

146 FERC ¶ 61,210
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Midcontinent Independent System Operator, Inc.
Southern Indiana Gas & Electric Company

Docket No. ER13-2375-000

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued March 20, 2014)

1. On September 13, 2013, in compliance with the Commission's May 16, 2013 order,¹ Midcontinent Independent System Operator, Inc. (MISO) and Southern Indiana Gas & Electric Company (Southern Indiana) filed proposed revisions to Southern Indiana's Attachment O formula rate protocols under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).² In this order, we conditionally accept Southern Indiana's proposed protocols, subject to further compliance, to become effective January 1, 2014.

I. Background

2. On May 17, 2012, the Commission instituted an investigation, pursuant to section 206 of the Federal Power Act (FPA),³ to determine whether the formula rate protocols under Attachment O of MISO's Tariff are sufficient to ensure just and reasonable rates.⁴ In the Hearing Order, the Commission identified three areas of

¹ *Midwest Indep. Transmission Sys. Operator*, 143 FERC ¶ 61,149 (2013) (May 16 Order).

² MISO FERC Electric Tariff, [25, Vectren ANNUAL RATE CALCULATION AND TRUE-UP PROCEDURES, 2.0.0.](#)

³ 16 U.S.C. § 824e (2012).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (Hearing Order). In order to address whether MISO's *pro forma* formula rate protocols

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concern: (1) scope of participation (i.e., who can participate in the information exchange); (2) the transparency of the information exchange (i.e., what information is exchanged); and (3) the abilities of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange (i.e., how the parties may resolve their potential disputes). In the May 16 Order, the Commission found that the formula rate protocols of MISO and the individual transmission owners were insufficient to ensure just and reasonable rates, and therefore, directed MISO and its transmission owners to file revised formula rate protocols.

3. On September 13, 2013, MISO⁵ and Southern Indiana, as a transmission owning member of MISO, submitted revised forward-looking Attachment O formula rate protocols in compliance with the May 16 Order. Southern Indiana states that its revised protocols address the Commission's areas of concern and are sufficient to ensure just and reasonable rates.

II. Notice and Responsive Filings

4. Notice of Southern Indiana's filing was published in the *Federal Register*, 78 Fed. Reg. 58,299 (2013), with interventions and protests due on or before October 4, 2013, subsequently extended until October 18, 2013.

5. Notices of intervention were filed by the Arkansas Public Service Commission, the Indiana Utility Regulatory Commission, and the Missouri Public Service Commission. The Organization of MISO States (OMS) filed a notice of intervention and comments.⁶ Timely motions to intervene were filed by: Consumers Energy Company; American Municipal Power, Inc.; NIPSCO; Arkansas Electric Cooperative Corporation;

and the formula rate protocols of independent transmission owners are sufficient to ensure just and reasonable rates, the Commission established paper hearing procedures.

⁵ MISO states that it joins this filing as the administrator of its Tariff, but takes no position on the substance of the filing.

⁶ OMS filed its comments in this proceeding, as well as in response to the formula rate protocols proposed by: (1) MISO and the MISO Transmission Owners in Docket No. ER13-2379-000 (MISO Transmission Owners Filing); (2) MISO and Northern Indiana Public Service Company (NIPSCO) in Docket No. ER13-2376-000 (NIPSCO Filing); (3) Entergy Services Inc. in Docket No. ER13-948-000 (Entergy Filing); and (4) ITC Holdings Corp. in Docket No. ER12-2681-002 (ITC Midsouth Filing). Although OMS states that its comments address all filings submitted in the aforementioned dockets, OMS substantively addresses only the MISO Transmission Owners Filing and

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and the MISO Transmission Owners.⁷ Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, The Public Service Commission of Yazoo, and South Mississippi Electric Power Association (collectively, Joint Customers) filed a motion to intervene and protest.⁸

6. Southern Indiana filed an answer in response to OMS's comments. OMS, in turn, filed an answer in response to Southern Indiana's answer.

the NIPSCO Filing. Nevertheless, because OMS filed its comments in this proceeding, we address OMS's arguments to the extent that they apply to Southern Indiana's proposed formula rate protocols.

⁷ For the purpose of this proceeding, the MISO Transmission Owners consist of: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power; Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; 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 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; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

⁸ Joint Customers filed its protest in this proceeding, as well as in response to the MISO Transmission Owners Filing, the NIPSCO Filing, the Entergy Filing, and the ITC Midsouth Filing. However, substantively, Joint Customers' protest does not specifically address Southern Indiana's proposed formula rate protocols. Nevertheless, because Joint Customers filed their protest in this proceeding, we address Joint Customers' arguments to the extent that they apply to Southern Indiana's proposal.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by Southern Indiana and OMS because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

9. As further discussed below, we will conditionally accept Southern Indiana's proposed formula rate protocols, subject to its submission of a compliance filing, to become effective on January 1, 2014, as requested.

1. Scope of Participation

a. May 16 Order

10. In the May 16 Order, the Commission found that the MISO formula rate protocols inappropriately limit the ability of certain interested parties to obtain information and participate in review processes. As a result, the Commission directed 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 attorneys general.⁹

b. Filing

11. Southern Indiana states that in compliance with the Commission's directive to include all interested parties in the information exchange and review processes, section 1(a) of Southern Indiana's revised protocols defines "Interested Parties" as including the Indiana Office of Utility Consumer Counselor, the Indiana Attorney General, and the Indiana Utility Regulatory Commission, and any other state regulatory commission, consumer advocacy agency, and state attorney general in jurisdictions where Southern

⁹ May 16 Order, 143 FERC ¶ 61,149 at P 34.

Indiana serves wholesale customers or owns facilities. Southern Indiana argues that under the revised protocols, all interested parties are included in the information exchange, review, and dispute resolution processes.¹⁰

c. Protest

12. OMS recommends that “Commission Staff” explicitly be included in all MISO transmission owners’ protocols’ definition of interested party. According to OMS, the burden to review annual formula rates does not rest with those explicitly mentioned as interested parties in the proposed protocols. Instead, argues OMS, the Commission must ultimately determine the justness and reasonableness of formula rate charges.¹¹

d. Answer

13. In response to OMS’s recommendation that the protocols explicitly mention “Commission Staff” as an Interested Party, Southern Indiana argues that the May 16 Order does not require such a definition. Southern Indiana states that the Commission already reviews informational filings and conducts formula rate audits; therefore, the protocols need not explicitly include “Commission Staff.”¹²

e. Commission Determination

14. In the May 16 Order, the Commission stated that transmission owners must revise their protocols to allow for participation by “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[s] general[.]”¹³ We find that Southern Indiana’s protocols fail to include all interested parties by limiting participation in information exchange and review processes to its customers, certain entities within Indiana, and other entities located where Southern Indiana serves wholesale customers or owns facilities. The limited scope of participation included within the Southern Indiana protocols is particularly problematic given that a transmission owner’s costs are often shared across the MISO footprint and, thus, extend beyond a transmission owner’s physical location and direct customers. Accordingly, we

¹⁰ Southern Indiana Filing at 2.

¹¹ OMS Comments at 27.

¹² Southern Indiana Answer at 5.

¹³ May 16 Order, 143 FERC ¶ 61,149 at P 34.

find Southern Indiana's proposed definition of "Interested Parties" unjust and unreasonable and direct Southern Indiana to revise its protocols to explicitly provide that all interested parties, including those mentioned in the May 16 Order, may participate in review and challenge procedures.

15. As to OMS's suggestion of explicitly including "Commission Staff" in Southern Indiana's and other transmission owners' formula rate protocols, we find that this suggestion goes beyond the directives of the May 16 Order, as the Commission did not require transmission owners to explicitly include the Commission in their definitions of interested parties. We note that in the May 16 Order, the Commission addressed its own participation, explaining that "[t]he [required] annual informational filings . . . will further promote broad participation by interested parties, including the Commission, as several intervenors suggest."¹⁴ Furthermore, we note that nothing in May 16 Order precludes the Commission from participating transmission owners' annual updates and true-up processes. Therefore, we find OMS's suggestion to be unnecessary.

2. Transparency

a. May 16 Order

16. The May 16 Order found that MISO's formula rate protocols provided insufficient transparency with respect to information about the transmission owners' costs and revenue requirements. The Commission required transmission owners to annually post their revenue requirements and relevant information on both MISO's website and Open Access Same-Time Information System (OASIS), and to hold an annual meeting open to all interested parties to review and discuss the posted information. The order stated that the annual posting should include 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. The order further required transmission owners to disclose any accounting changes during the rate period that affect the inputs into the formula rate or the resulting charges.¹⁵

17. The May 16 Order provided that, following the annual update, interested parties must be afforded the opportunity to review the information posted and submit reasonable information and document requests to the transmission owner, provided they are relevant to the implementation of the formula rate. They must also be allowed the opportunity to request further information regarding the transmission owner's accounting practices to

¹⁴ *Id.* P 34 n.56.

¹⁵ *Id.* PP 86-88.

the extent the accounting impacts items included in the determination of the annual revenue requirement, and to obtain upon request information on procurement methods and cost control methodologies used by the transmission owner. Further, the order required that transmission owners make a good faith effort to respond to information requests within a set, reasonable period of time.¹⁶

18. In the May 16 Order, the Commission required that transmission owners make annual informational filings of their formula rate updates with the Commission. The Commission stated that the informational filing must be made following the information exchange period and must include any corrections or adjustments made during that period. The Commission also required that the informational filing note 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 is 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).¹⁷

b. Filing

19. Southern Indiana states that, in compliance with the directives of the May 16 Order, its proposed protocols provide interested parties with supporting information for the annual update, including: (1) a data-populated version of the formula rate template setting forth the projected net revenue requirement and load for the following year; (2) supporting workpapers that demonstrate and explain information upon which the projected net revenue requirement and load are based; (3) an explanation of any change in Southern Indiana's accounting policies and practices; and (4) supporting documentation for the true-up adjustment. Southern Indiana states that the proposed protocols specifically provide that the input components of the projected net revenue requirement will be provided in sufficient detail to enable interested parties to replicate the formula rate. Southern Indiana also states that the proposed protocols specify the true-up procedures and provide an example of a true-up calculation.¹⁸ The proposed

¹⁶ *Id.* P 91.

¹⁷ *Id.* P 92.

¹⁸ Southern Indiana Filing at 3-4.

protocols provide that Southern Indiana will post its annual update no later than September 1 and hold its annual meeting no later than October 1, providing no less than 14 days' notice of the meeting.

20. Southern Indiana states that it has revised the protocols to provide for a more formal discovery process. The proposed protocols also provide that interested parties shall have up to 90 days after the posting of the annual update to serve Southern Indiana with reasonable information requests, including: (1) the extent of effect of a material accounting change; (2) the proper application by Southern Indiana of the formula rate and the procedures in these protocols; (3) the accuracy of data and consistency with the formula rate for the charges shown in the annual update; and (4) procurement methods and cost control methodologies.¹⁹ Southern Indiana states that the proposed protocols specify that Southern Indiana will make a good faith effort to respond to information requests within 15 business days.²⁰

21. Southern Indiana states that the proposed protocols specify that Southern Indiana will disclose to interested parties any changes in accounting that may involve: (1) initial implementation of an accounting standard or policy; (2) the initial implementation of accounting practices for unusual or unconventional items where the Commission has not provided specific accounting directions; (3) corrections of errors and prior period adjustments; (4) implementation of new estimation methods or policies that change prior estimates; or (5) changes to income tax elections. Southern Indiana also states that the proposed protocols require Southern Indiana to provide a narrative explanation of the individual impact of the accounting changes to the extent such changes affect charges under the formula rate.²¹

22. Southern Indiana states that the proposed protocols provide that Southern Indiana will make an informational filing with the Commission following the time period allowed for interested Parties to review the updates and for Southern Indiana to respond to data requests. Southern Indiana explains that the informational filing will incorporate any mutually agreed upon modifications and will also note any aspects of the rate or its inputs that are in dispute or under challenge procedures.²²

¹⁹ MISO FERC Electric Tariff, [25, Vectren ANNUAL RATE CALCULATION AND TRUE-UP PROCEDURES, 2.0.0.](#)

²⁰ Southern Indiana Filing at 3.

²¹ *Id.*

²² *Id.* at 4.

c. Protests

23. OMS recommends that the Commission require MISO to provide electronic notice of each transmission owner's formula rate update/true-up to interested parties. OMS states that notice of an annual formula rate update/true-up should be provided within 10 days of such posting, and that notice of the annual open meeting should be provided no less than seven days prior to such meeting.²³ OMS also recommends that transmission owners be required to hold a joint open informational meeting each year where all transmission owners charging shared project costs could explain to all interested parties how these costs are reflected in the formula rate update/true-up. OMS argues that such a joint and centralized meeting would streamline the review that an interested customer would otherwise have to undertake by separately participating in each transmission owner's annual meeting.²⁴ OMS argues that transmission owners should be required to hold their informational meetings no later than 30 days of posting their annual update/true-up, and no earlier than 10 days following posting.²⁵ Joint Customers request that the protocols be revised to provide that if any deadline falls on a weekend or holiday recognized by the Commission, then that deadline will shift to the next business day.²⁶

24. OMS also recommends that the Commission require the protocols to specifically provide to interested parties data and information on procurement methods and cost control methodologies used by transmission owners so that interested parties have the means to assess prudence.²⁷ Joint Customers object to the limitation imposed by the insertion of the word "material" on the type of accounting changes that must be reported, and argue that "material" should be removed from all instances of the use of the phrase "material accounting changes."²⁸ Further, Joint Customers argue that the Commission should direct the MISO Transmission Owners to revise the protocols to require that the

²³ OMS Comments at 14.

²⁴ *Id.* at 18-19.

²⁵ *Id.* at 15-18.

²⁶ Joint Customers Protest at 5.

²⁷ OMS Comments at 34-35.

²⁸ Joint Customers Protest at 11-12.

initial implementation of all accounting standards and policies must be reported in the annual update or true-up.²⁹

25. Joint Customers argue that the protocols should be revised to include a provision that obligates the transmission owner to notify interested parties of corrections to the annual update or true-up. Then, Joint Customers suggest, a corrected annual update or true-up should reset the performance deadlines for information requests and informal challenges, with the scope of review limited to the aspects of the formula rate affected by the corrections.

26. Joint Customers request that a provision precluding the transmission owner from claiming that responses to information and document requests pursuant to the protocols are subject to any settlement provision, such as but not limited to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2013), be added to the proposed protocols. Joint Customers add that a party may need to use a transmission owner's response to an information request in a formal challenge, but would be prohibited from doing so if the information were deemed privileged under settlement. Joint Customers state that such claims would be inappropriate in the annual update/true-up process, because the process is not subject to commission settlement confidentiality requirements.³⁰

27. OMS expresses concern that if the Commission receives informational filings at the end of the protocol process, then any Commission review or participation may not be as robust or informed as if the Commission participated concurrent with other interested parties. OMS states that, as a result, it recommends that the Commission require Southern Indiana to submit two informational filings: one at the beginning of the annual update and true-up process and another at the end of this process.³¹ OMS suggests the filing submitted in the beginning of the process include the five items enumerated by the Commission in paragraph 92 of the May 16 Order, as well as any other information necessary to understand the annual update or true-up. According to OMS, the second filing should address other items discussed by the Commission, including any corrections or adjustments made during the protocol process and any items that are the subject of an ongoing dispute under the challenge procedures. OMS argues that dividing informational reports is the most useful method for interested parties and would provide information to the Commission in a manner both timely and conducive to facilitating the Commission's

²⁹ *Id.* at 9.

³⁰ *Id.* at 16.

³¹ OMS Comments at 20-21.

assessment of the effectiveness of protocol processes for a given rate year. Additionally, OMS asserts that dual informational filings pose no additional burden to transmission owners and that such a requirement is consistent with Commission precedent.³²

d. Answers

28. Southern Indiana argues that OMS's request to provide interested parties with further advance notice of the annual update and meeting is not necessary to ensure transparency. Southern Indiana maintains that its proposed protocols already provide sufficient advance notice.³³ However, Southern Indiana states that it is willing, in response to Joint Customers' request, to revise the proposed protocols to provide that if a certain deadline falls on a weekend or holiday recognized by the Commission, then the deadline will be extended to the next business day.³⁴

29. Southern Indiana points out that its proposed protocols expressly allow interested parties to obtain information regarding procurement methods and cost control methodologies through discovery requests. According to Southern Indiana, this is sufficient to satisfy the requirements of the May 16 Order. In response to Joint Customers, Southern Indiana contends that its proposed protocols do in fact provide for the disclosure of all accounting changes that affect formula rate inputs through its inclusive definition of a "Material Accounting Change."³⁵

30. Southern Indiana states that the additional informational filing sought by OMS is not required by the May 16 Order. Southern Indiana argues that its protocols comply with Commission's directives in the May 16 Order by providing that an informational filing shall be made 120 days following the posting of an annual update and after the discovery period has concluded. However, Southern Indiana states that it is amenable to revising its protocols if the Commission determines that an additional informational filing is warranted.³⁶

³² *Id.* at 21-22 (citing to the formula rate protocols for AEP East Companies included in Attachment H-14A of PJM Interconnection, LLC's Open Access Transmission Tariff).

³³ Southern Indiana Answer at 4.

³⁴ *Id.* at 7.

³⁵ *Id.* at 5-6.

³⁶ *Id.* at 4.

31. In its answer, OMS maintains its position that the annual meeting should be held no later than 30 days and no earlier than 10 days after the posting of a transmission owner's update/true-up. OMS also maintains that transmission owners should be required to hold a joint annual meeting for projects that have shared costs.³⁷

e. **Commission Determination**

32. We find that the provisions in the proposed protocols relating to transparency generally comply with the requirements of the May 16 Order. We will, therefore, conditionally accept them, subject to further compliance, as discussed below.

33. Regarding OMS's request that the Commission require notice, similar to the commitment by MISO Transmission Owners to provide notice through an email "exploder" list to be maintained by MISO, we direct Southern Indiana to revise its protocols to also provide such electronic notice.³⁸ We will also, as requested by OMS, require Southern Indiana to revise the protocols to provide notice within 10 days of posting the annual update-true-up and provide notice of the annual meeting no less than seven days prior to such meeting. Additionally, we agree with OMS that transmission owners with transmission projects that utilize a regional cost sharing mechanism should hold joint informational meetings to streamline the process that an interested party would otherwise have to undertake by separately participating in each transmission owner's annual meeting. Accordingly, we direct Southern Indiana to propose, in its compliance filing, a process for transmission owners with transmission projects that utilize a regional cost sharing mechanism to coordinate and hold joint meetings to enable all interested parties to understand how those transmission owners are implementing their formula rates for cost recovery of such projects. We find that this type of process will ease the burden of both transmission customers and owners by limiting the number of annual meetings necessary.

34. With regard to the proposed timeline, we accept Southern Indiana's commitment in its answer to revise the protocols to provide that if a certain deadline falls on a weekend or holiday recognized by the Commission, then the deadline will be extended to the next business day. We find that the proposed timeline, as modified herein, generally meets the requirements of the May 16 Order.

³⁷ OMS Answer at 12-16.

³⁸ See *Midcontinent Independent System Operator, Inc.*, 146 FERC ¶ 61,212, at P 59 (2014).

35. We find that, as proposed, Southern Indiana’s protocols do not fully comply with the May 16 Order’s requirements for information that should be included in the annual posting. As proposed, Southern Indiana’s protocols do not contain sufficient detail. To provide the requisite detail, as well as consistency in information provided in the MISO Transmission Owners’ protocols, we require Southern Indiana to revise its protocols to expressly state that the annual update will identify any changes in the formula references (page and line numbers) to its FERC Form No. 1 and all material adjustments made to its FERC Form No. 1 data in determining formula inputs, including relevant footnotes to and any adjustments not shown in its FERC No. Form 1.³⁹ Such information will provide interested parties sufficient detail and explanation to demonstrate that each input to the formula rate is consistent with the requirements of the formula rate. We will also require Southern Indiana to revise the protocols to note any reorganization or merger transaction⁴⁰ noting if such transactions are likely to affect the charges that result from the formula rate calculations. Further, Southern Indiana must revise the protocols to identify any items included in the formula rate at an amount other than on a historical cost basis (e.g. fair value adjustments). Finally, with regard to Joint Customers’ request that we require revisions to the proposed protocols that obligate the transmission owner to notify interested parties of corrections to the annual update or true-up, we will require Southern Indiana to make tariff revisions to provide that any corrections or adjustments made must be described in the informational filing.

36. With regard to Joint Customers’ request that the word “material” be removed from all instances of the phrase “material accounting changes,” we will require the Southern Indiana to make this revision. The May 16 Order directed the formula rate protocols 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.⁴¹ We note that by adding the concept of materiality to the accounting changes that must be disclosed, Southern Indiana reduces the transparency of financial information used in formula rate billings without sufficient support. Southern Indiana has not defined in the proposed protocols how the concept and threshold of materiality would be applied to the transmission revenue requirement, which can lead to varying interpretations by

³⁹ Both MISO Transmission Owners and NIPSCO proposed formula rate protocols revisions contain this provision. *Midcontinent Independent System Operator, Inc., et al.*, 146 FERC ¶ 61,211 (2014), and *Midcontinent Independent System Operator, Inc., et al.*, 146 FERC ¶ 61,212 (2014).

⁴⁰ 18 C.F.R. §§ 33.1-33.3 (2013).

⁴¹ May 16 Order, 143 FERC ¶ 61,149 at P 87.

transmission owners and excludes the input of interested parties. Thus, we will require the protocols to exclude the word “material” from all instances of the phrase “material accounting changes.”

37. With regard to Joint Customers comments about confidentiality provisions of settlement agreements, we agree that claiming settlement privilege is inappropriate in the annual update/true-up process. We therefore direct Southern Indiana to revise the protocols to include a provision precluding a transmission owner from claiming that responses to information and document requests pursuant to the protocols are subject to any settlement provision.

38. Southern Indiana’s proposed revisions related to informational filings generally comply with the directives of the May 16 Order. We will conditionally accept Southern Indiana’s proposed revisions related to informational filings, subject to Southern Indiana making revisions in a compliance filing, as discussed below. In the May 16 Order, the Commission stated that “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 is 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).”⁴² Consistent with the May 16 Order, we will require Southern Indiana to revise its protocols to specifically provide that the informational filing include information necessary to determine these five inquiry categories.

39. As clarified in our order denying rehearing,⁴³ we will require all MISO transmission owners to submit informational filings in separate docket numbers. We find that separation of filings will ease the burden of the Commission and interested parties to keep track of the status of each informational filing by providing a discrete location for formula rate update information and potential formal challenges for a specific rate year. In keeping with our previous directives regarding electronic notice to interested parties, we also direct MISO to provide notification of the filing through the email “exploder” list to be maintained by MISO, and by posting the docket number assigned

⁴² *Id.* P 92 (emphasis added).

⁴³ *Midwest Independent Transmission System Operator, Inc., et al*, 146 FERC ¶ 61,209 (2014).

annually to each transmission owner's informational filing on the MISO website and OASIS within five days of such filing.

40. We reject OMS's suggestion that the Commission require two separate informational filings. The May 16 Order required MISO transmission owners to submit only one informational filing following information exchange and submission of challenges.⁴⁴ Accordingly, we find OMS's suggestion beyond the scope of this proceeding. In addition, we find that OMS's concern regarding the availability of information that may be used to assess prudence is adequately addressed by the ability of interested parties to submit informational requests on procurement methods and cost control methodologies under the proposed protocols.

3. Challenge Procedures

a. May 16 Order

41. The May 16 Order found that the MISO formula rate protocols were insufficient in setting forth the specific challenge procedures. In order to ensure that transmission owners implement their annual updates in accordance with their Commission-approved formula rates, the Commission held that interested parties must be afforded the ability to challenge a transmission owner's annual update and resolve related disputes through straightforward and defined procedures.⁴⁵ In particular, the Commission stated that the MISO formula rate protocols must set out a procedure through which interested parties can informally challenge transmission owners' proposed inputs.⁴⁶ At a minimum, the Commission required such procedures to permit interested parties to raise informal challenges for a reasonable period of time after transmission owners initially post their annual updates.⁴⁷ Where applicable, the Commission added that transmission owners must appoint senior representatives to work with interested parties to resolve informal challenges.⁴⁸ Furthermore, 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

⁴⁴ May 16 Order, 143 FERC ¶ 61,149 at P 92.

⁴⁵ *Id.* P 118.

⁴⁶ *Id.* P 119.

⁴⁷ *Id.*

⁴⁸ *Id.*

challenge with the Commission, in which the transmission owner would bear the burden of demonstrating the correctness of its update or true-up.⁴⁹

b. Filing

42. Southern Indiana states that its proposed protocols include structured informal and formal challenge procedures, in compliance with the May 16 Order.⁵⁰ Specifically, Southern Indiana states that interested parties may submit an informal challenge within 120 days after the posting of the annual update. Further, Southern Indiana proposes to require interested parties that have raised informal challenges to attempt in good faith to informally resolve all informal challenges over a 60-day period before filing a complaint with the Commission pursuant to section 206 or section 306 of the FPA; however, under Southern Indiana's proposed protocols, an interested party's submission of an informal challenge is not a prerequisite to raising a formal challenge. Upon the request of an interested party, Southern Indiana additionally proposes to appoint a senior representative to assist in resolving disputes.

43. Under its proposed challenge procedures, Southern Indiana states that it will bear the burden of demonstrating the correctness of its update or true-up. However, Southern Indiana states that interested parties that challenge the prudence of a given expenditure must first create a serious doubt before the burden of proof shifts to Southern Indiana.

c. Protests

44. OMS additionally contends that the Commission should reject any provision of the proposed challenge procedures that requires formal challenges to be filed under Rule 206 of the Commission's Rules of Practice and Procedure.⁵¹ OMS cautions that application of Rule 206 to formal challenges would shift the burden of proof in formal challenges to interested parties, in contravention of the Commission's ruling in the May 16 Order.⁵² Further, OMS suggests that application of Rule 206 would inappropriately conflate complaints, filed pursuant to section 206 of the FPA, and formal challenges, filed pursuant to the transmission owner's formula rate protocols.

⁴⁹ *Id.* P 120.

⁵⁰ Southern Indiana Filing at 4.

⁵¹ OMS Comments at 30 (citing 18 C.F.R. § 385.206 (2013)).

⁵² *Id.* at 32 (citing May 16 Order, 143 FERC ¶ 61,149 at P 120).

45. Joint Customers take issue with the deadlines established by the proposed protocols. Joint Customers assert that the proposed deadline for interested parties' submission of informal challenges should be modified to afford interested parties a reasonable opportunity to raise informal challenges after the close of the information exchange period.⁵³ For instance, Joint Customers suggest that interested parties should be permitted to submit informal challenges up to 30 days following the transmission owner's last response to an information request. Joint Customers also note that transmission owners should be required to respond to informal challenges within 20 business days.⁵⁴

46. Joint Customers contend that the proposed protocols fail to adequately protect interested parties' rights under the FPA and suggest revising the protocols to provide that "[t]hese Protocols in no way limit the rights of [the Transmission Owner] or any Interested Party to initiate a proceeding at FERC at any time with respect to the Formula Rate or any Annual Update consistent with the party's full rights under the [FPA], including Sections 205, 206, and 306, and FERC's regulations."⁵⁵

47. Joint Customers raise concerns regarding the Southern Indiana's proposal to require formal challenges to be filed pursuant to Rule 206 of the Commission's Rules of Practice and Procedure.⁵⁶ Joint Customers suggest that such a requirement inappropriately shifts the burden of proof that the Commission imposed on transmission owners in the context of a formal challenge and is, therefore, inconsistent with the May 16 Order. Furthermore, Joint Customers suggest that Southern Indiana's proposed challenge procedures too narrowly describe the transmission owner's burden of proof in a formal challenge. Joint Customers state that, in order to be consistent with the May 16 Order, the proposed protocols must provide that the transmission owner will bear the burden of demonstrating the justness and reasonableness of its implementation of its formula rate.

48. Joint Customers also urge the Commission to require transmission owners to provide a written explanation of the transmission owner's disagreement with an informal challenge raised by an interested party.⁵⁷ Moreover, Joint Customers argue that

⁵³ Joint Customers Protest at 6-7.

⁵⁴ *Id.* at 8-9.

⁵⁵ *Id.* at 20-21.

⁵⁶ *Id.* at 21-23 (citing 18 C.F.R. § 385.206 (2013)).

⁵⁷ *Id.* at 25.

transmission owners should be required to post all informal challenges and the relevant responses, as well as advanced notice of all pertinent meetings and conference calls on MISO's OASIS.

d. Answers

49. In its answer, Southern Indiana states that it is willing to revise its proposed challenge procedures, if directed to do so by the Commission, to provide that Southern Indiana will respond to all informal challenges within 20 business days, as suggested by Joint Customers.⁵⁸

50. OMS reiterates its position that formal challenges should not be subject to the requirements of Rule 206. OMS suggests, instead, that workable filing requirements for formal challenges could be based on Rule 207, Rule 211, or Rule 212 of the Commission's Rules of Practice and Procedure.⁵⁹ OMS further notes that the Commission has stated that application of the section 206 framework to formula rate challenges is inappropriate.⁶⁰

e. Commission Determination

51. We will conditionally accept Southern Indiana's proposed challenge procedures because its proposal largely complies with the Commission's directives in the May 16 Order. Specifically, Southern Indiana's proposed challenge procedures afford interested parties the opportunity to raise informal challenges for a reasonable period of time after the transmission owner initially proposes its annual update. Southern Indiana's proposal also requires it, where appropriate, to resolve informal challenges.

52. However, we are concerned that the proposed deadline for interested parties' submission of informal challenges could precede the date by which Southern Indiana is required to respond to information requests, thereby impairing the abilities of interested parties to raise informed informal challenges. Southern Indiana's proposed protocols permit interested parties to submit information requests up to 90 days after and to raise informal challenges up to 120 days after Southern Indiana posts its annual update. In addition, the proposed protocols require Southern Indiana to make a good-faith effort to respond to information requests within 15 business days, but establish no firm deadline for such a response. Thus, subject to the proposed good faith requirement, the proposed

⁵⁸ Southern Indiana Answer at 7.

⁵⁹ OMS Answer at 20-21 (citing 18 C.F.R. §§ 385.207, 385.211, 385.212 (2013)).

⁶⁰ *Id.* (citing May 16 Order, 143 FERC ¶ 61,149 at P 115).

challenge procedures would permit Southern Indiana to delay its response to an information request beyond the deadline for informal challenges. In doing so, the proposed deadline could effectively prevent interested parties from considering all of the available information in their assessment of the annual update and true-up and their decision to raise an informal challenge. Transmission owners often possess the information necessary for interested parties to evaluate an annual update or true-up. As a result, the information exchange process serves a critical role in the ability of interested parties to effectively participate in the annual update and true-up process and to challenge a transmission owner's application of its formula rate. Consequently, we will condition our acceptance of the proposed protocols on additional revisions that enable interested parties to present informal challenges after an opportunity to evaluate all responses to information requests.

53. Southern Indiana's proposal also fails to provide appropriate formal challenge procedures. Under the proposed challenge procedures, an interested party shall have the right to submit a formal challenge with the Commission, "pursuant to 18 C.F.R. § 385.206, and [s]ection 206 and/or 306 of the [FPA]." However, an interested party's right to file a formal challenge pursuant to a transmission owner's formula rate protocols is distinct from that party's statutory right to file a complaint pursuant to sections 206 and 306 of the FPA. Indeed, the May 16 Order recognized and maintained this distinction.⁶¹ As a result, the Commission required MISO and its transmission owners to propose formula rate protocols that afford interested parties the right to submit informal and formal challenges, in addition to their statutory right to file a complaint with the Commission.⁶² Thus, we direct Southern Indiana to propose additional revisions to its formula rate protocols to establish formal challenge procedures that are distinct from the statutory right of the Commission and interested parties to file a complaint pursuant to section 206 of the FPA.

54. We also direct Southern Indiana to propose Tariff revisions to clarify that formal challenges should be filed in the informational filing dockets.⁶³ We find that this will

⁶¹ See May 16 Order, 143 FERC ¶ 61,149 at P 119 (distinguishing between informal challenges, formal challenges, and complaints filed pursuant to section 206 of the FPA).

⁶² *Id.* PP 118-122.

⁶³ We clarify that in this regard the informational filing of the annual update is distinguishable from the typical informational filings required by the Commission for which no opportunity for comments or protests is provided.

reduce the Commission's administrative burden of tracking the status of formal challenges and informational filings.

55. We also agree with Joint Customers that Southern Indiana's description of its burden of proof in the course of a formal challenge does not reflect the Commission's directives in the May 16 Order. Southern Indiana's proposed challenge procedures provide that it will assume the burden of demonstrating the "correctness" of its annual update in the context of a formal challenge. While the Commission did note in the May 16 Order that transmission owners must bear the burden of demonstrating the correctness of their annual updates, the Commission proceeded to recall its precedent in which the Commission has explained that the transmission owner "continues to bear the burden of demonstrating the justness and reasonableness of the rate resulting from its application of the formula, consistent with the filed formula rate."⁶⁴ The Commission further clarified the nature of a transmission owner's burden, explaining that "the transmission owner will bear the burden of demonstrating the justness and reasonableness of the implementation of its formula rate in the context of a formal challenge."⁶⁵ Because Southern Indiana's proposed description of the burden to be borne by the transmission owner in a formal challenge singularly focuses on the "correctness" of the annual update, and excludes the consideration of the justness and reasonableness of the rate resulting from its application of the formula, consistent with the filed formula rate, we direct Southern Indiana to revise its formula rate protocols to more accurately capture the breadth of the Commission's directives in the May 16 Order.

56. However, nothing in the May 16 Order required transmission owners to publicly post their responses to informal challenges or to provide notice of meetings or conference calls regarding informal challenges, as requested by Joint Customers. Further, such a requirement could impede the resolution of disputes in the informal challenge process. Thus, we reject Joint Customers' arguments in favor of such requirements.

57. We will also accept Southern Indiana's commitment to revise its protocols to respond to all informal challenges within 20 business days.⁶⁶ As a result, we will direct Southern Indiana, in its compliance filing, to propose additional revisions to effectuate those commitments.

⁶⁴ May 16 Order, 143 FERC ¶ 61,149 at P 120.

⁶⁵ *Id.*

⁶⁶ *See* Southern Indiana Answer at 7.

4. Effective Date

a. Filing

58. Southern Indiana requests that its proposed protocols be made effective on January 1, 2014. Southern Indiana states that this would be “[c]onsistent with the Commission’s notice requirements, 18 C.F.R. § 35.3.”⁶⁷

b. Protest

59. OMS argues that Southern Indiana provides no explanation or rationale for its requested effective date. OMS argues that the Commission should reject the proposed January 1, 2014 effective date, and instead, make the proposed formula rate protocols effective as of the refund effective date established in the Hearing Order, May 23, 2012.⁶⁸ Although OMS acknowledges the “procedural peculiarities” which prevent transmission owners from going back in time to take specific actions on specific dates,” OMS maintains that the Commission properly established the refund effective date in this proceeding. According to OMS, the May 23, 2012 refund effective date established by the Commission⁶⁹ serves as the date that the “fixed” protocols are to be effective.⁷⁰ Further, OMS asserts that accepting the proposed effective date would not provide maximum protection to customers.⁷¹

60. OMS suggests that the Commission allow interested parties, after the posting of the update or true-up for the first rate year established under the new protocols, to also have the ability to make information requests and to raise informal and formal challenges with respect to the two immediately prior years’ formula rate updates, i.e., any formula rate charges billed on or after the May 23, 2012 refund effective date.⁷² OMS states that

⁶⁷ Southern Indiana Filing at 5.

⁶⁸ OMS Comments at 9-13.

⁶⁹ See May 16 Order, 143 FERC ¶ 61,149, n.10 (noting the refund effective date).

⁷⁰ OMS Comments at 11 (citing *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,191, at PP 21, 23, 28 (2009)).

⁷¹ *Id.* at 11-12 (citing Hearing Order, 139 FERC ¶ 61,127 at P 25).

⁷² *Id.* at 12-13.

the timeline for such a process could run concurrently with the timeline for the immediately applicable rate year.

61. Based on the premise that the protocols in effect between the refund effective date and December 31, 2013 have been deemed to be unjust and unreasonable, OMS argues that it is appropriate to apply as much of the new formula rate protocol process to the charges levied during that time as possible. OMS adds that such measures would not constitute retroactive ratemaking because notice was provided by the Commission in the form of establishment of the refund effective date.⁷³ Furthermore, OMS states that such an outcome would give maximum protection to customers, whereas accepting the proposed effective date would not provide customers with any meaningful protection for the period between the refund effective date and December 31, 2013.

62. Moreover, OMS states that accepting the proposed effective date without imposing additional measures would “permit the charges produced and levied by the formula rate process [prior to the proposed effective date] to be unjust and unreasonable due to the deficiencies identified by the Commission.”⁷⁴

c. Answers

63. In its answer, Southern Indiana argues that the Commission should reject OMS’s contention that the proposed effective date is inconsistent with the Commission’s prior determinations.⁷⁵ Southern Indiana argues that section 206(b) of the FPA required the Commission to establish a refund effective date that is no earlier than the date of publication of the Commission’s notice of the initiation of the investigation and no later than five months after such notice. However, Southern Indiana states that the refund effective date does not mandate that the proposed protocols be made effective on May 23, 2013 “because there are no monies to be refunded.”⁷⁶ Further, Southern Indiana asserts that a retroactive effective date would require that two prior years’ annual updates to be reopened. Southern Indiana states that such an outcome would result in administrative costs and confusion without providing any meaningful protection to customers and other interested parties. Additionally, Southern Indiana claims that the proposed effective date

⁷³ *Id.* at 13 (citing *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,191 at PP 28, 33).

⁷⁴ *Id.* at 12.

⁷⁵ Southern Indiana Answer at 3.

⁷⁶ *Id.*

would ensure that the new procedures apply to the next applicable forward-looking update and true-up process without depriving customers of any refunds.

64. OMS responds that the Commission has already exercised its discretion by establishing the earliest refund effective date allowed under the FPA.⁷⁷ Further, OMS states that the question presented in this proceeding is “whether the Commission may (or must), once it determines the just and reasonable protocol process, establish and fix that... process and apply it to the period beginning with the refund effective date previously established.”⁷⁸ OMS states that the Commission may apply a protocol process back to the established refund effective date in order to determine if charges were incorrectly or inappropriately levied.⁷⁹ OMS also suggests that it is uncertain whether any monies are to be refunded because the applicable charges were not subject to an effective protocol process that allowed interested parties to review and challenge the proposed updates and true-ups.⁸⁰ OMS additionally notes that, contrary to the assertion of Southern Indiana, a transmission owner’s formula rate is “always ‘open’ until definitively closed by the Commission” in that the transmission owner continues to bear the burden of demonstrating that the charge produced by the formula rate is just and reasonable and that the Commission has authority to require utilities to make available detailed information regarding their formula rates and inputs.⁸¹

d. Commission Determination

65. We will allow the proposed protocols to become effective on January 1, 2014, as requested. As an initial matter, we note that the breadth of the Commission’s discretion is at its zenith when fashioning remedies.⁸²

⁷⁷ OMS Answer at 3.

⁷⁸ *Id.* at 4.

⁷⁹ OMS additionally identifies a drafting error in its previously filed comments, clarifying that the Commission found in the May 16 Order that the formula rate protocols at issue have been unjust and unreasonable since May 23, 2012—not the formula rates themselves. *Id.* at 5-6.

⁸⁰ *Id.* at 7.

⁸¹ *Id.* at 6-8.

⁸² *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967).

66. In this case, it is unclear that customers would benefit from the retroactive application of the revised protocols. In the May 16 Order, the Commission held that the existing formula rate protocols provided under the Tariff were insufficient to ensure just and reasonable rates; however, the Commission made no determination as to the justness and reasonableness of the charges actually assessed. Moreover, the rate itself, i.e., the formula, continues to be just and reasonable and has not been called into question. Thus, there is no basis to conclude that the charges assessed between the refund effective date and December 31, 2013 were unjust, unreasonable, unduly discriminatory or preferential.

67. On the other hand, requiring Southern Indiana to retroactively apply the revised protocols could be unnecessarily burdensome to Southern Indiana as well as interested parties. As OMS acknowledges, Southern Indiana “cannot go back in time to take specific actions on specific dates.”⁸³ However, OMS’s proposal would nevertheless require Southern Indiana to provide interested parties with belated formula rate update information, and to defend against belated challenges, up to three years in the past and apparently concerning three rate years at once. Furthermore, it is unclear whether and how the deadlines established in the revised protocols conditionally accepted here would afford transmission owners or interested parties the ability or time to consider and pursue such challenges.

The Commission orders:

(A) Southern Indiana’s proposed formula rate protocols are hereby conditionally accepted, to be effective January 1, 2014, as discussed in the body of this order.

(B) Southern Indiana is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸³ OMS Comments at 11.