

150 FERC ¶ 61,024
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Midcontinent Independent System Operator, Inc.	Docket Nos. ER13-2379-001
Midcontinent Independent System Operator, Inc. Northern Indiana Public Service Company	ER13-2376-001
Midcontinent Independent System Operator, Inc. Southern Indiana Gas & Electric Company	ER13-2375-001
Midwest Independent Transmission System Operator, Inc. ALLETE, Inc. Ameren Illinois Company Ameren Transmission Company of Illinois American Transmission Company, LLC Big Rivers Electric Corporation Board of Water, Electric and Communications Trustees of the City of Muscatine, Iowa Central Minnesota Municipal Power Agency City of Columbia, Missouri, Water & Light Company City Water, Light & Power (Springfield, Illinois) Duke Energy Indiana, Inc. Dairyland Power Cooperative Entergy Services, 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 Michigan South Central Power Agency MidAmerican Energy Company	EL12-35-002

Missouri River Energy Services
Montana-Dakota Utilities Company
Montezuma Municipal Light & Power
Municipal Electric Utility of the City of Cedar Falls,
Iowa
Muscatine Power and Water
Northern States Power Company, a Minnesota
Corporation
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.

ORDER ON REHEARING AND CLARIFICATION

(Issued January 22, 2015)

1. On April 28, 2014, the Organization of MISO States (OMS) filed a request for rehearing and clarification of the Commission's March 20, 2014 orders on the compliance filings regarding the formula rate protocols under the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) in the above-captioned proceedings.¹ As discussed below, we deny OMS's request for rehearing and dismiss its requested clarification.

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014) (March 2014 MISO Order); *Midcontinent Indep. Sys. Operator, Inc. and Northern Indiana Public Service Co.*, 146 FERC ¶ 61,211 (2014) (March 2014 NIPSCO Order); *Midcontinent Indep. Sys. Operator, Inc. and Southern Indiana Gas & Elec. Co.*, 146 FERC ¶ 61,210 (2014) (March 2014 Southern Indiana Order) (collectively, the March 2014 Orders).

I. Background

2. On May 17, 2012, the Commission instituted an investigation, pursuant to section 206 of the Federal Power Act (FPA),² to determine whether the formula rate protocols under Attachment O of the Tariff were sufficient to ensure just and reasonable rates.³ In the May 2012 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). In an order on May 16, 2013, 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

3. On September 13, 2013, in compliance with the Commission's May 2013 Order, MISO and the MISO Transmission Owners⁵ filed proposed revisions to Attachment O of

² 16 U.S.C. § 824e (2012).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (May 2012 Order).

⁴ *Midwest Indep. Transmission Sys. Operator*, 143 FERC ¶ 61,149 (2013) (May 2013 Order).

⁵ For the purpose of these proceedings, 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; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC acting as agent for Duke Energy Indiana, Inc.; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois

(continued...)

MISO's Tariff in Docket No. ER13-2379-000 to modify the existing formula rate protocols. Northern Indiana Public Service Company (NIPSCO) made a separate compliance filing in Docket No. ER13-2376-000 and Southern Indiana Gas & Electric Company (Southern Indiana) made a separate compliance filing in Docket No. ER13-2375-000.

4. On March 20, 2014, the Commission conditionally accepted the compliance filings in each docket, to become effective January 1, 2014. However, the Commission required several adjustments to the protocols provisions related to the scope of participation in the challenge and review procedures, transparency of the information exchange process, and the ability of customers to challenge the transmission owners' implementation of the formula rate.⁶

II. Request for Rehearing

5. In its request for rehearing, OMS states that the Commission erred in the March 2014 Orders when it allowed the revised formula rate protocols to become effective on January 1, 2014, rather than the refund effective date of May 23, 2012 that was established in the May 2013 Order.⁷ OMS also seeks clarification that the revised formula rate protocols accepted by the Commission in the March 2014 MISO Order apply to the initial establishment of a formula rate revenue requirement by a MISO transmission owner, and if the Commission does not so clarify, OMS seeks rehearing on this issue.

6. On May 7, 2014, the MISO Transmission Owners filed a request for leave to answer and answer to OMS's request for rehearing and clarification.

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

⁶ *See, e.g.*, March 2014 MISO Order, 146 FERC ¶ 61,212 at PP 58-73, 103-115; March 2014 NIPSCO Order, 146 FERC ¶ 61,211 at PP 28-37, 53-64; March 2014 Southern Indiana Order, 146 FERC ¶ 61,210 at PP 58-73, 103-115.

⁷ OMS Request for Rehearing and Clarification at 3.

III. Discussion

A. Procedural Matters

7. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2014), prohibits an answer to a request for rehearing. Accordingly, we reject the MISO Transmission Owners' answer.

B. Substantive Matters

1. Effective Date

a. Request for Rehearing

8. OMS seeks rehearing of the Commission's decision in the March 2014 Orders to allow the revised formula rate protocols to go into effect on January 1, 2014, rather than the refund effective date of May 23, 2012, which was established in the May 2013 Order.⁸ OMS notes that the Commission set the January 1, 2014 effective date because the Commission found that the May 2013 Order did not make a determination as to the justness and reasonableness of the charges assessed under the formula rate, and that the formula itself continued to be just and reasonable; thus, the Commission found that there was no basis to conclude that the charges assessed between the refund effective date and December 31, 2013 were unjust and unreasonable.⁹ However, OMS states that the issue at hand is whether the charges produced by the formula rate during that period were possibly unjust and unreasonable. OMS states that the Commission spoke to this point when it found in the May 2013 Order that the formula rate protocols were insufficient to ensure just and reasonable rates during that period, and made the determination to establish a refund effective date of May 23, 2012 as a cure for the insufficiently just and reasonable protocols.¹⁰ Accordingly, OMS argues that it is inappropriate for the Commission to allow the January 1, 2014 effective date for the revised just and reasonable protocols.

9. OMS further states that there is no basis to conclude that the charges assessed between the refund effective date and December 31, 2013 were just, reasonable, and not unduly discriminatory or preferential.¹¹ Rather, OMS asserts that a conclusion of just and

⁸ *Id.* at 4.

⁹ *Id.* (citing March 2014 MISO Order, 146 FERC ¶ 61,212 at P 127).

¹⁰ *Id.* at 4 (citing May 2013 Order, 143 FERC ¶ 61,149 at P 1).

¹¹ *Id.* at 5.

reasonable charges for that period can only be reached after a transparent and comprehensive review of the formula rate inputs. By not applying the revised protocols back to the refund effective date, OMS argues that the Commission is suggesting that the existence of a just and reasonable rate formula for the period between May 23, 2012 and December 31, 2013 ensures a just and reasonable charge, even though the formula rate protocols that were in effect were insufficient to ensure just and reasonable rates.

10. Although OMS acknowledges that the revised protocols contain milestone dates, and it is therefore not possible to apply the revised protocols in their entirety to the period between May 23, 2012 and December 31, 2013, OMS argues that the Commission must apply as much of the revised formula protocols as possible (particularly the information request and challenge provisions) to the formula rate updates used to produce charges billed during that period. OMS notes that MISO Transmission Owners' plant additions reported in FERC Form No. 1s have been included in formula rates effective during 2012, and that these additions may only be challenged during the initial period that the costs are included in the formula rate.¹² Thus, OMS argues that establishing the effective date at May 23, 2012 for the revised protocols would provide the first opportunity for meaningful review of those charges by state commissions and other interested parties.

11. OMS argues that the January 1, 2014 effective date also conflicts with section 206(b) of the FPA, which requires that when the Commission institutes a section 206 investigation on its own motion, the Commission must establish a refund effective date that is no earlier than the date of publication of the notice of the Commission's initiation of its investigation in the Federal Register and no later than five months after the publication date.¹³ OMS states that the Commission must give that date meaning and not simply ignore the fact of its establishment. OMS also states that the Commission has an obligation to ensure that charges flowing from the formula rate remain just and reasonable, and absent application of a just and reasonable protocol process to the formula rate updates producing charges for the period between May 23, 2012 and December 31, 2013, the Commission fails its section 206 obligation.¹⁴

¹² *Id.* at 7.

¹³ *Id.*

¹⁴ *Id.* at 8.

b. Commission Determination

12. The request for rehearing is denied. As the Commission explained in the March 2014 Orders, the Commission made no determination as to the justness and reasonableness of the charges actually assessed under the formula rate between May 23, 2012 and December 1, 2013.¹⁵ Instead, the Commission found that the formula rate protocols provided under the Tariff were insufficient to ensure just and reasonable rates and mandated changes to the formula rate protocols. These changes do not modify the underlying formula rate, and we find it neither necessary nor practical to require application of the revised protocols as of May 23, 2012, because, as OMS recognizes, it is impossible to re-run the full protocols process for past periods. Instead, the protocols establish a new open and transparent process for conducting the MISO transmission owners' formula rate updates prospectively, beginning January 1, 2014. However, nothing in this decision alters any parties' rights to challenge the prior years' annual updates under section 206 of the FPA if there becomes reason to believe that those prior years' annual updates were in violation of the filed rate, or that unjust and unreasonable (i.e., imprudently incurred) costs were passed through the formula in the charges assessed pursuant to those updates, and the Commission has authority to order refunds of charges assessed pursuant to those prior years' annual updates to the extent those are found to have occurred. Furthermore, the Commission is not, as OMS suggests, required to establish an effective date if the charges produced by the formula rate during the period between May 23, 2013 and December 31, 2013 were "possibly" unjust and unreasonable. The Commission was well within its remedial discretion in determining that there was no basis to conclude that the charges assessed between the refund effective date and December 31, 2013 were unjust, unreasonable, or unduly discriminatory.

13. We do not agree with OMS that the January 1, 2014 effective date violates section 206(b) of the FPA. Under section 206(b), the Commission is required to establish a refund effective date that is no earlier than the date of publication of the Commission's notice of the initiation of the investigation and no later than five months after such notice. Based on this statutory requirement, the Commission established a refund effective date of May 23, 2012. However, the establishment of the refund effective date does not require the Commission to order refunds as of that date; rather, the Commission has broad equitable discretion in determining whether and how to apply remedies in any

¹⁵ March 2014 MISO Order, 146 FERC ¶ 61,212 at P 127; March 2014 NIPSCO Order, 146 FERC ¶ 61,211 at P 73; March 2014 Southern Indiana Order, 146 FERC ¶ 61,210 at P 66.

particular case.¹⁶ Thus, we affirm our determination that requiring transmission owners to apply the revised protocols as of May 23, 2013 could unnecessarily burden transmission owners.

2. Application of Revised Formula Rates

a. Request Clarification or, in the Alternative, Rehearing

14. OMS notes that the Commission in the March 2014 MISO Order expressed concern that MISO's then-effective formula rate protocols provided insufficient transparency with respect to information about a transmission owner's costs and revenue requirements.¹⁷ OMS argues that even though these concerns apply equally to the initial establishment of a transmission owner's revenue requirement as they do to the subsequent annual update of the formula rate, the Commission did not state clearly whether or not the revised formula rate protocols apply to the initial establishment of a transmission owner's revenue requirement.¹⁸ OMS further notes that the Commission in the March 2014 MISO Order required the revised protocols to apply to the projected revenue requirement in addition to the annual true-up, because 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.¹⁹ OMS argues that it is equally unreasonable to require customers to pay rates that flow from the initial revenue requirement adopted by a transmission owner that newly joins MISO unless interested parties have access to the process for reviewing and challenging those rates.²⁰

¹⁶ See *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (the Commission's breadth of discretion is "at its zenith" when fashioning remedies).

¹⁷ OMS Request for Rehearing and Clarification at 9-10 (citing March 2014 MISO Order, 146 FERC ¶ 61,212 at P 20).

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 10-11 (citing March 2014 MISO Order, 146 FERC ¶ 61,212 at P 62).

²⁰ *Id.* at 11.

b. Commission Determination

15. OMS asserts that, unless the revised formula rate protocols apply to the initial establishment of a revenue requirement that is based on historical costs, there will be no opportunity in the rate update and true-up process for interested parties to exercise information request and challenge procedures with respect to the charges produced by the formula rate in the transmission owner's initial year as a MISO member.²¹ OMS explains that this is because historical formula rates rely on FERC Form No. 1 data from the previous year, and the review process under the protocols would not occur until the following year – which would then be limited to the FERC Form No. 1 data from the year of the transmission owner's initial service. OMS requests that the Commission clarify that the revised formula rate protocols apply to both transmission owners that are currently employing formula transmission rates and to those transmission owners that are initially establishing a revenue requirement under the MISO formula rate process (e.g., for a transmission owner newly joining MISO).²² If the Commission does not so clarify, OMS requests rehearing on this issue.

16. OMS has raised this issue for the first time on rehearing. The Commission looks with disfavor on parties raising issues for the first time on rehearing because other parties are not permitted to respond to a request for rehearing.²³ Therefore, we dismiss OMS's request for clarification or, alternatively, rehearing on this issue. However, while we note that neither the formula rate protocols nor our prior orders in these proceedings specifically address how the protocols will be applied to initial rates established under the MISO formula rate process (e.g., for a transmission owner newly joining MISO or an existing transmission owner proposing to switch from a historical to forward-looking formula rate), we expect that all formula rate updates, including initial rates calculated by a transmission owner under Attachment O of the Tariff after January 1, 2014, will be subject to review and challenge procedures consistent with our determinations in these proceedings. The newly joining transmission owner, or the transmission owner proposing to adopt a new formula rate, should propose a plan to apply the protocols to the calculation of its initial rates when MISO makes a filing revising the Tariff to reflect the

²¹ *Id.*

²² *Id.* at 11-12.

²³ See, e.g., *Westar Energy, Inc.*, 134 FERC ¶ 61,176, at P 23 (2011) (citing *Calpine Oneta Power v. American Elec. Power Serv. Corp.*, 114 FERC ¶ 61,030 (2006); *Midwest Indep. Transmission Sys. Op., Inc.*, 112 FERC ¶ 61,211, at P 34 (2005) (citing *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270 (2000) and *Baltimore Gas & Elec. Co.*, 92 FERC ¶ 61,043, at 61,114 (2000))).

inclusion of the new transmission owner's facilities²⁴ or to include a new formula rate for an existing MISO transmission owner in the MISO Tariff.

The Commission orders:

(A) OMS's request for rehearing of the March 20 Orders is hereby denied, as discussed in the body of this order.

(B) OMS's request for clarification is hereby dismissed, as discussed in the body of this order.

By the Commission. Commissioner Honorable is voting present.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁴ For instance, when a new transmission owner integrates into MISO, MISO files revisions to Schedules 7, 8 and 9 to reflect the pricing zone designation of the new transmission owner, revisions to Attachment FF to reflect the new transmission owner in the transmission planning process, and, to the extent that the transmission owner seeks its own individual Attachment O formula rate, revisions to Attachment O.