

146 FERC ¶ 61,211  
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.  
Northern Indiana Public Service Company

Docket No. ER13-2376-000

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued March 20, 2014)

1. On September 13, 2013, in compliance with the Commission's May 16, 2013 order,<sup>1</sup> Midcontinent Independent System Operator, Inc. (MISO), and Northern Indiana Public Service Company (NIPSCO), filed proposed revisions to NIPSCO's Attachment O formula rate protocols under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).<sup>2</sup> In this order, we conditionally accept NIPSCO'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),<sup>3</sup> to determine whether the formula rate protocols under Attachment O of the Tariff were sufficient to ensure just and reasonable rates.<sup>4</sup> In the Hearing Order, the Commission identified three areas of concern: (1) scope

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

<sup>2</sup> MISO FERC Electric Tariff, [42, NIPSCO Annual Rate Calculation and True-Up Procedures, 2.0.0](#).

<sup>3</sup> 16 U.S.C. § 824e (2012).

<sup>4</sup> *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 and the formula rate protocols of independent transmission owners are sufficient to ensure just and reasonable rates, the Commission established paper hearing procedures.

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).

3. In the May 16 Order, the Commission found that the formula rate protocols under the Tariff were insufficient to ensure just and reasonable rates, and therefore, directed MISO and its transmission owners to file revised formula rate protocols.

4. On September 13, 2013, MISO<sup>5</sup> and NIPSCO, as a transmission owning member of MISO, submitted revised forward-looking Attachment O formula rate protocols in compliance with the May 16 Order. NIPSCO states that, while NIPSCO already had a fairly robust information exchange process, the revised protocols enhance this process, as directed by the Commission, to explicitly expand the scope of participants, to formalize and further develop the information exchange procedures, and to create challenge procedures that provide a structure for resolving disputes that are not reconciled in the information exchange process.

## **II. Notice and Responsive Filings**

5. Notice of NIPSCO's filing was published in the *Federal Register*, 78 Fed. Reg. 58,300 (2013), with interventions and protests due on or before October 4, 2013, subsequently extended until October 18, 2013. Notices of intervention were filed by the Arkansas Public Service Commission and the Indiana Utility Regulatory Commission. The Organization of MISO States (OMS) filed a notice of intervention and comments. Timely motions to intervene were filed by: Consumers Energy Company; American Municipal Power, Inc.; and the MISO Transmission Owners.<sup>6</sup> A timely motion to

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

<sup>6</sup> 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, (continued...)

intervene and protest was filed by 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).<sup>7</sup> NIPSCO and OMS filed answers.

### **III. Discussion**

#### **A. Procedural Matters**

6. 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.

7. 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 are not persuaded to accept the answers submitted by NIPSCO and OMS and will, therefore, reject them.

#### **B. Substantive Matters**

8. As discussed below, we will conditionally accept NIPSCO's compliance filing, subject to further compliance, to be effective January 1, 2014.

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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.

<sup>7</sup> Joint Customers filed their protest 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; (2) MISO and Southern Indiana Gas & Electric Company in Docket No. ER13-2375-000; (3) Entergy Services Inc. in Docket No. ER13-948-000; and (4) ITC Holdings Corp. in Docket No. ER12-2681-002. However, substantively, Joint Customers' protest does not specifically address NIPSCO'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 NIPSCO's proposal.

**1. Scope of Participation****a. May 16 Order**

9. 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 MISO's 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.<sup>8</sup>

**b. Filing**

10. NIPSCO states that in compliance with the Commission's directive to include all interested parties in information exchange and review processes, NIPSCO proposes to expand the scope of participation listed in section IV of its formula rate protocols. NIPSCO states that the proposed protocols provide that interested parties eligible to participate in information exchange and challenge processes include, but are not limited to, customers under the Tariff, state utility regulatory commissions, OMS, consumer advocacy agencies, and state attorneys general.<sup>9</sup>

**c. Protests**

11. 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.<sup>10</sup>

**d. Commission Determination**

12. In the May 16 Order, the Commission stated that MISO and its 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

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<sup>8</sup> May 16 Order, 143 FERC ¶ 61,149 at P 34.

<sup>9</sup> NIPSCO Filing at 3.

<sup>10</sup> OMS Comments at 27.

state attorney[s] general[.]”<sup>11</sup> NIPSCO’s proposed definition of “Interested Parties” uses language identical to the Commission’s directives without additional provisions that might prevent an interested party from participating in information exchange and review processes. Accordingly, we find NIPSCO’s proposed definition of “Interested Parties” and general scope of participation just and reasonable.

13. As to OMS’s suggestion of explicitly including “Commission Staff” in NIPSCO’s and other transmission owners’ formula rate protocols, we find that this suggestion goes beyond the scope of the May 16 Order’s directives, as the Commission did not direct 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.”<sup>12</sup> Furthermore, we find that nothing in the May 16 Order or NIPSCO’s proposed protocols precludes the Commission from participating in transmission owners’ annual updates and true-up processes. Therefore, we find OMS’s suggestion to be unnecessary.

## 2. Transparency

### a. May 16 Order

14. 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 Commission 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 Commission 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.<sup>13</sup>

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<sup>11</sup> May 16 Order, 143 FERC ¶ 61,149 at P 34.

<sup>12</sup> *Id.* P 34 n.56.

<sup>13</sup> *Id.* PP 86-88.

15. 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 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 Commission required that transmission owners make a good faith effort to respond to information requests within a set, reasonable period of time.<sup>14</sup>

16. 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).<sup>15</sup>

**b. Filing**

17. NIPSCO states that its revised formula rate protocols require posting of the annual true-up and projected net revenue requirement, as well as underlying data and information, on both MISO's website and OASIS. NIPSCO's revised protocols provides for workable spreadsheets with all links and formula intact, as well as supporting documents and workpapers for data not included in the applicable form filed by the transmission owner, with sufficient information for interested parties to replicate the calculation of the formula results and identify any changes to the formula references (i.e. pages and line numbers). NIPSCO proposes that on June 1 of each rate year, it shall provide its annual true-up and the true-up adjustment. NIPSCO states that the projected

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<sup>14</sup> *Id.* P 91.

<sup>15</sup> *Id.* P 92.

net revenue requirement is posted on or before October 1 of each year. NIPSCO states that interested parties are provided until December 1 (60 days from the posting of the projected net revenue requirement) to serve information and data requests regarding the projected net revenue requirement and true-up and any inputs thereto following the posting. NIPSCO also states that the protocols require NIPSCO to hold an open meeting on or before November 1 of each year to create a forum where NIPSCO can explain and interested parties can review and discuss NIPSCO's calculations. NIPSCO further states that the protocols require it to make a good faith effort to respond to information and document requests within a reasonable and defined period of time (i.e., 15 days).<sup>16</sup> The proposed protocols limit such information and document requests to "what is necessary to determine: (1) the extent of effect of a Material Accounting Change; (2) whether the Annual True-Up fails to include data properly recorded in accordance with these protocols; (3) the proper application of the formula rate and procedures in these protocols; (4) the accuracy of data and consistency with the formula rate and procedures in these protocols; (5) the accuracy of data and consistency with the formula rate of the calculations shown in the Annual True-Up; and (6) the effect of any change to the underlying Uniform System of Accounts or [Applicable Form]."<sup>17</sup>

18. NIPSCO states that the proposed protocols require that the projected net revenue requirement include the annual true-up adjustment as well as supporting workpapers regarding projected costs of plant in projected rate base, the expected construction schedules and in-service dates, and projected capital expenditures. NIPSCO states that the protocols additionally provide that, upon request, NIPSCO will provide a description of the basis on which projects were planned either by NIPSCO or MISO. According to NIPSCO, the proposed protocols state that sufficient information must be included to determine: (1) the input data under the formula rate was properly recorded in any underlying workpapers; (2) the formula rate and procedures in the protocols were properly applied; (3) the data is accurate and consistent with the formula rate of the actual revenue requirement and rates under review; (4) the extent of accounting changes that affect formula rate inputs; and (5) the projected costs included in the projected capital addition expenditures are reasonable. According to NIPSCO, the proposed protocols require that the annual true-up publication include sufficient information to enable interested parties to replicate the calculation using the FERC Form No. 1 and identify any changes in inputs or formula references from the FERC Form No. 1.

19. NIPSCO's proposed protocols obligate it to provide the information regarding accounting changes, fair value adjustments and mergers, and a narrative explanation of

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<sup>16</sup> NIPSCO Filing at 4-5.

<sup>17</sup> MISO FERC Electric Tariff, [42, NIPSCO Annual Rate Calculation and True-Up Procedures, 2.0.0](#), section III.

the individual impacts of the material accounting changes, fair value adjustments, and mergers.<sup>18</sup> NIPSCO states that section VII of its revised protocols includes a requirement to make an annual information filing with the Commission that addresses NIPSCO's projected net revenue requirement for the rate year, including the annual true-up and true-up adjustment. NIPSCO states that the informational filing must include information reasonably necessary to determine: (1) that input data under the formula rate is properly recorded in any underlying workpapers; (2) that NIPSCO has properly applied the formula rate and procedures; (3) the accuracy of data and the consistency with the formula rate of the projected net revenue requirement and rates under review; and (4) the extent of accounting changes that affect formula rate inputs. NIPSCO explains that the informational filing must also describe corrections and adjustments during the period as well as any ongoing disputes under the informal or formal challenge procedures.<sup>19</sup>

**c. Protests**

20. 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.<sup>20</sup> 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.<sup>21</sup> OMS argues that there is too much time between the dates that the annual update/true-up must be posted and when the transmission owners hold their information meetings. OMS states that transmission owners should be required to hold their informational meetings no later than 30 days after posting their annual update/true-up, and no earlier than 10 days following posting.<sup>22</sup>

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<sup>18</sup> NIPSCO Filing at 4.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> OMS Comments at 14.

<sup>21</sup> *Id.* at 18-19.

<sup>22</sup> *Id.* at 15-18.

21. 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.<sup>23</sup> OMS and Joint Customers object to the proposal to limit identification of any reorganization or merger transaction that occurred during the previous year to those that required submission of a filing under section 203 or 205 of the FPA.<sup>24</sup> OMS recommends removing the limitation to require identification during the annual update to include any reorganization or merger transaction that occurred during the previous year, regardless of whether they required a filing with the Commission. 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.”<sup>25</sup>

22. Further, Joint Customers argue that the proposed protocols should be revised to require that the initial implementation of all accounting standards and policies must be reported in the annual update or true-up. Joint Customers state that the proposed protocols limit reporting of the initial implementation of an accounting standard or policy to that which is required to be disclosed under FERC Form No. 1, which Joint Customers argue is inappropriate and unjustified. Similarly, Joint Customers object to limiting the correction of errors and prior period adjustments that impact the true-up adjustment calculation to only the adjustments that alter what is reported in FERC Form No. 1 and require resubmittal of FERC Form No. 1.<sup>26</sup>

23. 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 those formula rate affected by the corrections.<sup>27</sup>

24. Joint Customers request that a provision precluding the transmission owner from claiming that responses to information and document requests pursuant to the protocols

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<sup>23</sup> *Id.* at 34-35.

<sup>24</sup> OMS Comments at 40-41; Joint Customers Protest at 14.

<sup>25</sup> Joint Customers Protest at 11-12.

<sup>26</sup> *Id.* at 12-14.

<sup>27</sup> *Id.* at 9.

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.<sup>28</sup>

25. OMS and Joint Customers object to the proposed limitations regarding the types of information that can be sought by interested parties and raised in challenges. OMS suggests removing all substantive limitations to information requests.<sup>29</sup> Joint Customers suggest revising the limit on information and document requests from "shall be limited to what is necessary to determine" to "shall be limited to what is reasonably calculated to lead to what is necessary and appropriate to determine."<sup>30</sup>

26. Joint Customers and OMS object to the provisions in the protocols that require interested parties to "make a good faith effort to submit consolidated sets of information and document requests that limit the number and overlap of questions to the maximum extent practicable."<sup>31</sup>

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 two informational filings be made: one at the beginning of the annual update and true-up process and another at the end of this process.<sup>32</sup> OMS suggests the first informational filing, submitted in the beginning of the process, include the five items enumerated in paragraph 92 of the May 16 Order, as well as any other information necessary to understand the annual update or true-up. OMS suggests that the second filing cover other items discussed by the Commission, including any corrections or adjustments made during the process and any items that are the subject of an ongoing dispute under the challenge procedures. OMS argues that

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<sup>28</sup> *Id.* at 16.

<sup>29</sup> OMS Comments at 28-30.

<sup>30</sup> Joint Customers Protest at 15.

<sup>31</sup> *Id.* at 15-16; OMS Comments at 18.

<sup>32</sup> OMS Comments at 20-21.

dividing informational reports is the most useful method for interested parties and would provide information to the Commission in a manner that is both timely and conducive to facilitating the Commission's 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 are consistent with Commission precedent.<sup>33</sup>

**d. Commission Determination**

28. 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.

29. 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 NIPSCO to revise its protocols to also provide such electronic notice.<sup>34</sup> We will also, as requested by OMS, require the MISO Transmission Owners to revise the protocols to provide such notice within 10 days of posting the annual update/true-up and to 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 NIPSCO 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.

30. With regard to the proposed timeline, we will not require NIPSCO to change the proposed date of the annual meeting. It is important to hold all parties accountable to a structured timeline, such as the one proposed, in order to ensure that the entire process is completed before the beginning of the next year's posting and information exchange.

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<sup>33</sup> *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).

<sup>34</sup> See *Midcontinent Independent System Operator, Inc., et al.*, 146 FERC ¶ 61,212, at P 59 (2014).

However, just as interested parties must follow the timelines set forth in the protocols, so must the transmission owners. Therefore, we agree with Joint Customers that any delay in the publication date should result in an equivalent extension of time for submission of information requests and direct NIPSCO to revise the proposed protocols to include such a provision. We will also require NIPSCO to revise the protocols to provide that if a certain deadline for interested parties falls on a weekend or holiday recognized by the Commission, then the deadline will be extended to the next business day. Further, we find that the proposed timeline meets the requirements of the May 16 Order.

31. We will require NIPSCO to remove the requirement in section IV.E of the proposed protocols for interested parties to make a good faith effort to consolidate information requests. We find, as protestors have argued, that such a requirement could prove to be overly burdensome to interested parties. We note that nowhere in the May 16 Order did the Commission contemplate requiring coordination on the part of interested parties.

32. We will grant the requests that the Commission require revisions to the provision relating to mergers and reorganizations. We find that the proposed provision, which requires identification of any merger or reorganization requiring submission of a filing under section 203 or 205 of the FPA, does not comply with the May 16 Order. Section II.D.8.c should be modified to remove the phrase “that required submission of a filing under section 203 or 205 of the Federal Power Act.” However, we will not grant 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 find that the protocols, as proposed, provide sufficient notification already, because they require transmission owners to describe in the informational filing any corrections or adjustments made.

33. With regard to Joint Customers’ request that the word “material” should be removed from all instances of the phrase “material accounting changes,” we will require NIPSCO to revise its protocols 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.<sup>35</sup> We note that by adding the concept of materiality to the accounting changes that must be disclosed, NIPSCO reduces the transparency of financial information used in formula rate billings without sufficient support. NIPSCO 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 transmission owners and excludes the input of interested parties. Thus, we will require the protocols to

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<sup>35</sup> May 16 Order, 143 FERC ¶ 61,149 at P 87.

exclude the word “material” from all instances of the phrase “material accounting changes.”

34. Similarly, we find that the additional limiting factors for accounting changes proposed by NIPSCO in section II.D.8.a to be unnecessary and unsupported. Specifically, accounting changes should not be limited to those not previously reported in FERC Form No. 1. Neither should an accounting change be limited to the implementation of an accounting standard or policy that is required to be disclosed under FERC Form No. 1. Neither should an accounting change be limited to corrections of errors and prior period adjustments that alter what is reported in FERC Form No. 1 and require resubmittal of the FERC Form No. 1. These limiting factors proposed by NIPSCO reduce the transparency of costs that are recovered under formula rate billings without adequate justification. All interested parties should be able to identify all accounting changes that affect inputs to the formula rate or the resulting charges billed under the formula rate.

35. We find that it is reasonable for the protocols to provide some limitations on the types of information that can be requested in both the information exchange and the challenge process. This will prevent the transmission owners from spending time and resources on extraneous requests for irrelevant information. However, the protocols should not overly restrict the types of information requested. Thus, we direct NIPSCO to revise its protocols to make clear that the six factors proposed in section III do not unduly constrain interested parties’ information requests. Specifically, NIPSCO must revise its protocols to state “such information and document requests shall be limited to what may be necessary to determine: [followed by the list of six inquiry categories]; or any other information that may reasonably have a substantive effect on the calculation of the rate pursuant to the formula.” This is consistent with the May 16 Order, which requires the formula rate protocols 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.”<sup>36</sup> We find that the six factors proposed in section III adequately respond to OMS’s concerns regarding the provision of information on procurement methods and cost control methodologies, as factor number five allows interested parties to request information on the prudence of actual costs and expenditures.

36. 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 NIPSCO to revise the protocols to include a provision precluding a transmission owner from claiming that responses to

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<sup>36</sup> *Id.* P 83.

information and document requests pursuant to the protocols are subject to any settlement provision.

37. As clarified in our order denying rehearing,<sup>37</sup> 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 to each transmission owner’s informational filing on the MISO website and OASIS within five days of such filing.

38. 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.<sup>38</sup> Accordingly, we find OMS’s suggestion beyond the scope of this proceeding.

### **3. Challenge Procedures**

#### **a. May 16 Order**

39. 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.<sup>39</sup> 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.<sup>40</sup> 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

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<sup>37</sup> *Midwest Independent System Operator Inc., et al.*, 146 FERC ¶ 61,209 (2014).

<sup>38</sup> May 16 Order, 143 FERC ¶ 61,149 at P 83.

<sup>39</sup> *Id.* P 118.

<sup>40</sup> *Id.* P 119.

annual updates.<sup>41</sup> Where applicable, the Commission added that transmission owners must appoint senior representatives to work with interested parties to resolve informal challenges.<sup>42</sup> 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 challenge with the Commission, in which the transmission owner would bear the burden of demonstrating the correctness of its update or true-up.<sup>43</sup>

**b. Filing**

40. NIPSCO argues that its proposed formula rate protocols include well-defined informal challenge procedures that can be utilized to challenge six factors: (1) the extent or effect of a material accounting change; (2) whether the annual true-up or projected net revenue requirement fails to include data properly recorded in accordance with the protocols; (3) the proper application of the formula rate and procedures in the protocols; (4) the accuracy of data and consistency with the formula rate of calculations shown in the annual true-up or projected net revenue requirement; (5) the prudence of actual costs and expenditures; and (6) the effect of any change to the underlying Uniform System of Accounts or applicable form.<sup>44</sup> NIPSCO proposes to permit interested parties to raise informal challenges pursuant to the proposed protocols. Moreover, NIPSCO proposes to permit interested parties to raise formal challenges pursuant to the protocols, though such challenges must satisfy the requirements established by Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2013).

41. NIPSCO proposes to allow interested parties to submit informal challenges until December 1, 60 days after NIPSCO's publication of the projected net revenue requirement.<sup>45</sup> NIPSCO further proposes to make a good-faith effort to respond to all informal challenges within 15 business days and to respond to all informal challenges no later than December 20. If an interested party's informal challenge has not been resolved within 30 days after the review period, the interested party would have an additional 30 days to raise a formal challenge before the Commission. However, the proposed challenge procedures prohibit interested parties from raising any issue in a formal challenge that was not the subject of that party's informal challenge during the applicable

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* P 120.

<sup>44</sup> NIPSCO Filing at 6.

<sup>45</sup> *Id.*

review period. Furthermore, under NIPSCO's proposal, NIPSCO's annual true-up and projected net revenue requirement would become final and "no longer subject to challenge pursuant to the[] protocols or by any other means by [the Commission] or any other entity" upon the latter of (i) the applicable deadline for the submission of formal challenges, if no such challenge has been submitted, or (ii) a final Commission order issued in response to a formal challenge or proceeding initiated by the Commission to consider the annual true-up or projected net revenue requirement.

42. Under NIPSCO's proposed challenge procedures, NIPSCO shall bear the burden of proving that it has correctly applied the terms of the formula rate, consistent with the protocols, and that it has followed the applicable requirements and procedures in Attachment O of the Tariff. However, NIPSCO states that its proposal is not intended to alter the burdens applied by the Commission with respect to prudence challenges.

**c. Protests**

43. OMS and Joint Customers raise concerns with the proposed deadline governing the submission of informal challenges.<sup>46</sup> OMS recommends that NIPSCO keep the window for submitting informal challenges open until at least two weeks after the transmission owner has responded to all information requests.<sup>47</sup> Joint Customers add that the period for review and challenge of annual updates/true-up could be compressed if the transmission owner has not timely responded to the submitted information requests.<sup>48</sup> Joint Customers argue that interested parties should not be required to submit informal challenges until the later of 150 days after the transmission owner publishes the annual update/true-up or 30 days after the transmission owner's last response to information requests.<sup>49</sup>

44. On a related issue, Joint Customers argue that transmission owners should be required to respond to informal challenges within 20 business days.<sup>50</sup> Moreover, Joint Customers assert that 20 business days is more than enough time for a transmission owner to respond to an informal challenge.

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<sup>46</sup> OMS Comments at 20; Joint Customers Protest at 6-7.

<sup>47</sup> OMS Comments at 20.

<sup>48</sup> Joint Customers Protest at 7.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 8-9.

45. OMS takes issue with NIPSCO's proposal to limit the scope of permissible challenges to issues pertaining to the six proposed factors.<sup>51</sup> OMS points out that transmission owners frequently possess the information necessary for an interested party to succeed on a complaint before the Commission, but retain discretion as to whether they provide the interested party with that information.<sup>52</sup> Thus, OMS argues that interested parties need significant leeway with regards to the information that they seek from transmission owners.<sup>53</sup> OMS states that the proposed protocols contain other provisions that preclude interested parties from seeking to modify the transmission owner's formula rate through the challenge procedures.<sup>54</sup> Consequently, OMS argues that the Commission should require NIPSCO to revise its proposal to make clear that the six proposed factors do not comprise an exclusive list.<sup>55</sup> Joint Customers argue that the six limiting factors proposed by NIPSCO are inconsistent with the May 16 Order.<sup>56</sup> Joint Customers contend that the Commission required a transmission owner to bear the burden of demonstrating "the justness and reasonableness of the implementation of its formula rate in the context of a [f]ormal [c]hallenge."<sup>57</sup> According to Joint Customers, it must follow that an interested party can challenge the justness and reasonableness of the transmission owner's implementation of the formula rate through informal and formal challenges.

46. OMS and Joint Customers additionally argue that the Commission should reject NIPSCO's proposal to preclude an interested party from raising any issue in a formal challenge that has not been previously raised in its informal challenge.<sup>58</sup> OMS contends that circumstances may arise that prevent interested parties from preparing a

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<sup>51</sup> *Id.* at 23-25; OMS Comments at 28-30.

<sup>52</sup> OMS Comments at 29.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 29-30.

<sup>55</sup> *Id.* at 30.

<sup>56</sup> Joint Customers Protest at 23-25.

<sup>57</sup> *Id.* at 24.

<sup>58</sup> *Id.* at 19-20; OMS Comments at 28-30.

comprehensive informal challenge.<sup>59</sup> OMS adds that the Commission has previously accepted formula rate protocols that require interested parties to make only a good faith effort to raise all issues in an informal challenge. Joint Customers contend that the Commission has previously rejected provisions like NIPSCO's proposal.<sup>60</sup> Joint Customers add that this provision is contrary to the Commission's previous recognition that a transmission customer may discover an issue subsequent to the informal challenge. Likewise, Joint Customers posit that interested parties should be allowed to adopt issues in a formal challenge that have been raised by other interested parties in informal challenges.

47. Joint Customers also suggest that three aspects of the proposed challenge procedures are inconsistent with the filed-rate doctrine and long-standing Commission precedent.<sup>61</sup> First, Joint Customers state that NIPSCO's proposal would limit an interested party's ability to raise at a later time any issue not raised through either the informal or formal challenge process. Second, Joint Customers state that NIPSCO's proposal renders the annual update unassailable after the later of two developments: (1) the period for filing formal challenges has passed, provided no such challenge has been submitted and the Commission has not initiated a relevant proceeding; or (2) a final Commission order has been issued in response to a formal challenge or proceeding initiated by the Commission. Third, Joint Customers point to the proposed "cut-off date for a party to raise challenges" as to an annual update or true-up filing. Joint Customers assert that the Commission has previously rejected proposals to include a cut-off date for challenges to rates included in the transmission owner's annual update.<sup>62</sup> Joint Customers additionally assert that longstanding Commission precedent provides that an error in the application of a formula rate is a violation of the filed-rate doctrine and, as such, is correctable back to the date of the error.<sup>63</sup>

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<sup>59</sup> OMS Comments at 28. For instance, unless the deadline for informal challenges is revised, OMS states that an interested party could be prevented from filing a comprehensive informal challenge. *Id.*

<sup>60</sup> Joint Customers Protest at 19-20 (citing *Tampa Elec. Co.*, 133 FERC ¶ 61,023, at P 60 (2010)).

<sup>61</sup> *Id.* at 16-20.

<sup>62</sup> *Id.* at 17-18 (citing *Virginia Elec. & Power Co.*, 123 FERC ¶ 61,098 (2008)).

<sup>63</sup> *Id.* (citing *Pub. Serv. Co. of N.M.*, 143 FERC ¶ 61,227, at P 14 (2013); *Tampa Elec. Co.*, 133 FERC ¶ 61,023 at P 60; *American Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 35 (2008); *Pioneer Transmission LLC*, 126 FERC ¶ 61,281, at P 113 (2009)).

48. OMS also takes issue with NIPSCO's proposal to deem a transmission owner's annual update final and no longer subject to challenge pursuant to the protocols, or by any other means, by the Commission or any other entity.<sup>64</sup> OMS states that Commission precedent permits parties to challenge the inputs or implementation of the formula at whatever time errors are discovered.<sup>65</sup> OMS contends that the Commission has allowed review of potentially imprudent costs charged to customers in prior-year formula rates. Moreover, OMS asserts that the Commission has rejected similar proposals in the past and has ruled that the Commission may order refunds for past periods where a utility has misapplied a formula rate or otherwise charged rates contrary to the filed rate.<sup>66</sup> Joint Customers add that this aspect of the proposed protocols constrain interested parties' statutory rights.<sup>67</sup>

49. OMS and Joint Customers further ask that the Commission reject the provisions of NIPSCO's proposal that would require interested parties' formal challenges to satisfy the requirements of Rule 206 of the Commission's Rules of Practice and Procedure.<sup>68</sup> OMS and Joint Customers contend that such a requirement could effectively require interested parties to assume the burden of proof in their formal challenges, in contravention of the May 16 Order.<sup>69</sup> Specifically, OMS points out that application of Rule 206 would require challenging parties to clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements, and to explain how the action or inaction violates the applicable authorities.<sup>70</sup> OMS further contends that

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<sup>64</sup> *Id.* at 16-20; OMS Comments at 37-39.

<sup>65</sup> OMS Comments at 38.

<sup>66</sup> *Id.* (citing *DTE Energy Trading Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,062, at P 28 (2005); *Quest Energy, L.L.C. v. The Detroit Edison Co.*, 106 FERC ¶ 61,227, at P 21 (2004); *Yankee Atomic Elec. Co.*, 60 FERC ¶ 61,316, at 62,096-97 (1992); *Appalachian Power Co.*, 23 FERC ¶ 61,032, at 61,088 (1983)).

<sup>67</sup> Joint Customers Protest at 19.

<sup>68</sup> *Id.* at 21-23; OMS Comments at 30-33.

<sup>69</sup> OMS Comments at 32-33 (citing May 16 Order, 143 FERC ¶ 61,149 at P 120); Joint Customers Protest at 21-22.

<sup>70</sup> OMS Comments at 32.

application of Rule 206 would conflate formal challenges and complaints filed pursuant to section 206 of the FPA and eliminate any distinction between the processes.<sup>71</sup>

50. Furthermore, Joint Customers assert that NIPSCO's attempt to describe its burden of proof in the context of a formal challenge falls short of the Commission's directives in the May 16 Order.<sup>72</sup> Joint Customers contend that the Commission required transmission owners to bear the burden of demonstrating the justness and reasonableness of the implementation of the formula rate.

51. OMS raises concerns regarding interested parties' access to confidential information.<sup>73</sup> Although OMS acknowledges the Commission's past decisions regarding the treatment of confidential information, OMS asserts that NIPSCO's proposal could result in interested parties being denied access to information necessary to allow a thorough analysis of the transmission owner's annual update or the interested party's preparation of a meaningful challenge. For example, OMS cautions that interested parties may be prohibited from using confidential information provided by a transmission owner in the context of a formal or informal challenge. Thus, OMS contends that the Commission should require NIPSCO to revise its proposal to enable interested parties to raise challenges based on confidential information. OMS adds that the Commission has previously approved such provisions.

52. With respect to transmission owners' responses to informal challenges, Joint Customers argue that, to the extent that a transmission owner disagrees with an informal challenge, the transmission owner should be required to respond to the interested party with a written explanation of that disagreement.<sup>74</sup> Joint Customers add that transmission owners should be required to post all informal challenges and responses to MISO's OASIS.<sup>75</sup> Further, Joint Customers contend that transmission owners should publicly post advanced notice of all meetings and conference calls to discuss or resolve any informal challenges.

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<sup>71</sup> *Id.* at 32-33.

<sup>72</sup> Joint Customers Protest at 22-23.

<sup>73</sup> OMS Comments at 35-37.

<sup>74</sup> Joint Customers Protest at 25.

<sup>75</sup> *Id.*

**d. Commission Determination**

53. We will conditionally accept NIPSCO's proposed challenge procedures, as they largely comply with the Commission's directives in the May 16 Order. Specifically, NIPSCO'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 true-up and projected net revenue requirement and provide that, where appropriate, NIPSCO will appoint a senior representative to resolve informal challenges. Additionally, NIPSCO's proposal enables interested parties to raise formal challenges, in which NIPSCO would bear the burden of demonstrating that it correctly applied the terms of the formula rate in a manner consistent with its protocols and the applicable requirements and procedures in Attachment O of the Tariff.

54. The proposed deadline for interested parties' submission of informal challenges, however, raises significant concerns because it potentially leaves interested parties with insufficient time to prepare an informal challenge after considering all of NIPSCO's responses to information and data requests. 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 actively participate in the annual update and true-up process and to challenge a transmission owner's application of its formula rate. Under NIPSCO's proposal, the time allotted for interested parties to submit information and data requests runs concurrent with the period in which interested parties may raise informal challenges. Specifically, interested parties must submit information requests and informal challenges alike by December 1. The proposed protocols only require NIPSCO to respond to information requests by December 20, the same day on which it is required to respond to informal challenges. In doing so, the proposed deadline for NIPSCO's response to information requests 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 of whether to raise an informal challenge. Consequently, we will condition our acceptance of the proposed protocols on additional revisions that enable interested parties to present informal challenges after a reasonable opportunity to evaluate all of NIPSCO's responses to information requests.

55. It is unnecessary to require NIPSCO to respond to all informal challenges within 20 business days, as Joint Customers request. As we note in a concurrently issued order, it is all but impossible to precisely predict the substance of future informal challenges.<sup>76</sup> The complexity of the issues that could be raised by interested parties in informal challenges, as well as the time necessary for transmission owners to develop responses,

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<sup>76</sup> *Midwest Independent System Operator, Inc. et al.*, 146 FERC ¶ 61,209 (2014); *Midcontinent Independent System Operator, Inc., et al.*, 146 FERC ¶ 61,212 (2014).

could vary. In this light, NIPSCO's proposal to make a good-faith effort to respond to informal challenges within 15 business days and to set a specific date by which it will respond to all informal challenges is reasonable under the circumstances.

56. As to the proposed six-factor limitation governing the range of issues that interested parties may raise through the challenge process, NIPSCO's proposal is generally consistent with the Commission's directives in the May 16 Order. Describing the burden that a transmission owner must carry in the course of defending against a formal challenge, the Commission explained that the transmission owner would "bear the burden of demonstrating the correctness of its update or true-up."<sup>77</sup> The Commission proceeded to recall its precedent in which the transmission owner "continues to bear the burden of demonstrating the justness and reasonableness of the rate resulting from its application of the formula."<sup>78</sup> 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."<sup>79</sup> Therefore, as an initial matter, the May 16 Order does not preclude NIPSCO's effort to describe the range of issues that can be appropriately addressed through informal and formal challenges. Subject to the modification below, NIPSCO's proposal further balances the ability of interested parties to participate in NIPSCO's update or true-up process with the need to avoid exposing NIPSCO to challenges regarding irrelevant issues. Given the Commission's focus in the May 16 Order on the transmission owner's implementation of the formula rate, the six factors proposed illustrate a range of issues that the Commission intended to be addressed through the formal challenge process.

57. Nevertheless, the proposed six-issue limitation may not reflect the full range of issues raised by NIPSCO's implementation of its formula rate. It is impossible to predict every future variation of facts. Consequently, in its compliance filing, we direct NIPSCO to modify section V.D of the proposed protocols to allow interested parties to raise all issues "that may be necessary to determine: (1) the extent or effect of an accounting change; (2) whether the annual true-up fails to include data properly recorded in accordance with the protocols; (3) the proper application of the formula rate and procedures in the proposed protocols; (4) the accuracy of data and consistency with the formula rate of the calculations shown in the annual true-up; (5) the prudence of actual costs and expenditures; and (6) the effect of any change to the underlying Uniform

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<sup>77</sup> May 16 Order, 143 FERC ¶ 61,149 at P 120.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* (emphasis added).

System of Accounts or applicable form ; or any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula.”

58. NIPSCO’s proposal to prohibit interested parties from raising any issue in a formal challenge that was not previously raised in the course of that party’s informal challenge raises a similar concern. While it is reasonable to require interested parties to submit an informal challenge before filing a formal challenge, as this would encourage interested parties to actively engage in the update and true-up process, which the Commission has previously encouraged,<sup>80</sup> an interested party’s awareness and understanding of an issue may evolve as new information becomes available through the course of the informal challenge process. NIPSCO’s proposal fails to properly account for this latter consideration. Though we view a prerequisite that interested parties must submit an informal challenge before filing a formal challenge as reasonable from a procedural perspective, interested parties must be able to raise newly discovered issues in a formal challenge, provided they have raised an informal challenge with respect to the applicable update or true-up. As a result, we direct NIPSCO to propose, in its compliance filing, revisions to its formula rate protocols to permit interested parties to raise substantive issues in a formal challenge that they did not raise in their preceding informal challenge.

59. Thus, while we are rejecting the proposal to prohibit interested parties from raising any issue in a formal challenge that was not previously raised in the course of that party’s informal challenge, we retain the requirement that an interested party submit an informal challenge in order to be able to raise *any* issue in a formal challenge, as this will encourage interested parties to actively engage throughout the process. Such a procedural prerequisite conflicts with neither Commission precedent nor the filed-rate doctrine because such a requirement does not impair any party’s statutory right to challenge a transmission owner’s update or true-up by filing a separate complaint pursuant to section 206 of the FPA. Specifically, in the decisions cited by Joint Customers, the Commission rejected proposals that were intended to limit the ability of interested parties to file a separate complaint pursuant to section 206 of the FPA.<sup>81</sup> Just as the informal and formal challenge process does not deny interested entities their statutory right to file a separate complaint pursuant to section 206 of the FPA, those decisions similarly have no bearing on the formal challenge procedures proposed by

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<sup>80</sup> See, e.g., *Delmarva Power & Light Co.*, 145 FERC ¶ 61,055, at P 22 (2013).

<sup>81</sup> See *Tampa Elec. Co.*, 133 FERC ¶ 61,023, at PP 12, 60 (2010); *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at PP 10, 35 (2008); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 113 (2009) (“Because we are concerned that the tariff language in Pioneer’s proposed protocols limits parties’ and the Commission’s rights to initiate a section 206 proceeding, Pioneer must revise its tariff . . .”).

NIPSCO and largely accepted here, which, as we note in a concurrently issued order, are distinct from complaints filed pursuant to section 206 of the FPA.<sup>82</sup>

60. We find that the finality provision in NIPSCO's proposed protocols, section V.I, contravenes Commission precedent and the filed-rate doctrine. As noted above, the Commission has long held that a transmission owner's formula rate protocols must not impede the statutory rights of the Commission or other interested parties to initiate complaint proceedings pursuant to section 206 of the FPA.<sup>83</sup> In this case, section V.I of the proposed protocols would deem NIPSCO's annual update and true-up final, and therefore "no longer subject to challenge pursuant to the[] protocols or by any other means by [the Commission] or any other entity...." Importantly, this provision would preclude the Commission and interested entities from exercising their rights under section 206 of the FPA. Consequently, in its compliance filing, we direct NIPSCO to revise the proposed protocols to ensure that the Commission and interested entities are not precluded from exercising their statutory rights.

61. While NIPSCO's proposal to require interested parties to satisfy the filing requirements set forth in Rule 206 of the Commission's Rules of Practice and Procedure does not improperly shift the burden of persuasion to interested parties, we find that it is inappropriate for the protocols to incorporate Rule 206 by reference. The proposed protocols state that formal challenges "shall be filed under and satisfy all requirements" established by Rule 206. Rule 206, in turn, requires complainants simply to identify and explain the alleged violation of the applicable statutory or regulatory requirements at issue. Applying Rule 206's filing requirements to formal challenges will ensure that interested parties sufficiently explain the matters being challenged without hampering any interested party's right to file a formal challenge.<sup>84</sup> In addition, the proposed protocols specifically provide that a transmission owner will be bear the burden of proving that the transmission owner has "correctly applied the terms of the formula rate consistent with the[] protocols, and that it followed the applicable requirements and procedures in this Attachment O. . . . Nothing herein is intended to alter the burdens applied by [the Commission] with respect to prudence challenges." Thus, contrary to Joint Customers' assertion, the proposed protocols reasonably describe the burden of proof to be borne by a transmission owner in the course of a formal challenge, as they

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<sup>82</sup> *Midcontinent Independent System Operator, Inc. and Southern Indiana Gas & Electric Co.*, 146 FERC ¶ 61,210 (2014).

<sup>83</sup> *See, e.g., Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 113.

<sup>84</sup> In particular, it is unclear how the rights of interested parties, irrespective of their size or available resources, are impaired by subjecting formal challenges to the filing requirements of Rule 206.

reflect the Commission's focus on the transmission owner's implementation of its formula rate.

62. Nevertheless, the proposed challenge procedures could create confusion with respect to the relationship between complaints, filed pursuant to section 206 of the FPA, and formal challenges, filed pursuant to the transmission owner's formula rate protocols. For instance, the proposed challenge procedures state that formal challenges "shall be filed under" Rule 206; however, Rule 206 itself makes no reference to formal challenges. Similarly, as OMS points out, Rule 206(b) sets forth the filing requirements for a complaint, but not a formal challenge. As a result, some of Rule 206(b)'s requirements may not be easily applied in the formal challenge context. For instance, Rule 206(b) requires complainants to describe the action or inaction that is alleged to violate the applicable statutory or regulatory requirements, though formal challenges are intended to address the transmission owner's implementation of its formula rate. Consequently, in its compliance filing, we direct NIPSCO to propose Tariff revisions that (1) make clear that formal challenges are filed pursuant to the proposed protocols, rather than Rule 206, and (2) detail specifically the filing requirements that an interested party must satisfy in submitting a formal challenge to the Commission.

63. We also direct NIPSCO to propose Tariff revisions to clarify that formal challenges should be filed in the informational filing docket. We find that this will reduce the Commission's administrative burden of tracking the status of formal challenges and informational filings. We note that the deadlines for filing formal challenges and informational filings, December 30th and January 31, respectively, must be revised to accommodate this change, to provide a reasonable period of time after the filing of the informational filing before formal challenges are due.<sup>85</sup>

64. While we stated in the May 16 Order that the challenge procedures need not conflict with the confidentiality requirements set forth in the MISO Transmission Owners Agreement and the Tariff,<sup>86</sup> NIPSCO's proposal simply states that the challenge provisions would be subject to the applicable confidentiality protections under the Tariff. However, it appears that the confidentiality provisions under the Tariff only cover the sharing of information with other Balancing Authorities, Transmission Owners, Market Participants and Regulating Authorities. Therefore, we direct NIPSCO to explain how the protocols' challenge procedures will ensure that customers have access to information

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<sup>85</sup> 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.

<sup>86</sup> See May 16 Order, 143 FERC ¶ 61,149 at P 119 n.197.

that will allow them to effectively challenge the implementation of the formula rate or revise the protocols to ensure that they do.

65. As to Joint Customers' request that NIPSCO be required to provide written responses to informal challenges, we note that the proposed protocols provide that NIPSCO will cause to be posted all informal challenges as well as NIPSCO's responses to such informal challenges. Consequently, we will not require further modification of NIPSCO's proposal in this respect.

66. Additionally, nothing in the May 16 Order required transmission owners 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.

#### 4. Effective Date

##### a. Filing

67. NIPSCO requests that its proposed protocols be made effective January 1, 2014, noting that the first subsequent annual update and true-up will take place on June 1, 2014.

##### b. Protests

68. OMS argues that the Commission should reject the January 1, 2014 effective date proposed by NIPSCO, and instead, make the proposed formula rate protocols effective as of the refund effective date established in the Hearing Order, May 23, 2012.<sup>87</sup> 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 refund effective date serves as the date that the "fixed" protocols are to be effective.<sup>88</sup> Further, OMS asserts that accepting the proposed effective date would not provide maximum protection to customers.<sup>89</sup>

69. OMS suggests that the Commission allow interested parties, after the update/true-up posting for the first rate year established under the new protocols, to also have the

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<sup>87</sup> OMS Comments at 9-13.

<sup>88</sup> *Id.* at 11 (citing *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,191, at PP 21, 23, 28 (2009)).

<sup>89</sup> *Id.* at 11-12 (citing Hearing Order, 139 FERC ¶ 61,127 at P 25).

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.<sup>90</sup> OMS states that the timeline for such a process could run concurrently with the timeline for the immediately applicable rate year.

70. 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.<sup>91</sup> 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.

71. 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."<sup>92</sup>

**c. Commission Determination**

72. 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.<sup>93</sup>

73. 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,

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<sup>90</sup> *Id.* at 12-13.

<sup>91</sup> *Id.* at 13 (citing *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,191 at PP 28, 33).

<sup>92</sup> *Id.* at 12.

<sup>93</sup> *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967).

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.

74. On the other hand, requiring NIPSCO to retroactively apply the revised protocols could unnecessarily burden NIPSCO as well as interested parties. As OMS acknowledges, NIPSCO “cannot go back in time to take specific actions on specific dates.”<sup>94</sup> However, OMS’s proposal would nevertheless require NIPSCO 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 NIPSCO or interested parties the ability or time to consider and pursue challenges.

The Commission orders:

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

(B) NIPSCO 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.

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<sup>94</sup> OMS Comments at 11.