

139 FERC ¶ 61,127  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Midwest Independent Transmission System Operator, Inc.      Docket No. EL12-35-000  
ALLETE, Inc.

Ameren Illinois Company

Ameren Transmission Company of Illinois

American Transmission Company, LLC

Big Rivers Electric Corporation

Board of Water, Electric and Communications Trustees  
of the City of Muscatine, Iowa

Central Minnesota Municipal Power Agency

City of Columbia, Missouri, Water & Light Company

City Water, Light & Power (Springfield, Illinois)

Dairyland Power Cooperative

Great River Energy

Hoosier Energy Rural Electric Cooperative, Inc

Indiana Municipal Power Agency

Indianapolis Power & Light Company

International Transmission Company

ITC Midwest, LLC

Michigan Electric Transmission Company, LLC

Michigan Public Power Agency

Michigan South Central Power Agency

MidAmerican Energy Company

Missouri River Energy Services

Montana-Dakota Utilities Company

Montezuma Municipal Light & Power

Municipal Electric Utility of the City of Cedar Falls,  
Iowa

Muscatine Power and Water

Northern Indiana Public Service Company

Northern States Power Company, a Minnesota  
Corporation

Northern States Power Company, a Wisconsin  
Corporation

Northwestern Wisconsin Electric Company

Otter Tail Power Company

Southern Illinois Power Cooperative  
Southern Indiana Gas & Electric Company  
Southern Minnesota Municipal Power Agency  
Tipton Municipal Utilities  
Union Electric Company  
Wabash Valley Power Association, Inc.  
Wolverine Power Supply Cooperative, Inc.

ORDER INITIATING INVESTIGATION OF FORMULA RATE PROTOCOLS AND  
ESTABLISHING PAPER HEARING PROCEDURES

(Issued May 17, 2012)

1. In this order, we institute an investigation pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> to determine whether the formula rate protocols under the Midwest Independent Transmission System Operator, Inc. (MISO) Tariff are sufficient to ensure just and reasonable rates. To address whether MISO's *pro forma* formula rate protocols and individual MISO transmission owners' formula rate protocols on file with the Commission are sufficient,<sup>2</sup> and to provide MISO and the MISO transmission owners as well as other interested parties an opportunity to comment on this investigation through written submissions, this order establishes intervention and paper hearing procedures.

**I. Background**

2. Our inquiry into the sufficiency of the MISO formula rate protocols stems from several recently issued orders involving recovery of transmission rate incentives through formula rates. Most notably, on December 30, 2011, the Commission issued orders in *MidAmerican Energy Co.*<sup>3</sup> and *Otter Tail Power Co.*,<sup>4</sup> where the Illinois Commerce Commission (Illinois Commission) and the Indiana Utility Regulatory Commission (Indiana Commission) argued that the transmission owners' formula rates were

---

<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> MISO's *pro forma* formula rate protocols and individual MISO transmission owners' formula rate protocols on file with the Commission are collectively referred to as the MISO formula rate protocols.

<sup>3</sup> 137 FERC ¶ 61,250 (2011) (*MidAmerican*).

<sup>4</sup> 137 FERC ¶ 61,255 (2011) (*Otter Tail*).

insufficient to ensure just and reasonable rates. In *MidAmerican*, MidAmerican proposed, among other things, a transition from an historical-based formula rate to a forward-looking formula rate and new formula rate protocols for the forward-looking formula rate. In *Otter Tail*, Otter Tail already had a Commission-accepted forward-looking formula rate and protocols that would provide for recovery of the requested incentives and, accordingly, had not proposed any changes to its formula rate protocols.

3. In support of its position that MidAmerican's protocols were insufficient, the Illinois Commission argued that the proposed protocols did not provide an opportunity for interested parties to evaluate and challenge the inputs or prudence of the costs to be recovered by MidAmerican. The Illinois Commission averred that it is not sufficient for MidAmerican to simply explain how it calculated its revenue requirement and the corresponding rate. Rather, the Illinois Commission argued that MidAmerican must allow an opportunity to review the inputs and calculations and to challenge the prudence of the costs that MidAmerican seeks to recover. To this end, the Illinois Commission recommended a series of prescriptive changes to the formula rate protocols. Similarly, the Indiana Commission argued in both proceedings that MidAmerican's and Otter Tail's formula rate protocols did not allow for interested parties, such as state utility commissions, who are not customers of the transmission owners, to receive information regarding the status of projects, the prudence of the costs being incurred, and the annual true-up, and it recommended that both transmission owners be required to adopt more expansive formula rate protocols. More recently, on February 29, 2012, the Commission addressed Ameren Transmission Company of Illinois' (Ameren Illinois) formula rate protocols where the Illinois Commission and a group of customers argued, in pertinent part, that the proposed protocols were deficient relative to other formula rate protocols on file with the Commission.<sup>5</sup> In *Ameren*, customers argued that Ameren Illinois' protocols did not provide customers, state regulators, or other interested parties with any real opportunity to evaluate the formula rate input data or to challenge either the correctness or reasonableness of the inputs, including the true-up, or to challenge the prudence of the costs to be recovered.<sup>6</sup> The Illinois Commission added that Ameren Illinois' protocols lacked the necessary transparency and other features critical to ensuring that ratepayers and other interested parties are reasonably informed of rate input changes and true-up adjustments and can adequately investigate and potentially challenge costs and formula rate inputs.

---

<sup>5</sup> *Midwest Indep. Transmission Sys. Operator, Inc. and Ameren Transmission Co. of Illinois*, 138 FERC ¶ 61,147 (2012) (*Ameren*).

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

4. In each case, the Commission rejected the challenges to the transmission owners' formula rate protocols on procedural grounds, finding that the protests were more appropriately characterized as complaints than protests and therefore were inappropriately filed in those proceedings.<sup>7</sup>

## II. Discussion

### A. Overview of the MISO Formula Rate Protocols

5. Notwithstanding its actions in the orders just cited, the Commission recognizes that the integrity and transparency of formula rates and particularly formula rate protocols are critically important, and especially so given that more utilities are using formula rates to recover the cost of their transmission investments. The Commission has undertaken an analysis of the MISO formula rate protocols. As further discussed below, our analysis leads us to conclude that the MISO formula rate protocols may be deficient in several respects, and thus may lead to unjust and unreasonable rates.

6. The protocols for the historical formula rates provide that each MISO transmission owner will complete the appropriate rate formula template, and MISO will review each completed template and the appropriate publicly available data (FERC Form No. 1, Rural Utilities Service (RUS) Form No. 12, or Energy Information Administration (EIA) Form No. 412) for accuracy. If MISO requests additional data or documentation to ensure that the templates are properly completed, the transmission owner is required to produce the requested material in a timely fashion. Once MISO has reviewed the templates for accuracy, it issues a letter to each transmission owner informing it that the rates and revenue requirements resulting from the template have been reviewed and approved by MISO.

7. The protocols for the forward-looking formula rates generally provide that each MISO transmission owner shall determine its projected net revenue requirement and load for the next year no later than September 1, or October 1, of the current year. The transmission owner shall then make available to customers<sup>8</sup> its projected net revenue requirement, including information in workpapers regarding projected costs of plant in

---

<sup>7</sup> *MidAmerican*, 137 FERC ¶ 61,250 at P 71; *Otter Tail*, 137 FERC ¶ 61,255 at P 23; *Ameren*, 138 FERC ¶ 61,147 at P 34.

<sup>8</sup> While almost all of the forward-looking formula rate protocols only provide for information sharing with the MISO transmission owner's customers, the protocols of two MISO transmission owners, ITC Midwest, LLC and Michigan Electric Transmission Company, LLC, specifically allow state commission access to information concerning these two companies' net projected revenue requirement.

forecasted rate base, expected construction schedules and in-service dates, load and resultant rates incorporating a true-up adjustment. The protocols further state that the transmission owner shall provide all inputs in sufficient detail to identify the components of the transmission owner's net revenue requirement, and, upon request, the transmission owner will provide a description of the basis on which projects were planned either by MISO itself or the MISO transmission owner. The protocols also state that, by October 31 of the current year, the MISO transmission owner will hold a customer meeting to explain the formula rate input projections and cost details.<sup>9</sup> Any true-up adjustment and related calculations are posted on MISO's Open Access Same-Time Information System (OASIS) no later than June 1 following submittal of the FERC Form No. 1 for the previous year. Finally, the transmission owner will provide an explanation of such true-up adjustment in response to customer inquiries and will post information to frequently asked questions on the OASIS.

## **B. Formula Rate Protocols**

8. Based upon our examination of MISO's *pro forma* formula rate protocols and the formula rate protocols of individual MISO transmission owners, we find that the concerns raised in the context of the prior challenges to the transmission owners' formula rate protocols in *MidAmerican*, *Otter Tail*, and *Ameren*, discussed above, may have merit. Specifically, we identify three areas of concern with the MISO formula rate protocols. The areas of concern are categorized as follows: (1) scope of participation – who can participate in the information exchange; (2) the transparency of the information exchange – what is exchanged; and (3) the ability to challenge the transmission owners' implementation of the formula rate as a result of the information exchange – how the parties may resolve their potential dispute.

9. Regarding formula rates, the Commission has stated that “the formula itself is the rate, not the particular components of the formula.”<sup>10</sup> Thus, periodic adjustments, typically performed on an annual basis, “made in accordance with the Commission-approved formula do not constitute changes in the rate itself and accordingly do not require section 205 filings.”<sup>11</sup> Because the formula rates for transmission service presently on file with the Commission do not typically require transmission owners to make a section 205 filing to update their annual transmission revenue requirement,

---

<sup>9</sup> The date of the customer meeting varies for each MISO transmission owner, but is usually held at some point in October.

<sup>10</sup> *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,544 (1994).

<sup>11</sup> *Id.* at 61,545; *see also Ala. Power Co. v. FERC*, 993 F.2d 1557, 1567-68 (D.C. Cir. 1993).

safeguards need to be in place to ensure that the input data is the correct data, that calculations are performed consistent with the formula, that the costs to be recovered in the formula rate are reasonable and were prudently incurred, and that the rates are just and reasonable.<sup>12</sup> The safeguard that has often been employed is formula rate protocols.

10. The reason for including formula rate protocols in formula rates for transmission service is to provide the parties paying such rates specific procedures for notice, review, and challenges to the transmission owner's annual updates. Such formula rate protocols, in order to fulfill this purpose, should afford adequate transparency to affected customers, state regulators or other interested parties, as well as provide mechanisms for resolving potential disputes; they can be an important tool in ensuring just and reasonable rates. Because the MISO formula rate protocols may be deficient in the three identified areas, as further discussed below, we are instituting an investigation pursuant to section 206 of the FPA to determine whether the MISO formula rate protocols are sufficient to ensure just and reasonable rates. And, to provide MISO and the MISO transmission owners as well as other interested parties an opportunity to brief the issues identified in this investigation through written submissions, this order establishes a paper hearing.

### **1. Scope of Participation**

11. We find that the MISO formula rate protocols may limit the ability of certain interested parties to obtain information about annual updates from transmission owners. The historical protocols give only MISO the opportunity to participate in the exchange of information. Further, while the forward-looking protocols allow greater participation, they generally exclude state commissions and other interested parties.

12. We find that the exclusion of interested parties – such as customers and state commissions, as suggested in the protests in *MidAmerican*, *Otter Tail*, and *Ameren* – from participating in the review of the implementation of the formula rate and of the costs that would flow through the formula rates may be unjust and unreasonable. We also find that, to assist the Commission in performing its duty to ensure just and reasonable rates, it may be necessary for MISO and the MISO transmission owners to provide the Commission all such information reasonably necessary to review and evaluate the implementation of the formula rate and the costs that would flow through the formula rate. To afford adequate opportunity for participation and access to information,

---

<sup>12</sup> While a party that challenges the transmission owner's projected costs must do more than make unsubstantiated allegations, see *Interstate Power & Light Co. v. ITC Midwest, LLC*, 135 FERC ¶ 61,162, at P 18 (2011), the transmission owner bears the ultimate burden of demonstrating the justness and reasonableness of the charge resulting from its application of the formula. *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 47 (2008); *Am. Elec. Power Co., Inc.*, 124 FERC ¶ 61,306, at P 36 (2008).

the MISO formula rate protocols may need to be revised to provide all interested parties and the Commission access to information about the annual updates.

13. Therefore, we set the issue of scope of participation for the paper hearing ordered below.

## 2. Transparency

14. We find that the MISO formula rate protocols may provide insufficient opportunity for interested parties to obtain and review the information necessary to understand and evaluate the implementation of the formula rate and the reasonableness of the resulting charges. The historical protocols give only MISO the opportunity to review the transmission owner's completed formula rate template, publicly available reports, and any additional data or documentation that MISO requests to ensure the formula is correctly implemented. For the forward-looking protocols, the MISO transmission owners provide customers their projected net revenue requirement and all formula rate inputs in sufficient detail to identify the components of the transmission owner's net revenue requirement and, upon request, will provide a description of the basis on which projects were planned either by MISO itself or the MISO transmission owner.<sup>13</sup> Any true-up adjustments and related calculations following the submittal of the FERC Form No. 1 for the previous year, along with answers to frequently asked questions are also posted on MISO's OASIS. Customers also have access to information through the annual customer meeting.

15. Based upon our examination, we find that the MISO formula rate protocols, and the resulting rates, may not be just and reasonable because the protocols do not provide interested parties the information necessary to understand and evaluate the implementation of the formula rate for either the correctness of inputs and calculations or the reasonableness and prudence of the costs to be recovered in the formula rate, which would form the basis of any potential challenge.<sup>14</sup> In particular, the MISO formula rate protocols may need to be revised to require that, in the annual update, the transmission owners provide interested parties information about their implementation of the formula rate in sufficient detail and with sufficient explanation to demonstrate that each input to

---

<sup>13</sup> See, e.g., MISO, FERC Electric Tariff, Attachment O (0.0.0), §§ 11, 13, 16, 18, 20, 23, 25.

<sup>14</sup> The Commission has previously noted its authority to order refunds for imprudent costs charged to customers through an existing formula rate. See *Yankee Atomic Elec. Co.*, 60 FERC ¶ 61,316, at 62,096-97 (1992).

the formula is consistent with the requirements of the formula,<sup>15</sup> without requiring interested parties to serve extensive information requests to understand the transmission owner's implementation of the formula and verify its correctness.<sup>16</sup> In addition, transmission owners may also need to identify any changes in accounting policies, practices, and procedures that took effect during the calendar year which could impact the formula rate or the resulting rates under the formula rate. Further, to allow the Commission to perform its duty to ensure just and reasonable rates, such information may need to be filed with the Commission in the form of an annual informational filing. Finally, the lack of a formal discovery process and procedures to require the transmission owner to answer a party's reasonable information requests may make the formula rate protocols unjust and unreasonable.<sup>17</sup>

16. The MISO formula rate protocols, to be just and reasonable, may need to be revised to provide interested parties the information necessary to understand and evaluate the implementation of the formula rate for either the correctness of inputs and

---

<sup>15</sup> This is particularly important where those inputs reflect adjustments to account balances generally reported in the FERC Form No. 1, RUS Form No. 12, or EIA Form No. 412. For instance, formula rates may require: adjustments to administrative and general expense account balances for industry association membership dues, regulatory commission expenses, and advertising expenses; adjustments to taxes other than income taxes to determine those that should be functionalized on the basis of labor ratios and those that should be functionalized on the basis of plant ratios; adjustments to accumulated deferred income tax account balances to remove paper entries in those accounts or allocate the amounts reported in those accounts; adjustments to revenue accounts to determine amounts appropriately credited in the annual transmission revenue requirement; and adjustments to load or reservation data to determine inputs to rate divisors or allocators. We note that, for formula rates for which no informational filings are required to be regularly submitted to the Commission, the Form No. 1 requires footnotes to explain how formula rate inputs were derived if different from the account balances generally reported in the FERC Form No. 1. *Revisions to Forms, Statements and Reporting Requirements for Electric Utilities and Licensees*, Order No. 715, FERC Stats. & Regs. ¶ 31,277, at P 34 (2008).

<sup>16</sup> All populated formula templates and underlying workpapers should be provided in their native format, including all worksheets with all formulas and links intact (i.e., workable).

<sup>17</sup> See Illinois Commission Comments, Docket No. ER12-749-000, at 13 (filed Jan. 25, 2012).



calculations, or the reasonableness and prudence of the costs to be recovered in the formula rate.

17. Therefore, we set the issue of the transparency of the information exchange for the paper hearing ordered below.

### **3. Challenge Procedures**

18. While the historical and forward-looking protocols in Attachment O of the MISO tariff do not contain specific provisions for parties to challenge a transmission owner's implementation of the formula rates, customers currently can use the dispute resolution procedures under Attachment HH of MISO's tariff or may file a complaint with the Commission pursuant to section 206 of the FPA. However, these challenge provisions may not be sufficient to allow interested parties to informally resolve disputes related to implementation of the formula rates. The MISO formula rate protocols, to be just and reasonable, may need to provide, at a minimum, specific procedures for challenging and resolving disputes related to a transmission owner's revenue requirement without needing to file a formal complaint with the Commission.

19. Specifically, the MISO formula rate protocols, to be just and reasonable, may need to be revised to provide specific challenge procedures for interested parties to attempt to resolve disputes related to implementation of the formula rates without filing a complaint with the Commission. The protocols may also need to include dispute resolution procedures that are tailored to disputes that arise over the information requests and review of the formula rate inputs and calculations, rather than relying on a general dispute resolution procedure crafted to address issues arising out of the overall tariff.

20. We therefore set the sufficiency of the challenge procedures in the MISO formula rate protocols for the paper hearing ordered below.

### **C. Paper Hearing Procedures**

21. Our preliminary analysis, as discussed above, indicates that the MISO formula rate protocols on file with the Commission may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we find that it is appropriate to institute an investigation in this proceeding, Docket No. EL12-35-000, with respect to the MISO formula rate protocols. We also find that a paper hearing, as ordered below, is the appropriate procedure to resolve this matter.

22. As ordered below, any entity desiring to participate in the paper hearing must file a timely notice of intervention or a motion to intervene, as appropriate, with the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011).

23. Parties may file initial briefs no later than 30 days after the publication of notice in the *Federal Register* of the Commission's initiation of this section 206 proceeding in Docket No. EL12-35-000. Parties also may file reply briefs in response to parties' initial briefs, due within 21 days after the due date of initial briefs.

24. All parties' briefs should separately state the facts and arguments advanced by that party and include any exhibits upon which that party relies. The statement of material facts must include citations to any supporting exhibits, affidavits and/or prepared testimony.

25. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, requires that the Commission establish a refund effective date that is no earlier than the date of publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date.<sup>18</sup> Consistent with our general policy of providing maximum protection to customers, we will set the refund effective date at the earliest date possible, which will be the date the notice of the initiation of the investigation in Docket No. EL12-35-000 is published in the *Federal Register*.<sup>19</sup>

26. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision.<sup>20</sup> We expect that we should be able to render a decision within six months of receiving reply briefs, or February 28, 2013.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under

---

<sup>18</sup> 16 U.S.C. § 824e(b) (2006).

<sup>19</sup> See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989). We, however, note that section 206 of the FPA does not require that the Commission order refunds in every instance. *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121, at P 154 (2009).

<sup>20</sup> 16 U.S.C. § 824e(b) (2006).

the FPA (18 C.F.R. Chapter I), the Commission hereby institutes an investigation in Docket No. EL12-35-000 to determine whether the MISO formula rate protocols are sufficient to ensure just and reasonable rates. A paper hearing, with briefing, shall be held concerning the scope of participation, the transparency of the information exchange, and the lack of challenge procedures provided in the MISO formula rate protocols, as discussed in the body of this order.

(B) Any entity desiring to participate in Docket No. EL12-35-000 as ordered above, must file a notice of intervention or a motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), within 30 days of publication of notice in the *Federal Register* of the Commission's initiation of section 206 proceedings in Docket No. EL12-35-000.

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL12-35-000.

(D) The refund effective date established pursuant to section 206(b) of the FPA, will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (C) above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.