

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

Entergy Services, Inc.

Docket No. ER13-948-000

ORDER ON COMPLIANCE FILINGS

(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.² (MISO) and the MISO Transmission Owners³ (collectively, the MISO Transmission Owners) filed proposed

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

² Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc." MISO states that it joins this filing as the administrator of its Tariff, but takes no position on the substance of the filing.

³ 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...)

revisions to Attachment O of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to modify the existing formula rate protocols (MISO Transmission Owners Filing).⁴ Also in compliance with the May 16 Order, compliance letters were filed by: Montezuma Municipal Light & Power and Tipton Municipal Utilities (Montezuma-Tipton); The Board of Water, Electric and Communications Trustees for the City of Muscatine, Iowa d/b/a Muscatine Power & Water (Muscatine Power); and Michigan South Central Power Agency (Michigan South). Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies,⁵ also submitted a compliance letter in compliance with the Commission's directives in *ITC Holdings Corp.*⁶ In this order, we conditionally accept, subject to further compliance, the MISO Transmission Owners Filing to become effective January 1, 2014. We also accept the compliance letters of Montezuma-Tipton, Muscatine Power, Michigan South, and Entergy.

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.

⁴ Also on September 13, 2013, in compliance with the Commission's order in *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013), ITC Holdings Corp. filed, on behalf of its subsidiaries ITC Arkansas LLC, ITC Louisiana LLC, ITC Mississippi LLC and ITC Texas LLC (collectively ITC Midsouth), formula rate implementation protocols. ITC Midsouth has since moved to withdraw its filing as moot. The Commission ruled on ITC Midsouth's motion separately in *ITC Holdings Corp.*, 146 FERC ¶ 61,111 (2014).

⁵ The Entergy Operating Companies are: Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

⁶ 143 FERC ¶ 61,257 (2013) (accepting the Entergy Operating Companies' proposed formula rate protocols, subject to modification to comply with the outcome of the May 16 Order).

I. Background

2. On May 17, 2012, the Commission instituted an investigation, pursuant to section 206 of the Federal Power Act (FPA),⁷ to determine whether the formula rate protocols under Attachment O of the Tariff were sufficient to ensure just and reasonable rates.⁸ In the Hearing Order, the Commission identified three areas of 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 ability 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. The MISO Transmission Owners Filing, submitted in Docket No. ER13-2379-000, includes: (1) protocols that apply to all transmission owners that use historical data to derive their annual transmission revenue requirement under Attachment O of the Tariff; and (2) protocols that apply to transmission owners that maintain company-specific forward-looking rate formulas that have not filed company-specific protocols to comply with the May 16 Order. The MISO Transmission Owners state that the proposed protocols for forward-looking formula rates apply to the determination of the actual net revenue requirement and true-up adjustment, rather than projected data.⁹

5. The MISO Transmission Owners state that the revised formula rate protocols are the result of several months of discussions among the transmission owners to develop consistent procedures for all transmission owners, regardless of which form (i.e., FERC Form No. 1, Rural Utilities Service Form No. 12, or Energy Information Administration Form No. 412) they use to develop their rates or whether their revenue requirement is based on historical or projected cost data. The MISO Transmission Owners state that,

⁷ 16 U.S.C. § 824e (2012).

⁸ *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.

⁹ MISO Transmission Owners Filing at 8.

where possible, the proposed protocols incorporate language taken directly from the May 16 Order or from existing protocols utilized by transmission owners in other regions.

6. In Docket No. ER13-948-000, Entergy, on behalf of the Entergy Operating Companies, submitted a compliance letter stating their intent to adopt the protocols for historical formula rates proposed by the MISO Transmission Owners. Entergy states that this is consistent with the Commission's order accepting the Entergy Operating Companies' proposed protocols, subject to compliance with the outcome of the May 16 Order.¹⁰

7. In a compliance letter filed on September 13, 2013 in Docket No. EL12-35-000, Montezuma-Tipton state that they concur with the filing made by the MISO Transmission Owners. Montezuma-Tipton explain that they are each a small municipally-owned electric utility whose transmission is part of MISO and whose costs are included in MISO rates. According to Montezuma-Tipton, they each have an individualized formula rate template that provides for non-levelized rates. Montezuma-Tipton state that they have separate tariff sheets from the generic Tariff, and the MISO Transmission Owners formula rate protocols may not apply to their city-specific Attachment O formula rate templates. Therefore, Montezuma-Tipton state that they are separately confirming that they will follow the generic formula rate protocols filed by the MISO Transmission Owners.

8. In its compliance letter filed on September 17, 2013 in Docket Nos. EL12-35-000 and ER13-2379-000, Muscatine Power states that it utilizes the MISO *pro forma* formula rate protocols, and that it plans to continue using the *pro forma* protocols as they may be adopted or modified by the Commission.

9. Michigan South submitted a compliance letter on September 13, 2013 in Docket No. EL12-35-000 stating that it does not receive an annual transmission revenue requirement distribution from MISO and does not have any formula rate protocols on file with the Commission. Michigan South explains that it is a transmission owner in a joint-transmission pricing zone and receives a capacity offset in lieu of a revenue distribution for its ownership interest in the Michigan Electric Transmission Company, LLC (METC) transmission system, and that it is aware of no compliance steps it can take at this time.

¹⁰ See *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 99 (2013).

II. Notice and Responsive Filings

10. Notice of the MISO Transmission Owners Filing was published in the *Federal Register*, 78 Fed. Reg. 58,298 (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. Timely motions to intervene were filed by: South Mississippi Electric Power Association; NRG Companies;¹¹ Muscatine Power; East Texas Electric Cooperative, Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.; International Transmission Company, METC, and ITC Midwest LLC; Northern Indiana Public Service Company; Alliant Energy Corporate Services, Inc. (Alliant); Wisconsin Electric Power Company; and Illinois Municipal Electric Agency. The Missouri Public Service Commission filed a motion to intervene.

11. The Organization of MISO States (OMS) filed a notice of intervention and comments. Timely motions to intervene and comments or protests were filed by: American Municipal Power, Inc. (AMP); Southwestern Electric Cooperative, Inc. (SWEC); The Midwest Municipal Transmission Group, the Municipal Electric Utility of the City of Cedar Falls, Iowa, Central Minnesota Municipal Power Agency, Atlantic Municipal Utilities of Atlantic, Iowa, Eldridge, Iowa, Elk River Municipal Utilities, Minnesota, Glencoe, Minnesota, the Iowa Public Power Agency, Pella, Iowa, and Montezuma-Tipton.; DTE Electric Company and Consumers Energy Company (DTE-Consumers); and Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, The Public Service Commission of Yazoo City, and South Mississippi Electric Power Association (collectively, Joint Customers). Answers were filed by the MISO Transmission Owners, DTE-Consumers, and OMS.

III. Discussion

A. Procedural Matters

12. 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.

¹¹ For the purpose of this filing, the NRG Companies are Louisiana Generating LLC, NRG Power Marketing LLC, GenOn Energy Management, LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC, Cottonwood Energy Company LP, and NRG Wholesale Generation LP.

13. 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 the MISO Transmission Owners, DTE-Consumers, and OMS because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

14. We will accept the compliance letters filed by Entergy, Montezuma-Tipton, Muscatine Power, and Michigan South. As further discussed below, we will conditionally accept the MISO Transmission Owners Filing, subject to further compliance, to be effective January 1, 2014.

1. Scope of Participation

a. May 16 Order

15. 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 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.¹²

b. MISO Transmission Owners Filing

16. MISO argues that the protocols submitted with its filing comply with the Commission's directives to include all interested parties in information exchange and review processes. MISO states that, specifically, both the historical and company-specific forward-looking protocols state that the term "Interested Party" includes, but is not limited to, customers under the Tariff, state utility regulatory commissions, OMS, consumer advocacy agencies, and state attorneys general. MISO also notes that interested parties have the right to participate in the open annual meetings, submit information requests, and make informal and formal challenges.¹³

¹² May 16 Order, 143 FERC ¶ 61,149 at P 34.

¹³ MISO Transmission Owners Filing at 8.

c. Protests

17. 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.¹⁴

d. Commission Determination

18. 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.”¹⁵ MISO’s proposed definition of interested parties uses language identical to the Commission’s directives without additional provisions which might prevent an interested party from participating in information exchange and review processes. Accordingly, we find the MISO’s proposed definition of interested parties and general scope of participation just and reasonable.

19. As to OMS’s suggestion of explicitly including “Commission Staff” in MISO’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 Commission staff in their definitions of interested parties. It is also unnecessary. 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.”¹⁶ Furthermore, we find that nothing in the MISO Transmission Owners’ proposed protocols would prevent Commission staff from participating in transmission owners’ annual updates and true-up processes.

¹⁴ OMS Comments at 27.

¹⁵ May 16 Order, 143 FERC ¶ 61,149 at P 34.

¹⁶ *Id.* P 34 n.56.

2. Transparency

a. May 16 Order

20. 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.¹⁷

21. 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.¹⁸

22. 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

¹⁷ *Id.* PP 86-88.

¹⁸ *Id.* P 91.

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).¹⁹

b. MISO Transmission Owners Filing

23. The MISO Transmission Owners state that their revisions to the information exchange procedures meet the requirements of the May 16 Order. The filing proposes that, on or before June 1 of each rate year, each transmission owner using the historical protocols will calculate the revenue requirement applicable for the upcoming rate year.²⁰ For forward-looking protocols, the filing proposes that the transmission owner must post its annual true-up on or before June 1 of the subsequent calendar year, unless a different posting date is designated in that transmission owner's protocols.²¹ The MISO Transmission Owners state that the proposed protocols require each transmission owner to post such information on the MISO website and OASIS, unless the date falls on a weekend or holiday, in which case the posting is due on the next business date.²²

24. The MISO Transmission Owners state that, to ensure transparency in both the formula rate and each transmission owner's inputs and development of its revenue requirement, the revised protocols provide a detailed listing of the information that must be posted on the MISO website and OASIS. The MISO Transmission Owners explain that this list includes workable spreadsheets with all links and formulae 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). The MISO Transmission Owners state that the proposed

¹⁹ *Id.* P 92.

²⁰ For transmission owners with historical protocols, the rate year is the period beginning on June 1 of that year and continuing through May 31 of the subsequent year.

²¹ The MISO Transmission Owners note that Central Minnesota Municipal Power Agency is obligated under a prior settlement to post its annual update on or before April 1 of each year.

²² MISO Transmission Owners Filing at 10.

protocols require each transmission owner to include underlying data for formula rate inputs that provide greater granularity than is required for the applicable forms.²³

25. The MISO Transmission Owners state that each transmission owner is required to hold an open annual meeting for interested parties between the June 1 posting date and October 1, and provide notice of the time, date, and location of the annual meeting on MISO's website and OASIS. The MISO Transmission Owners state that the annual meeting will permit the transmission owner to explain and clarify its annual update or annual true-up, as applicable, and provide interested parties an opportunity to seek information and clarifications from the transmission owner about the annual update or annual true-up and related calculations.²⁴

26. The MISO Transmission Owners state that the proposed protocols require each transmission owner to identify material accounting changes, and explain that the categories of information subject to identification as a material accounting change are consistent with those listed in the May 16 Order. The MISO Transmission Owners also state that the proposed protocols obligate each transmission owner to provide the information regarding fair value adjustments and mergers, and a narrative explanation of the individual impact of the material accounting, fair value adjustments, and merger-related impacts.²⁵ The MISO Transmission Owners state that the proposed protocols include detailed information exchange procedures, which allow interested parties to seek additional information concerning material accounting changes, the proper application of the formula rate, and the accuracy of the data, as well as to evaluate the prudence of the actual costs.

27. The MISO Transmission Owners state that interested parties have up to 120 days from the date the information is posted to submit information and document requests, unless a different date is agreed to by the transmission owner or is ordered by the Commission. The MISO Transmission Owners state that this 120-day period will provide interested parties with adequate time to review information, and is consistent with what the Commission has approved for transmission owners in other regional transmission organizations. Further, the MISO Transmission Owners state that the proposed protocols require each transmission owner to make a good faith effort to respond to these requests within 15 business days of receipt, and provide all responses by no later than December 1. The MISO Transmission Owners state that the transmission

²³ *Id.* at 10-11.

²⁴ *Id.* at 11.

²⁵ *Id.*

owner shall post all information requests from interested parties and the transmission owner's response on OASIS.²⁶ 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 of the charges shown in the Annual Update; (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].”²⁷

28. According to the MISO Transmission Owners, the existing, Commission-approved protocols of the transmission owners who use a forward-looking Attachment O already specify how the true-up is calculated, and thus, the MISO Transmission Owners have not made any substantive changes to these procedures.²⁸ The MISO Transmission Owners have also not made any substantive changes to the existing projected net revenue requirement procedures of those transmission owners who use a forward-looking Attachment O. Generally, the projected net revenue requirement procedures allow for the transmission owners to make available information regarding projected costs of plant in forecasted rate base, expected construction schedules and in-service dates, load and resultant rates incorporating a true-up adjustment.

29. MISO states that both its revised historical and forward-looking protocols adopt informational filing procedures that comply with the Commission's directives.²⁹ MISO states that the informational filing will be submitted on January 31 after the challenge period ends. MISO explains that the protocols require each transmission owner to describe all aspects of the formula rate or its inputs that are the subject of an ongoing dispute under challenge procedures and provide information that is reasonably necessary to determine: (1) that input data under the formula rate are properly recorded in any underlying workpapers; (2) that the transmission owner has properly applied the formula rate and protocols; (3) the accuracy of data and the consistency with the formula rate of the revenue requirement and rates under review; and (4) the extent of accounting changes that affect formula rate inputs. MISO states that these informational filings will not be

²⁶ *Id.* at 11-12.

²⁷ MISO FERC Electric Tariff, [2, MISO Formulaic Rates](#), 3.0.0, section III.

²⁸ MISO Transmission Owners Filing at 13.

²⁹ *Id.* at 19 (citing May 16 Order, 143 FERC ¶ 61,149 at PP 85, 92, 92 n.142, 120 n.200).

noticed and that any challenges to the implementation of the formula rate must be made through the applicable challenge procedures or in a separate complaint proceeding, not in response to an informational filing.³⁰

c. Protests

30. OMS recommends that the Commission require MISO to provide electronic notice of each transmission owner's posting of the 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.³¹ OMS states that because the cost of many projects in MISO's footprint are shared regionally by transmission customers (e.g. Multi-Value Projects³²), it 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.³³

31. Several of the protests and comments propose changes to the timelines associated with the annual meeting and information exchange. In general, parties seek more time to request and review information from transmission owners. 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. With regard to the October 1 deadline for submitting information requests, Joint Customers request that it be deleted so that interested parties are only required to submit information requests within 120 days of the publication date in the event the publication date is delayed. They also argue that deadlines for information requests should be tolled in the event of delay in the provision of information responses. Similarly, AMP argues that, as the protocols only require transmission owners to make a good faith effort to

³⁰ *Id.*

³¹ OMS Comments at 14.

³² Multi-Value Projects are a category of transmission projects in the MISO Tariff that receive broad regional cost allocation, and are frequently built as joint projects by multiple transmission owners.

³³ OMS Comments at 18-19.

respond to information requests within 15 business days, the transmission owner has an incentive to delay responding until the December 1 deadline, which is also the end of the information exchange period. Thus, AMP and Joint Customers suggest revising the protocols to extend the exchange period day-for-day for each day beyond the 15-day target that a transmission owner's response is provided.³⁴

32. SWEC contends that the proposed protocols afford the transmission owners too much time to respond to information requests. According to SWEC, because the review and challenge procedures contained in the proposed protocols limit the amount of time for parties to submit discovery requests, utilities have an opportunity to “run out the clock” on customers by providing only minimally responsive answers that beget additional, follow-up requests. SWEC requests that the Commission direct the MISO Transmission Owners to revise the proposed protocols to commit transmission owners to respond to information requests within 10 business days.³⁵

33. OMS, Joint Customers, and DTE-Consumers point out that the protocols proposed by the MISO Transmission Owners allow a transmission owner to hold the annual meeting on the final day for interested parties to request information regarding a transmission owner's annual update. Joint Customers express concern that interested parties may have additional questions that stem from the annual meeting, but would not have the opportunity to submit information requests if the annual meeting were held on October 1. DTE-Consumers suggest that all deadlines be established from the date of the annual meeting. 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.³⁶

34. Alliant argues that, although the MISO Transmission Owners' proposal provides greater transparency with respect to the true-up adjustment, their filing fails to enable transmission customers to evaluate and influence future costs on behalf of their end-use customers. Alliant explains that transmission customers are very concerned about the *projected* rates and the lack of transparency with regard to the underlying work plan, rationale, business case and benefits.³⁷ OMS and SWEC similarly argue that the

³⁴ AMP Comments at 3; Joint Customers Protest at 5-6.

³⁵ SWEC Protest at 12-13.

³⁶ Joint Customers Protest at 8; DTE-Consumers Comments at 3-4; OMS Comments at 15-18.

³⁷ Alliant Comments at 5-6.

Commission should direct all transmission owners to revise their protocols to make their formula rate projections subject to all aspects of the proposed processes: posting, open meeting, information exchange, challenge process, and informational filing.

Additionally, SWEC argues that the protocols should be revised to require transmission owners with forward-looking rates to provide a variance report showing the differences between the estimates included in the projected rates and the actuals. OMS and SWEC contend that automatic true-ups without any investigations into the reasonableness and prudence of projected costs do not provide protection to customers against unreasonable and imprudent costs.³⁸

35. 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.³⁹

36. SWEC argues that the protocols should specifically identify the information that the transmission owners must post annually. SWEC is concerned that the proposed protocols do not commit transmission owners to provide sufficient information for customers to understand the implementation of the formula without resorting to extensive information requests.⁴⁰ AMP suggests that transmission owners should include a narrative description of any significant change in an input from the prior year. According to AMP, this would be helpful to interested parties by allowing them to focus on items that are markedly different from prior year amounts.⁴¹

37. OMS 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 the interested parties have the means to assess prudence.⁴²

³⁸ OMS Comments at 22-27; SWEC Protest at 8-9.

³⁹ Joint Customers Protest at 9.

⁴⁰ SWEC Protest at 6-7.

⁴¹ AMP Comments at 1-2.

⁴² OMS Comments at 34-35.

38. AMP, Joint Customers, and OMS object to the provisions in section III.A of 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.”⁴³ AMP argues that a disproportionate amount of effort can be expended attempting to consolidate information requests, as compared to the efforts required of a transmission owner to deal with overlapping questions.⁴⁴

39. Several protestors 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. Joint Customers suggest the 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.”⁴⁵ DTE-Consumers suggest revising the language to state that such information and document requests “may include but shall not be limited to.”⁴⁶

40. OMS and Joint Customers object to the MISO Transmission Owners’ 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.⁴⁷ 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. Similarly, 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.”⁴⁸

⁴³ *Id.* at 18; AMP Comments at 2-3; Joint Customers Protest at 15-16.

⁴⁴ AMP Comments at 2-3.

⁴⁵ Joint Customers Protest at 15.

⁴⁶ DTE-Consumers Comments at 4-5.

⁴⁷ OMS Comments at 40-41; Joint Customers Protest at 14.

⁴⁸ Joint Customers Protest at 11-12.

41. Further, Joint Customers argue that the Commission should direct the MISO Transmission Owners to revise the protocols 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. 1.⁴⁹

42. 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.⁵⁰ SWEC argues that the proposed protocols should include a mechanism to resolve disputes over the information exchange process.⁵¹

43. 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.⁵² OMS suggests the informational 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. OMS suggests that second filing cover other items discussed by the Commission, including any corrections or adjustments made during the protocol process

⁴⁹ *Id.* at 12-14.

⁵⁰ *Id.* at 16.

⁵¹ SWEC Protest at 13.

⁵² OMS Comments at 20-21.

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 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 precedential.⁵³

44. Finally, OMS points out that the "Transmission Provider Formulaic Rates description" section of MISO's Attachment O states that, after reviewing the formula rate templates for accuracy, MISO will send a letter informing the transmission owner that MISO has reviewed and approved the rates and revenue requirement contained in the template. OMS takes issue with MISO's use of the term "approved," arguing that the role performed and actions taken by MISO do not constitute approval of the transmission owners' formula rate charges. OMS states that it is concerned that retaining in the Tariff this mischaracterization of MISO's role could lead to future misunderstandings and disputes, and thus requests that the Commission direct the MISO Transmission Owners to delete the words "and approved" from Attachment O.⁵⁴

d. Answers

45. Regarding OMS's request that the Commission require MISO to provide electronic notice of posting of the annual update/true-up, the MISO Transmission Owners state that they are willing to amend section II.E of the proposed protocols to provide that notice will be provided through an email "exploder" list to be maintained by MISO. However, with regard to OMS's request that the Commission require joint meetings, the MISO Transmission Owners argue that a joint meeting is unnecessary and not required by the May 16 Order.⁵⁵

46. Regarding protests related to annual meeting dates, the MISO Transmission Owners explain that their proposal was not intended to prevent interested parties from submitting information requests. To address such concerns, the MISO Transmission Owners state that they are willing to modify section II.E of their protocols to state that the annual meeting must be held sometime between publication of the annual update and

⁵³ *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.

⁵⁴ *Id.* at 39-40.

⁵⁵ MISO Transmission Owners Answer at 15-17.

September 1, thereby leaving at least 30 days before the deadline for information requests. The MISO Transmission Owners add that this modification will also provide for additional time between the annual meeting and the deadline for challenges. The MISO Transmission Owners also state that proposed timelines for submitting information requests should be rejected and that the 120-day information request period and proposed response period are consistent with other Commission-approved protocols as well as the May 16 Order.⁵⁶ According to the MISO Transmission Owners, a transmission owner will have no incentive to delay responses to information requests, as such conduct would simply invite a challenge. Further, the MISO Transmission Owners respond to objections to the proposed protocols' requirement that interested parties consolidate information requests by arguing that such objections are misplaced. The MISO Transmission Owners explain that they will not decline to respond to an information or document request on the basis that it is duplicative of another request.⁵⁷

47. The MISO Transmission Owners add that the Commission should reject protestors' arguments suggesting that the proposed protocols should be extended to govern projected revenue requirements. The MISO Transmission Owners argue that application of information exchange and challenge procedures to cost projections is wasteful, duplicative, and administratively burdensome. The MISO Transmission Owners state that the true-up and refund requirements will adequately protect consumers. The MISO Transmission Owners additionally argue that application of the formula rate protocols to projected rates will have no impact on over- or under-collection, because outcomes are ultimately based on actual costs.⁵⁸

48. In response to SWEC's concerns over information provided with the posting of an annual update, the MISO Transmission Owners state that their protocols fully comply with the May 16 Order. Specifically, the MISO Transmission Owners state that section II.D of the proposed protocols require transmission owners to provide detailed information concerning the calculation of the annual update or true-up, including supporting documentation and workpapers for data that is used in the formula rate. The MISO Transmission Owners also argue that the protocols are self-explanatory and are either based on language contained in the May 16 Order or protocols adopted by other transmission owners.⁵⁹ The MISO Transmission Owners similarly argue that requests to

⁵⁶*Id.* at 19 (citing *Baltimore Gas & Elec. Co.*, 115 FERC ¶ 61,066, at P 2 (2006); *Commonwealth Edison Co.*, 122 FERC ¶ 61,030, at P 2 (2008)).

⁵⁷ *Id.* at 14-20.

⁵⁸ *Id.* at 31-35.

⁵⁹ *Id.* at 10 (citing *Commonwealth Edison Co.*, 122 FERC ¶ 61,030 at P 2).

require a narrative discussion of any significant change and to require transmission owners using forward-looking formula rates to explain any variance of more than 10 percent between the actual and projected net requirement should be rejected. The MISO Transmission Owners contend that neither the May 16 Order nor anything in the FPA or Commission precedent requires such provisions.⁶⁰

49. In response to OMS's recommendation that the Commission require that the protocols specifically provide interested parties with data and information on procurement methods and cost control methodologies used by transmission owners, MISO Transmission Owners state that this request is superfluous and should be rejected.⁶¹ MISO argues that the May 16 Order requires that such information be obtained *upon request* and that the proposed protocols provide for information requests to determine the prudence of actual costs and expenditures, therefore no additional revisions are necessary.⁶²

50. In response to the objections regarding the limited scope of reorganizations and mergers that the protocols require disclosure of, the MISO Transmission Owners argue that their proposal appropriately applies only to transactions that are likely to affect the charges that result from the formula rate calculations. And, they argue that OMS does not explain why it would be appropriate to hold the transmission owners to a different standard with regard to reporting mergers and reorganizations than transmission owners are held to under the FPA.⁶³

51. The MISO Transmission Owners additionally assert that objections over information request limitations lack merit. The MISO Transmission Owners state that the provisions establishing the scope of challenges are consistent with the May 16 Order and protocols adopted by other transmission owners.⁶⁴

⁶⁰ *Id.* at 9-11.

⁶¹ *Id.* at 9 n.30.

⁶² *Id.* (citing May 16 Order, 143 FERC ¶ 61,149 at P 90).

⁶³ *Id.* at 13-14.

⁶⁴ *Id.* at 23 (citing *Green Power Express LP*, 135 FERC ¶ 61,141, at P 75 (2011); *Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, at P 98 (2010); *PPL Elec. Utils. Corp.*, 128 FERC ¶ 61,178, at P 9 (2009)).

52. The MISO Transmission Owners state that SWEC's request that the protocols include a mechanism for the resolution of disputes over information and document requests should be rejected, arguing that the Commission rejected requests that the protocols allow for the appointment of a discovery master. The MISO Transmission Owners contend that SWEC's request is an improper collateral attack on the May 16 Order.⁶⁵

53. In response to OMS's suggestion to institute two informational filings, MISO asserts that nothing in May 16 Order supports or mandates this proposition. MISO states that because the information contained in the initial informational filing desired by OMS will be posted on the annual update and true-up publication date by the transmission owner, an additional informational filing is duplicative and unnecessary.⁶⁶

54. Regarding its request that transmission owners be required to hold joint meetings for shared projects, OMS responds that the MISO Transmission Owners failed to respond to its observations about shared transmission project costs in the MISO region and the lack of transparency regarding rate recovery for those projects. OMS states that its request stemmed from its observation about the lack of transparency for interested parties in the rate recovery for shared transmission project costs in the MISO region.⁶⁷

55. OMS states that it appreciates the MISO Transmission Owners' reconsideration of the timeline for annual meetings. However, OMS argues that this concession does not satisfy its concerns, contending that prevention of potential abuse at the outset, rather than delayed and/or disputed remediation after the fact, better serves the interests of efficiency and stability in the protocols finally adopted. Thus, OMS continues to recommend that the annual meeting be held on the timeline proposed in its comments.⁶⁸

56. OMS takes issue with the MISO Transmission Owners' assertion that applying the protocols to the projected net revenue requirements is not required by the May 16 Order. OMS argues that the Commission's expression of concern regarding transparency and the Commission's reiteration of the transmission owners' responsibility to demonstrate the just and reasonableness of the charges produced by the formula rate in the May 16 Order apply to charges produced in the revenue requirement projection stage as well as the true-

⁶⁵ *Id.* at 20-21.

⁶⁶ *Id.* at 21-22 (citing May 16 Order, 143 FERC ¶ 61,149 at P 122).

⁶⁷ OMS Answer at 13-16.

⁶⁸ *Id.* at 12-13.

up stage. According to OMS, the MISO Transmission Owners' focus on actual costs ignores the fact that customers do actually pay the costs reflected in the projected net revenue requirements, and if those projections are inflated, customers will not obtain a refund of improperly collected rates until several years later. OMS argues that it is unreasonable to expect customers to pay inflated rates for a year and only after that year has passed, have access to a process for reviewing and challenging costs that they have already been forced to pay. OMS maintains that the protocols need to include the ability to make available projected and actual data so that OMS and state commissions can submit meaningful information requests and make informal or formal challenges based on comparisons of projected and actual data.⁶⁹

57. OMS continues to recommend that the Commission delete the requirement that interested parties make a good faith effort to consolidate information requests. With regard to reporting mergers, OMS argues that the May 16 Order requires that any reorganization or merger transaction be reported and that an explanation of the effect of the accounting for such transactions on inputs to the formula rate be provided.⁷⁰

e. **Commission Determination**

58. 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.

59. Regarding OMS's request that the Commission require MISO to provide electronic notice of the annual update/true-up postings, we will accept the MISO Transmission Owners' statement that they are willing to amend section II.E of the proposed protocols to provide that notice will be provided through an email "exploder" list to be maintained by MISO. We will also, as requested by OMS, require the MISO Transmission Owners 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 the MISO Transmission Owners to propose, in their 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

⁶⁹ *Id.* at 8-12.

⁷⁰ *Id.* at 19 (citing May 16 Order, 143 FERC ¶ 61,149 at P 87).

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.

60. With regard to the proposed timeline, we accept the MISO Transmission Owners' commitment in their answer to hold their annual meetings before September 1 of each year. 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. Thus, we will not require the MISO Transmission Owners to toll the deadlines for information requests in the event of a delay in the provision of information responses. We also find that the protocols require that transmission owners make a "good faith effort" to respond within the specified timelines, and transmission owners have an incentive to, in fact, provide timely responses to information requests, in order to avoid informal and formal challenges that could otherwise be resolved during the information exchange process. If interested parties believe that transmission owners are refusing to make a good faith effort, the proposed protocols allow for them to bring this before the Commission in a formal challenge.

61. 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 the MISO Transmission Owners to revise the Tariff to include such a provision. We will also require the MISO Transmission Owners 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, as modified herein, meets the requirements of the May 16 Order.

62. We will require the MISO Transmission Owners to revise the proposed forward-looking protocols to apply to the projected revenue requirement, in addition to the true-up, as requested by protestors. The May 16 Order required transmission owners to post their revenue requirements and relevant information, and to hold an annual meeting where transmission owners and interested parties can discuss the calculations.⁷¹ This language was meant to apply to all revenue requirements, including projected revenue requirements. We agree with protestors that it is unreasonable to require customers to pay rates based upon projected revenue requirements, while prohibiting them from having access to the process for reviewing and challenging those rates. Further, we will require the MISO Transmission Owners to ensure that interested parties have appropriate

⁷¹ May 16 Order, 143 FERC ¶ 61,149 at P 86.

time to review the updates to the projected costs, since these updates may not be available until after the June 1 date. Consistent with our finding here, we will also require the MISO Transmission Owners to revise the Tariff to provide that informational filings contain information necessary to review the reasonableness of projected costs for transmission owners with forward-looking rates.

63. We will also require the MISO Transmission Owners to remove the requirement in 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.

64. 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.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.” We will not, however, require the MISO Transmission Owners to further revise the protocols to specifically identify the information that the transmission owners must post annually, nor will we require transmission owners to include a narrative description of any significant change in an input from the prior year or a variance report showing the difference between the projected rates and the actuals. We find such revisions to be beyond the requirements of the May 16 Order. We will also 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 which, as proposed, require transmission owners to describe in the informational filing any corrections or adjustments made, provide sufficient notification already.

65. 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 MISO Transmission Owners 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.⁷² We note that by adding the concept of materiality to the accounting changes that must be disclosed, the MISO Transmission Owners reduce the transparency of financial information used in formula rate billings without sufficient support. The MISO Transmission Owners have

⁷² May 16 Order, 143 FERC ¶ 61,149 at P 87.

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 exclude the word “material” from all instances of the phrase “material accounting change(s).”

66. Similarly, we find that the additional limiting factors for accounting changes proposed by the MISO Transmission Owners in section II.8 are unnecessary and unsupported. Specifically, accounting changes should not be limited to those not previously reported in the Applicable Form. Neither should an accounting change be limited to the implementation of an accounting standard or policy that is required to be disclosed under the Applicable Form. Neither should an accounting change be limited to corrections of errors and prior period adjustments that alter what is reported in the Applicable Form and require resubmittal of the Applicable Form. These limiting factors proposed by the MISO Transmission Owners reduce the transparency of costs that are recovered under formula rate billings without adequate justification. All interested parties should be able to identify and understand all accounting changes that affect inputs to the formula rate or the resulting charges billed under the formula rate.

67. 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 the MISO Transmission Owners to revise their protocols to make clear that the six factors proposed in section III do not unduly constrain interested parties’ information requests. Specifically, the MISO Transmission Owners must revise their 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 substantive effect on the calculation of the charge 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.”⁷³ 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.

⁷³ *Id.* P 83.

68. 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 the MISO Transmission Owners 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.

69. We dismiss SWEC's argument that the proposed protocols should include a mechanism to resolve disputes over the information exchange process. The proposed protocols contain sufficient informal and formal challenge procedures, we believe, in order to provide an avenue for disputes that arise during the information exchange process, including the availability of an on-call settlement judge at the Commission,⁷⁴ and we decline at this time to require any additional mechanisms.

70. With regard to the MISO Transmission Owners' statement that any challenges to the implementation of their formula rate must be made through the applicable challenge procedures or in a separate complaint proceeding, not in response to an informational filing, we clarify that the protocols in no way limit the ability of an interested party to file a formal challenge or complaint with the Commission in response to an informational filing, as long as the party follows the appropriate procedures discussed in the challenge procedures section below. As discussed in that section, the formal challenge is the opportunity to file a protest or comments to the informational filing,⁷⁵ and formal challenges should be filed in the same docket as the informational filing.

71. As clarified in our order denying rehearing,⁷⁶ 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 other 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

⁷⁴ *Id.* P 122 (the Commission noted that "parties are free to request the appointment of a settlement judge and avail themselves of the on-call settlement judge, as well as the Commission's Dispute Resolution Service to resolve such matters.").

⁷⁵ 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.

⁷⁶ *Midcontinent Independent System Operator, Inc., et al.*, 146 FERC ¶ 61,209 (2014).

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.

72. 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.⁷⁷ Accordingly, we find OMS’s suggestion beyond the scope of this proceeding.

73. With regard to OMS’s request that the Commission delete the words “and approved” from the description of formula rate templates at the beginning of Attachment O, we find that that portion of Attachment O is not a part of the formula rate protocols, and thus reject OMS’s request as outside the scope of this proceeding. Moreover, such “approval” by MISO does not constitute approval of the implementation of the formula rate by the Commission.

3. Challenge Procedures

a. May 16 Order

74. 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.⁷⁸ 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.⁷⁹ 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.⁸⁰ Where applicable, the Commission added that transmission owners

⁷⁷ May 16 Order, 143 FERC ¶ 61,149 at P 92.

⁷⁸ *Id.* P 118.

⁷⁹ *Id.* P 119.

⁸⁰ *Id.*

must appoint senior representatives to work with interested parties to resolve informal challenges.⁸¹ 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.⁸²

b. MISO Transmission Owners Filing

75. Both the MISO Transmission Owners' revised historical and forward-looking protocols set forth MISO's proposed challenge procedures.⁸³ Under the MISO Transmission Owners' proposal, interested parties are afforded 150 days following the publication of transmission owners' revenue requirements and true-ups to raise an informal challenge with the transmission owner.⁸⁴ The MISO Transmission Owners additionally propose to subject informal challenges to two substantive requirements. First, the MISO Transmission Owners state that an interested party that raises an informal challenge must specify the inputs, supporting explanations, allocations, calculations or other information to which it objects. Interested parties must also provide an appropriate explanation and documents to support an informal challenge. Second, the MISO Transmission Owners propose to limit interested parties to: (1) the extent or effect of a material accounting change; (2) whether the annual update or 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 protocols; (4) the accuracy of data and consistency with the formula rate of the charges shown in the annual update; (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.⁸⁵ The MISO Transmission Owners assert that these restrictions appropriately allow interested parties to raise informal challenges without requiring the transmission owner to provide information that is irrelevant to its annual update or true-up.

76. The MISO Transmission Owners propose to require transmission owners to post all informal challenges, as well as the transmission owner's response, subject to the

⁸¹ *Id.*

⁸² *Id.* P 120.

⁸³ MISO Transmission Owners Filing at 13.

⁸⁴ *Id.* at 13-14.

⁸⁵ *Id.* at 14-15.

applicable confidentiality protections under the Tariff.⁸⁶ Additionally, the MISO Transmission Owners propose that any changes or adjustments resulting from the information exchange and informal challenge processes that the transmission owner agrees to make on or before December 1 will be reported in the annual informational filing and reflected in the Annual Update or True-Up Adjustment in the following rate year.⁸⁷

77. The MISO Transmission Owners contend that the proposed protocols also set forth a well-defined procedure for formal challenges.⁸⁸ Under the MISO Transmission Owners' proposal, if a transmission owner and an interested party have not resolved an informal challenge within 30 days after the 150-day review period ends, the interested party has an additional 30 days to submit a formal challenge to the Commission. Thus, under the MISO Transmission Owners' proposal, formal challenges must be submitted by December 30. However, an interested party may not raise "any issue that was not the subject of that party's [i]nformal [c]hallenge during the applicable [r]eview [p]eriod."⁸⁹ The MISO Transmission Owners further propose to subject formal challenges to the procedures set forth in Rule 206 of the Commission's Rules of Practice and Procedure;⁹⁰ however, the proposed protocols state that the transmission owner shall bear the burden

⁸⁶ *Id.* at 15 & n.69 (citing section IV.E of the Protocols ("The Transmission Owner will cause to be posted all Informal Challenges from Interested Parties and the Transmission Owner's response(s) to such Informal Challenges. Such posting will be subject to all applicable confidentiality protections under the Tariff.")).

⁸⁷ *Id.* at 15-16 (citing section IV.F of the Protocols). Section IV.F provides:

Any changes or adjustments to the True-Up Adjustment resulting from the Information Exchange and Informal Challenge processes that are agreed to by [Transmission Owner] will be reported in the Informational Filing required pursuant to Section VI of these protocols. Any such changes or adjustments agreed to by [Transmission Owner] on or before December 1 will be reflected in the projected net revenue requirement for the upcoming Rate Year. Any changes or adjustments agreed to by [Transmission Owner] after December 1 will be reflected in the following year's Annual True-Up, as discussed in Section V of these protocols.

⁸⁸ *Id.* at 16-17.

⁸⁹ *Id.* at 16.

⁹⁰ *Id.* at 14 (citing 18 C.F.R. § 385.206 (2013)).

of demonstrating that “it correctly applied the terms of the formula rate, and that it followed the applicable requirements and procedures.”⁹¹ The MISO Transmission Owners also state that the proposal is not intended to alter the burdens applied by the Commission with respect to prudence challenges.⁹² Moreover, the proposed protocols provide that, subject to certain exceptions, nothing in the proposed protocols is intended to limit a transmission owner’s rights pursuant to section 205 of the FPA or an interested party’s rights pursuant to section 206 of the FPA.

78. The MISO Transmission Owners Filing further adds that, subject to any judicial review, the annual update or true-up will become final, and no longer subject to challenge on the later of: (1) 30 days after the period for filing formal challenges, if no such challenge has been made; or (2) the date of a final order of the Commission in response to a formal challenge or a proceeding initiated by the Commission to consider the annual update or true-up. The MISO Transmission Owners argue that this provision provides finality and that similar provisions have been previously accepted by the Commission.⁹³

c. Protests

79. OMS, Joint Customers, and AMP raise concerns with the proposed deadline governing the submission of informal challenges.⁹⁴ OMS notes that the proposed protocols require the transmission owner to respond to all information and document requests by December 1, but require interested parties to notify the transmission owner of any informal challenge by November 1.⁹⁵ Consequently, OMS is concerned that transmission owners may withhold responses to information requests until after the November 1 deadline for informal challenges has passed, thereby precluding interested parties from raising informal challenges.⁹⁶ Joint Customers add that the period for review and challenge of annual updates could be compressed if: (1) the publication date is published after June 1; and/or (2) the transmission owner has not timely responded to

⁹¹ *Id.* at 16-17.

⁹² *Id.*

⁹³ *Id.* at 18.

⁹⁴ OMS Comments at 20; Joint Customers Protest at 6-7; AMP Protest at 4-5.

⁹⁵ OMS Comments at 20.

⁹⁶ *Id.*; *see also* Joint Customers Protest at 6-7.

the submitted information requests.⁹⁷ AMP raises similar concerns and asserts that the deadline for informal challenges should be extended by an amount of time equal to any discovery extension necessitated by late responses to information requests.⁹⁸ OMS suggests that the Commission should require the MISO Transmission Owners to accept informal challenges until at least two weeks after the transmission owner has responded to all information requests.⁹⁹ 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 or 30 days after the transmission owner's last response to information requests.¹⁰⁰

80. On a related issue, Joint Customers argue that transmission owners should be required to respond to informal challenges within 20 business days.¹⁰¹ Joint Customers note that the MISO Transmission Owners' proposal to require transmission owners to make a good faith effort to respond to informal challenges within 20 business days is incompatible with the deadlines imposed on interested parties. Joint Customers claim that the transmission owner should be held to the same standard. Moreover, Joint Customers assert that 20 business days is more than enough time for a transmission owner to respond to an informal challenge.

81. Various parties take issue with the MISO Transmission Owners' proposal to limit the scope of permissible challenges to issues pertaining to six factors.¹⁰² 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.¹⁰³ Thus, OMS argues that interested parties need significant leeway with regards to the information that they

⁹⁷ Joint Customers Protest at 7.

⁹⁸ AMP Protest at 4-5.

⁹⁹ OMS Comments at 20.

¹⁰⁰ Joint Customers Protest at 7.

¹⁰¹ *Id.* at 8-9.

¹⁰² OMS Comments at 28-30; Joint Customers Protest at 23-25; AMP Protest at 5; DTE Protest at 5-6.

¹⁰³ OMS Comments at 29.

seek from transmission owners.¹⁰⁴ 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.¹⁰⁵ AMP adds that it is impossible to predict every future variation in facts and impossible to ensure the proposed categories would encompass every legitimate challenge.¹⁰⁶ Consequently, OMS, DTE-Consumers, and AMP argue that the Commission should require the MISO Transmission Owners to revise their proposal to make clear that the six proposed factors do not comprise an exclusive list.¹⁰⁷

82. Joint Customers argue that the six limiting factors proposed by the MISO Transmission Owners are inconsistent with the May 16 Order.¹⁰⁸ Joint Customers contend that the Commission required that transmission owners must 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."¹⁰⁹ 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.

83. Some protestors additionally argue that the Commission should reject the MISO Transmission Owners' proposal to preclude an interested party from raising any issue in a formal challenge that has not been previously raised in its informal challenge.¹¹⁰ OMS and AMP contend that circumstances may arise that prevent interested parties from preparing a comprehensive informal challenge.¹¹¹ OMS adds that the Commission has previously accepted formula rate protocols that require interested parties to make only a

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 29-30.

¹⁰⁶ AMP Protest at 5.

¹⁰⁷ OMS Comments at 30; AMP Protest at 5; DTE-Consumers Comments at 5-6.

¹⁰⁸ Joint Customers Protest at 23-25.

¹⁰⁹ *Id.* at 24.

¹¹⁰ *See* OMS Comments at 28-30; AMP Protest at 5-6; SWEC Protest at 9-12.

¹¹¹ OMS Comments at 28; AMP Protest at 5. For instance, unless the deadline for informal challenges is revised, OMS and AMP state that an interested party could be prevented from filing a comprehensive informal challenge.

good faith effort to raise all issues in an informal challenge. Joint Customers contend that the Commission has previously rejected provisions similar to the MISO Transmission Owners' proposal.¹¹² 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. SWEC and AMP claim that such a requirement could impinge interested parties' statutory rights pursuant to section 206 of the FPA.

84. Joint Customers also suggest that three aspects of the proposed challenge procedures are inconsistent with the filed-rate doctrine and long-standing Commission precedent.¹¹³ First, Joint Customers state that the MISO Transmission Owners' 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 the MISO Transmission Owners' 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.¹¹⁴ Joint Customers additionally assert that longstanding Commission policy 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.¹¹⁵

¹¹² Joint Customers Protest at 19-20 (citing *Tampa Elec. Co.*, 133 FERC ¶ 61,023, at P 60 (2010)).

¹¹³ *Id.* at 16-20.

¹¹⁴ *Id.* at 17-18 (citing *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098 (2008)).

¹¹⁵ *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 (2010); *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 35 (2008); *Pioneer Transmission LLC*, 126 FERC ¶ 61,281, at P 113 (2009)).

85. A number of protestors take issue with the MISO Transmission Owners' proposal to deem a transmission owner's annual update final and no longer subject to challenge.¹¹⁶ OMS and SWEC state that Commission precedent permits parties to challenge the inputs or implementation of the formula at whatever time errors are discovered.¹¹⁷ OMS contends that the Commission has allowed review of potentially imprudent costs charged to customers in prior-year formula rates. Moreover, OMS and SWEC assert 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.¹¹⁸ Likewise, SWEC argues that the Commission has rejected similar "finality" provisions in the past.¹¹⁹ AMP notes that the MISO Transmission Owners' proposal could effectively insulate unjust and unreasonable charges collected under a formula rate, despite late-discovered errors.¹²⁰ Joint Customers and SWEC add that this aspect of the proposed protocols constrain interested parties' statutory rights.¹²¹

¹¹⁶ See OMS Comments at 37-39; Joint Customers Protest at 16-20; AMP Protest at 6; SWEC Protest at 9-12; DTE-Consumers Protest at 35-37.

¹¹⁷ OMS Comments at 38; SWEC Protest at 9-11.

¹¹⁸ OMS Comments at 38 (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)); SWEC Protest at 11-12 (citing *PPL Elec Utils. Corp.*, 125 FERC ¶ 61,121, at PP 33-36 (2008)).

¹¹⁹ SWEC Protest at 11-12. DTE-Consumers add that the Commission should require the MISO Transmission Owners to clarify this provision to ensure that the Commission would not be precluded from ordering future refunds as a result of a FERC Form 1 audit or any other Commission review. DTE-Consumers Comments at 7.

¹²⁰ AMP Protest at 6.

¹²¹ Joint Customers Protest at 19; SWEC Protest at 10. SWEC also states that the MISO Transmission Owners' arguments in support of this proposed provision rely on the Commission's approval of protocols that were the result of negotiations between the utilities and their respective customers. SWEC Protest at 10.

86. Several protestors ask that the Commission reject the MISO Transmission Owners' proposal to require interested parties' formal challenges to satisfy the requirements of Rule 206 of the Commission's Rules of Practice and Procedure.¹²² OMS, DTE-Consumers 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.¹²³ 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.¹²⁴ AMP similarly asserts that application of Rule 206 to formal challenges would be unduly burdensome.¹²⁵ OMS further contends that application of Rule 206 would conflate formal challenges and complaints filed pursuant to section 206 and eliminate any distinction between the processes.¹²⁶

87. Furthermore, Joint Customers assert that the MISO Transmission Owners' attempt to describe the transmission owner's burden of proof in the context of a formal challenge falls short of the Commission's directives in the May 16 Order.¹²⁷ 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, rather than that the transmission owner's application of the formula rate was consistent with the applicable formula rate protocols.

88. OMS raises concerns regarding interested parties' access to confidential information.¹²⁸ Although OMS acknowledges the Commission's past decisions regarding the treatment of confidential information, OMS asserts that the MISO

¹²² See OMS Comments at 30-33; Joint Customers Protest at 21-23; AMP Protest at 4; DTE-Consumers Comments at 6.

¹²³ OMS Comments at 32-33 (citing May 16 Order, 143 FERC ¶ 61,149 at P 120); Joint Customers Protest at 21-22; DTE-Consumers Comments at 6.

¹²⁴ OMS Comments at 32.

¹²⁵ AMP Protest at 4.

¹²⁶ OMS Comments at 32-33.

¹²⁷ Joint Customers Protest at 22-23.

¹²⁸ OMS Comments at 35-37.

Transmission Owners' proposal could result in interested parties not being granted 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 the MISO Transmission Owners to revise their proposal to enable interested parties to raise challenges based on confidential information. OMS adds that the Commission has previously approved such provisions.

89. With respect to transmission owners' responses to informal challenges, Joint Customers and SWEC 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.¹²⁹ Joint Customers further assert that transmission owners should be required to post all informal challenges and responses to OASIS.¹³⁰

90. Joint Customers also contend that transmission owners should publicly post advanced notice of all meetings and conference calls to discuss or resolve any informal challenges.

d. Answers

91. The MISO Transmission Owners argue that the timing and scope of the proposed challenge procedures proposed in the MISO Transmission Owners Filing are fully compliant with the May 16 Order and consistent with provisions previously accepted by the Commission.¹³¹ The MISO Transmission Owners state that the proposed challenge procedures permit interested parties to raise challenges within a reasonable, well-defined period of time. Moreover, the MISO Transmission Owners state that they are willing to require transmission owners to hold their annual meetings no later than September 1 of each year, which would have the effect of providing additional time between the annual meeting and the deadline for submitting informal and formal challenges.

¹²⁹ Joint Customers Protest at 25; SWEC Comments at 14.

¹³⁰ Joint Customers Protest at 25.

¹³¹ MISO Transmission Owners Answer at 22-24.

92. The MISO Transmission Owners claim that requiring challenging parties to comply with the formalities of section 206 of the FPA will ensure that formal challenge procedures are appropriately detailed and provide the transmission owner and the Commission sufficient notice of the issues being raised. The MISO Transmission Owners state that “imposing the filing requirements of FPA section 206 does not disadvantage any challenging party.”¹³²

93. The MISO Transmission Owners also refute protestors’ claims that formal challenge procedures should not be subject to the requirements of Rule 206.¹³³ The MISO Transmission Owners note that the proposed formal challenge procedures are substantially similar to those which the Commission has approved in other instances. Further, the MISO Transmission Owners assert that the proposed challenge procedures do not shift the burden of proof to interested parties, in violation of the May 16 Order. The MISO Transmission Owners note that the proposed protocols expressly provide that the transmission owner will bear the burden of proof in the course of a formal challenge.

94. In particular, the MISO Transmission Owners contend that Joint Customers’ objection to the burden language proposed is baseless.¹³⁴ Contrary to the assertion of Joint Customers, the MISO Transmission Owners state that the proposed language governing a transmission owners’ burden of proof in a formal challenge is consistent with the May 16 Order, which states: “[t]ransmission owners are obliged to demonstrate the rate resulting from the application of the formula rate complies with the directives of section 205 of the FPA, i.e., that the rate is just and reasonable, by demonstrating that it has correctly implemented the filed formula rate.”¹³⁵

95. The MISO Transmission Owners additionally argue that permitting interested parties to raise in a formal challenge only those issues that the party has raised in an informal challenge is appropriate.¹³⁶ The MISO Transmission Owners suggest that such a requirement promotes timely and efficient resolution of challenges by allowing a transmission owner to be informed of, and to respond to, interested parties’ concerns. Further, such a procedure provides the parties with an opportunity to resolve issues

¹³² *Id.* at 25.

¹³³ *Id.* at 24-25.

¹³⁴ *Id.* at 25-26.

¹³⁵ *Id.* (quoting May 16 Order, 143 FERC ¶ 61,149 at P 18).

¹³⁶ *Id.* at 26.

informally prior to elevating that concern to the Commission as a formal dispute. The MISO Transmission Owners also state that the Commission has accepted similar provisions in the past.

96. The MISO Transmission Owners proceed to argue that the proposed protocols provide finality to rates after having provided interested parties with the right and opportunity to examine and challenge the implementation of the formula rate for a given year.¹³⁷ In doing so, the MISO Transmission Owners state that such procedures provide rate certainty to customers and cost-recovery certainty to transmission owners. The MISO Transmission Owners add that the proposed provision is consistent with similar provisions previously accepted by the Commission.

97. The MISO Transmission Owners also argue that the proposed reservation of rights under sections 205 and 206 of the FPA is sufficient to protect interested parties' statutory rights, despite Joint Customers' assertions to the contrary.

98. The MISO Transmission Owners further refute the concerns raised by OMS and Joint Customers with respect to the proposed confidentiality provisions. The MISO Transmission Owners state that the proposed confidentiality provisions are consistent with the May 16 Order, in which the Commission stated that the challenge procedures "need not conflict with the confidentiality requirements set forth in the MISO Transmission Owners Agreement and the Tariff."¹³⁸ According to the MISO Transmission Owners, the extent to which a transmission owner can assert a settlement privilege or any other privilege in a later proceeding is more appropriately decided in such a future proceeding.

99. In its answer, OMS recalls that MISO is responsible for demonstrating that subjecting formal challenges to the requirements of Rule 206 is just and reasonable.¹³⁹ In any event, OMS asserts that Rules 207, 211, and 212 of the Commission's Rules of Practice and Procedure provide more appropriate and workable filing requirements for formal challenges than does Rule 206.¹⁴⁰ OMS cites the May 16 Order's determination that applying the FPA section 206 framework to formula rate challenges imposes significant informational and financial obstacles on interested parties, particularly smaller

¹³⁷ *Id.* at 27-28.

¹³⁸ *Id.* at 29 (citing May 16 Order, 143 FERC ¶ 61,149 at P 119 n.197).

¹³⁹ OMS Answer at 21.

¹⁴⁰ *Id.*

entities, and that such impediments could discourage interested parties from raising issues of less financial significance, even when their concerns are valid. OMS states that it agrees with the Commission's determination and urges that "the Commission direct the deletion of any tariff language that would require formal challenges to be filed under and satisfy all filing requirements applicable to section 206 complaints."¹⁴¹

100. With respect to the proposed time deadlines for interested parties' submission of informal and formal challenges, OMS claims that the "preponderance of precedent supports" OMS's position that the Commission should strike such limitations.¹⁴² Further, OMS contends that the Commission addressed the issue of timing in the May 16 Order. Specifically, OMS states that the Commission only required the MISO Transmission Owners to permit interested parties to raise informal challenges for a reasonable period of time after transmission owners initially propose their annual updates.¹⁴³ However, with respect to formal challenges, OMS argues that the Commission did not place a time limit on interested parties' rights to submit formal challenges.

101. As to the proposed confidentiality provisions, OMS suggests that the language in the May 16 Order cited by the MISO Transmission Owners is inapplicable. According to OMS, the Commission addressed confidentiality only with respect to informal challenges; however, OMS states that such a statement is "irrelevant to the issue of whether, or how, confidential information may be used in formal challenges."¹⁴⁴

102. DTE-Consumers clarify the arguments raised in their protest, noting that they do not seek to extend the challenge process beyond the proposed time parameters.¹⁴⁵ Rather, DTE-Consumers state that they sought to ensure that the Tariff language would not constrain the Commission itself from any further action that may arise from a review of the MISO Transmission Owners' revenue requirement determination. DTE-Consumers further explain that the Commission should clarify that the Tariff revisions proposed by the MISO Transmission Owners would not preclude the Commission from ordering refunds following an audit by the Commission's staff.

¹⁴¹ *Id.* at 21-22 (citing May 16 Order, 143 FERC ¶ 61,149 at P 115).

¹⁴² *Id.* at 22-23.

¹⁴³ *Id.* at 22 (citing May 16 Order, 143 FERC ¶ 61,149 at P 119).

¹⁴⁴ *Id.* at 23-24 (citing May 16 Order, 143 FERC ¶ 61,149 at P 119 n.197).

¹⁴⁵ DTE-Consumers Answer at 3-4.

e. **Commission Determination**

103. We will conditionally accept the MISO Transmission Owners' proposed challenge procedures, as their proposal largely complies with the Commission's directives in the May 16 Order. Specifically, the MISO Transmission Owners' 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 and require transmission owners, where appropriate, to appoint a senior representative to resolve informal challenges. Additionally, the MISO Transmission Owners' proposal enables interested parties to raise a formal challenge in which the transmission owner bears the burden of demonstrating the correctness of its update or true-up.

104. The proposed deadline for interested parties' submission of informal challenges, however, raises significant concerns because it precedes the date by which transmission owners are required to respond to information 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. The proposed deadline for transmission owners to respond to information requests would 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. Moreover, it is unclear how the MISO Transmission Owners' willingness to require transmission owners to hold their annual meetings before September 1 placates this consideration. Consequently, we will condition our acceptance of the proposed protocols on additional revisions that enable interested parties to present an informal challenge after an opportunity to evaluate all responses to information requests.

105. However, contrary to Joint Customers' assertion, it would be inappropriate to require transmission owners to respond to informal challenges within 20 business days. Various parties note that it is all but impossible to precisely predict the substance of future informal challenges. 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, could vary. Thus, the proposed "good faith" standard is reasonable in this case.

106. As to the proposed six-factor limitation governing the range of issues that interested parties may raise through the challenge process, the MISO Transmission Owners' 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.”¹⁴⁶ 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.”¹⁴⁷ 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.”¹⁴⁸ Therefore, as an initial matter, the May 16 Order does not preclude the MISO Transmission Owners’ effort to describe the range of issues that can be appropriately addressed through informal and formal challenges. Subject to the modification below, the MISO Transmission Owners’ proposal balances the ability of interested parties to participate in a transmission owner’s update or true-up process with the need to avoid exposing transmission owners to challenges regarding irrelevant issues. Given the Commission’s focus 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.

107. Nevertheless, the proposed six-issue limitation may not reflect the full range of issues raised by a transmission owner’s implementation of its formula rate. As AMP aptly points out, it is impossible to predict every future variation of facts. Consequently, in their compliance filing, we direct the MISO Transmission Owners to modify section IV.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 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.”

108. The MISO Transmission Owners’ 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

¹⁴⁶ May 16 Order, 143 FERC ¶ 61,149 at P 120.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* (emphasis added).

would encourage interested parties to actively engage in the update and true-up process, which the Commission has previously encouraged,¹⁴⁹ 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. The MISO Transmission Owners' 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 the MISO Transmission Owners to propose, in their compliance filing, revisions to their 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.

109. 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.¹⁵⁰ 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 the MISO Transmission Owners and largely accepted here, which, as we note in a concurrently issued order, and as discussed below, are distinct from complaints filed pursuant to section 206 of the FPA.¹⁵¹

¹⁴⁹ See, e.g., *Delmarva Power & Light Co.*, 145 FERC ¶ 61,055, at P 22 (2013).

¹⁵⁰ 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 . . .").

¹⁵¹ *Midcontinent Independent System Operator, Inc. and Southern Indiana Gas & Electric Co.*, 146 FERC ¶ 61,210 (2014).

110. We find that the finality provision in the MISO Transmission Owners' proposed protocols, section IV.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.¹⁵² In this case, section IV.I of the proposed protocols would deem a transmission owner's annual update or 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 of the MISO Transmission Owners' proposal would preclude the Commission and interested entities from exercising their rights under section 206 of the FPA. A savings provision does not cure section IV.I's deficiency. Consequently, in its compliance filing, we direct the MISO Transmission Owners to revise the proposed protocols to ensure that the Commission and interested entities are not precluded from exercising their statutory rights.

111. While the MISO Transmission Owners' 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.¹⁵³ In addition, the proposed protocols specifically provide that a transmission owner will 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 reflect the Commission's focus on the transmission owner's implementation of its formula rate.

¹⁵² See, e.g., *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 113.

¹⁵³ 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.

112. 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 the MISO Transmission Owners 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.

113. We also direct the MISO Transmission Owners 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 30 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.

114. 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,¹⁵⁴ the MISO Transmission Owners' 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 by MISO with other Balancing Authorities, Transmission Owners, Market Participants and Regulating Authorities. Therefore, we direct the MISO Transmission Owners to explain how the protocols' challenge procedures will ensure that customers have access to information that will allow them to effectively challenge the implementation of the formula rate or revise the protocols to ensure that they do.

115. With regard to DTE-Consumers request, we clarify that the Tariff revisions proposed by the MISO Transmission Owners, as modified herein, would not preclude the Commission from ordering refunds following an audit by the Commission's staff.

¹⁵⁴ See May 16 Order, 143 FERC ¶ 61,149 at P 119 n.197.

116. As to the requests of Joint Customers and SWEC that the transmission owner be required to provide written responses to informal challenges, we note that the MISO Transmission Owners' proposed protocols provide that the transmission owner will cause to be posted all informal challenges and the transmission owner's responses to such informal challenges. Consequently, we will not require further modification of the MISO Transmission Owners' proposal in this respect.

117. 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. MISO Transmission Owners Filing

118. The MISO Transmission Owners request that the proposed protocols be made effective on January 1, 2014, which would allow the proposed procedures to be utilized for the subsequent annual updates and true-ups, which will take place on June 1, 2014.¹⁵⁵ The MISO Transmission Owners maintain that implementing the proposed protocols before January 1, 2014 would be impossible given the procedures set forth in their currently effective formula rate protocols and the time required to carry out the information exchange and challenge procedures proposed in the MISO Transmission Owners Filing.

b. Protests

119. OMS argues that the Commission should reject the January 1, 2014 effective date proposed by the MISO Transmission Owners, and instead, make the proposed formula rate protocols effective as of the refund effective date established in the Hearing Order, May 23, 2012.¹⁵⁶ Although OMS acknowledges the "procedural peculiarities which prevent MISO and the MISO [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

¹⁵⁵ MISO Transmission Owners Filing at 19.

¹⁵⁶ OMS Comments at 9-13.

effective date serves as the date that the “fixed” protocols are to be effective.¹⁵⁷ Further, OMS asserts that accepting the proposed effective date would not provide maximum protection to customers.¹⁵⁸

120. 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 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.¹⁵⁹ OMS states that the timeline for such a process could run concurrently with the timeline for the immediately applicable rate year.

121. 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.¹⁶⁰ 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.

122. 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.”¹⁶¹

¹⁵⁷ *Id.* at 11 (citing *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,191, at PP 21, 23, 28 (2009)).

¹⁵⁸ *Id.* at 11-12 (citing Hearing Order, 139 FERC ¶ 61,127 at P 25).

¹⁵⁹ *Id.* at 12-13.

¹⁶⁰ *Id.* at 13 (citing *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,191 at PP 28, 33).

¹⁶¹ *Id.* at 12.

c. Answers

123. The MISO Transmission Owners urge the Commission to reject OMS's request to make the proposed protocols effective as of May 23, 2012.¹⁶² The MISO Transmission Owners state that the proposed effective date will afford transmission owners clear notice of what information they must make available, and inform all parties of their rights and responsibilities. The MISO Transmission Owners state that this is especially important for transmission owners that utilize the generic Attachment O formula rate, who have not been previously subject to any protocols. Though the MISO Transmission Owners maintain that the proposed effective date should be accepted, to the extent necessary, they request that the Commission exercise its equitable discretion as to remedies to make the proposed protocols effective on January 1, 2014.

124. OMS argues that the MISO Transmission Owners ignore the fact that the Commission has already exercised its discretion by establishing the earliest refund effective date allowed under the FPA.¹⁶³ Further, OMS contends that the authorities cited by the MISO Transmission Owners in support of the proposition that the Commission possesses discretion in fashioning remedies is of questionable relevance because those authorities addressed rates rather than the protocols governing the implementation of formula rates.

125. 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.”¹⁶⁴ 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.¹⁶⁵

¹⁶² MISO Transmission Owners Answer at 29-30.

¹⁶³ OMS Answer at 3.

¹⁶⁴ *Id.* at 4.

¹⁶⁵ 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.

d. Commission Determination

126. 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.¹⁶⁶

127. 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.

128. On the other hand, requiring transmission owners to retroactively apply the revised protocols could unnecessarily burden transmission owners as well as interested parties. As OMS acknowledges, transmission owners "cannot go back in time to take specific actions on specific dates."¹⁶⁷ However, OMS's proposal would nevertheless require transmission owners 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 challenges.

The Commission orders:

(A) The MISO Transmission Owners' proposed formula rate protocols are hereby conditionally accepted, to be effective January 1, 2014, as discussed in the body of this order.

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

¹⁶⁶ *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967).

¹⁶⁷ OMS Comments at 11.

(C) The compliance letters filed by Montezuma-Tipton, Muscatine Power, Michigan South and Entergy are hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.