a broad spectrum of disputes. Such flexibility, however, is inappropriate given the every-year nature of the annual update and true-up process. Rather, given the regular and repeated nature of this process and the corresponding potential for conflict, a straightforward and established process that is specifically tailored to transmission owners' annual formula rate updates is necessary. Given the common interests of numerous interested parties and frequency with which the formula rate updates and true-ups are performed, such specific procedures would ensure that the issues raised by interested parties will be resolved efficiently and effectively.

117. While parties such as ATC contend that they answer numerous questions regarding the development of their revenue requirements and provide additional information to interested parties, neither ATC's company-specific protocols, nor the rest of the MISO formula rate protocols expressly empower interested parties to submit inquiries. Conversely, nothing in the MISO formula rate protocols expressly requires transmission owners to respond to such inquiries. The fact that some transmission owners voluntarily submit additional information upon request, therefore, does not support the conclusion that the MISO formula rate protocols currently ensure just and reasonable rates.¹⁹⁵

118. We consequently find that the absence of structured informal and formal challenge procedures in the MISO formula rate protocols renders the protocols unjust and unreasonable. In order to ensure that transmission owners implement their annual updates in accordance with their Commission-approved formula rates, interested parties

¹⁹⁴ See, e.g., Interstate Power Initial Brief at 13-14; Indiana Commission Initial Brief at 13-14; OMS Initial Brief at 16-17.

¹⁹⁵ We do not find the fact that apparently no party has complained about ATC's protocols to be persuasive under the circumstances. ATC's protocols suffer from the same deficiencies as the rest of the MISO formula rate protocols in this respect—namely, the absence of any challenge procedures, formal or informal.

must be afforded the ability to challenge a transmission owner's annual update and resolve related disputes through straightforward and defined procedures.¹⁹⁶

119. In particular, the MISO formula rate protocols must set out a procedure through which interested parties can informally challenge transmission owners' proposed inputs. A well-defined informal challenge process would enable interested parties to raise challenges while avoiding the financial and informational burden associated with filing a formal challenge, as discussed below, or with filing a complaint with the Commission pursuant to section 206 of the FPA. Such procedures must, at a minimum, permit interested parties to raise informal challenges for a reasonable period of time after transmission owners initially propose their annual updates. In response to such a challenge, such procedures must require transmission owners and MISO, where applicable, to appoint a senior representative to work with the interested party (or its representatives) toward a resolution of the dispute.¹⁹⁷

120. If, after a reasonable period of time, the parties are unable to resolve their dispute informally, interested parties must be permitted to raise a formal challenge with the Commission, in which the transmission owner—as the utility proposing to charge the updated or true-up rate—would bear the burden of demonstrating the correctness of its update or true-up. Although Commission precedent has explained that the formula is itself the jurisdictional rate that a transmission owner must initially demonstrate is just and reasonable,¹⁹⁸ the transmission owner “continues to bear the burden of demonstrating the justness and reasonableness of the rate resulting from its application of the formula,”¹⁹⁹ consistent with the filed formula rate. That is, the transmission owner will

¹⁹⁶ See *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at PP 22, 34 (2008) (conditioning acceptance on revising proposed protocols to remove the restriction on rights to challenge the underlying inputs to the formula rates).

¹⁹⁷ These procedures, however, need not conflict with the confidentiality requirements set forth in the MISO Transmission Owners Agreement and the Tariff.

¹⁹⁸ See, e.g., *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098 at P 31 (“[w]hen the Commission approves a company's request for a formula rate, it approves the formula itself, which becomes the filed rate.”).

¹⁹⁹ *Id.* P 47; accord 16 U.S.C. § 824d (2006) (“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 . . . shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful. . . .”); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053 at P 120 & n.105.

bear the burden of demonstrating the justness and reasonableness of the implementation of its formula rate in the context of a formal challenge.²⁰⁰ Additionally, as some intervenors have pointed out, transmission owners frequently possess the information necessary for an interested party to succeed in a complaint before the Commission, but retain discretion in providing that information. Such formal challenge procedures will ensure that a transmission owner's possession of this information does not become, in practice, a means of including inappropriate costs in its annual update and collecting unjustified charges.

121. We will, however, continue to apply our well-established precedent with respect to challenges to the prudence of costs incurred by a transmission owner. The Commission has historically recognized that "managers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers."²⁰¹ Consequently, parties seeking to challenge the prudence of a transmission owner's expenditures must first create a serious doubt as to the prudence of those expenditures before the burden of proof shifts to the transmission owner.²⁰²

122. Finally, we believe that it is unnecessary to require that the MISO formula rate protocols be revised to allow interested parties to seek the Commission's appointment of a discovery master. First, we note that the numerous revisions that we have required above pertaining to the transparency of information supporting transmission owners' annual updates should ensure that interested parties will have access to sufficient information such that we anticipate that such disputes should be comparatively infrequent. Moreover, parties are free to request the appointment of a settlement judge and avail themselves of the on-call settlement judge, as well as the Commission's Dispute Resolution Service to resolve such matters. Lastly, requiring transmission owners to demonstrate the accuracy of their updates in the course of a formal challenge will encourage transmission owners to provide interested entities and the Commission with all information relevant to the contested matter.

²⁰⁰ As noted earlier, transmission owners will be required to file their annual updates, but only on an informational basis; they will not be noticed and, absent a formal challenge or complaint, will go into effect without being addressed by Commission order.

²⁰¹ *New England Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985).

²⁰² *Potomac-Appalachian Transmission Highline, LLC*, 140 FERC ¶ 61,229, at P 81 (2012) (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,224, at P 28 (2006)).

123. Therefore, as discussed above, we will require MISO and the captioned transmission owners to revise both the *pro forma* and the company-specific formula rate protocols to enable interested parties to raise both informal and formal challenges regarding the transmission owner's annual update and true-up.

The Commission orders:

(A) The Commission finds that the formula rate protocols of MISO and the other above captioned parties are unjust, and unreasonable, as discussed in the body of this order.

(B) The above captioned parties are hereby directed to submit a compliance filing revising their formula rate protocols within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.