

158 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Old Dominion Electric Cooperative

Docket No. ER13-2483-001

OPINION NO. 553

ORDER ON INITIAL DECISION

(Issued January 19, 2017)

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1. This case is before the Commission on exceptions to the April 13, 2015 Initial Decision.¹ As discussed below, we affirm in part, and reverse in part, the determinations of the Presiding Administrative Law Judge (Presiding Judge), and order refunds.

I. Background and Procedural History

A. ODEC’s Filing

2. On September 30, 2013, Old Dominion Electric Cooperative (ODEC) filed a cost-of-service rate schedule² (Revised Formula Rate) pursuant to section 205 of the Federal Power Act (FPA),³ and requested an effective date of January 1, 2014. ODEC stated that it is a non-profit power supply electric cooperative with 11 member distribution cooperatives that serve retail customers in Virginia, Delaware, and Maryland.⁴ ODEC

¹ *Old Dominion Electric Cooperative*, 151 FERC ¶ 63,002 (2015) (Initial Decision).

² *Old Dominion Electric Cooperative*, FERC FPA Electric Tariff, [Volume No. 1, Rate Formula, 1.0.0.](#)

³ 16 U.S.C. § 824d (2012).

⁴ The ODEC member distribution cooperatives are A&N Electric Cooperative, BARC Electric Cooperative, Choptank Electric Cooperative, Community Electric Cooperative, Delaware Electric Cooperative, Mecklenburg Electric Cooperative,

(continued ...)

proposed various revisions to its formula rate (Prior Formula Rate), which has been on file with the Commission since 1992.⁵ ODEC stated that many of the core aspects of the Prior Formula Rate would remain the same under the Revised Formula Rate. ODEC argued the individual rate components of both the Prior and Revised Formula Rates allocated demand and energy costs to ODEC's Member Cooperatives based upon their usage. ODEC explained that under the Prior Formula Rate, all of ODEC's demand costs were recovered from Member Cooperatives through a single rate based on each Member Cooperative's coincident peak (CP) usage each month (12 CP). ODEC stated that the Commission had previously noted a mismatch between the way that PJM Interconnection, L.L.C. (PJM) allocates demand costs to ODEC, and the methodology ODEC uses to allocate those same costs to its Member Cooperatives.⁶ ODEC stated that the Revised Formula Rate would provide energy rates that more accurately reflect market conditions and ODEC's costs, and more closely align ODEC's cost recovery from its Member Cooperatives with PJM's methodology.⁷

Northern Neck Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative (collectively, Class A members or Member Cooperatives). Each Class A member is a consumer-owned distribution cooperative that purchases its full energy requirement from ODEC under a bilateral full requirements wholesale power contract (WPC). Initial Decision, 151 FERC ¶ 63,002 at P 1, n.1. The cost-of-service formula rate is Exhibit D to each of the WPCs. Ex. ODC-34 at 2. The Commission accepted the currently-effective WPCs by letter order issued November 4, 2008. *Old Dominion Electric Coop.*, Docket No. ER08-1498-000 (Nov. 4, 2008) (delegated letter order).

⁵ The Commission accepted ODEC's most recent prior formula rate revision by letter order issued March 18, 2011. *Old Dominion Electric Coop.*, Docket No. ER10-2607-002 (Mar. 18, 2011) (delegated letter order).

⁶ *Old Dominion Electric Coop.*, Opinion No. 499, 122 FERC ¶ 61,174 (2008). In that order, the Commission said that "...[ODEC] should address this matter in [the] next section 205 filing and either modify [its] demand cost allocation method to match PJM's or explain why such a modification would not be just and reasonable." Opinion No. 499, 122 FERC ¶ 61,174 at P 46, n.64.

⁷ ODEC September 30, 2013 Transmittal Letter at 4.

B. Bear Island's Protest

3. Bear Island Paper WB, LLC (Bear Island), a retail industrial customer of Rappahannock Electric Cooperative (Rappahannock), receives a monthly bill from Rappahannock that flows-through, without markup or change, what Rappahannock pays to ODEC for service to Bear Island. Bear Island is not a customer of ODEC and does not take service from ODEC.⁸ Bear Island filed a motion to intervene and protest ODEC's proposed revisions, asserting that its interest in Demand Response and cost-of-service rates would not be protected under the Revised Formula Rate.⁹ Bear Island explained that it has invested considerable capital and labor costs in optimizing its Demand Response activities and contended that the Revised Formula Rate would thwart its investment in equipment that enables it to participate in such programs and otherwise disincentivize Demand Response.

4. Bear Island argued that the Revised Formula Rate was deficient because it would increase rates, and that ODEC improperly filed the proposed rate schedule as a "rate schedule change other than a rate increase."¹⁰ Bear Island further argued that the proposed rate changes were: (i) inconsistent with the Commission's directive in Opinion No. 499 that ODEC allocate its demand costs in the same manner as PJM;¹¹ (ii) contrary to cost causation and proper price signals; and (iii) discriminatory and unduly prejudicial in deciding which costs to socialize and which costs to assign to particular delivery points or customers. Bear Island requested that the Commission issue a deficiency notice or, alternatively, suspend ODEC's filing for the maximum period and set it for hearing and settlement judge procedures.

C. Procedural History

5. On December 2, 2013, the Commission accepted the Revised Formula Rate for filing, suspended it for a nominal period to become effective January 1, 2014, subject to refund, and established hearing and settlement judge procedures.¹²

⁸ Initial Decision 151 FERC ¶ 63,002 at n.50.

⁹ Bear Island October 21, 2013 Protest (Bear Island Protest) at 7.

¹⁰ Bear Island Protest at 13 (citing 18 C.F.R. § 35.13 (2013)).

¹¹ *Id.* at 20 (citing Opinion No. 499, 122 FERC ¶ 61,174 at P 46).

¹² *Old Dominion Electric Coop.*, 145 FERC ¶ 61,189 (2013) (Hearing Order).

D. Initial Decision

6. In the Initial Decision, the Presiding Judge found that ODEC had shown many elements of the Revised Formula Rate to be just and reasonable. However, the Presiding Judge also found that ODEC failed to satisfy its burden of proof with regard to: (1) the 2014 add-back costs attributable to Bear Island's 2013 demand response; (2) the RTO Capacity Service proxy rate; (3) the 1 CP Transmission Service rate allocator; and (4) Margin Requirement Note F insofar as it grants the ODEC Board of Directors (Board) the option to retain net margin above 1.2 Times Interest Earned Ratio (TIER).¹³

7. Briefs on exceptions were filed by ODEC, Bear Island, and Commission Trial Staff (Trial Staff), on May 13, 2015. Bear Island submitted a corrected version of its brief on exceptions on May 28, 2015. Briefs opposing exceptions were filed by ODEC, Bear Island, and Trial Staff on June 2, 2015.

E. Summary of Opinion

8. As discussed in detail below, we affirm in part, subject to compliance filing, and reverse in part, the Initial Decision. We affirm the Initial Decision's finding that this is an FPA section 205 proceeding, and that Opinion No. 499 did not impose a filing requirement on ODEC. We affirm the Initial Decision that the following ODEC proposals are just and reasonable: the allocation of PJM capacity charges on a 5 CP basis; the incorporation of PJM "add-backs;" the allocation of third-party transmission costs on a 1 CP basis; the allocation and true-up mechanism of non-PJM costs on a 12 CP basis; the base energy and energy adjustment rates; billing methodology; Executive Summary; loss factor; and the commencement of each rate year on January 1. We also affirm the Initial Decision's findings that the following ODEC proposals are unjust and unreasonable: the four-year average "proxy rate" for PJM capacity costs; the proposed retention of net margins at 1.2 TIER; and the 12 CP true-up mechanism for PJM capacity costs and third-party transmission costs.

9. We reverse the Initial Decision's finding that ODEC's proposed Zonal averaging mechanism and the use of add-backs in 2014 are unjust and unreasonable, and we instead accept them. We also reverse the Initial Decision that delivery point billing is a "non-issue," and find ODEC's proposal just and reasonable. We reverse the Initial Decision's findings regarding FERC Account Nos. 551 and 553, and direct ODEC to functionalize these accounts to demand based on the predominance method.

¹³ Initial Decision, 151 FERC ¶ 63,002 at P 214.

II. Discussion

A. Burden of Proof on Unchanged Portions of the Rate

10. The Presiding Judge found that the participants' Preliminary Joint Statement of Contested Issues, as well as subsequent pre-filed testimony and supporting exhibits, reflected issues which the Presiding Judge considered beyond the scope of the Hearing Order and misapplied burdens of proof.

11. The Presiding Judge issued bench rulings that the Hearing Order expressly confined this proceeding to an examination of "ODEC's proposed rate schedule revisions"—which ODEC bore an affirmative burden to prove are just, reasonable, and not unduly discriminatory. The Presiding Judge also ruled that unrevised elements of the tariff could be addressed only insofar as some proposed tariff revision(s) also materially changed or impacted unrevised elements. The Presiding Judge specifically rejected Trial Staff's position that the Hearing Order opened the entire ODEC formula rate, specifically the rate protocols, to examination in this proceeding. The Presiding Judge also rejected as beyond the scope of the hearing a more limited Bear Island position that ODEC should have filed time-of-day/seasonal energy rates because they are "more reasonable" than the proposed energy rate.

12. While, as discussed below, the Presiding Judge's rulings have no effect on our ability to resolve the issues in this proceeding, we will provide some general clarification with respect to developing a sufficient record during the hearing. When the Commission establishes a hearing under section 205 of the FPA (or section 4 of the Natural Gas Act (NGA)), the parties need to litigate the contested issues relating to the tariff changes proposed. As the Presiding Judge recognized, the Commission can make revisions to the utility's proposed rate under section 205, particularly as to specific cost items¹⁴ as well as other issues directly affected by those proposed revisions.¹⁵ The Commission, in appropriate circumstances, also can make determinations on certain issues under

¹⁴ *W. Res., Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993) ("[W]e appreciate that minor deviations from the pipeline's proposed rate based, for example, upon differences as to the extent of specific cost items, may be handled in a § 4 proceeding[.]"); *E. Tenn. Nat. Gas Co.*, 863 F.2d 932, 942 (D.C. Cir. 1988) (The Commission's NGA section 4 authority extends to existing rate components that the pipeline had not proposed to change but which the Commission found could not coexist with proposed changes without producing an unjust or unreasonable rate.).

¹⁵ See *E. Tenn. Nat. Gas Co. v. FERC*, 863 F.2d 932, 942 (D.C. Cir. 1988).

section 206¹⁶ as long as the statutory burdens are met.¹⁷ In addition, during the course of a hearing, as occurred in this case, the utility proposing the rate change may agree to adopt a significant revision to one component of its filing as proposed either by a party or by the Presiding Judge.¹⁸ The Commission also recognizes, however, that under our regulations, Presiding Judges have discretion to limit the scope of hearings into extraneous issues to ensure that the resolution of the hearing issues is conducted expeditiously.

13. The Commission, therefore, needs to have a complete record on the contested issues in a proceeding raised by the parties so that the Commission can decide how to apply the principles discussed above. In considering Bear Island's brief on exceptions, the issue it raised relating to the use of time-of-day/seasonal energy rates was unrelated to the changes proposed in ODEC's section 205 filing. The record, however, does not contain sufficient information for us to resolve the issue under section 206. Bear Island can, if it chooses, file a section 206 complaint if it believes ODEC's traditional rate design is unjust and unreasonable. Similarly, the issue of formula rate protocols raised by Trial Staff went beyond any of the rate issues originally set for hearing and we cannot find the Presiding Judge abused his discretion in determining not to litigate either of these issues.

B. Applicability of Opinion No. 499

1. Issue Summary

14. In Opinion No. 499, the Commission stated in a footnote to its discussion of ODEC's demand rate that:

¹⁶ 16 U.S.C. § 824e (2012).

¹⁷ 16 U.S.C. § 824d (e) (2012) (“[A]fter full hearings ... the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective.”); *see W. Res., Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir 1993). Permitting litigation on such issues, with appropriate recognition of the burdens of proof, may often permit more expeditious resolution of related issues than requiring parties to file separate complaints regarding unchanged provisions.

¹⁸ *See City of Winnfield v. FERC*, 744 F. 2d 871 (D.C. Cir. 1984); *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066, at PP 15-23 (2015).

No party in this proceeding has sought to modify the Applicants' proposed method of allocating demand costs among firm non-interruptible services so that it would exactly match PJM's demand cost allocation method. Because the parties did not raise or discuss that issue at the hearing, we will not pursue that matter in this proceeding. However, the Applicants should address this matter in their next section 205 filing and either modify their demand cost allocation method to match PJM's or explain why such a modification would not be just and reasonable.¹⁹

15. The Initial Decision concludes that Opinion No. 499 did not impose a filing requirement on ODEC in this proceeding and that the Commission cannot require a utility to make a section 205 filing.²⁰

16. Trial Staff disagrees with the Initial Decision's finding. Trial Staff states that ODEC's Revised Formula Rate is ODEC's next filing, as contemplated by the footnote, and argues that because ODEC did not seek rehearing of Opinion No. 499, it must comply with it. Trial Staff rejects ODEC's rationale that it does not precisely follow PJM's method because it is a cooperative electric utility, whose 11 member cooperatives have agreed to socialize costs with a "postage stamp" rate design. Trial Staff states that this circumstance is not a credible excuse for non-compliance with a Commission directive.²¹ Bear Island did not except to the Initial Decision's finding on Opinion No. 499.²² ODEC states that there is no requirement that its cost allocation method match PJM's exactly. ODEC states that Opinion No. 499 also recognized that ODEC can reasonably depart from the PJM methodology, which it has done for certain demand charges under the Revised Formula Rate.²³

¹⁹ Opinion No. 499, 122 FERC ¶ 61,774 at P 46, n.64.

²⁰ *See generally* Initial Decision, 151 FERC ¶ 63,002 at PP 38-44.

²¹ Trial Staff Brief on Exceptions at 30-37.

²² Bear Island Brief on Exceptions at 4-5.

²³ ODEC Brief Opposing Exception at 22-24.

2. Commission Determination

17. We affirm the Initial Decision's finding that Opinion No. 499 did not impose a filing requirement on ODEC. While the Commission cannot require utilities to make FPA section 205 filings, the Commission can require utilities to provide data and other information.²⁴ In Opinion No. 499, the Commission stated that ODEC should address this matter in its next section 205 filing and either modify the demand cost allocation method to match PJM's or explain why such a modification would not be just and reasonable.

18. In its September 30, 2013 filing, ODEC explained that its proposed rate schedule reflected a revised rate design which would more closely align ODEC's cost recovery from its member distribution cooperatives with the methodologies used by PJM to allocate costs to ODEC for the service ODEC takes on behalf of its members.²⁵ ODEC acknowledged that the Commission had previously noted this mismatch between its methodology and PJM's. ODEC explained how its proposed revised rate design would align its cost recovery more closely with PJM's.²⁶ ODEC had the burden of proof to support its proposed revisions, and we address specific issues below.

²⁴ FPA section 301(b) provides that "[t]he Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities." 16 U.S.C. § 825(b) (2012). FPA section 304(a) further provides that "every public utility shall file with the Commission such annual and other periodic or special reports as the Commission may ... prescribe as necessary or appropriate to assist the Commission in the proper administration of [the FPA]." 16 U.S.C. § 825c(a) (2012). Finally, FPA section 309 grants the Commission the authority to "perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of [the FPA]." 16 U.S.C. § 825h (2012).

²⁵ Transmittal Letter at 4.

²⁶ We note that in its filing, ODEC did not raise any objections to Opinion No. 499. ODEC stated that the Commission had "encouraged ODEC" to address these issues. ODEC Transmittal Letter at 5. Further, in two other filings made subsequent to Opinion No. 499, ODEC referenced the issues in footnote 64, but stated it would defer their consideration until its next rate schedule revision.

C. ODEC's Proposed Rate Design

1. Demand Charges

19. In order to serve its Member Cooperatives, ODEC incurs a number of demand charges related to generation and transmission capacity. First, as a Load Serving Entity (LSE) in the PJM region, ODEC purchases its entire capacity requirement through PJM's capacity market, the Reliability Pricing Model (RPM), to ensure the entire demand of its Member Cooperatives is met at all times.²⁷ To recover these PJM-related costs, ODEC proposes an "RTO Capacity Service" rate. Second, for other costs ODEC incurs, primarily from its generation assets unrelated to PJM, ODEC proposes a "Remaining Owned Capacity Service" rate. Finally, in order to deliver power to its Member Cooperatives ODEC incurs transmission costs from third parties under Commission-approved Network Integration Transmission Service Agreements. ODEC proposes to pass through such costs under its "Transmission Service" rate. We address these three rates below.

a. RTO Capacity Service

i. Demand Response Add-Backs

(a) Issue Summary

20. ODEC explains that demand response is a customer's voluntary load curtailment in response to an energy price increase or incentive payment for load curtailment during emergency events. ODEC clarifies that, since PJM has no assurance that load curtailments in one year will be repeated the next year, PJM must "add back" those quantities to a customer's Peak Load Contribution (PLC) when it calculates the next year's total system capacity requirements.²⁸ Thus, ODEC incurs capacity demand costs associated with any add-backs allocated to it by PJM. ODEC's Prior Formula Rate socialized the add-back costs among the Member Cooperatives, and required them to pay a share of the cost through artificially-inflated PLCs, whether or not individual Member Cooperatives created any of the cost. According to ODEC, the Prior Formula Rate did

²⁷ Initial Decision, 151 FERC ¶ 63,002 at P 50.

²⁸ PJM measures the total amount of capacity it needs to purchase for each PJM Zone and customers are allocated a portion of this capacity based on their contribution to the five highest peak hours (coincident peak or CP hours) annually. This constitutes a customer's PLC.

not reflect cost causation. ODEC states the Revised Formula Rate corrects the Prior Formula Rate's add-back allocation by directly assigning add-backs to the Member Cooperatives in which load's participation in demand response resulted in the add-back adjustment. ODEC notes that the Revised Formula Rate continues the Prior Formula Rate's direct assignment of other demand/energy-related charges.²⁹

(b) Initial Decision

21. The Initial Decision finds that to the extent the RTO Capacity Service rate add-back provision matches PJM's method, it follows that it must be just and reasonable.³⁰ (1) PJM's add-back allocation to ODEC is based on actual demand response provided in the previous Delivery Year;³¹ (2) ODEC simply passes through the PJM add-back allocation; and (3) the PJM method and the RTO Capacity Service rate allocate add-backs to the entity responsible for causing them, thereby following cost causation. The Initial Decision adds that a number of other charges are directly assigned under the Revised Formula Rate,³² adding that direct assignment of add-backs applies to *any* Member Cooperative with an end-use customer whose demand response activity causes add-backs, and is therefore not discriminatory towards Bear Island.³³

22. Finally, the Initial Decision finds that ODEC's proposal to calculate add-backs based on a four-year average of PJM capacity costs (*i.e.*, the "proxy rate," discussed *infra*) does not match the actual add-back charged by PJM in a given year. The Initial Decision explains that Bear Island is billed approximately \$700,000 more in 2014 under the proxy rate, than PJM billed ODEC for Bear Island's add-backs. The Initial Decision concludes that ODEC's proposal to recalculate PJM's add-back at the proxy rate is unjust

²⁹ Initial Decision, 151 FERC ¶ 63,002 at PP 54-55.

³⁰ *Id.* P 78.

³¹ *Id.* P 80 (citing Ex. ODC-2 at 13-15).

³² *Id.* P 86 (citing Ex. ODC-13 at 14-15; Ex. ODC-3 at 22-23, 55-56). Further, the Initial Decision found that the fact that these other charges (Excess Facilities Charge, Power Factor Correction Charge, and Transition Fee) are much less than Bear Island's \$3.2 million 2014 add-back charge is irrelevant.

³³ *Id.* P 83.

and unreasonable, and that “add-back charges allocated to ODEC by PJM should be directly assigned at actual cost[.]”³⁴

(c) **Briefs on Exceptions**

23. Bear Island argues that the RTO Capacity Service is not transparent, maintaining that it is unduly discriminatory to cherry-pick a single power supply cost for direct assignment in a rate that otherwise socializes all power supply costs.³⁵ Bear Island states that if ODEC's rate design directly assigned all demand and energy costs (including add-backs) on actual cost, Bear Island would not contend that ODEC's direct assignment of an add-back charge is unduly discriminatory.³⁶ Bear Island states that in Opinion No. 440, the Commission found similar rates with direct cost assignment unjust and unreasonable.³⁷ Bear Island argues that the other directly assigned charges are not power supply costs, but distribution-related costs and temporary payments to two Member Cooperatives.³⁸ Finally, Bear Island alleges that the Initial Decision failed to explicitly order refunds that would correct any overcharges under RTO Capacity Service, and that the proper relief is for the Commission to reject the Revised Formula Rate, reinstate the Prior Formula Rate, and order appropriate refunds.³⁹

24. Trial Staff agrees with the Presiding Judge's conclusion that it is just and reasonable to directly assign add-backs to Member Cooperatives, but not at a proxy rate under the RTO Capacity Service.⁴⁰

³⁴ *Id.* P 101.

³⁵ Bear Island Brief on Exceptions at 1-2, 4, 10, 23, 27.

³⁶ *Id.* at 1-2.

³⁷ *Id.* at 15-17 (citing *Am. Elec. Pow. Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999)).

³⁸ *Id.* at 22.

³⁹ *Id.* at 9, 14.

⁴⁰ Trial Staff Brief on Exceptions at 38-40.

(d) **Briefs Opposing Exception**

25. ODEC disagrees with Bear Island's argument that the direct assignment of add-backs is unduly discriminatory because most other costs under the Revised Formula Rate are shared among the Member Cooperatives. ODEC agrees with the Initial Decision's conclusion that the circumstance that some directly assigned costs (*e.g.*, Excess Facilities Charge) are minor compared to Bear Island's \$3.2 million add-back charge is irrelevant; the issue is whether other charges are directly assigned.⁴¹ ODEC points out that the add-back charge is applicable to all Member Cooperatives whose customers participate in demand response, and thus is not unduly discriminatory.⁴²

(e) **Commission Determination**

26. We affirm the Initial Decision's finding that ODEC's proposed add-back provision is just and reasonable, subject to a compliance filing. As the Initial Decision notes: (1) PJM's add-back allocation to ODEC is based on actual demand response provided in the previous Delivery Year; (2) ODEC passes through PJM's add-back allocation methodology; and (3) both PJM's method and the RTO Capacity Service rate add-back provision allocate capacity add-backs to the Member Cooperative responsible for causing them. When Bear Island reduces load and is paid for demand response during a coincident peak period, it reduces its Member Cooperative's load for that period. PJM then adds that reduction back so that the ODEC's load reflects the amount of capacity ODEC needs to procure to serve its load for the next year prior to any demand response occurring.⁴³ The only issue here is whether ODEC proposed a reasonable method of allocating the add-back among its Members Cooperatives. We find just and reasonable ODEC's proposal to add back that same amount to the Member Cooperative where the demand response occurred, so that Member Cooperative's load reflects the actual load for which it needs to acquire capacity. This approach ensures that each Member Cooperative is responsible for paying for the amount of capacity it needs to procure from PJM. If ODEC allocated the add-back proportionally to all of its Member Cooperatives, then some Members will be purchasing capacity for more load than they are expected to serve, while others will be purchasing capacity for less load than they are expected to serve.

⁴¹ ODEC Brief Opposing Exceptions at 27-28.

⁴² *Id.* at 30-32.

⁴³ If PJM did not add the demand response back, then it would result in PJM failing to procure sufficient capacity.

27. Bear Island's reference to Opinion No. 440 is inapposite. There, the Commission noted that the issue "was the proper allocation of [accumulated deferred income taxes] between *different* groups of ratepayers (i.e., transmission vs. requirements customers)." ⁴⁴ Here, the issue is the proper allocation of demand response-related add-back costs between the *same* group of ratepayers (i.e., Member Cooperatives). Under ODEC's proposal, Member Cooperatives will be charged any add-back costs their end-use customers incur if they participate in demand response, as is currently the case for other LSEs in PJM. As the Initial Decision noted, this tariff provision applies equally to all Member Cooperatives. We agree that this is just and reasonable.

28. We agree with ODEC that add-back costs are distinct compared to other costs that are directly assigned under ODEC's Revised Formula Rate. As ODEC explains, for most costs included in the Revised Formula Rate, Member Cooperatives share costs and benefits of service under the WPCs. The retail customer providing demand response service receives direct payment. However, under the Prior Formula Rate, the associated cost for that demand response service payments was socialized among all Member Cooperatives through PJM capacity and energy charges *and* through add-back costs. We agree that all the other Member Cooperatives should not have their load increased for demand response occurring in only certain Member Cooperatives' territory. ⁴⁵

29. We agree with the Initial Decision that the Excess Facilities Charge, Power Factor Correction Charges and the Transition Fee continue to be directly assigned under the Revised Formula Rate, and therefore direct assignment of add-backs is not a unique rate treatment. We also disagree with Bear Island's contention that the relative size of these other charges, compared to the add-back cost, is relevant in determining whether it is just and reasonable. Here, ODEC is proposing to align its cost allocation methodology for add-backs with PJM's. Finally, we agree with the Initial Decision that any direct assignment of add-back charges must be at actual cost to the Member Cooperative in question, and direct ODEC to reflect this change in a compliance filing within 30 days.

⁴⁴ Opinion No. 440, 88 FERC at 61,446 (emphasis added).

⁴⁵ ODEC Brief Opposing Exception at 28-30.

ii. **Application of ODEC's Proposal to 2014 Capacity Charges**

(a) **Issue Summary**

30. ODEC made its filing on September 30, 2013, with a proposed effective date of January 1, 2014. To implement the rate in 2014, ODEC must rely on PJM's allocation of Bear Island's add-backs from July 2013 – before ODEC's filing. The issue here is whether ODEC violated the filed rate doctrine by relying on billing determinants that occurred before ODEC's filing.

(b) **Initial Decisions**

31. The Initial Decision notes two rulings related to the filed rate doctrine and RTO Capacity Service. First, ODEC's filing to include add-backs as of the effective date of the filing, January 1, 2014, does not violate the filed rate doctrine. However, the Initial Decision also finds that ODEC's filing is unjust and unreasonable because it proposed to collect add-backs in 2014 relating to demand response events occurring in 2013, prior to the date of the filing. The Initial Decision notes that because Bear Island was not on notice of the revised cost allocation when it engaged in its demand response activity, ODEC cannot implement its revised allocation to collect the 2014 capacity market charges imposed by PJM, including the add-backs.⁴⁶ The Initial Decision finds that Bear Island's 2013 demand response that resulted in 2014 add-backs all occurred on or before July 19, 2013,⁴⁷ and that Bear Island did not have notice of its potential 2014 add-back liability until September 30, 2013.

(c) **Briefs on Exceptions**

32. Bear Island agrees that ODEC's proposal is unjust and unreasonable, but argues that the Commission should affirm the Initial Decision under Bear Island's rationale – namely, that it violates the filed rate doctrine.⁴⁸ Conversely, ODEC agrees that its

⁴⁶ Initial Decision, 151 FERC ¶ 63,002 at P 87, 96.

⁴⁷ *Id.* P 95 (citing Ex. ODC-41).

⁴⁸ Bear Island Brief on Exceptions at 1-2, 11, 34-35 (citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 (1981); *City of Anaheim v. FERC*, 558 F.3d 521, 523 (D.C. Cir. 2009); *Columbia Gas Trans. Corp. v. FERC*, 831 F.2d 1135 (D.C. Cir. 1987); *Columbia Gas in Associated Gas Distribs. V. FERC*, 893 F.2d 349 (D.C. Cir. 1989); *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570 (D.C. Cir. 1990)).

proposal does *not* violate the filed rate doctrine, but argues that once the Presiding Judge made such a finding, he could not conclude that the proposal was unjust and unreasonable because Bear Island had no “plausible means to avoid or mitigate” the proposed 2014 rate increase.⁴⁹

(d) Briefs Opposing Exception

33. ODEC agrees with the Initial Decision that Bear Island’s 2013 demand response did not change Bear Island’s expected 2014 load (as reflected in its capacity requirement).⁵⁰ ODEC contends that the Revised Formula Rate did not change the add-back costs imposed by PJM, and thus Bear Island was clearly on notice as that past usage was being used to set current add-back charges.⁵¹ Therefore, ODEC argues, its proposal here is just and reasonable.

(e) Commission Determination

34. We affirm the Initial Decision’s determination with respect to the filed rate doctrine, but reverse the determination that ODEC was required to file its proposed cost allocation change prior to Bear Island’s demand response activity. We agree with the Initial Decision that ODEC’s proposal to change the allocation of PJM’s capacity charges, including add-back amounts, did not apply retroactively, but applied prospectively to future allocations starting with PJM’s 2014 charges, which are incurred after the effective date of the filing. As the Commission has previously found, a prospective change to a tariff provision does not violate the filed rate doctrine simply because it may relate to or affect prior expectations.⁵² In response to an argument that “PJM’s proposed 30-minute load response requirement violates the filed rate doctrine, given the reliance placed by curtailment service providers on PJM’s existing rules at the time that these entities’ resources cleared in PJM’s capacity auctions,”⁵³ the Commission responded:

⁴⁹ ODEC Brief on Exceptions at 3, 5-6, 11-16.

⁵⁰ ODEC Brief Opposing Exceptions at 36.

⁵¹ *Id.* at 40.

⁵² *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103, at PP 47, 62 (2014); *see PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,059, at P18 (2014).

⁵³ *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103, at P 47, 62 (2014).

Under the filed rate doctrine, a regulated entity may not charge, or be required by the Commission to charge, a rate different from the one on file with the Commission for a particular good or service. Here, however, PJM is not changing rates, or terms and conditions of service, relating to past performance; it is only changing the requirements applicable to future performance. Under these circumstances, PJM's proposed tariff provisions will have a prospective application only and thus not violate the filed rate doctrine.⁵⁴

35. The same principles apply with respect to the question of whether ODEC's September 2013 filing is unjust and unreasonable for failing to put all parties on notice of the revised allocation of PJM capacity charges prior to the 2013 demand response activity. ODEC's filing does not change rates relating to past performance; it only changes the rates applicable to future performance. And, the reallocation of capacity costs does not retroactively change the rates for demand response PJM paid Bear Island in 2013. It affects only how ODEC collects from its Member Cooperatives just and reasonable PJM capacity costs for years starting in 2014. That a portion of the PJM capacity charges for 2014 are based on PJM projections from past demand response performance prior to the ODEC filing does not render the collection of those charges unjust and unreasonable. Future rates generally are determined based on past performance.⁵⁵

36. Bear Island's possible reliance or expectations with respect to the allocation of capacity costs in 2013, therefore, does not render ODEC's proposal unjust and unreasonable as applied to 2014. All demand responders, including Bear Island, in fact, already were aware that add-backs based on the past year's activity were used to determine future capacity prices. Participants in these markets are "sophisticated

⁵⁴ *Id.* P 62; *see PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,059 at P18.

⁵⁵ The test period in rate cases occurs prior to the date of the filing, but that fact does not result in a lack of adequate notice to rate payers of the activity giving rise to their rates.

businesses”⁵⁶ that are well aware that rates and cost allocation are subject to revision under FPA section 205.⁵⁷

37. Moreover, as the Presiding Judge found, ODEC’s allocation of capacity costs does not result in unjust and unreasonable charges to ODEC’s Member Cooperatives, or derivatively to demand response providers in those cooperatives. Including add-backs of demand response is necessary to prevent double counting of demand response by ensuring that demand response is not treated as a supply side resource while at the same time reducing the level of capacity LSEs need to purchase for the following year.⁵⁸ Given that ODEC’s allocation is just and reasonable for 2014, we cannot find that whatever reliance Bear Island may have placed on ODEC’s prior allocation warrants a finding that a prospective change to cost allocation is unjust and unreasonable simply because PJM used prior demand response data from 2013 as part of a projection used to determine the capacity rate billed to ODEC.

⁵⁶ *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527, 545 (2008).

⁵⁷ *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103 at P 62 (entities enter into transactions with notice that a public utility may seek to implement a prospective tariff change, pursuant to FPA section 205). For example, when a party enters into a long-term 20-year, non-fixed rate contract for service at the tariff rate, it does so with the risk that the utility may file to increase that rate, or change the terms and conditions of service, during the term of the contract. *Id.* See generally *ISO-New England Inc.*, 145 FERC ¶ 61,095, at P 28 (2013) (accepting a revision to a capacity market that changed the conditions of service for resources committed in a prior auction).

⁵⁸ Initial Decision, 151 FERC ¶ 63,002 at P 90 (add-backs restore billing determinants to the proper level for purposes of establishing the following year’s capacity requirements). In a simple example, suppose ODEC’s capacity commitment in 2013 was 1000 MWs, of which 50 MWs reflects Bear Island’s load, and Bear Island directly paid ODEC for the 50 MWs in capacity in 2013. If Bear Island provided 50 MW of demand response, PJM would pay Bear Island a capacity payment and a performance payment for 2013. But if 50 MWs were not added to the projection for the ODEC load in 2014, Bear Island would avoid payment for its portion of capacity (for which it paid in 2013) and other customers would be required to make up that difference.

iii. Proxy Rate**(a) Issue Summary**

38. PJM determines ODEC's capacity obligation based on its annual contribution to the five hourly coincident peaks (5 CP). ODEC proposes to allocate the RTO Capacity Service charge on the basis of each Member Cooperative's contribution to PJM's 5 CPs. RTO Capacity Service differs from PJM's capacity cost allocation in three respects: (i) it uses a proxy rate based on a rolling four-year average of the capacity price for the applicable PJM Locational Deliverability Areas rather than the PJM's annual price; (ii) it resets the RTO Capacity Service rate on January 1 each year instead of June 1, as PJM does; and (iii) it charges the same RTO Capacity Service rate across all four PJM Zones in which Member Cooperatives provide service instead of charging a different capacity rate for each Zone, as PJM does.⁵⁹ Additionally, ODEC proposes to true-up any over- or under-collections based on a 12 monthly coincident peaks (12 CP) basis, despite allocating costs based on 5 CP.

(b) Initial Decision

39. The Initial Decision finds the 5 CP aspect of RTO Capacity Service and a rate year beginning each January 1 to be just and reasonable, as no party objected to these. The Initial Decision finds the use of a proxy rate for capacity price to be unjust and unreasonable. The Initial Decision finds that the fundamental ratemaking requirement is to produce revenues that match the cost to serve⁶⁰ and that the proxy rate is not designed to achieve that objective.⁶¹ The Initial Decision also finds that the RTO Capacity Service rate is not just and reasonable insofar as ODEC charges the same rates across all four Zones. The Initial Decision states that it is doubtful that any end-use customers would willingly pay more than the actual annual PJM capacity cost attributable to the Zone in which it is located. Finally, the Initial Decision finds that under ODEC's proposed true-up methodology, capacity costs charged to one Member Cooperative on a 5 CP basis could be refunded to a *different* Member Cooperative on a 12 CP basis – an unjust and unreasonable result.

⁵⁹ *Id.* P 102.

⁶⁰ *Id.* P 113 (citing, *e.g.*, Opinion No. 499, 122 FERC 61,174 at P 41).

⁶¹ *Id.* P 113 (citing Tr. 1104, 1149).

(c) **Briefs on Exception**

40. ODEC states that it chose a proxy rate based on a four-year rolling average of the capacity price for a given Locational Deliverability Area to avoid the rate volatility in PJM's capacity market. ODEC argues that in a similar case, *High Island Offshore Transmission System, LLC*, the Commission approved a pipeline's proposal to calculate fuel costs based on a three-year average due to its "smoothing effect."⁶² ODEC also argues that it is fundamental to its nature as a cooperative to charge a single, ODEC-wide rate across all four PJM Zones, regardless of which PJM Zone a Member Cooperative is located. ODEC notes that the Commission has previously acknowledged the principle that "[p]roperly designed rates should produce revenues from each class of customers which match, *as closely as practicable*, the cost to serve each class or individual customer."⁶³ ODEC argues that all eleven Member Cooperatives are a single class of customer that has agreed to an ODEC-wide rate. ODEC argues that because the four-year rolling average only collects PJM prices, there will be no over- or under-collections that are trued-up on a 12 CP basis.

41. ODEC argues that in the event the Commission does not overturn the Initial Decision regarding RTO Capacity Service, then it should "be directed to revise the RTO Capacity Service rate to replace the rolling four-year average with the annual PJM capacity prices," and to implement a 5 CP true-up methodology, correcting the mismatch noted by the Initial Decision.⁶⁴ ODEC maintains that it should not be directed to abandon its single, ODEC-wide rate.

⁶² ODEC Brief on Exceptions at 19 (citing *High Island Offshore Transmission Sys., LLC*, 110 FERC ¶ 61,043 (2005) (*High Island*), *order on reh'g*, 112 FERC ¶ 61,050 (2005), *order on reh'g*, 113 FERC ¶ 61,280 (2005), *rev'd and rem'd in part sub nom. Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695 (D.C. Cir. 2007)).

⁶³ *Id.* at 21 (citing Opinion No. 499, 122 FERC ¶ 61,174 at P 41) (emphasis added); *see also* Initial Decision, 151 FERC ¶ 63,002 at P 113; *Public Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201, 1206 (1987) ("Although ringing of mathematical precision, the calculation of a just and reasonable rate is less a science than an art.").

⁶⁴ ODEC Brief on Exceptions at 39.

42. Trial Staff alleges that ODEC has not shown that it is just and reasonable to divide costs spanning a four-year test period by billing determinants from a one-year period.⁶⁵ Trial Staff states that the Presiding Judge should have made ODEC revise its proposal.

(d) Briefs Opposing Exception

43. Bear Island states that a four-year average of PJM's capacity prices is inconsistent with *High Island*, will not temper price volatility,⁶⁶ and ignores PJM's Final Zonal Capacity Price.⁶⁷ Bear Island argues that charging the single, ODEC-wide rate is unjust and unreasonable. Bear Island alleges that in order to calculate the rate in 2014, ODEC under-collected nearly \$22 million from Member Cooperatives in the Delmarva Zone, and over-collected about \$15 million from Member Cooperatives in the Dominion Zone. Bear Island argues that the 12 CP true-up methodology is unjust and unreasonable.

44. Bear Island states that entire filing must be rejected outright.⁶⁸ Bear Island states that ODEC's proposals in its Brief on Exceptions to cure the deficiencies noted in the Initial Decision constitute a new rate and the Commission does not have evidence to determine if these proposals are just and reasonable. Bear Island alleges that doing so would be contrary to *Tennessee Gas Pipeline*⁶⁹ where the court rejected the Commission's approval of a new rate revision without substantial evidence and due process.

45. Trial Staff argues that in *ANR Pipeline Co. (ANR II)*, on which *High Island* relied, the Commission found that whatever smoothing occurred as a result of a three-year average, there was a clear bias toward over-collection. Trial Staff argues that the rate does not credit the money ODEC earns from selling its capacity to PJM against the

⁶⁵ Trial Staff Brief on Exceptions at 41 (citing 18 C.F.R. § 35.13(a)(2)(i)(A)). Trial Staff also notes that formula rates also use a one-year test period. *Id.* (citing *Midwest Indep. Sys. Op.* 143 FERC ¶ 61,149 at P 83 (2013)).

⁶⁶ Bear Island Brief Opposing Exceptions at 26.

⁶⁷ *Id.* at 27 (citing Ex. ODC-3 at 28; Ex. ODC-4) (showing that ODEC uses PJM's Preliminary Zonal Capacity Price, not Final Zonal Capacity Price).

⁶⁸ *Id.* at 45.

⁶⁹ *Id.* at 53 (citing *Tenn. Gas Pipeline Co. v. FERC*, 860 F.2d 446, 457 (D.C. Cir. 1988)).

money it pays to PJM to satisfy its annual capacity requirements. Trial Staff argues that the single, ODEC-wide rate should be replaced with PJM's Zonal rates.

(e) **Commission Determination**

46. As discussed below, we affirm the Initial Decision in part, reverse the Initial Decision in part, and accept ODEC's proposed RTO Capacity Service rate subject to a compliance filing. Under ODEC's proposal, RTO Capacity Service charges are allocated based on each Member Cooperative's contribution to total load in the 5 CP hours over the previous PJM Capacity Year (June 1—May 31). In this regard, ODEC passes through to its Member Cooperatives PJM's capacity costs on the same basis that ODEC incurs them. No participant disputes this fact. Accordingly, we affirm the Initial Decision's finding that the RTO Capacity Service 5 CP cost allocation under is just and reasonable.⁷⁰

47. We affirm the Initial Decision's finding that the proxy rate is unjust and unreasonable, as it averages PJM's capacity costs over four years, over-collecting costs it incurs from PJM in some years, and under-collecting in others. As the Initial Decision reasons, under-collection by design is equally objectionable to over-collection by design here because ODEC proposes to employ a 12 CP true-up mechanism.⁷¹ Thus, capacity costs charged to one Member Cooperative on a 5 CP basis under the RTO Capacity Service rate could be refunded to a *different* Member Cooperative on a 12 CP basis.⁷² In its Brief on Exceptions, ODEC proposes to remedy these two deficiencies identified in the Initial Decision. First, ODEC agrees to revise the RTO Capacity Service rate to replace the rolling four-year average with the annual PJM capacity prices in order to match PJM's capacity cost allocation methodology.⁷³ Second, ODEC proposes to "true-up any over- or under-recoveries under the RTO Capacity Service Rate (which would include add-backs) on the basis of 5 CP."⁷⁴ We find that these revisions cure the deficiencies noted in the Initial Decision, and are just and reasonable.

⁷⁰ We address ODEC's proposed January 1 annual rate update *infra* at PP 88-92, as this date encompasses more than RTO Capacity Service.

⁷¹ Initial Decision, 151 FERC ¶ 63,002 at P 113.

⁷² *Id.* P 113; *see also* Ex. ODC-2 at 13.

⁷³ ODEC Brief on Exceptions at 39.

⁷⁴ *Id.* at 40.

48. Bear Island's reliance on *Tennessee* is misplaced. That case dealt with the imposition of a new rate of the Commission's choosing that was different than the rate originally proposed by the utility. In the instant proceeding, however, ODEC is proposing to modify its rate, based on deficiencies outlined in the Initial Decision. As the court found in *City of Winnfield*, during the course of a hearing the utility proposing the rate change may agree to adopt a significant revision to one component of its filing as proposed either by a party or by the Presiding Judge.⁷⁵ That is precisely what ODEC proposes here, and we review its proposal consistent with the just and reasonable standard under section 205.

49. Accordingly, we accept the Revised Formula Rate, subject to ODEC making the indicated revisions in a compliance filing within 30 days. In addition, we agree with Bear Island that ODEC's proposed tariff language does not explicitly state that it will charge PJM's Final Zonal Capacity Price.⁷⁶ We therefore direct ODEC to add clarifying language that the RTO Capacity Service rate accounts for PJM's Incremental Auctions and the Final Zonal Capacity Price. All other arguments about the rolling four-year average are moot (i.e., the applicability of *ANR II* and *High Island* to the instant proceeding).

50. We reverse the Initial Decision's finding that ODEC's proposal to charge its Member Cooperatives a single, ODEC-wide rate for RTO Capacity Service is unjust and unreasonable. In rejecting ODEC's proposal, the Initial Decision relies largely on the fact that Bear Island would prefer to be billed the Dominion Zonal rate. We are not persuaded by Bear Island's protests that, *after* having opted in to the ODEC-Member Cooperative paradigm, it should then be able to fundamentally alter what the Presiding Judge agrees is a "unique structure."⁷⁷ Furthermore, the record indicates that three⁷⁸ of

⁷⁵ See *City of Winnfield v. FERC*, 744 F. 2d 871 (D.C. Cir. 1984); *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066 at PP 15-23.

⁷⁶ Bear Island Brief Opposing Exceptions at 27 (citing Ex. ODC-3 at 28).

⁷⁷ Initial Decision, 151 FERC ¶ 63,002 at P 114.

⁷⁸ See Ex. ODC-4, noting American Electric Power Co., Inc. (AEP), Allegheny Power Systems (APS) and Dominion (DOM) Zones incurring the same prices in a given Delivery Year (e.g. \$59.37 in Delivery Year 2016/2017; \$119.81 in Delivery Year 2016/2017). All prices are in \$/MW-day.

the four Zones are consistently charged the same Zonal rate, with only one⁷⁹ experiencing any price separation. Additionally, such price separation may be *de minimis*,⁸⁰ and the ODEC-wide rate is similar to others in the PJM Tariff, as discussed by ODEC Witness Rutigliano.⁸¹ Finally, we agree that ODEC's Member Cooperatives are a single class of customer and that it is just and reasonable to charge the same rate.⁸² Accordingly, we find this aspect of the proposed RTO Capacity Service just and reasonable.

b. Remaining Owned Capacity Service

i. Issue Summary

51. ODEC offers all the capacity from its generation assets into the PJM Base Residual Auction (BRA). There is no guarantee that PJM will accept all of ODEC's capacity, or that the market clearing price will cover all the costs of its underlying assets, primarily associated with two generation assets owned by ODEC. To recoup such costs, ODEC proposes the Remaining Owned Capacity Service rate based on each Member Cooperative's 12 CP.

ii. Initial Decision

52. The Initial Decision agrees that ODEC does not recover all of its capacity costs elsewhere in the Revised Formula Rate. The Initial Decision finds that the Remaining Owned Capacity Service rate recovers the same non-PJM-related capacity costs the Prior Formula Rate recovered, under the identical 12 CP methodology.⁸³ The Initial Decision notes that the Revised Formula Rate includes a true-up mechanism, ensuring that Remaining Owned Capacity Service "recovers no more or less than the actual capacity

⁷⁹ *Id.* (noting that Delmarva Power and Light Co. (DPL-S) Zone experiencing price separation from other Zones, e.g., \$119.13 in Delivery Year 2016/2017; \$119.92 in Delivery Year 2017/2018).

⁸⁰ In Delivery Year 2017/2018, the DPL-S price of \$119.92 is comparable to the AEP, APS, and DOM price of \$119.81. Ex. ODC-4.

⁸¹ *See* Ex. ODC-26 at 15.

⁸² *See* Ex. ODC-1 at 3.

⁸³ The Initial Decision notes that these are primarily fixed costs associated with two large generating assets. Initial Decision, 151 FERC ¶ 63,002 at P 123.

costs not otherwise recovered under the RTO Capacity Service rate or the Transmission Service rate.”⁸⁴ The Initial Decision reasons that ODEC’s 12 CP rate design must be considered a “long standing practice.”⁸⁵ The Initial Decision concludes that these factors prove that the Remaining Owned Capacity Service rate is just and reasonable. However, the Initial Decision notes that the RTO Capacity Service rate was rejected, and questions whether the Remaining Owned Capacity Service rate must also be rejected because they are part of a single rate design.

iii. Briefs on Exceptions

53. Neither ODEC nor Bear Island filed a Brief on Exceptions on this issue. Trial Staff avers that the prices ODEC receives in PJM’s capacity market do not reveal what embedded costs ODEC may be recovering. Specifically, Trial Staff states that ODEC may recover the same costs twice: once under RTO Capacity Service, or Transmission Service, and again under Remaining Owned Capacity Service. Trial Staff also excepts to the Initial Decision’s finding that the Remaining Owned Capacity Service rate is not materially different from the Prior Formula Rate. Trial Staff argues that the Prior Formula Rate contained a formula calculating all demand costs, whereas the Revised Formula Rate does not. Trial Staff argues that Remaining Owned Capacity Service should be allocated on 5 CP, because ODEC sells its capacity into PJM, which allocates capacity costs on 5 CP.

iv. Briefs Opposing Exceptions

54. ODEC argues that, if the RTO Capacity Service and Transmission Service rates recover all of ODEC’s budgeted demand costs, then no costs will be recovered through the Remaining Owned Capacity Service rate. ODEC argues that the language of the Revised Formula Rate limits recovery under the Remaining Owned Capacity Service rate to amounts *not* already billed in the RTO Capacity Service and Transmission Service rates.

v. Commission Determination

55. We affirm the Initial Decision, and find that the Remaining Owned Capacity Service rate is just and reasonable. Through this rate, ODEC will charge any non-PJM-

⁸⁴ Initial Decision, 151 FERC ¶ 63,002 at P 124.

⁸⁵ *Id.* at n.70 (citing *Pub. Serv. Comm’n. of N.Y. v. FERC*, 642 F.2d 1335, 1346 (D.C. Cir. 1980)).

related capacity costs from the generation facilities that serve its Member Cooperatives. Trial Staff states that the Initial Decision erred when finding that ODEC does not recover 100 percent of the capacity costs associated with ODEC-owned assets through the RTO Capacity Service and Transmission Service rates. We disagree. As Ms. Powers indicated during the hearing, “the costs that we recover from PJM do not cover all the costs that we have of owning assets.”⁸⁶ The record confirms that these assets include nuclear and coal-fired generation⁸⁷ facilities, and that the market-clearing price ODEC receives from PJM is not always enough to cover the assets’ underlying fixed costs.⁸⁸ Accordingly, we affirm the Initial Decision’s finding that “the Remaining Owned Capacity Service rate is sufficiently de-coupled from the PJM-dependent RTO Capacity Service and Transmission Service rates to permit a discrete rate design.”⁸⁹

56. We disagree with Trial Staff’s contention that the Remaining Owned Capacity Service rate should be based on 5 CP, instead of 12 CP, simply because ODEC bids its capacity into PJM’s capacity market.⁹⁰ As Ms. Powers noted in her testimony, “[t]he fact that ODEC bids all of its capacity into the PJM market has no bearing on the Remaining Owned Capacity Service rate, except that the costs not recovered from the PJM market are what is collected through the Remaining Owned Capacity Service rate. Thus, there is no link between PJM cost allocation and ODEC for these costs that are not recovered by ODEC from PJM.”⁹¹ We agree. Moreover, given that these fixed, non-PJM-related costs are incurred in each month of the year by all Member Cooperatives, we find it just and reasonable to have a rate design based on 12 months (i.e., 12 CP), rather than five select hours out of a year, as is the case under RTO Capacity Service.

57. We are not persuaded by Trial Staff’s argument that ODEC may somehow over-recover its capacity costs. ODEC’s proposed tariff language twice confirms that it cannot do so. ODEC’s Revised Formula Rate ensures that the only costs recovered through Remaining Owned Capacity Service are those unrelated to RTO Capacity Service and

⁸⁶ Tr. 853 (Powers).

⁸⁷ Ex. ODC-51 at 2.

⁸⁸ Ex. ODC-31 at 51.

⁸⁹ Initial Decision, 151 FERC ¶ 63,002 at P 123.

⁹⁰ Ex. S-1 at 21.

⁹¹ Ex. ODC-31 at 50.

Transmission Service.⁹² The definition of the rate specifically states, “Remaining Owned Capacity Service shall represent all demand costs not billed under the Transmission Service and RTO Capacity Service charges.”⁹³

58. Finally, we disagree with Trial Staff’s argument that the Revised Formula Rate unjustly and unreasonably eliminated a calculation of demand costs that was in the Prior Formula Rate. The Prior Formula Rate calculated all of ODEC’s demand costs in a single formula. Under the Revised Formula Rate, however, ODEC proposes three demand charges: one to recover PJM capacity costs (RTO Capacity Service), another to collect transmission charges from third parties in order to serve load (Transmission Service), and finally, any remaining capacity costs (Remaining Owned Capacity Service) for ODEC-owned generation. The Revised Formula Rate calculates the latter demand charges through a formula, which includes defined terms specifying how ODEC must calculate this rate based on its budget, including demand costs, as specified in the denominator of the equation.⁹⁴ Accordingly, we are unpersuaded by Trial Staff’s arguments that this proposed language is unjust and unreasonable.

c. **Transmission Service**

i. **Issue Summary**

59. The Transmission Service rate recovers transmission- and distribution-related expenses that ODEC incurs from third parties under Network Interconnection Transmission Service Agreements (NITSA), in order to serve its Member Cooperatives. Transmission Service is billed to each Member Cooperative based on its contribution to the single coincident peak (1 CP) hour in the previous PJM Transmission Year for the PJM Transmission Zone in which the Member Cooperative takes service from ODEC. In the event ODEC over-collects for Transmission Service in a given year, it proposes to refund any money on a 12 CP basis.⁹⁵

⁹² Ex. ODC-3 at 17.

⁹³ *Id.* at 29 (emphasis added).

⁹⁴ *Id.* at 29.

⁹⁵ Specifically, ODEC proposes to process refunds through its Remaining Owned Capacity Service rate refund mechanism.

ii. Initial Decision

60. The Initial Decision finds that ODEC has demonstrated that the expenses collected under Transmission Service are not a matter of discretionary budgeting, but come directly from the PJM OATT and third-party facility costs. The Initial Decision finds that the 1 CP rate allocator matches PJM's Network Integration Service allocation methodology. However, the Initial Decision finds that Transmission Service is problematic because any over- or under-collections will be reconciled through on a 12 CP basis. The Initial Decision concludes that this true-up component of Transmission Service is unjust and unreasonable.

iii. Briefs on Exceptions

61. ODEC alleges that the Initial Decision erred by finding that a difference in the 1 CP cost allocation and 12 CP true-up methodology is unjust and unreasonable. ODEC argues that apart from that difference it matches PJM's cost allocation methodology.⁹⁶ Regardless, ODEC states that because the transmission costs it incurs from third parties are relatively flat, there will be little over- or under-recovery that needs to be trueed-up.

62. Bear Island argues that the Transmission Service rate lacks transparency, and that ODEC mixes demand and energy charges under Transmission Service. Similarly, Trial Staff alleges that the Transmission Service rate does not reveal what costs are recovered, and that the resulting transmission and distribution rates cannot be determined. Trial Staff notes that ODEC has two types of transmission costs: 1) it incurs transmission costs from third parties to serve its load; and 2) it is a PJM Transmission Owner that serves load and recovers its costs under the PJM OATT.

iv. Briefs Opposing Exceptions

63. ODEC states that Bear Island is incorrect about any improper billing under the demand and energy accounts. ODEC also avers that there is no double recovery of transmission expenses. ODEC notes that the Revised Formula Rate collects transmission expenses from third parties, whereas PJM OATT, Att. H-3F, which is not at issue in this proceeding, recovers transmission expenses from ODEC-owned facilities. Additionally, ODEC states that any revenues it receives under the PJM OATT are credited against transmission expense that would be recovered under the Revised Formula Rate.

⁹⁶ ODEC Brief on Exceptions at 24 (citing Initial Decision, 151 FERC ¶ 63,002 at P 142).

64. Bear Island and Trial Staff argue that the Initial Decision correctly found that it is unjust and unreasonable to true-up and over- or under- recovery from the 1 CP Transmission Service rate through the 12 CP Remaining Owned Capacity Service rate.

v. **Commission Determination**

65. We affirm the Initial Decision and direct ODEC to make a compliance filing, as discussed below.⁹⁷ We agree with the Initial Decision that expenses collected under Transmission Service are not a matter of discretionary budgeting, but come directly from the PJM OATT and third-party facility costs – both of which are Commission-approved and therefore just and reasonable.⁹⁸ The record also confirms that PJM allocates these costs on a 1 CP methodology, which ODEC proposes to mirror in the Revised Formula Rate.⁹⁹ We disagree with Trial Staff’s contention that there may be double recovery. As ODEC Witness Powers outlines in her testimony, ODEC’s Attachment H-3F to the PJM OATT recovers its revenue requirements for its *owned* transmission facilities, for service provided to third parties. Any revenues received from PJM under ODEC’s Attachment H-3F are recorded by ODEC in Account 456.1 under the FERC Uniform System of Accounts. The Transmission Service rate also includes Account 456.1, and records as a credit any revenues ODEC receives pursuant to the PJM OATT. As Witness Powers concludes, “[b]y operation of the formula, there can be no double recovery of these revenue requirements by ODEC.”¹⁰⁰ We agree.

66. Bear Island alleges that ODEC recovers both energy and demand costs through the Transmission Service rate. We disagree. To support this allegation, Bear Island cites a footnote in ODEC’s budget materials referencing “transmission-related” ancillary service costs. However, as ODEC notes, it incurs these charges under PJM Network Integration Transmission Service Agreements, and appropriately classifies ancillary services as

⁹⁷ Although we agree with Trial Staff that the Initial Decision appears to inexplicably hold that the Transmission Service rate is both a revised and an unrevised element of the formula rate, the Presiding Judge clearly addressed Trial Staff’s arguments and the rest of his analysis appropriately treats the Transmission Service rate as a revised element.

⁹⁸ Ex. ODC-2 at 6, 8.

⁹⁹ *Id.* at 8.

¹⁰⁰ Ex. ODC-31 at 22.

energy-related (e.g., operating reserve energy charges) or transmission-related based on the nature of the costs.¹⁰¹

67. We affirm the Initial Decision's finding that ODEC failed to prove that it is just and reasonable to allocate Transmission Service on 1 CP, and true-up any over- or under-recovery on a 12 CP basis. ODEC notes in its Brief on Exceptions that if the Commission does not reverse the Initial Decision on this point, then it is amenable to harmonizing the allocator and true-up so that both are based on 1 CP. As ODEC reasons, "a 1 CP true-up would allow ODEC's Transmission Service rate cost allocation to more closely follow PJM's. This could be accomplished by modifying the Revised Rate Schedule to reference a 1 CP true-up in the Transmission Service rate."¹⁰² We agree, and accept the Transmission Service rate, subject to ODEC making this change in a compliance filing within 30 days.

2. Energy Charges

a. Base Energy Rate

i. Issue Summary

68. The Revised Formula Rate implements a formula to develop an annual Base Energy Rate based on ODEC's budgeted energy costs. ODEC notes that the stated rate was out of sync with ODEC's actual energy costs, so it had to rely heavily on a true-up mechanism ("Energy Adjustment," discussed below), resulting in rate volatility.

ii. Initial Decision

69. The Initial Decision noted that the Revised Formula Rate recovers the same budget-based revenue requirement and uses the same FERC Accounts as the Prior Formula Rate.¹⁰³ The Initial Decision found that the Base Energy Rate's annual budgeted transmission kWh and distribution kWh are comparable in operation to the High Voltage Energy Rate and the Low Voltage Energy Rate reflected in the Prior Formula Rate. The Initial Decision concluded that there was no basis to conclude that the changes to the Base Energy Rate are unjust and unreasonable.

¹⁰¹ ODEC Brief Opposing Exceptions at n.121.

¹⁰² ODEC Brief on Exceptions at 40.

¹⁰³ Initial Decision, 151 FERC ¶ 63,002 at P 153.

iii. Briefs on Exceptions

70. Trial Staff and Bear Island argue that the new Base Energy Rate is not transparent.¹⁰⁴ Trial Staff adds that the Revised Formula Rate merely lists account numbers without explaining how they end up in the numerator of the Base Energy Rate calculation. Similarly, Bear Island adds that an end-user cannot assess the accuracy of the rate. Trial Staff asks the Commission to reject the Base Energy Rate. Bear Island explains that a rate is lawful only when it has been subjected to Commission review under either section 205 or section 206 and claims that the Base Energy Rate has never been subjected to such review.¹⁰⁵

iv. Briefs Opposing Exceptions

71. ODEC notes that the Base Energy Rate replaces the stated rate and will continue to collect ODEC's budgeted energy costs pursuant to the cost-of-service formula that lists accounts as specified in the Commission's Uniform System of Accounts. ODEC reiterates that these will be classified as demand charges or energy charges based on the nature of these costs. ODEC argues that both the Base Energy Rate and the prior, stated rate come from ODEC's budgeted energy costs and contain a true up mechanism. Therefore, ODEC avers that the Initial Decision was correct that this is an unchanged element of ODEC's filing and is just and reasonable.¹⁰⁶

v. Commission Determination

72. We affirm the Initial Decision's finding that the revised Base Energy Rate is just and reasonable.¹⁰⁷ The Base Energy Rate is a formula rate, where the formula tracks all operations and maintenance (O&M) expenses by FERC Account for providing energy-

¹⁰⁴ Bear Island Brief on Exceptions at 57-58; Trial Staff Brief on Exceptions at 55 (citing Ex. S-1 at 10:1-4).

¹⁰⁵ *Id.* (citing *Tenn. Gas Pipeline Co. v. FERC*, 860 F.2d 446, 453 (D.C. Cir. 1988)).

¹⁰⁶ ODEC Brief Opposing Exceptions at 45-48.

¹⁰⁷ Although we disagree with the Initial Decision's statement that this is an unchanged element of ODEC's formula rate, there is a complete evidentiary record on this issue, so we are able to affirm the Initial Decision's ultimate conclusion that the Base Energy Rate is just and reasonable.

related services.¹⁰⁸ As the Commission explained in *Wisconsin Electric*,¹⁰⁹ formula rates enable utilities to pass through increases or decreases in their fuel costs to ratepayers without the need to file formal rate changes. ODEC explains that as a FERC-jurisdictional electric cooperative, ODEC follows the FERC Uniform System of Accounts and the formula lists the specific FERC categories of expenses and accounts applicable to providing the service.¹¹⁰ Except for two added production accounts to accommodate the demand and energy-related costs anticipated for a new combined-cycle generator, we agree with the Presiding Judge that the demand and energy-related FERC accounts being tracked are the same as the Prior Formula Rate. The Revised Formula Rate will also reduce ODEC's heavy reliance on a true-up mechanism to recover its energy costs. Accordingly, we are not persuaded by Trial Staff or Bear Island that the degree of transparency that they seek are necessary here, and will deny their requests to disallow the Base Energy Rate as unjust and unreasonable.

b. Energy Adjustment

i. Issue Summary

73. ODEC proposes a true-up mechanism for the Base Energy Rate, which it calls the Energy Adjustment and is set at zero at the beginning of each rate year. ODEC proposes that its Board may use the Energy Adjustment at any time during the year in order to reduce volatility. Under its Prior Formula Rate, ODEC could only use the Energy Adjustment in April and October.

ii. Initial Decision

74. The Initial Decision finds that there is no material difference between the Energy Adjustment mechanism in the Prior and Revised Formula Rates: each is used only after the ODEC Board's approval and only to respond to a mismatch between ODEC's actual energy costs and its budgeted energy costs. The Initial Decision finds the proposed

¹⁰⁸ See *Ocean State Power II*, 69 FERC ¶ 61,146 at 61,544-45 (1994) (“With formula rates, the formula itself is the rate, not the particular components of the formula . . . periodic adjustments made in accordance with the Commission-approved formula do not constitute changes in the rate itself and accordingly do not require section 205 filings.”).

¹⁰⁹ *Wisconsin Electric Power Co.*, 140 FERC ¶ 61,128 (2012).

¹¹⁰ See Ex. ODC-30 at 24.

Energy Adjustment to be just and reasonable, noting that it makes more sense for the ODEC Board to have the ability to react to any mismatch when it is identified, rather than up to six months after the fact, as under the Prior Formula Rate. The Initial Decision rejects arguments that the Energy Adjustment is not transparent, or otherwise unavailable to regulators or end-use customers upon request.¹¹¹

iii. Briefs on Exceptions

75. Trial Staff and Bear Island contend that the Energy Adjustment should be rejected. Trial Staff and Bear Island complain that it is unreasonable to expand ODEC Board discretion with respect to when an adjustment may be implemented. Bear Island also complains that it cannot budget the likely adjustment when the unknown make-up amount is amortized.

iv. Briefs Opposing Exceptions

76. ODEC contends that its proposed Energy Adjustment is just and reasonable because it allows ODEC to better match revenues to actual fuel costs any time of the year, whereas it was only available during April or October under the Prior Formula Rate. ODEC explains that there has been no expansion of discretion under the new Base Energy Rate because under the proposed mechanism, the ODEC Board can adjust its rates closer to the time that its actual energy costs exceed its budgeted revenues.

v. Commission Determination

77. We affirm the Initial Decision and accept the Energy Adjustment true-up mechanism, subject to a compliance filing. We are not persuaded by Trial Staff that the degree of transparency it seeks is necessary under the WPCs at issue here, or that Bear Island will not be able to monitor any energy rate adjustments implemented by ODEC during the budget year. Specifically, any implemented Energy Adjustment would be amortized over the remaining months of the budget year, and any prior year balance in the Deferred Energy Account will be amortized over the subsequent budget year. As the Initial Decision reasoned, it is just and reasonable for the ODEC Board to have the ability to react to any mismatch between budgeted energy costs and actual energy costs when it is identified, rather than up to six months after the fact.

78. However, ODEC does not provide any objective criteria in the Revised Formula Rate that would indicate when the ODEC Board may utilize the Energy Adjustment (e.g.,

¹¹¹ Initial Decision, 151 FERC ¶ 63,002 at PP 158-162.

actual cost deviations of +/- one percent from budgeted energy costs). Accordingly, we accept the Base Energy Rate and Energy Adjustment mechanism as an appropriate formula to track energy-related costs, subject to the ODEC Board proposing in a compliance filing, within 30 days, objective criteria stating when such mechanism will be implemented, to provide clarity and transparency on when an adjustment may be implemented.

3. Line Loss Factor

a. Issue Summary

79. ODEC proposes to pass through distribution line losses (Distribution Loss Factor) charged to ODEC by third parties that provide transmission service to its Member Cooperatives at the distribution level.

b. Initial Decision

80. The Initial Decision finds that the Distribution Loss Factor recovers 100 percent pass-through of costs specified in two Commission-approved agreements. The Initial Decision reasons that the Distribution Loss Factor charges are already Commission-approved, and it is therefore unnecessary for them to be numerically specified in the Revised Formula Rate, as Bear Island argues. The Initial Decision adds that the numerical factors are readily available to the affected Member Cooperatives, and that the source agreements change from time to time, so specifying the numerical factors would require the formula rate to be revised any time the numerical factors in either agreement changed. The Initial Decision concludes that a primary advantage to a formula rate is that it permits the underlying rate inputs to change without requiring a formula rate revision, and therefore the Distribution Loss Factor is just and reasonable.¹¹²

c. Briefs on Exceptions

81. Trial Staff argues that the Initial Decision failed to cite any case law to support its finding that the line loss factors are just and reasonable. Trial Staff alleges that the Revised Formula Rate neither defines the line-loss factors that are being used, nor states which Commission-approved agreements ODEC relies upon when passing through costs. Trial Staff suggests that ODEC could be double recovering line-loss costs from facilities that it owns, on top of third-party charges.¹¹³ Bear Island argues that the Revised

¹¹² *Id.* PP 167-168.

¹¹³ Trial Staff Brief on Exceptions at 58-59.

Formula Rate is defective because it lacks specification as to how the Distribution Loss Factor is calculated, and there is no information in the rate filing's work papers.¹¹⁴

d. Briefs Opposing Exceptions

82. ODEC argues that the Distribution Loss Factor is directly based on distribution line losses in third-party transmission agreements and is calculated as an average of the loss factors in these FERC-approved agreements. ODEC asserts that the Presiding Judge reasonably concluded that the numerical value does not need to be specified, since these pass-through costs are already Commission-approved and part of the PJM OATT. ODEC concludes that there no basis for Staff's suggestion that ODEC might be double recovering.¹¹⁵

e. Commission Determination

83. We affirm the Initial Decision, and accept the Distribution Loss Factor, subject to a compliance filing. First, as noted by the Presiding Judge, ODEC's proposal allows for the pass-through of distribution line losses charged to ODEC by third parties, thereby matching cost to causation. These line-loss factors are specified in Commission-approved agreements under PJM's currently-effective Tariff.¹¹⁶ Since the Distribution Loss Factor recovers 100 percent pass-through costs specified in these Commission-approved agreements, it is unnecessary for ODEC to numerically specify them here. The numerical factors are readily available under the PJM Tariff to any interested party. Second, as the Initial Decision reasons, these numerical values may change from time-to-time. A primary advantage to a formula rate structure is that it permits the underlying rate inputs to change without requiring a formula rate revision. Although the record in this proceeding identifies the underlying Commission-approved agreements, ODEC's proposed tariff language does not. Accordingly, to ensure that the Revised Formula Rate accurately reflects ODEC's losses, we accept the Distribution Loss Factor subject to ODEC filing work papers that show how it is calculated, and that identify the Commission-approved source documents.¹¹⁷

¹¹⁴ Bear Island Brief on Exceptions at 59.

¹¹⁵ ODEC Brief Opposing Exceptions at 48-51.

¹¹⁶ See generally Ex. ODC-38.

¹¹⁷ Section 35.13(d)(5), *Work papers*, requires a utility that files adjusted Period I or Period II data to file work papers and additional explanatory material to support rates.

4. Other Proposed Changes**a. Delivery Point Billing****i. Issue Summary**

84. Under the Prior Formula Rate, ODEC provided billing details down to the delivery point level (or service point level), but the Revised Formula Rate will only require ODEC to provide each Member Cooperative billing information in the aggregate for bill Transmission Service (1 CP), Distribution Service (1 CP) and RTO Capacity Service (5 CP) charges. ODEC explains that the Prior Formula Rate billed all charges, including charges for the single demand rate, base energy rate, and the energy adjustment factor at the service point level, which is the point where ODEC takes service on behalf of the Member Cooperatives.¹¹⁸

ii. Initial Decision

85. The Presiding Judge finds that there is “no reference to delivery point billing” in the Revised Formula Rate and concludes that this is a “non-issue.”¹¹⁹

iii. Briefs on Exceptions

86. Bear Island and Trial Staff except to the Presiding Judge’s finding on this issue. Bear Island notes that the Presiding Judge rejected its argument in the hearing that the Revised Formula Rate improperly eliminates the requirement that ODEC bill its members on a service point level rather than the Member Cooperative level.¹²⁰ Bear Island asserts that this billing method is critical to Bear Island, which receives a pass-through of ODEC’s charges along with distribution-related costs under its retail service agreement with Rappahannock.¹²¹ Bear Island and Trial Staff both argue that the Revised Formula Rate impedes transparency and could undermine cost causation and correct price signals to customers. Trial Staff and Bear Island argue that because ODEC’s formula rate is a pass-through rate, impacting customers of the member cooperatives and end-users (as

¹¹⁸ Ex. ODC-2 at 20.

¹¹⁹ Initial Decision, 151 FERC ¶ 63,002 at P 175.

¹²⁰ Bear Island Brief on Exceptions at 12.

¹²¹ *Id.* at 12.

opposed to the member cooperatives themselves), Trial Staff urges the Commission to direct ODEC to amend its formula rate tariff to require it to provide this detailed data.¹²² Specifically, Bear Island argues that the Commission should require ODEC to revert to billing at the service point level for all charges as required in the Prior Formula Rate.¹²³ Trial Staff argues that ODEC's status as a cooperative should not allow it to circumvent Commission review of either ODEC's Prior Formula Rate or its Revised Formula Rate and nor should its rates be treated any differently than any other jurisdictional utility's formula rate.

iv. Brief Opposing Exceptions

87. ODEC states that Bear Island and Trial Staff's claims are baseless, and that the Initial Decision correctly determined this to be a non-issue. ODEC states that there is no difference in the way these charges are billed under the Prior and Revised Formula Rates: they were and will continue to be billed at the service point level, and Member Cooperatives will continue to receive detailed load files with a summary of all service point data in their monthly bills from ODEC. ODEC argues that despite the cosmetic change in how the bills are sent out under the Revised Formula Rate, there is essentially no difference in the way these charges were billed at service points under the Prior Formula Rate and how they are billed under the Revised Formula Rate. ODEC states that the new billing method is merely the aggregation of each Member Cooperative's service points.¹²⁴ ODEC argues that given the absence of any difference between the old and new billing practices and the continuation of providing monthly detailed load files with service point data, which were not required under the Prior Formula Rate, the Presiding Judge correctly determined that Bear Island's and Trial Staff's alleged concerns are a "non-issue." Further, ODEC argues that Trial Staff and Bear Island's claims that it will stop providing service point data with its billing in the future are unsupported speculation.¹²⁵

¹²² Trial Staff Brief on Exceptions at 61.

¹²³ Bear Island Brief on Exceptions at 43.

¹²⁴ ODEC Brief Opposing Exceptions at 51-52.

¹²⁵ *Id.* at 51-52.

v. Commission Determination

88. As an initial matter, we reverse the Presiding Judge's determination that this is a non-issue, given the evidence in this proceeding. The Revised Formula Rate "contains new provisions regarding 'development of charges.'"¹²⁶ As ODEC Witness Powers testifies, certain charges will be billed at the service point level, while other will be charged at the Member Cooperative level.¹²⁷ We agree with ODEC that there is essentially no difference in the way these charges were billed under the Prior Formula Rate and how they will be billed under the Revised Formula Rate because the new billing is merely the aggregation of each Member Cooperative's service points. We also find that ODEC's rationale for making these revisions, which is to more closely match PJM's billing methodology,¹²⁸ is practical, and thus, appropriate. For illustrative purposes, ODEC provides its December 2013 and January 2014 invoices to Rappahannock to compare and contrast its billing methodology under the Prior and Revised Formula Rates. Based upon our review of the billing methodologies, we find ODEC's proposal here to be just and reasonable.¹²⁹ As an initial matter, we agree with ODEC that the changes to its billing process are administrative in nature: they simply implement the Revised Formula Rate within ODEC's existing billing process and infrastructure. As demonstrated in Ex. ODC-5, the illustrative bills are functionally equivalent. The only real difference being *additional* line items under the Revised Formula Rate to account for demand charges (e.g., RTO Capacity Service) that more closely align with PJM. We find arguments that this is not transparent to be unpersuasive, based on the record evidence.

b. January 1 Effective Date

i. Issue Summary

89. ODEC's annual update to the formula rate is made effective January 1, which is the beginning of ODEC's budget year. The issue here is whether the Initial Decision erred in finding that the January 1 annual update is just and reasonable.

¹²⁶ Ex. ODC-2 at 20.

¹²⁷ *Id.* at 20-22.

¹²⁸ *Id.* at 21.

¹²⁹ *See generally* Ex. ODC-5.

ii. Initial Decision

90. The Presiding Judge states that neither Trial Staff nor Bear Island appears to have any specific objection to ODEC resetting the Revised Formula Rate on January 1 each year to synchronize ODEC's rate year with its budget year.¹³⁰ The Initial Decision finds that the synchronization does not appear to have any objectionable rate impacts, and has a rational basis in light of the circumstance that ODEC's calendar year budget forms the entire basis for its projected loads and revenue requirements.¹³¹ The Initial Decision concludes that this proposed change is just and reasonable.

iii. Briefs on Exceptions

91. Bear Island argues that ODEC's proposal to have its Board approve its annual budget each December, and to implement that budget on January 1 is unjust and unreasonable because a one-month interval is unreasonably short.¹³²

iv. Brief Opposing Exceptions

92. ODEC argues that Bear Island fails to show any valid grounds for overturning the Presiding Judge's ruling that the proposed January 1 effective date based on a December budget approval is just and reasonable. ODEC asserts that the proposed January 1 effective date would align each year's cost incurrence with the same year's cost collection. ODEC asserts that under the Prior Formula Rate, the budget year began on January 1 annually, but the rate year began on April 1, and thus involved a mismatch between the incurrence of demand costs and their collection. ODEC notes that Bear Island does not challenge this as a valid reason for adopting a January 1 effective date. Further, ODEC argues that it has a long-standing and sound business practice of approving next year's budget in December because of the need to obtain up-to-date cost and other data for formulating the budget.¹³³

¹³⁰ Initial Decision, 151 FERC ¶ 63,002 at P 110.

¹³¹ *Id.* P 110.

¹³² Bear Island Brief on Exceptions at 59-60.

¹³³ ODEC Brief Opposing Exceptions at 53-54.

v. **Commission Determination**

93. We affirm the Presiding Judge's finding on this issue. We agree with the Presiding Judge's finding that the proposed January 1 effective date would avoid a mismatch between the incurrence of demand costs and their collection by aligning each year's cost incurrence with the same year's cost collection. We find that Bear Island failed to show any valid grounds for overturning the Presiding Judge's ruling that the proposed January 1 effective date based on a December budget approval is just and reasonable.

c. **Proposed Retention of Margins**

i. **Issue Summary**

94. The Presiding Judge notes that in contrast to rate structures designed to provide a return on common equity to profit-making utilities, ODEC's not-for-profit formula rate is designed to produce a net margin, which is simply any demand revenue in excess of demand expense.¹³⁴ ODEC explains that both the Prior Formula Rate and the Revised Formula Rate allow it to retain up to a 1.2 Times Interest Earned Ratio (TIER), or net margins up to 20 percent. ODEC refers to this as its "Margin Requirement." ODEC further explains the proposed Revised Formula Rate differs from the Prior Formula Rate in that the proposed Margin Requirement grants the ODEC Board the option to either return any net margin above 20 percent (1.2 TIER) to the Member Cooperatives (as it did under the Prior Formula Rate) or to retain the excess margin as additional capital.

ii. **Initial Decision**

95. The Presiding Judge notes that Bear Island and Trial Staff both oppose ODEC's revisions insofar as it grants the ODEC Board the option to retain any net margin above 20 percent as additional capital.¹³⁵ The Initial Decision finds that ODEC did not satisfy its FPA section 205 burden to prove that it is just and reasonable to give the ODEC Board the discretion to retain net margins in excess of 20 percent (1.2 TIER) as additional capital.

¹³⁴ Initial Decision, 151 FERC ¶ 63,002 at P 177.

¹³⁵ *Id.* PP 178-179.

iii. Brief on Exceptions

96. ODEC states that the Revised Formula Rate's proposed changes concern what happens when ODEC either under-collects or over-collects the Margin Requirement equal to 20 percent of ODEC's gross interest expense in any given year.¹³⁶ ODEC states that the Prior Formula Rate provided that if ODEC under-collected or over-collected the 20 Percent Margin Requirement in any given year, it would implement a true-up charge or true-up refund in the next year. ODEC argues that ODEC's Board could choose to save up margins in the "good" years to offset under-collections in the "bad" years, thus mitigating a true-up charge every time margins do not produce a 20 percent Margin Requirement. ODEC states that no party challenged the reasonableness of ODEC's 20 percent Margin Requirement and that the only issue at the hearing was the reasonableness of ODEC's proposal to allow the ODEC Board to retain net margins in excess of 20 percent as capital in the Revised Formula Rate. ODEC requests that if the Commission does not reverse the Initial Decision, it should permit ODEC to revert to the Margin Requirement of the Prior Formula Rate in a compliance filing.¹³⁷

iv. Briefs Opposing Exceptions

97. Trial Staff argues that there is nothing in the record to support ODEC's proposal to give the ODEC Board unfettered discretion to retain any over-collections above 20 percent, and states that the finding in the Initial Decision was correct.¹³⁸ Trial Staff argues that the Commission should require ODEC to revert to its Prior Formula Rate, which allows ODEC to maintain a 20 percent Margin Requirement with a true-up mechanism to account for over- or under-collections. Both Trial Staff and Bear Island agree that the Initial Decision correctly rejected ODEC's proposal. Bear Island claims that the Initial Decision's finding is consistent with Opinion No. 499, in which the Commission rejected a functionally identical tariff revision proposed by ODEC. Bear Island states that in Opinion No. 499, the Commission ruled that the phrase "unless the Board of Directors decides otherwise" was unjust and unreasonable because it gave the Board discretion as to when to pass through under- and over-recoveries. Bear Island also argues that ODEC Witness Kees conceded that granting ODEC's Board additional

¹³⁶ ODEC Brief on Exceptions at 27.

¹³⁷ *Id.* at 41.

¹³⁸ Trial Staff Brief Opposing Exceptions at 62-66.

discretion is not “critical” and acknowledged that the Board has always “gotten along” without it.¹³⁹

v. Commission Determination

98. We affirm the Initial Decision’s finding that ODEC failed to adequately demonstrate that the Revised Formula Rate is just and reasonable insofar as it grants the ODEC Board the option to retain net margin above 20 percent as additional capital. We agree with Bear Island and Trial Staff that this would grant the ODEC Board the option to retain any net margin above 20 percent as additional capital inconsistent with Opinion No. 499, in which the Commission rejected a functionally identical tariff revision proposed by ODEC.¹⁴⁰ Accordingly, as proposed by ODEC in its Brief on Exceptions, we direct ODEC to submit a compliance filing within 30 days reverting to the Margin Requirement contained in the Prior Formula Rate.

d. Proposed Use of Placeholder Accounts

i. Issue Summary

99. ODEC proposes to include several placeholder accounts in the Revised Formula Rate. For example, ODEC proposes to revise Account Nos. 551 and 553 to accommodate energy-related expenses associated with a new 1,000 MW natural gas-fired combined-cycle generating plant that it plans to bring online by June 1, 2017 (Wildcat Point Facility). ODEC also proposes to include certain other accounts that it claims were missing from the Prior Formula Rate.¹⁴¹ ODEC posits that it is appropriate to include in the formula rate all accounts in which ODEC may incur costs now or in the future.

ii. Initial Decision

100. The Initial Decision notes that ODEC reasonably anticipates bringing the Wildcat Point Facility online by June 1, 2017 and finds it just and reasonable for ODEC to include the related sub-accounts in the formula rate at this time. The Initial Decision rejects Trial Staff’s assertion that the Commission requires the costs within a FERC

¹³⁹ Bear Island Brief Opposing Exceptions at 42-45.

¹⁴⁰ See Opinion No. 499, 122 FERC ¶ 61,174 at P 82.

¹⁴¹ These include Account Nos. 408.2, 409.3 through 411.5, and 435. Initial Decision, 151 FERC ¶ 63,002 at P 200.

account to be allocated entirely to either demand or energy. The Initial Decision also finds that any objection to the Revised Formula Rate grounded in unpopulated, placeholder accounts is meritless because the record indicates ODEC was correcting a Prior Formula Rate error. The Initial Decision notes that the record establishes ODEC's consistent formula rate approach since 1992 has been to include all accounts falling within the Statement of Income listed in the FERC Uniform System of Accounts. The Initial Decision rejects a Trial Staff request to populate any unused FERC Account with a "hard zero," as that would require ODEC to make a new section 205 filing when it seeks to populate the Revised Formula Rate. The Initial Decision concludes that ODEC, as a not-for-profit cooperative utility, has no incentive to over-recover its costs, as Trial Staff avers.¹⁴²

iii. Briefs on Exceptions

101. Trial Staff requests that the Commission require ODEC to populate any placeholder accounts that are unused and unlikely to be used with "hard zeros" that cannot be changed absent a section 205 or 206 filing with the Commission. Trial Staff argues that ODEC's formula rate is not transparent and that requiring ODEC to populate any placeholder accounts with a "hard zero" will ensure that ODEC must make a filing with the Commission before it can populate it with costs. Furthermore, Trial Staff argues that inclusion of accounts that will not be used is of particular concern because it allows a utility to change its inputs on an annual basis without making a section 205 filing. Trial Staff argues Account No. 435, which recovers extraordinary property losses, is unused and should be disallowed from the formula rate.¹⁴³

102. Trial Staff argues the Commission should reject ODEC's proposal to revise Accounts 551 and 553 to accommodate energy-related expenses because: (a) ODEC does not currently have any combined-cycle generating facilities; (b) this fact means that ODEC is unable to provide a study to support these as energy-related costs; and, (c) the Commission requires that costs within an account must be allocated to either demand or energy – not to both – according to the predominance method.¹⁴⁴ Additionally, Trial

¹⁴² Initial Decision, 151 FERC ¶ 63,002 at PP 198-201.

¹⁴³ Trial Staff Brief on Exceptions at 74-77.

¹⁴⁴ *Id.* at 77-78 (citing *Arizona Public Service Co.*, 4 FERC ¶ 61,101 at 61,209-10 (1978)). In *Arizona Public Service Co.*, the Commission adopted the "predominance" method for classifying certain production O&M accounts as variable (e.g., fuel) and other production O&M accounts as fixed.

Staff argues that ODEC provided no case law to support its claim that ODEC should be allowed to segregate and track the combined cycle costs through the use of sub-accounts.

iv. Briefs Opposing Exceptions

103. ODEC noted that the Initial Decision found that Trial Staff's objections to placeholder accounts were meritless because many were also included in the Prior Formula Rate, and thus are presumed to be reasonable. ODEC states that it showed that there was a possibility that ODEC could incur costs that would need to be included in the specific accounts ODEC proposed to add in this case.¹⁴⁵ ODEC argues that the Initial Decision correctly approved proposed revisions to the formula rate to allow costs included in Accounts 551 and 553 for combined cycle plants to be classified as energy-related. ODEC rebuts Trial Staff's three arguments that the Commission should reject revisions to these accounts to accommodate energy-related expenses: (a) ODEC states that the record shows that Wildcat Point is on track to be placed in service in June 2017; (b) Trial Staff cited no Commission precedent requiring an engineering study; (c) the cases cited by Trial Staff regarding the "predominance method" did not support a conclusion that there is any such requirement. ODEC argues that none of the cases cited by Trial Staff addressed a situation analogous to ODEC's, where the predominant nature of production O&M costs in a particular account varies based on the type of generating plant.¹⁴⁶

v. Commission Determination

104. We affirm in part, and reverse in part, the Initial Decision, subject to a compliance filing, as discussed below. We agree with the Presiding Judge's finding that to the extent Bear Island or Trial Staff challenge FERC Accounts in the Prior Formula Rate that remain unchanged in the Revised Formula Rate, those challenges fall beyond the scope of the Hearing Order and FPA section 205 and are dismissed. Trial Staff's argument that Account No. 435 should be disallowed from the Revised Formula Rate is misplaced. As noted by the Presiding Judge, the Commission treats extraordinary property losses as

¹⁴⁵ ODEC Brief Opposing Exceptions at 66-68.

¹⁴⁶ ODEC Brief Opposing Exceptions at 68-70.

one-time expenses that cannot be passed through without Commission review,¹⁴⁷ which dispels any concern over including Account No. 435 in the Revised Formula Rate.¹⁴⁸

105. We affirm the Presiding Judge's finding with respect to unpopulated (placeholder) accounts in the Revised Formula Rate because placeholders reflect practices common in Commission-accepted transmission formula rates and there is no reason to believe they will produce unreasonable results.¹⁴⁹ We agree that any unpopulated accounts carried forward from the Prior Formula Rate to the Revised Formula Rate remain just and reasonable. We also agree with the Presiding Judge that including unpopulated accounts in the formula rate is not unjust or unreasonable in principle. The record establishes that ODEC's approach to formula rate since 1992 has been to include all accounts falling within the Statement of Income listed in the FERC Uniform System of Accounts. The record indicates that ODEC added Account Nos. 408.2, 409.3 through 411.5 and 435 to the Revised Formula Rate because ODEC discovered those accounts were missing from the Prior Formula Rate when preparing the September 30, 2013 filing. Thus, we agree with the Initial Decision that ODEC was simply correcting a Prior Formula Rate oversight. We disagree with Trial Staff's assertion that ODEC must populate accounts reflecting no current costs with a "hard zero." There is no evidence the Commission needs to require "hard zeroes" in unpopulated FERC Accounts. Thus, we affirm the Presiding Judge's finding on this issue.

106. With respect to Account Nos. 551 and 553, we reverse the Presiding Judge's finding on this issue. As Trial Staff notes, ODEC's proposal to split and allocate costs within these accounts as either demand or energy is contrary to Commission precedent.¹⁵⁰

¹⁴⁷ *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 55 (2007) ("Extraordinary property losses are one-time expenses, not traditionally reoccurring expenses, and are not permitted to be passed through without initial Commission review.").

¹⁴⁸ Initial Decision, 151 FERC ¶ 63,002 at n.89.

¹⁴⁹ *Accord Xcel Energy Southwest Transmission Co., LLC*, 149 FERC ¶ 61,182, at P 96 (2014).

¹⁵⁰ See, e.g., *Arizona Public Service Co.*, 4 FERC ¶ 61,101, at 61,209-10 (1978); *Illinois Power Co.*, 11 FERC ¶ 63,040, at 65,255-6 (1980), *aff'd*, 15 FERC ¶ 61,050, at 61,093 (1981); *Kansas City Power & Light Co.*, 21 FERC ¶ 63,003, at 65,037 (1982), *reh'g denied*, 23 FERC ¶ 61,262 (1983); *Minnesota Power & Light Co.*, Opinion No. 86, 11 FERC ¶ 61,312, at 61,648-9 (1980).

We agree with Trial Staff that ODEC has provided no case law to support its claim that ODEC should be allowed to segregate and track the combined cycle costs through the use of sub-accounts. Therefore, we require ODEC to functionalize the costs in Accounts No. 551 and 553 to demand, according to the predominance method. Accordingly, we accept the Revised Formula Rate, subject to ODEC making the indicated revisions in a compliance filing within 30 days.

e. **Proposed Changes to the Executive Summary and Formula Rate Protocols**

i. **Issue Summary**

107. ODEC states that both the Prior Formula Rate and the Revised Formula Rate contain an Executive Summary that explains how the formula rate is implemented, and that the proposed changes to the Executive Summary are merely organizational. ODEC also explains that the Executive Summary in both the Prior and Revised Formula Rates contain a sub-section designated “Development and Implementation of the Formula Rate.”¹⁵¹ In a similar vein, the Prior Formula Rate listed various circumstances that required ODEC to make a rate change application to the Commission, such as changes to reflect any expense not presently included in the formula, and Extraordinary Losses. ODEC proposes to delete this listing in the Revised Formula Rate.¹⁵²

108. As discussed earlier, the Initial Decision determined that the challenges to the Formula Rate Summary and Protocols went beyond the scope of this proceeding, and the Commission found that this issue was outside of the section 205 filing made by ODEC.¹⁵³ The Presiding Judge nonetheless made findings on this issue and the parties filed briefs on exception, providing the Commission with sufficient information to determine that we see no basis to exercise FPA section 206 authority to require a change in ODEC’s protocols.

¹⁵¹ Initial Decision, 151 FERC ¶ 63,002 at P 188.

¹⁵² With respect to the Extraordinary Losses provision, as the Initial Decision held, the Commission treats extraordinary property losses as one-time expenses that cannot be passed through without initial Commission review. We agree with the Presiding Judge’s finding on this issue.

¹⁵³ See *supra* P 13.

ii. **Initial Decision**

109. The Initial Decision states that the participants agree that the Revised Formula Rate section designated “Development and Implementation of the Formula Rate” explains the substantive processes that ODEC employs to develop and implement the rates each year. The Presiding Judge finds that various elements described in the section are addressed under more specific issues throughout the Initial Decision (e.g., proposed January 1 effective date for the ODEC budget) and thus this section may need to be modified to conform to the rulings on those issues, but finds the section is not otherwise objectionable.¹⁵⁴ The Initial Decision finds that ODEC’s formula rate is not a tariff of general applicability (such as an open access transmission tariff), as were those implicated in the *MISO Orders*.¹⁵⁵ The Initial Decision states that the record confirms the rate is strictly confined to the bilateral WPCs between ODEC and its 11 Member Cooperatives, and the *MISO Orders* distinguish OATTs from “contract rates.” The Initial Decision finds that the concerns expressed in the *MISO Orders* are not at issue here and that if the Commission were to disagree, the indicated remedy would be for it to initiate an FPA section 206 investigation.¹⁵⁶

110. The Initial Decision finds that ODEC is correct that it is unnecessary to include a list of circumstances requiring it to make a rate change application to the Commission in the formula rate. The Presiding Judge states that the FPA and the Commission, not the formula rate or the ODEC Board, dictate the circumstances under which ODEC is required to file a rate change application. With respect to the omission of the Extraordinary Losses provision, the Initial Decision notes that Trial Staff emphasizes that the Commission treats extraordinary property losses as one-time expenses that cannot be passed through without initial Commission review. Thus, the Initial Decision finds that there is no need to confirm this provision in the Revised Formula Rate.¹⁵⁷

¹⁵⁴ Initial Decision, 151 FERC ¶ 63,002 at P 191.

¹⁵⁵ See *Midwest Independent Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *reh’g denied*, 146 FERC ¶ 61,209 (2014), *order on compliance*, 146 FERC ¶ 61,212 (2014) (*MISO Orders*).

¹⁵⁶ Initial Decision, 151 FERC ¶ 63,002 at P 209.

¹⁵⁷ *Id.* PP 186-187.

iii. Briefs on Exceptions

111. Trial Staff and Bear Island filed exceptions to the Presiding Judge's finding on this issue. Trial Staff argues that a total lack of protocols alone would be sufficient reason for the Commission to reject ODEC's Revised Formula Rate and to direct ODEC to file protocols that comply with Commission policy.¹⁵⁸ Trial Staff states that it is concerned with how ODEC developed and implemented its proposed rates in the instant filing (e.g., Transmission Service). Trial Staff argues that ODEC should have: (1) revised the Executive Summary to include the standard protocols, or (2) drafted an entirely new provision incorporating protocols that comply with Commission policy and precedent. Trial Staff argues that by finding the only recourse would be for the Commission to initiate an FPA section 206 investigation, the Presiding Judge disregarded all of Trial Staff's discussion of the Commission's requirements for protocols. Trial Staff argues that the Revised Formula Rate includes new substantive provisions to ODEC's formula, resulting in such a changed formula as to require complete Commission review to ensure that the formula rate is just and reasonable.

112. With regard to the deletion of the list detailing when ODEC must make a rate filing, Trial Staff states that the Commission has no opportunity to review ODEC's formula rate, as it would other formula rates with annual informational filings. Trial Staff argues that ODEC's proposal to eliminate oversight language is particularly troubling because all parties, state regulators, and even FERC Staff, cannot determine what costs go into ODEC's formula rate and how it will be calculated. Trial Staff states that it has no confidence that ODEC would share information with the Commission or interested parties, concluding that the Commission should reverse the Initial Decision on this issue.¹⁵⁹

113. Bear Island disputes the Presiding Judge's finding that the Executive Summary is "merely descriptive and explanatory" and otherwise not objectionable, because once the determination is made that the section has revisions, Commission review under section 205 is warranted. Bear Island argues that the absence of protocols in the Prior Formula Rate has no relevance to rate schedule revisions in the Revised Formula Rate, the reasonableness of which is assessed in accordance with the Commission's current standards for formula rates.¹⁶⁰

¹⁵⁸ Trial Staff Brief on Exceptions at 78-85.

¹⁵⁹ *Id.* at 73-74.

¹⁶⁰ Bear Island Brief on Exceptions at 46-49.

iv. Briefs Opposing Exceptions

114. ODEC argues that the Commission should affirm the Presiding Judge's finding that the revisions made to the Executive Summary did not put at issue the Revised Formula Rate's compliance with the Commission's requirements for formula rate implementation protocols and practices. Further, ODEC argues that the Commission should reject the suggestion by Trial Staff and Bear Island that any change to the Executive Summary, no matter how minor, or organizational, opens up longstanding aspects of the formula rate to complete Commission review. ODEC argues that neither Trial Staff nor Bear Island has cited any precedent applying the specific *MISO Orders* requirements to a formula contained in bilateral contracts between a cooperative and its members. Further, ODEC argues that the Presiding Judge correctly found that ODEC's formula rate is not a tariff of general applicability to which the *MISO Orders* precedent applies, and the Commission should reject Trial Staff's arguments to the contrary.¹⁶¹

115. ODEC objects to Trial Staff's desire to retain in the Revised Formula Rate a list of circumstances that require ODEC to make a rate change application with the Commission. ODEC argues that Commission oversight is governed by the FPA, not its tariff language. ODEC states that Trial Staff has presented nothing to refute the Initial Decision's ruling other than the allegation that ODEC would not be open to sharing necessary information with the Commission or interested parties. Further, ODEC states that it has the same filing obligations, and customers are protected by the same level of oversight, whether or not listed in the tariff.

v. Commission Determination

116. As discussed below, we affirm the Initial Decision and find that ODEC need not revise its formula rate protocols. We also find that requiring a list describing circumstances that require ODEC to make a rate filing is unnecessary. As noted in the Initial Decision, elements in the Executive Summary (e.g., Margin Stabilization) are addressed elsewhere in this Opinion, and will need to be modified to conform to the rulings on those issues. Such deficiencies, however, do not make the final rate unjust and unreasonable and thus require ODEC to revise its Executive Summary as envisioned by Trial Staff and Bear Island.

117. Moreover, we see no reason to revise the formula rate protocols as indicated in the *MISO Orders* since the Revised Formula Rate is strictly confined to the WPCs between ODEC and its Member Cooperatives, which will be able to familiarize themselves with

¹⁶¹ ODEC Brief Opposing Exceptions 70-78.

both the rate filing and the supporting data. Thus, the *MISO Orders*, which relate to transparency and the ability to participate in the development of a rate filing, are not applicable here.

118. Finally, we find Trial Staff's argument that ODEC's modified rate design (e.g., RTO Capacity Service, etc.) is substantive and "require[s] complete Commission review to ensure that the Revised Formula Rate is just and reasonable" to be moot.¹⁶² We have addressed ODEC's Revised Formula Rate in its entirety throughout this Opinion.

D. Relief

119. We have made determinations throughout this proceeding on the just and reasonable rate applicable to ODEC's Revised Formula Rate. ODEC has agreed to make changes with respect to its Margin Requirement, RTO Capacity Service, and Transmission Service. We have also directed ODEC to make other changes in a compliance filing, specifically filing Distribution Loss Factor work papers and adopting the Commission's predominance method for FERC Account Nos. 551 and 553.¹⁶³ Accordingly, ODEC is required to file a refund report within 30 days of a Commission order on compliance filing, and to pay refunds, and file a refund report, pursuant to 18 C.F.R. § 35.19a, within 30 days of the date the proceeding is final.¹⁶⁴

The Commission orders:

(A) The Initial Decision is hereby affirmed in part and reversed in part, and ODEC's proposed Tariff revisions are accepted, subject to condition, to be effective January 1, 2014, as discussed in the body of this order.

(B) ODEC is hereby directed to file, within 30 days from the date of the issuance of this order, a compliance filing, to be effective January 1, 2014, as discussed in the body of this order.

¹⁶² Trial Staff Brief on Exceptions at 86.

¹⁶³ The Commission can revise a proposal under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

¹⁶⁴ *See* 18 C.F.R. § 35.19a.

(C) ODEC is required to make refunds and file a refund report, pursuant to 18 C.F.R. § 35.19a, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.