

150 FERC ¶ 61,203  
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.

Westar Energy, Inc.

Docket Nos. ER14-2852-000  
EL14-77-000

ORDER ON COMPLIANCE FILING

(Issued March 19, 2015)

1. On September 11, 2014, Westar Energy, Inc. (Westar) submitted a compliance filing in this docket to propose revisions to its transmission formula rate protocols, which are designated as Attachment H-2 to its Open Access Transmission Tariff (Westar Tariff) and as Attachment H to Southwest Power Pool, Inc.'s (SPP's) Open Access Transmission Tariff (SPP Tariff).<sup>1</sup> Westar's submission proposes new formula rate protocols in response to the Commission's July 17 Order.<sup>2</sup> In this order, we conditionally accept Westar's compliance filing, effective March 1, 2015, as requested, subject to further compliance.

**I. Background**

**A. MISO Protocols Proceedings**

2. On May 17, 2012, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>3</sup> as to the formula rate protocols of Midwest Independent

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<sup>1</sup> As we explained in the July 17, 2014 order, *Westar Energy, Inc.*, 148 FERC ¶ 61,033 at n.2 (2014), while Westar's formula rate protocols are included in the Westar Tariff, Westar's formula rate and formula rate protocols are also included as part of SPP's Tariff. Revisions to the Westar formula rate and formula rate protocols in SPP's Tariff are filed by SPP on Westar's behalf.

<sup>2</sup> July 17 Order, 148 FERC ¶ 61,033.

<sup>3</sup> 16 U.S.C. § 824e (2012).

Transmission System Operator, Inc. (MISO),<sup>4</sup> finding that they may lead to unjust and unreasonable rates. The Commission specifically 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).<sup>5</sup>

3. After receiving comments from parties to the proceeding, on May 16, 2013, the Commission found that the formula rate protocols under the MISO Tariff were insufficient to ensure just and reasonable rates, and therefore, directed MISO and its transmission owners to file revised formula rate protocols to address the Commission's concerns about the scope of participation, the transparency of the information exchange, and the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange.<sup>6</sup> On March 20, 2014, the Commission conditionally accepted, subject to further compliance, MISO's proposed Tariff revisions made in compliance with the MISO Investigation Order.<sup>7</sup> Among the requirements addressing the transparency of the information exchange, in the MISO Investigation Order, the Commission required MISO to include a provision in the formula rate protocols that transmission owners make annual informational filings of their formula rate updates with the Commission.<sup>8</sup> Further, on May 19, 2014, MISO

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<sup>4</sup> Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

<sup>5</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127, at P 8 (2012).

<sup>6</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *reh'g denied*, 146 FERC ¶ 61,209 (2014).

<sup>7</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (MISO Compliance Order) (2014). The Commission also separately evaluated the compliance filings of two MISO transmission owners. *See Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,210 (2014) (evaluating the compliance filing of Southern Indiana Electric & Gas Company (Southern Indiana)); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,211 (2014) (evaluating the compliance filing of Northern Indiana Public Service Company (NIPSCO)).

<sup>8</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 92.

submitted a compliance filing in response to the MISO Compliance Order. The Commission conditionally accepted that compliance filing on January 22, 2015.<sup>9</sup>

**B. Westar Protocols Order (July 17 Order)**

4. In the July 17 Order, the Commission explained that it had undertaken a review of the transmission formula rates and formula rate protocols of jurisdictional public utilities to identify utilities that currently are not required to make annual informational filings of their formula rate updates with the Commission, and identified Westar as one such utility.<sup>10</sup> The Commission found that the then-effective Westar Tariff's formula rate protocols were deficient in the three areas of concern identified in the MISO Investigation Order and MISO Compliance Order, and thus appeared to be unjust and unreasonable.<sup>11</sup> The Commission directed Westar to file proposed formula rate protocols to conform to the requirements of the MISO Orders, or show cause why they should not be required to do so.<sup>12</sup>

**II. Notice of Filing and Responsive Pleadings**

5. Pursuant to the July 17 Order, interventions in Docket No. EL14-77-000 were due within 30 days of publication of notice in the *Federal Register* of the Commission's initiation of section 206 proceeding, i.e., by August 22, 2014.<sup>13</sup> Timely motions to intervene in Docket No. EL14-77-000 were filed by: Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC; SPP; the Missouri Public Service Commission (Missouri Commission); the Secretary of Defense, on behalf of the U.S. Department of Defense and all other Federal Executive Agencies; Kansas Power Pool;

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<sup>9</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015) (MISO Second Compliance Order); *see also Midcontinent Indep. Sys. Operator, Inc. and Northern Indiana Public Service Company*, 150 FERC ¶ 61,022, at P 17 (2015) (NIPSCO Second Compliance Order) and *Midcontinent Indep. Sys. Operator, Inc. and Southern Indiana Gas & Electric Company*, 150 FERC ¶ 61,023, at P 18 (2015) (Southern Indiana Second Compliance Order).

<sup>10</sup> July 17 Order, 148 FERC ¶ 61,033 at P 7.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; *see also* MISO Investigation Order, 143 FERC ¶ 61,149; MISO Compliance Order, 146 FERC ¶ 61,212.

<sup>13</sup> 79 Fed. Reg. 42,786 (2014).

Missouri Joint Municipal Electric Utility Commission; and Kansas Electric Power Cooperative, Inc. (KEPCo). KEPCo filed limited comments in Docket No. EL14-77-000.

6. Notice of Westar's compliance filing was published in the *Federal Register*, 79 Fed. Reg. 56,353 (2014), with interventions and protests due on or before October 22, 2014.<sup>14</sup> SPP, Kansas Power Pool, and Missouri Joint Municipal Electric Utility Commission filed timely motions to intervene. The Missouri Commission filed a notice of intervention and comments. The Kansas Corporation Commission (Kansas Commission) and KEPCo each filed a timely motion to intervene and protest.<sup>15</sup> On October 17, 2014, Westar filed an answer to the protests filed by the Kansas Corporate Commission and KEPCo. On October 31, 2014, KEPCo filed an answer to Westar's answer.

### **III. Discussion**

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

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept Westar's and KEPCo's answers because they have provided information that assisted us in our decision-making process.

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<sup>14</sup> On September 30, 2014, the State Corporation Commission of the State of Kansas (Kansas Commission) filed a Motion for Extension of Time to respond to Westar's compliance filing. On October 2, 2014, the Commission granted the Kansas Commission's motion, extending the deadline to file comments, protests, and motions to intervene, to and including October 22, 2014.

<sup>15</sup> The Nebraska Public Power District erroneously filed a motion to intervene in Docket No. ER14-2852-000, but intended to file a motion to intervene in Docket No. ER14-2850-000.

**B. Substantive Matters****1. Scope of Participation****a. July 17 Order**

9. In the July 17 Order, the Commission found that Westar's protocol language that limited the participation of interested parties in the review of the implementation of the formula rate and of the costs that would flow through the formula rates appeared to be unjust and unreasonable.<sup>16</sup> For example, the Commission found that Westar's protocols inappropriately limited access to certain information necessary to assess the implementation of the formula rate to Westar's transmission customers and a designated staff person(s) of the Kansas Commission. Further, the Commission found that Westar allows "interested parties" to participate in the customer meetings, information exchange, and challenge procedures, but its protocols do not define the term "interested parties" to identify what parties can participate. The Commission also found that, to assist the Commission in performing its duty to ensure just and reasonable rates, it may be necessary for Westar to provide the Commission with all such information reasonably necessary to review and evaluate the implementation of the formula rate and the costs that would flow through the formula rate. Therefore, to afford adequate opportunity for participation and access to information, the Commission directed Westar to revise its formula rate protocols to provide all interested parties and the Commission with access to information about the annual updates as provided by the MISO Orders, or show cause why it should not be required to do so.<sup>17</sup>

**b. Westar Filing**

10. In its filing, Westar proposes to define the term "Interested Parties" so that it "includes, but is not limited to, customers under the SPP [Tariff], state utility regulatory commissions, consumer advocacy agencies, and state attorneys general."<sup>18</sup> Further, Westar proposes to provide the Commission with access to information about Westar's annual updates and projections in an annual informational filing. Westar argues that the protocols submitted with its filing comply with the Commission's directives to provide

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<sup>16</sup> July 17 Order, 148 FERC ¶ 61,033 at P 18.

<sup>17</sup> *Id.*; see also MISO Investigation Order, 143 FERC ¶ 61,149 at PP 81-92; MISO Compliance Order, 146 FERC ¶ 61,212 at PP 58-73.

<sup>18</sup> Westar Filing at 3-4 (citing Westar, OATT, Volume No. 5, Attachment H-2 (Formula Rate Implementation Protocols), § I.10 (1.0.0)).

all interested parties and the Commission adequate opportunity for participation and access to information.<sup>19</sup>

**c. Commission Determination**

11. We find that Westar's proposed definition of interested parties provides sufficient scope of participation for its protocols and will therefore accept this proposed revision with no further modifications. We direct Westar to take all necessary steps to have SPP make a parallel compliance filing to incorporate the same revision to the Westar protocols in the SPP Tariff.

**2. Transparency**

**a. July 17 Order**

12. In the July 17 Order, the Commission found that Westar's formula rate protocols do not provide all interested parties the information necessary to understand and evaluate the implementation of the formula rate for either the correctness of inputs and calculations or the reasonableness and prudence of the costs to be recovered in the formula rate, which would form the basis of any potential challenge.<sup>20</sup> The Commission found that: (1) Westar's revenue requirement and relevant information must be posted on both the Regional Transmission Organization's (RTO) website and Open Access Same Time Information System (OASIS) to ensure accessibility to all interested parties; (2) Westar's protocols do not provide parties other than Westar's transmission customers and designated staff of the Kansas Commission with notification of public meetings and, therefore, Westar must notify any interested party, through an email distribution list, of its public meetings related to the annual updates and, if appropriate, true-up adjustments; (3) Westar's protocols do not provide parties with notification of its postings related to the annual update and true-up if appropriate, and, therefore, Westar must notify any interested party through an email distribution list, of its postings related to the annual update and true-up if appropriate; (4) Westar's protocols do not contain a provision that specifically requires Westar to disclose any changes in accounting during the rate period that affects inputs to the formula rate or the resulting charges billed under the formula rate; (5) Westar's protocols do not specifically provide the opportunity to request further information regarding transmission owners' accounting practices to the extent the accounting impacts items included in the determination of the annual revenue requirement; (6) Westar's protocols do not explicitly include a provision that allows interested parties to obtain, upon request, information on procurement methods and cost

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

<sup>20</sup> July 17 Order, 148 FERC ¶ 61,033 at P 23.

control methodologies used by Westar in order to facilitate interested parties' analysis of whether Westar's costs were prudently incurred; (7) Westar's protocols do not include a process for Westar to endeavor to coordinate with other transmission owners that use a regional cost sharing mechanism and hold joint meetings to enable all interested parties to understand how Westar and the other transmission owners are implementing their formula rates to recover the costs of projects subject to such regional cost sharing; and (8) Westar's protocols do not provide a requirement to make annual informational filings with the Commission.<sup>21</sup> Therefore, the Commission directed Westar to revise its formula rate protocols to provide interested parties the information necessary to understand and evaluate the implementation of the formula rate for both the correctness of inputs and calculations, and the reasonableness and prudence of the costs to be recovered in the formula rate, as provided by the MISO Orders,<sup>22</sup> or show cause why they should not be required to do so.

**b. Westar Filing**

13. Westar has amended its protocols to provide that it will cause its annual true-up and annual projection, including the Annual Transmission Revenue Requirement and true-up adjustment, to be posted on the SPP website and OASIS. Westar states that, based on discussions with SPP, SPP has indicated that it is willing to add to its website a link to OASIS labeled "Member Related Postings" so that direct access to the member postings on the SPP OASIS will be available via the SPP website.<sup>23</sup> Westar also states that sections I.3, I.4 and V of its revised protocols state that Westar shall provide notice of the posting of its annual true-up and annual projection to "all parties on the SPP exploder list titled 'Service List'" and that Westar shall provide notice of its informational filing to the Commission via an email exploder list.<sup>24</sup>

14. Westar's revised protocols provide that the annual true-up shall identify all material adjustments made to the FERC Form No. 1 data in determining formula inputs,

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<sup>21</sup> *Id.* PP 19-30.

<sup>22</sup> *Id.* P 30 (citing MISO Investigation Order, 143 FERC ¶ 61,149 at PP 81-92; MISO Compliance Order, 146 FERC ¶ 61,212 at PP 58-73).

<sup>23</sup> Westar Filing at 4.

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

including relevant footnotes to FERC Form No. 1 and any adjustments not shown in FERC Form No. 1.<sup>25</sup>

15. Westar states that section I.9(e) of its revised protocols provides that Westar shall disclose in the annual true-up and annual projection “any change in accounting that affects inputs to the Formula Rate or the resulting charges billed under the Formula Rate” defined in Westar’s protocols as ‘Accounting Change.’”

16. Westar also states that section II.1(a) of its revised protocols provides that for each annual true-up and annual projection, interested parties may request, among other things, information and documents necessary to determine “the extent, effect or impact of an Accounting Change.”<sup>26</sup>

17. Westar states that section II.1(e) of its revised protocols provides that for each annual true-up and annual projection, interested parties may request, among other things, information and documents necessary to determine “the prudence of actual costs and expenditures, including the prudence of Westar’s procurement methods and cost control methodologies.”<sup>27</sup>

18. Westar proposes to post on SPP’s website all information requests and its response to such requests unless the requests include material Westar deems to be confidential. Westar further proposes to provide any such confidential material to requesting parties provided they execute a confidentiality agreement.

19. Westar proposes to add a clarification that it shall not claim that responses to information and document requests under the protocols are subject to any settlement privilege.

20. Westar notes that in the July 17 Order the Commission directed Westar to file with the Commission in the form of an annual informational filing “information such as the annual updates, true-up adjustments, and data and workpapers sufficiently detailed to support such information.”<sup>28</sup> In section V.1 of its revised protocols, Westar provides for such annual informational filings. Westar also argues that section V of the revised protocols, consistent with the Commission’s findings in the MISO Investigation Order

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<sup>25</sup> Westar, OATT, Volume No. 5, Attachment H-2 (Formula Rate Implementation Protocols), § I.8(b) (1.0.0).

<sup>26</sup> Westar Filing at 5.

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

<sup>28</sup> *Id.* at 5 (citing July 17 Order, 148 FERC ¶ 61,033 at P 29).

and Compliance Order, includes the information reasonably necessary to determine: (1) that input data under the formula rate is properly recorded in any underlying workpapers; (2) that the transmission owner has properly applied the formula rate and the procedures in the protocols; (3) the accuracy of data and the consistency with the formula rate of the actual revenue requirement and rates (including any true-up adjustment) under review; (4) the extent of accounting changes that affect formula rate inputs; and (5) the reasonableness of projected costs included in the projected capital addition expenditures (for forward-looking formula rates). Westar also notes that section V.1 of the revised protocols shall provide notice of the informational filing via an email exploder list.

21. Finally, Westar notes that, in the July 17 Order, the Commission directed Westar to propose a process for Westar to endeavor to coordinate with other transmission owners that use a regional cost sharing mechanism and hold joint meetings to enable all interested parties to understand how Westar and the other transmission owners are implementing their formula rates to recover the costs of projects subject to such regional cost sharing, consistent with the Commission's findings in the MISO Compliance Order. Westar explains that it has discussed the joint meeting requirement with other SPP transmission owners who also were directed by the Commission to include a similar provision in their compliance filings<sup>29</sup> and with SPP. Westar argues that, unlike the MISO Transmission Owners who utilize a standard formula rate template available in the MISO Tariff, the SPP transmission owners' formula rates are not based on standard formula rate forms available in the SPP Tariff. Westar contends that each SPP transmission owner has its own unique formula rate template and protocols, including distinct times for postings, customer meetings, and review periods. Further, Westar argues that the Commission acknowledged in the July 17 Order that other SPP transmission owners' formula rate protocols may not require such efforts, and that in such instances, cooperation of such SPP transmission owners would be necessary for Westar to provide for joint meetings.<sup>30</sup> Westar explains that it conducted an informal survey of other SPP transmission owners' protocols on file with the Commission and it is not aware of any SPP transmission owners' protocols that require a joint meeting. According to Westar, it will be limited in its ability to coordinate and host such joint meetings with the other SPP transmission owners and, therefore, if it were to include language in its protocols regarding holding joint meetings, Westar argues it would not be able to satisfy the requirement. Westar argues that it has shown good cause that submitting a provision

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<sup>29</sup> *Id.* at 6 (citing *The Empire District Electric Company*, 148 FERC ¶ 61,030, at P 21 & n.33 (2014); *Kansas City Power & Light Company*, 148 FERC ¶ 61,034, at P 22 & n.40 (2014)).

<sup>30</sup> *Id.* (citing July 17 Order, 148 FERC ¶ 61,033 at n.42).

regarding joint meetings with SPP transmission owners to discuss transmission projects which utilize regional cost allocation should not be included in Westar's protocols.

**c. Protests**

22. In addition to specific objections that protestors make to Westar's proposed changes to the transparency provisions of its formula rate protocols discussed below, KEPCo argues that Westar has used its compliance filing as a means to, in many instances, short-circuit ratepayers' due process rights by deleting or amending rights embedded in the current protocols, contrary to the letter and spirit of the July 17 Order. Further, KEPCo argues that Westar has, without explanation, curtailed parties' existing discovery rights that were the result of extensive settlement discussions and negotiations.<sup>31</sup> According to KEPCo, Westar has used its compliance filing in response to a section 206 Commission mandate to enhance the customer protections in its protocols to instead seek changes that undermine current customer protections and that may only be made under section 205 of the FPA. KEPCo requests that the Commission reject all non-responsive aspects of Westar's filing in accordance with Commission precedent disallowing tariff changes that are outside the scope of a response to a section 206 order.<sup>32</sup>

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<sup>31</sup> KEPCo Protest at 2 (noting that the Settlement Agreement provides that the parties retain their rights under sections 205 and 206 of the FPA with respect to modification to the Settlement Agreement after approval).

<sup>32</sup> *Id.* at 2-3 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216, at P 16 (2011) ("If PJM wishes to propose changes with respect to circumstances that were not addressed by the Commission's section 206 action in Order No. 745, the appropriate forum for such a proposal would be a separate section 205 filing."); *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,212, at P 37 (2011) ("If MISO wishes to propose changes with respect to circumstances that were not addressed by the Commission's section 206 action in Order No. 745, the appropriate forum for such a proposal would be a separate section 205 filing."); *Avista Corp.*, 122 FERC ¶ 61,204, at P 33 (2008) ("Avista proposes modifications to its SGIA which reflect rehearing edits where not previously reflected in its [tariff]. These proposed modifications are rejected because they are not substantively affected by Order No. 890, and are therefore beyond the scope of the compliance filing."); *S.C. Elec. & Gas Co.*, 147 FERC ¶ 61,126, at P 108 (2014) ("We also note that the Commission in the First Compliance Order did not require SCE&G to revise the definition of public policy requirements and, therefore, the proposed change is beyond the scope of this compliance filing."); *Pub. Serv. Co. of New Mexico*, 122 FERC ¶ 61,176, at P 28 (2008) ("If PNM wishes to revise these provisions, it must file the proposed revisions in a separate FPA section 205 filing."); *Progress Energy, Inc.*, 122 FERC ¶ 61,078, at P 39 (2008) ("We reject without prejudice  
(continued...)

23. The Kansas Commission also argues that the goals of the July 17 Order were to establish greater transparency and opportunity for review and that, accordingly, Westar should not be making any changes to its protocols that will have the opposite effect. The Kansas Commission asserts that Westar has not demonstrated why its proposed revisions beyond the MISO Investigation Order's requirements are just and reasonable, and that such revisions reduce the procedural rights of interested parties to investigate and to effectively participate in review of the formula rate.<sup>33</sup> The Kansas Commission requests that the Commission reject Westar's proposed revisions and set all of the genuine issues of material fact that are involved in Westar's filing for a full evidentiary hearing.<sup>34</sup>

24. The Missouri Commission also argues that the Commission should reject Westar's wholesale adoption of MISO's proposed tariff language. The Missouri Commission contends that the Commission has not and should not take a "one size fits all" approach to evaluation of the SPP Transmission Owners' tariffs. The Missouri Commission states that the Commission has not required countless other transmission owners with protocol language dissimilar to MISO's to draft new protocol language identical to MISO's Tariff. The Missouri Commission contends that the July 17 Order directed Westar to refer to the MISO Orders, not to the MISO Transmission Owners' response to the Commission.<sup>35</sup> For example, the Missouri Commission points to the Commission's directive for Westar regarding transparency, noting that nowhere in the Commission's directive does it say that Westar should adopt the MISO Transmission Owners' tariff language. The Missouri Commission further argues that these proposed revisions are not responsive to and directly contravene the spirit of the Commission's July 17 Order to enhance ratepayers' rights.<sup>36</sup>

25. KEPCo argues that under sections I.3 and I.4 of Westar's proposed revisions an open meeting date may be held within seven days from the date an annual true-up or annual projection is published, but notice of such publication may occur within 10 days of such posting. According to KEPCo, a meeting date may precede the date for providing notice of the posting. Also, KEPCo argues that there is no reason for delaying

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the proposed tariff revisions as beyond the scope of this compliance filing. If Progress Energy wishes to revise such provisions, it must file the proposed revisions in a separate FPA section 205 filing.'')).

<sup>33</sup> Kansas Commission Protest at 3-6.

<sup>34</sup> *Id.* at 7.

<sup>35</sup> Missouri Commission Protest at 3-5.

<sup>36</sup> *Id.* at 5-6.

the email notice of posting by 10 days and notes that there is no 10-day lag for the email notice of the meeting date in proposed sections I.10 and I.11. Therefore, KEPCo urges that sections I.3 and I. 4 be amended to delete the 10-day delay and to substitute language making clear that the notice of the posting will be sent on the date of publication.<sup>37</sup> The Missouri Commission also objects to the 10-day notification period and asserts that 10 days is unnecessary for notice via email service, even if it was approved in the MISO Investigation Order.<sup>38</sup>

26. The Kansas Commission argues that Westar's proposed revision to allow email notification for postings of the annual projection, annual true-up, and other meetings does not meet the goals of the July 17 Order to establish greater transparency and opportunity for review. The Kansas Commission argues that, to increase transparency and accessibility, the Commission require that Westar continue to provide actual notifications of filings and meetings to all interested parties, in addition to providing notification via the SPP exploder list.<sup>39</sup>

27. The Kansas Commission alleges that the information exchange provisions in Westar's proposed protocols are inadequate. The Kansas Commission states, for example, that Westar's proposed protocols call for the annual true-up to be posted on June 15th and for the meeting to follow by July 15th, with a period for discovery extending 75 days beyond that meeting. The Kansas Commission states that this would put the deadline for discovery at no later than September 28th. For the annual update, the Kansas Commission states Westar proposes to post its results by October 15th, hold the annual meeting by October 30th, and allow for discovery until November 15th. The Kansas Commission compares this to the protocols in the MISO Investigation Order requiring that the true-up be posted by June 1st and the annual update be posted by September 1st, with discovery for both until December 1st. The Kansas Commission contends that the deadlines Westar proposes will result in less time for interested parties to analyze data and seek discovery than under the timeframes the Commission conditionally approved for MISO transmission owners.<sup>40</sup> The Kansas Commission notes that Westar proposes to increase the time frame to respond to Information Requests from 10 to 15 days, consistent with the MISO Investigation Order, but contends that interested parties in MISO are provided much more time to issue discovery requests than Westar is proposing. Further, the Kansas Commission acknowledges that Westar proposes the

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<sup>37</sup> KEPCo Protest at 12.

<sup>38</sup> Missouri Commission Protest at 6.

<sup>39</sup> Kansas Commission Protest at 3-4.

<sup>40</sup> *Id.* at 5.

same deadlines for informal and formal challenges as the MISO Investigation Order protocols, but contends that Westar's proposal limits the discovery period for the true-up to no later than September 28th, which would restrict a party's ability to engage in discovery to four months before the deadline to file an informal challenge.<sup>41</sup>

28. The Kansas Commission requests that the Commission clarify that Westar does not have the unilateral discretion to make adjustments to the formula if the formula itself does not specify that there are to be such adjustments.<sup>42</sup> To ensure this, the Kansas Commission asserts that section I.8(b) of Westar's proposed protocols must be clarified with the statement "to the extent specified in the formula."

29. The Kansas Commission argues that Westar's proposal to delete language in section I.3(a) of the current protocols would remove valuable clarification from the protocols and the Kansas Commission requests that the language be reinserted into sections I.1, I.4, and I.5.<sup>43</sup>

30. The Kansas Commission alleges that Westar unjustly and unreasonably modified the protocols to allow itself to hold the annual true-up meeting in the forum of its choice, and requests that the Commission require that Westar clarify that an in-person meeting, either at Westar's corporate headquarters in Topeka, Kansas or at another location in Topeka, Kansas, will be hosted by Westar.<sup>44</sup> The Missouri Commission also argues that Westar should be required to offer remote access for interested parties to all of its public meetings.<sup>45</sup>

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<sup>41</sup> *Id.* at 5-6.

<sup>42</sup> *Id.* at 4 (citing Westar, OATT, Volume No. 5, Attachment H-2 (Formula Rate Implementation Protocols), § I.8(b) (1.0.0)).

<sup>43</sup> *Id.* at 5. Specifically, the Kansas Commission points to language from section I.3(a) which states in relevant part that "[t]he Formula specifies in detail the manner in which (i) the most recent Form No. 1 data will be used as inputs and the limited projections of net transmission plant, Transmission O&M, A&G, revenue credits, and load will be forecast for the next Rate Year in the Annual Update and (ii) any true-up calculated in accordance with the Formula ("True-Up Adjustment") for the prior Rate Year and posted by June 15 will be treated in the Annual Update."

<sup>44</sup> *Id.* at 4-5 (citing Westar, OATT, Volume No. 5, Attachment H-2 (Formula Rate Implementation Protocols), § I.10 (1.0.0)).

<sup>45</sup> Missouri Commission Protest at 6.

31. KEPCo opposes Westar's proposal to eliminate its existing dispute resolution provision under section II.1(d) allowing Westar or any interested party to petition the Commission to appoint an Administrative Law Judge as a discovery master in the event that Westar and any interested party(ies) are unable to resolve disputes related to information requests submitted in accordance with the annual review procedures. According to KEPCo, provisions such as this are important because transmission owners are in control of all relevant formula rate data and may not be forthcoming as to what they provide in response to data requests. KEPCo argues that section II.1(d) provides an enforcement mechanism and without it, customers are at a disadvantage, especially in light of meeting protocol deadlines and requirements for challenges without having secured the necessary sought-after data.<sup>46</sup>

32. KEPCo also argues that there are other miscellaneous compliance issues that Westar should address. First, KEPCo alleges there is an inconsistency between proposed section I.8(a), which states that the annual true-up "shall be based on FERC Form No. 1 data for the prior calendar year, and, to the extent specified in the Formula, upon the books and records of Westar consistent with [Commission] accounting policies and practices," and proposed section VI.1, which states that "The Projected Revenue Requirement for the previous year, not including any prior year True-Up Adjustment shall be compared to the Actual Revenue Requirement calculated in accordance with Westar's Formula Rate for the previous year using FERC Form No. 1 for that same year to determine any over or under recovery plus interest ('True-Up Adjustment')." <sup>47</sup> KEPCo argues that the requirement found in section I.8(a) that the comparison be made both on the prior year's FERC Form No. 1 and "to the extent specified in the Formula, upon the books and records of Westar consistent with [Commission] accounting policies and practices" is missing from section VI.1 and should be revised to include it.

33. Second, KEPCo argues that the limitation in proposed section V.1 that informational filings filed with the Commission include the information that is reasonably necessary to determine the reasonableness of projected costs included in the "projected capital addition expenditures" should be deleted. Rather, KEPCo believes that the demonstration of reasonableness should include all projected costs.<sup>48</sup>

34. Third, KEPCo also opposes Westar's proposal to expand the 10-day response period to respond to information and document requests under section II.1(c) to a 15-day response period. KEPCo argues that this proposal, combined with the proposed removal

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<sup>46</sup> KEPCo Protest at 3-4.

<sup>47</sup> *Id.* at 11.

<sup>48</sup> *Id.* at 11.

of the dispute resolution provision above, is wholly unacceptable as the two provisions were key factors in KEPCo's initial agreement to limit the discovery period to 75 days. Moreover, KEPCo argues that these proposals are unresponsive to the Commission's directives in the July 17 Order and that Westar's proposals limit, rather than expand, the protections afforded affected parties.<sup>49</sup>

**d. Answers**

35. Westar argues that its compliance filing is squarely within the scope of the July 17 Order. Westar notes that the foundation of the Commission's investigation of Westar's protocols was the findings of the MISO Investigation Order and the MISO Compliance Order and asserts that the scope of the July 17 Order is not as narrowly defined as KEPCo and the Kansas Commission argue. Westar asserts that its filing explains how it has endeavored to address each of the areas of concern identified by the Commission consistent with the standards established in the MISO Orders.<sup>50</sup>

36. Westar disputes the notion that rights negotiated in the settlement agreement filed by the parties in Westar's last section 205 filing are immune from section 206 scrutiny. Specifically, Westar points to the Commission letter order approving the settlement, which reads in part that "[t]he Commission retains the right to investigate rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act."<sup>51</sup> Westar asserts that the July 17 Order does not carve out or preserve from scrutiny formula rate protocol provisions agreed to by settlement. Westar further contends that its proposed changes give customers more rights under the protocols, provide more transparency, and establish clearer expectations.<sup>52</sup>

37. Westar asserts that KEPCo and the Kansas Commission argue about provisions that they believe Westar should have included in its formula rate protocols, such as provisions regarding a discovery master. However, Westar contends that such provisions are directly contrary to Commission precedent specifically rejecting inclusion of such provisions.<sup>53</sup>

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<sup>49</sup> *Id.* at 4-5.

<sup>50</sup> Westar Answer at 2-3.

<sup>51</sup> *Id.* at 3-4 (quoting *Westar Energy, Inc.*, 125 FERC ¶ 61,252, at P 4 (2008)).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 4-5.

38. Westar asserts that it significantly expanded the ability for interested parties to submit information requests. Specifically, Westar points to the revised protocols allowing two rounds of information requests to be made up to 75 days after the true-up meeting and up to 30 days after the Annual Projected Rate meeting. Westar asserts that the deadlines it is establishing allow it time to prepare the annual projection, make any necessary changes as a result of the information request process, and provide final numbers to SPP on time to include the updated revenue requirement in the rates that become effective on January 1st of each year.<sup>54</sup>

39. Westar further asserts that there is no need for the Commission to set the compliance filing for hearing. Westar argues that, while the Kansas Commission and KEPCo appear to be disappointed that Westar has conformed its protocols to the standards established in the MISO Orders, their concerns are not “genuine issues of material fact” that can or should be set for hearing. Westar argues the Commission can determine the extent and degree of Westar’s compliance in its order.<sup>55</sup>

40. In response, KEPCo argues that the Commission did not indicate in the July 17 Order that, if Westar made the changes required in the three areas of concern, Westar could make other changes abridging existing customer rights.<sup>56</sup> KEPCo argues that an existing tariff, whether the result of settlement or a unilateral filing by a utility, may not be changed via an out-of-scope section 206 compliance filing; rather, except as to the three areas of concern noted in the July 17 Order, the existing tariff may only be changed under section 205.<sup>57</sup> Moreover, KEPCo challenges Westar’s characterization of KEPCo and the Kansas Commission’s arguments regarding provisions “they believe Westar should have included in its formula rate protocols that are directly contrary to Commission precedent.” KEPCo argues that its objection is to the removal or abridgement of *existing* protocol provisions containing customer rights that are not subject to the compliance directives in the July 17 Order.<sup>58</sup>

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<sup>54</sup> *Id.* at 7-8.

<sup>55</sup> *Id.* at 9.

<sup>56</sup> KEPCo Answer at 3-4, 6-8.

<sup>57</sup> *Id.* at 4.

<sup>58</sup> *Id.* at 4-6.

41. Finally, KEPCo notes that Westar's answer is silent as to the three miscellaneous compliance issues or errors that KEPCo raised in its protest. KEPCo asserts that the Commission should grant its requested relief as to those issues.<sup>59</sup>

**e. Commission Determination**

42. As discussed below, we find that Westar's revisions in its proposed protocols related to transparency generally comply with the requirements of the July 17 Order. We will therefore conditionally accept them, subject to further compliance, as discussed below. We also will direct Westar to take all necessary steps to have SPP make a parallel compliance filing to incorporate the same revisions to the Westar protocols in the SPP Tariff.

43. We disagree with protestors' assertion that Westar's protocols should have been left undisturbed because of their association with a previous settlement. In the MISO Investigation Order, the Commission established a set of standards for formula rate protocols to provide adequate scope of participation, transparency, and challenge procedures. As noted above, in the July 17 Order, the Commission found that its review indicated that Westar's protocols failed to meet these standards. However, the Commission also stated that Westar may show cause why it should not be required to revise its formula rate protocols. To this end, the Commission will evaluate arguments by Westar or intervenors to this proceeding supporting individual, existing provisions in the protocols on a case-by-case basis.

44. Regarding the timing of the publication of the annual update/true-up postings, the notification of such postings, and the open meetings themselves, we find that Westar's proposed protocols comply with the July 17 Order and therefore disagree with KEPCo and the Missouri Commission that Westar's proposed protocols should be revised. The Commission did not require Westar to adhere to a specific timeline for publications and postings, but rather directed Westar to provide interested parties the information necessary to understand and evaluate the implementation of the formula rate for both the correctness of inputs and calculations, and the reasonableness and prudence of the costs to be recovered in the formula rate, as provided by the MISO Investigation Order and MISO Compliance Order, or show cause why Westar should not be required to do so.<sup>60</sup> Further, we decline the Kansas Commission's request to require Westar to provide

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<sup>59</sup> *Id.* at 10.

<sup>60</sup> *See* MISO Compliance Order, 146 FERC ¶ 61,212 at P 59.

notification beyond that provided via the SPP exploder list. The Commission required Westar to only provide notification of postings through an email exploder list.<sup>61</sup>

45. Regarding the Kansas Commission's request for Westar to reinsert language detailing what the annual update would specify, we find that the proposed protocols provide an adequate level of transparency with respect to information about Westar's costs and revenue requirements and that reinsertion of the Kansas Commission's requested language would be redundant.

46. As to Kansas Commission's request that Westar revise its protocols as to the location of open meetings, we note that Westar's proposed protocols already allow various accommodations including video conferencing, webinar, internet conferencing, phone conferencing, in person, or other similar options. Therefore, we will not require Westar to further clarify that it will hold the Annual True-Up Meeting and Annual Projected Rate Meeting at its headquarters or at another suitable location in Topeka, Kansas. Further, we agree with the Missouri Commission's assertion that Westar's formula rate protocols should require Westar to provide remote access to their Annual Update and True-Up Adjustment meetings.<sup>62</sup> We find it reasonable to allow for remote access to ease burdens (e.g., travel costs) to ensure all interested parties have the opportunity to participate in the meetings. We will therefore direct Westar to modify its formula rate protocols to explicitly require remote access for participation at Annual Update meetings and True-Up Adjustment meetings.

47. We agree with the Kansas Commission that Westar's proposed protocols for the annual update/true-up information exchange period do not provide an adequate period of time for discovery. We find that the proposed timelines – 75 days to serve information requests on the Annual True-Up and as little as 31 days to serve information requests on the Annual Projection – are not sufficiently long enough to allow parties proper review. Therefore, we will direct Westar to revise its protocols to allow an adequate time period for interested parties to review information following its posting and to serve reasonable information requests on Westar relevant to the implementation of the formula rate.

48. We disagree with KEPCo and the Kansas Commission that Westar's expansion of its deadline to respond to information requests from 10 days to 15 days is inappropriate or unresponsive to the July 17 Order. We find that Westar's revised deadline is reasonable, particularly in light of our finding above that Westar must provide additional time for interested parties to pursue discovery.

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<sup>61</sup> July 17 Order, 148 FERC ¶ 61,033 at P 24.

<sup>62</sup> Missouri Commission Protest at 5-6.

49. We disagree with KEPCo and find it reasonable for Westar to remove the discovery master provision from its existing protocols. As stated in the MISO Investigation Order, the Commission found that a provision to allow the appointment of a discovery master is unnecessary.<sup>63</sup> The Commission found that the numerous revisions that the Commission required pertaining to the transparency of information supporting transmission owners' annual updates should ensure that interested parties will have access to sufficient information such that it anticipated that such disputes should be comparatively infrequent. Moreover, parties are free to request the appointment of a settlement judge and avail themselves of the on-call settlement judge, as well as the Commission's Dispute Resolution Service to resolve such matters. As with Westar's revised protocols, we find that with the increased transparency and challenge provisions, interested parties will have access to sufficient information in order to understand the transmission owner's updates and the procedures to raise informal and formal challenges.

50. We agree with KEPCo that the annual informational filing submitted to the Commission should include the information that is reasonably necessary to determine the reasonableness of all projected costs, not just those included in the projected capital expenditures. We will therefore direct Westar to remove the phrase "included in the projected capital expenditures" from section V.1 of its proposed protocols.

51. We agree with KEPCo that proposed section VI.1 should be revised to be consistent with proposed section I.8(a). We will therefore direct Westar to revise section VI.1 to include the phrase "to the extent specified in the Formula, upon the books and records of Westar consistent with FERC accounting policies and practices" as requested by KEPCo. We further find the language of this section unclear and will direct Westar to revise the sentence beginning with "[t]he Projected Revenue Requirement" to include additional punctuation where appropriate.

52. We find that Westar should include tariff language regarding joint meetings with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects subject to the same regional cost allocation. A joint meeting with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects that they develop that are subject to the same regional cost allocation would be an efficient way for such transmission owners to conduct annual meetings to discuss their annual updates, so that parties interested in the annual updates of multiple transmission owners with projects subject to the same regional cost allocation do not have to separately participate in each transmission owner's annual meeting.<sup>64</sup> This could ease the burden of both transmission customers and owners by

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<sup>63</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 122.

<sup>64</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 59.

limiting the number of annual meetings necessary.<sup>65</sup> Accordingly, we will direct Westar to include a requirement, in the compliance filing ordered below, that it endeavor to coordinate with other transmission owners using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism and hold joint meetings to enable all interested parties to understand how those transmission owners are implementing their formula rates for recovering the costs of such projects.<sup>66</sup>

53. We find that Westar has complied with the Commission's directives in the July 17 Order to file an annual informational filing. We remind Westar, consistent with the directives in the Southern Indiana and NIPSCO Second Compliance Orders,<sup>67</sup> that Westar is required to file its annual informational filing in a new docket each year.

54. We dismiss the Kansas Commission's request for a full evidentiary hearing of Westar's proposed revisions. Based on our review of the pleadings before us, we see no issues of material fact that necessitate a full evidentiary hearing.

### **3. Challenge Procedures**

#### **a. July 17 Order**

55. The Commission found that Westar's formula rate protocols regarding challenge procedures do not fully provide the ability to challenge a transmission owner's annual update and resolve disputes through straightforward and defined procedures, as provided by the MISO Investigation Order. The Commission required, at minimum, such procedures to permit interested parties to raise informal challenges for a reasonable period of time after annual updates are posted, in order to avoid the financial and informational burden associated with filing a formal challenge or with filing a complaint with the Commission pursuant to FPA section 206. Further, the Commission found that if, after a reasonable period of time, the parties are unable to resolve their dispute

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<sup>65</sup> *Id.* While we recognize that Westar's formula rate protocols only govern Westar's annual updates, we expect other public utility transmission owners using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism to cooperate in coordinating to hold joint meetings.

<sup>66</sup> Westar would not need to coordinate with transmission owners that do not use formula rates and thus do not update their rates each year.

<sup>67</sup> *See* NIPSCO Second Compliance Order, 150 FERC ¶ 61,022 at P 17; Southern Indiana Second Compliance Order, 150 FERC ¶ 61,023 at P 18.

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. The Commission found that Westar's protocols include provisions for informal and formal challenges, but require that formal challenges be complaints filed pursuant to section 206 of the FPA.

56. Additionally, the Commission found that Westar's protocols provide that each true-up adjustment shall become final and no longer subject to challenge on the later of (1) the passage of the 18-month period for a formal challenge if no formal challenge has been filed and the Commission has not initiated a proceeding to consider the true-up adjustment; or (2) a final Commission order issued in response to a formal challenge or a proceeding initiated by the Commission to consider the true-up adjustment. The Commission noted that such finality provisions contravene Commission precedent and the filed-rate doctrine. Accordingly, the Commission found that Westar's formula rate appeared to be unjust and unreasonable. Therefore, the Commission directed Westar to revise its formula rate protocols to provide specific procedures for informal and formal challenges, as provided by the MISO Investigation Order and MISO Compliance Order, or show cause why it should not be required to do so.<sup>68</sup>

**b. Westar Filing**

57. Westar argues that section III of its revised formula rate protocols incorporates informal and formal challenge procedures that satisfy the requirement that, among other things, the deadline for interested parties' submission of informal challenges affords them an opportunity to evaluate all responses to information requests, that all parties have the opportunity to raise issues in informal and formal challenges, and that interested entities are not precluded from exercising their statutory rights. Further, Westar states that its revised protocols provide a "structured timeline" that allows the review process to be completed before the next year's posting. Westar asserts that, as provided in the MISO Compliance Order, it has ensured that in sections II.1 and III.1 of its revised protocols the deadline for submission of an informal challenge in the protocols allow interested parties adequate opportunity to evaluate responses to information requests. Under proposed section III.2 of its revised protocols, Westar states that it provides the minimum requirements for an informal challenge and that Westar shall make a good faith effort to respond to any informal challenge within 20 days and shall, where applicable, appoint a senior representative to work towards resolving issues raised in the informal challenge. Further, Westar adds that proposed section III.4 provides the permitted scope of the informal and formal challenges consistent with the Commission's findings. According to

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<sup>68</sup> July 17 Order, 148 FERC ¶ 61,033 at PP 33-35 (citing MISO Investigation Order, 143 FERC ¶ 61,149 at PP 103-123; MISO Compliance Order, 146 FERC ¶ 61,212 at PP 103-117).

Westar, section III.8 of its revised protocols provide that Westar shall bear the burden of proof in any formal challenge filed with the Commission and section III.9 adopts language from the MISO protocols that provides that nothing in the protocols shall limit rights under section 206 of the FPA. Finally, Westar states that it has removed from its protocols provisions regarding the finality of the true-up adjustment as directed by the Commission.

**c. Protests**

58. In addition to its protest above asserting that a number of Westar's proposed revisions are outside the scope of a section 206 proceeding, KEPCo argues that Westar has unilaterally and without explanation inserted numerous criteria for filing informal and formal challenges that are not present in the current protocols, which are beyond the scope of compliance with the July 17 Order.<sup>69</sup> First, KEPCo states that under sections III.2(b) and III.4 of Westar's existing provisions, customers have 18 months from the customer meeting to file a formal challenge, with a tolling provision if data disputes are outstanding, and a formal challenge may be filed whether or not an informal challenge was lodged. KEPCo argues that under section III.1 of Westar's proposed revisions parties that have not included any issues as part of an informal challenge are barred from pursuing a formal challenge with respect to any issue for that annual true-up or annual projection. Further, KEPCo argues that Westar's proposal only allows interested parties until March 31st following the review period to make a formal challenge with the Commission. According to KEPCo, Westar's revisions erect a barrier to filing formal challenges by requiring a filing of an informal challenge and also substantially shorten the time period for filing formal challenges from 18 months to 8.5 months for a True-Up Challenge and 4.5 months for an annual projection filing.

59. KEPCo argues that, at the same time Westar proposes to reduce the time period for filing formal challenges, Westar allows itself unlimited time to cure errors and proposes to remove a provision stating that "Nothing in these Protocols should or may be construed as preventing a customer, the [Kansas Commission], or the [Commission] from protesting such correction as inappropriate."<sup>70</sup> While KEPCo acknowledges that this issue is within the purview of the July 17 Order, it argues that it is unduly discriminatory to allow Westar an unlimited time period to correct errors while limiting customers to less than 18 months to file a formal challenge to correct errors. KEPCo also opposes Westar's revision to section III.2(b) to remove the right to lodge a Year 2 formal

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<sup>69</sup> KEPCo Protest at 4, 7 & n.5.

<sup>70</sup> *Id.* at 8.

challenge to correct a Year 1 error, if an interested party did not initiate a formal challenge in Year 1.<sup>71</sup>

60. Further, KEPCo alleges that Westar's revised section IV.2 allows Westar to correct identified errors, but that the provision only speaks to errors identified by Westar and not those identified by customers.<sup>72</sup> KEPCo argues that it prefers that Westar's ability to correct errors be limited to the same time period to which the customers are held, but acknowledges that another approach is to remove the time limitation on filing formal challenges so that errors, whenever and by whomever they are found, may be addressed and corrected, with refunds or surcharges made or collected.<sup>73</sup>

61. In addition to its protest above asserting that Westar's proposed transparency provisions are outside the scope of a section 206 proceeding, the Missouri Commission also alleges that Westar's proposed challenge procedures go well beyond the Commission's minimum requirements and diminish consumers' due process rights by changing rights already in Westar's current tariff. In addition, the Missouri Commission argues that Westar should be clear that challenges under section III are to alleged violations of the Westar protocols or of the *application* of the rate formula rather than to the rate formula itself. The Missouri Commission specifically recommends adding "the application of the rate formula" to sections III.3(a)i and III.3(a)ii.<sup>74</sup>

62. The Missouri Commission contends that an interested party making a formal challenge under section III should not be required to explain why it did not raise an issue in the informal challenge process. The Missouri Commission alleges that requiring a party to make such an explanation exceeds the requirements established by the Commission in the MISO Compliance Order. According to the Missouri Commission, the Commission in the MISO Compliance Order required a party to have challenged *any* issue in the informal challenge process in order to participate in the formal challenge process. Accordingly, the Missouri Commission recommends that section III.3(a)viii should be changed to "State whether the filing party utilized the informal challenge procedures described in these Protocols *with regard to any issue.*"<sup>75</sup>

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<sup>71</sup> *Id.* at 6-7.

<sup>72</sup> KEPCo Limited Comments at 3-6.

<sup>73</sup> KEPCo Protest at 9-10.

<sup>74</sup> Missouri Commission Protest at 6.

<sup>75</sup> *Id.* at 7.

63. Further, the Missouri Commission contends that section III.7 should be revised to state that “a party may not pursue a Formal Challenge if that party did not submit *any* Informal Challenge” in order to accurately reflect the Commission’s requirements.<sup>76</sup>

**d. Answer**

64. In response to KEPCo’s assertions that Westar should not remove its provision extending the deadline to file a formal challenge if any data disputes are outstanding, Westar argues that because the Commission has previously rejected proposals to toll deadlines for information requests, it should not include such a provision in its protocols.<sup>77</sup>

65. Westar also asserts that KEPCo incorrectly equates the formal challenge process under the revised protocols with the formal challenge process under the current protocols. Westar contends that it expanded the formal challenge process such that now interested parties have three opportunities to resolve concerns with the formula rate update: informal challenges, formal challenges, and section 206 complaints. Westar asserts that its proposed revisions expand customer rights because, under the current protocols, the formal challenge process is available to customers under a section 206 filing, but its proposed revisions provide customers a formal challenge process that is separate and apart from the customer’s right to file a section 206 complaint.<sup>78</sup>

66. Westar further disputes KEPCo’s contention that Westar shortened the time period for filing a formal challenge with respect to the projected revenue requirement. Westar asserts that its revised protocols provide customers the ability to challenge the projected revenue requirement, a right which did not previously exist under the currently-effective protocols.<sup>79</sup> Westar explains that it accomplished this change by extending the time period for filing informal challenges by approximately 60 days so that the period

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<sup>76</sup> *Id.* at 7-8.

<sup>77</sup> Westar Answer at 5 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 60 (finding that it is important to hold all parties accountable to a structured timeline in order to ensure that the entire process is completed before the beginning of the next year’s posting and information exchange)).

<sup>78</sup> *Id.* at 5, 8.

<sup>79</sup> *Id.* at 5, 8-9.

encompasses both the time for posting the true-up revenue requirement and the time for posting the projected revenue requirement.<sup>80</sup>

67. Westar contends that its revised protocols remove language that would make its true-up adjustment final and no longer subject to challenge under certain circumstances, as directed by the Commission in the July 17 Order. Westar argues that KEPCo's proposal to reinsert language restricting Westar's ability to correct any errors is contrary to the Commission's directive and Commission precedent.<sup>81</sup> Further, Westar asserts that there is no disparity between an interested party's and Westar's ability to correct an error under the revised protocols. According to Westar, it has the obligation to correct an error whenever it is discovered, regardless of whether the correction is in Westar's or the customer's favor.<sup>82</sup>

68. KEPCo argues that Westar again mischaracterizes KEPCo's argument regarding the toll of deadlines for information requests. KEPCo maintains that it does not want Westar to include a tolling provision in its revisions but rather that the removal of existing tolling provisions is a change outside of the scope of the July 17 Order's compliance directives and, therefore, Westar has no basis to remove these existing customer rights.<sup>83</sup>

69. KEPCo asserts that it is not disputing the revised protocols' inclusion of three opportunities to challenge, but rather that Westar's revisions substantially shorten the time period for formal challenges to true-up filings from 18 months to 8.5 months and also create a new bar to a formal challenge by requiring that customers would have needed to file an informal challenge as to an issue prior to filing a formal challenge.<sup>84</sup> Moreover, KEPCo argues that the July 17 Order did not provide that, if Westar made the changes ordered, Westar would be authorized to diminish other customer rights in other areas.<sup>85</sup>

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<sup>80</sup> *Id.* at 9.

<sup>81</sup> *Id.* at 6 (citing July 17 Order, 148 FERC ¶ 61,033 at P 34).

<sup>82</sup> *Id.*

<sup>83</sup> KEPCo Answer at 5-6.

<sup>84</sup> *Id.* at 6.

<sup>85</sup> *Id.* at 6-7.

70. KEPCo states that it seeks parity as to correcting errors. KEPCo argues that, while Westar claims that it has the obligation to correct an error whenever it is discovered, the revised provision does not explain whether Westar must correct errors found by customers after the formal challenge period expires or how to proceed if the customer objects to Westar's unilateral error correction.<sup>86</sup>

**e. Commission Determination**

71. We find that Westar's revisions to its protocols related to challenge procedures generally comply with the requirements of the July 17 Order. We therefore conditionally accept them, subject to further compliance, as discussed below. We also will direct Westar to take all necessary steps to have SPP make a parallel compliance filing to incorporate the same revisions to the Westar protocols in the SPP Tariff.

72. Further, we disagree with KEPCo that Westar's proposed protocols erect a barrier to filing formal challenges. In the MISO Compliance Order, the Commission found reasonable a requirement that "interested parties submit an informal challenge before filing a formal challenge, as this would encourage interested parties to actively engage in the update and the true-up process."<sup>87</sup> Further, Westar's proposed protocols provide interested parties nearly 8.5 months to file a challenge to the true-up and 4.5 months to file a challenge to the annual projection, consistent with the standards in the MISO Investigation Order and MISO Compliance Order.<sup>88</sup>

73. We disagree with the Missouri Commission's contention that Westar should clarify in sections III.3(a)i and III.3(a)ii that challenges are to the application of the formula rate. We find that proposed section III.10 sufficiently clarifies that challenges made under the challenge procedures are not challenges to the rate itself, and that any changes to the formula rate must be made pursuant to a section 205 or 206 filing.

74. We disagree with the Missouri Commission regarding the revised language requiring an interested party filing a formal challenge that had not utilized the informal challenge procedures to address a specific issue to inform Westar why it had not done so.

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<sup>86</sup> *Id.* at 7-8.

<sup>87</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 108.

<sup>88</sup> *See* MISO Investigation Order, 143 FERC ¶ 61,149 at PP 103-123; MISO Compliance Order, 146 FERC ¶ 61,212 at PP 103-117.

We find that, as proposed, section III.3(a)viii is just and reasonable and consistent with the standards developed in the MISO Second Compliance Order.<sup>89</sup>

75. Regarding the Missouri Commission's request that Westar revise its protocols to provide that an interested party submit an informal challenge in order to raise *any* issue in a formal challenge, we agree. In the MISO Compliance Order,<sup>90</sup> the Commission rejected proposals to prohibit interested parties from raising any issue in a formal challenge that was not previously raised in an informal challenge. However, the Commission retained the requirement that an interested party submit an informal challenge in order to raise any issue in a formal challenge. Therefore, we will direct Westar to revise section III.7 to state that "a party may not pursue a Formal Challenge if that party did not submit *any* Informal Challenge during the applicable Review Period."

76. Further, we will not require Westar to reinsert the provision tolling the deadline for challenges to the true-up. The Commission has noted the importance of holding all parties "accountable to a structured timeline . . . in order to ensure that the entire process is completed before the beginning of the next year's posting and information exchange."<sup>91</sup>

77. We will not require Westar to remove the provision allowing it to correct errors. The Commission did not require Westar to remove this preexisting provision in the July 17 Order. However, we do agree with KEPCo that it is unjust and unreasonable for Westar to remove clarification from the protocols stating "[n]othing in these [p]rotocols should or may be construed as preventing a customer, the [Kansas Commission], or the [Commission] from protesting such correction as inappropriate," as it decreases the level of transparency of the information exchange process. We will therefore direct Westar to reinsert this sentence in section IV.2, and further will direct Westar to replace "a customer, the KCC," with "Interested Parties" to be consistent with the rest of the protocols.

The Commission orders:

(A) Westar's compliance filing is hereby conditionally accepted, effective March 1, 2015, as requested, as discussed in the body of this order.

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<sup>89</sup> See MISO Second Compliance Order, 150 FERC ¶ 61,025 at P 53.

<sup>90</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 108.

<sup>91</sup> *Id.* P 60.

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

(C) Westar is hereby directed to take all necessary steps to have SPP make a compliance filing to incorporate the same revisions to the Westar protocols in the SPP Tariff, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.