

unreasonable rates. The Commission specifically identified three areas of concern: (1) scope of participation (i.e., who can participate in the information exchange); (2) the transparency of the information exchange (i.e., what information is exchanged); and (3) the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange (i.e., how the parties may resolve their potential disputes).⁴

3. After receiving comments from parties to the proceeding, on May 16, 2013, the Commission found that the formula rate protocols under the MISO tariff were insufficient to ensure just and reasonable rates, and therefore, directed MISO and its transmission owners to file revised formula rate protocols to address the Commission's concerns about the scope of participation, the transparency of the information exchange, and the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange.⁵ On March 20, 2014, the Commission conditionally accepted, subject to further compliance, MISO's proposed tariff revisions made in compliance with the MISO Investigation Order.⁶ Among the requirements addressing the transparency of the information exchange, in the MISO Investigation Order, the Commission required MISO to include a provision in the formula rate protocols that transmission owners make annual informational filings of their formula rate updates with

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127, at P 8 (2012).

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *reh'g denied*, 146 FERC ¶ 61,209 (2014).

⁶ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (MISO Compliance Order) (2014). The Commission also separately evaluated the compliance filings of two MISO transmission owners. *See Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,210 (2014) (evaluating the compliance filing of Southern Indiana Electric & Gas Company (Southern Indiana)); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,211 (2014) (evaluating the compliance filing of Northern Indiana Public Service Company (NIPSCO)).

the Commission.⁷ Further, on May 19, 2014, MISO submitted a compliance filing in response to the MISO Compliance Order. The Commission conditionally accepted that compliance filing on January 22, 2015.⁸

B. LG&E/KU Protocol Order (July 17 Order)

4. In the July 17 Order, the Commission explained that it had undertaken a review of the transmission formula rates and formula rate protocols of jurisdictional public utilities to identify utilities that at that time were not required to make annual informational filings of their formula rate updates with the Commission, and identified LG&E/KU as two such utilities. The Commission found that the LG&E/KU Tariff lacked formula rate protocols, which made the formula rate deficient in all three areas of concern identified in the MISO Investigation Order and the MISO Compliance Order, and thus appeared to be unjust and unreasonable.⁹ The Commission directed LG&E/KU to file proposed formula rate protocols to conform to the requirements of the MISO Investigation Order and MISO Compliance Order, or show cause why they should not be required to do so.¹⁰

II. Notice of Filing and Responsive Pleadings

5. Pursuant to the July 17 Order, interventions in Docket No. EL14-76-000 were due within 30 days of publication of notice in the *Federal Register* of the Commission's initiation of section 206 proceeding, i.e., due by August 22, 2014.¹¹ Timely motions to intervene in Docket No. EL14-76-000 were filed in that docket by: Hoosier Energy Rural Electric Cooperative, Inc.; American Municipal Power, Inc. (AMP); the Kentucky

⁷ MISO Investigation Order, 143 FERC ¶ 61,149 at P 92.

⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015); *see also Midcontinent Indep. Sys. Operator, Inc. and Northern Indiana Public Service Company*, 150 FERC ¶ 61,022, at P 17 (2015) (NIPSCO Second Compliance Order); *Midcontinent Indep. Sys. Operator, Inc. and Southern Indiana Gas & Electric Company*, 150 FERC ¶ 61,023, at P 18 (2015) (Southern Indiana Second Compliance Order).

⁹ July 17 Order, 148 FERC ¶ 61,031 at P 6.

¹⁰ *Id.* P 8.

¹¹ *Id.* P 26; 79 Fed. Reg. 42,785 (2014).

municipal requirements customers of KU (KU Requirements Customers);¹² Owensboro Municipal Utilities; and Kentucky Municipal Power Agency and its members, Paducah Power Systems and the Princeton Electric Plant Board, (collectively, Kentucky Municipals); and LG&E/KU.

6. Notice of LG&E/KU's Compliance Filing in Docket No. ER14-2866-000 was published in the *Federal Register*, 79 Fed. Reg. 56,351 (2014), with interventions and protests due on or before October 3, 2014. On September 30, 2014, AMP filed a motion to intervene. On October 3, 2014, AMP filed a protest and motion for specified relief. On October 3, 2014, Kentucky Municipals filed a motion to intervene and protest. On October 20, 2014, LG&E/KU filed an answer.

III. Discussion

A. Procedural Matters

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

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the LG&E/KU's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Scope of Participation

a. July 17 Order

9. In the July 17 Order, the Commission found that LG&E/KU's lack of procedures for interested parties to participate in the review of the implementation of the formula rate and of the costs that would flow through the formula rates appeared to be unjust and unreasonable.¹³ The Commission also found that, to assist the Commission in performing its duty to ensure just and reasonable rates, it may be necessary for

¹² KU Requirements Customers are comprised of the Frankfort Electric and Water Plant Board and the Cities of Barbourville, Bardstown, Bardwell, Benham, Berea, Corbin, Falmouth, Madisonville, Nicholasville, Paris, and Providence, Kentucky.

¹³ July 17 Order, 148 FERC ¶ 61,031 at P 12.

LG&E/KU to provide the Commission with all such information reasonably necessary to review and evaluate the implementation of the formula rate and the costs that would flow through the formula rate. Therefore, to afford adequate opportunity for participation and access to information, the Commission directed LG&E/KU to propose formula rate protocols that provide all interested parties and the Commission with access to information about the annual updates as directed by the Commission in the MISO Investigation Order and MISO Compliance Order, or show cause why they should not be required to do so.

b. LG&E/KU Compliance Filing

10. LG&E/KU argue that the proposed protocols submitted with their compliance filing comply with the Commission's directives to include all interested parties in information exchange and review processes. Specifically, the protocols state that the term "Interested Party" includes, but is not limited to, customers under the Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorneys general.¹⁴ LG&E/KU state that Interested Parties have the right to participate in open annual meetings, submit information requests and make Informal and Formal Challenges.

c. Commission Determination

11. We find that LG&E/KU's proposed definition of Interested Parties provides sufficient scope of participation for their protocols and will, therefore accept this proposed revision, with no further modifications.

2. Transparency

a. July 17 Order

12. In the July 17 Order, the Commission found that, due to the lack of formula rate protocols in LG&E/KU's Tariff, interested parties are not provided with the information necessary to understand and evaluate the implementation of the formula rate for either the correctness of inputs and calculations or the reasonableness and prudence of the costs to be recovered in the formula rate, which would form the basis of any potential challenge.¹⁵ Therefore, the Commission directed LG&E/KU to propose formula rate protocols to provide interested parties the information necessary to understand and evaluate the implementation of the formula rate for both the correctness of inputs and calculations,

¹⁴ LG&E/KU Compliance Filing at 4.

¹⁵ *Id.* at 17-18.

and the reasonableness and prudence of the costs to be recovered in the formula rate, as directed by the Commission in the MISO Investigation Order and MISO Compliance Order,¹⁶ or show cause why they should not be required to do so.

b. LG&E/KU Compliance Filing

13. LG&E/KU state that their proposed protocols meet the transparency requirements of the July 17 Order. They explain that, on or before June 1 of each rate year, LG&E/KU will calculate their revenue requirement applicable to the upcoming rate year, which is the period beginning on June 1 of that year and continuing through May 31 of the subsequent year. LG&E/KU's proposed protocols require LG&E/KU to cause such information to be posted on the public area of LG&E/KU's Open Access Same Time Information System (OASIS). If such date falls on a weekend or holiday recognized by the Commission, the posting is due on the next business date. The date such posting occurs is defined as the Publication Date.¹⁷

14. LG&E/KU also state that, in order to ensure that both the formula rate and LG&E/KU's inputs and development of their revenue requirement are transparent, the protocols provide a detailed listing of the information that must be posted on LG&E/KU's OASIS. Consistent with the Commission's findings in the MISO Investigation Order, the protocols require LG&E/KU to provide workable spreadsheets with all links and formula intact. The protocols also require LG&E/KU to provide additional information, including supporting documents and workpapers for data that is not available in LG&E/KU's FERC Form No. 1, which includes sufficient information to enable interested parties to replicate the calculation of the formula results and identify any changes to the page and line number in the formula references. Additionally, the protocols require LG&E/KU to include underlying data for formula rate inputs that provide greater granularity than is required for the FERC Form No. 1.¹⁸

15. LG&E/KU state that, as directed by the Commission in the MISO Investigation Order and MISO Compliance Order and consistent with the current MISO protocols, LG&E/KU will hold an open annual meeting for interested parties between the publication date and September 1, and provide notice of the time, date, and location of

¹⁶ July 17 Order, 148 FERC ¶ 61,031 at P 18 (citing MISO Investigation Order, 143 FERC ¶ 61,149 at PP 81-92; MISO Compliance Order, 146 FERC ¶ 61,212 at PP 58-73).

¹⁷ LG&E/KU Compliance Filing at 5.

¹⁸ *Id.* at 6.

the annual meeting on the public area of LG&E/KU's OASIS and via an email exploder list. They explain that the annual meeting will permit LG&E/KU to explain and clarify their annual update and provide interested parties an opportunity to seek information and clarifications from LG&E/KU about the annual update and related calculations.¹⁹

16. LG&E/KU's proposed protocols also require that LG&E/KU identify "material" accounting changes, as defined in the protocols, which are those accounting changes "during the rate period that affect inputs to the formula rate or the resulting charges billed under the formula rate."²⁰ LG&E/KU state that the categories of information subject to identification in this section are consistent with those listed in the MISO Investigation Order and MISO Compliance Order and in MISO's protocols as currently proposed. LG&E/KU's proposed protocols also include detailed information exchange procedures, which allow interested parties to seek additional information concerning material accounting changes, the proper application of the formula rate, and the accuracy of the data, as well as to evaluate the prudence of the actual costs.

17. LG&E/KU acknowledge that, in the MISO Compliance Order, the Commission required MISO to remove "Material" from all instances of the term "Accounting Changes."²¹ They assert that the Commission's reasoning for requiring this change was that, by adding a concept of materiality to the accounting changes that must be disclosed, transmission owners could reduce the transparency of financial information used in formula rate billings without sufficient support.²² But, LG&E/KU note that the Commission also stated that "[t]he MISO Transmission Owners have not defined in the proposed protocols how the concept and threshold of materiality would be applied to the transmission revenue requirement, which can lead to varying interpretations by transmission owners and excludes the input of interested parties."²³ LG&E/KU have included in their proposed protocols a definition of "material accounting change":

"Material Accounting Change" shall mean a material change in LG&E/KU's accounting policies and practices (as such are defined by the Accounting Standards Codification Topic 250,

¹⁹ *Id.*

²⁰ *Id.* (citing MISO Investigation Order, 143 FERC ¶ 61,149 at P 87).

²¹ LG&E/KU Compliance Filing at 6.

²² *Id.* (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 65).

²³ *Id.*

Accounting Changes and Error Corrections issued by the Financial Accounting Standards Board [(FASB)] from those in effect for the year in which the immediately preceding Annual Update was based. Any Material Accounting Change shall be implemented prospectively only.^[24]

18. LG&E/KU argue that they have based this approach on a materiality standard in formula rate protocols recently accepted elsewhere by the Commission.²⁵ The Accounting Standards Codification Topic 250 provides detailed guidelines from the Securities and Exchange Commission (SEC) Staff regarding the quantitative and qualitative analysis a reporting entity should apply when determining materiality. LG&E/KU assert that this definition of material accounting changes maintains for interested parties the transparency of financial information used in the formula rate, and therefore addresses the concerns identified by the Commission in the MISO Investigation Order.²⁶

19. Finally, under LG&E/KU's proposed protocols, interested parties have until December 1 to submit information and document requests. They explain that this six-month period will provide interested parties with adequate time to review information, and is consistent with what the Commission stated in the MISO Investigation Order and MISO Compliance Order.²⁷ Under the proposed protocols, LG&E/KU must make a good faith effort to respond to these requests within 15 business days of receipt, with LG&E/KU required to provide all responses by no later than January 10. LG&E/KU propose a deadline to submit informational filings to the Commission of March 15 of each year. Lastly, LG&E/KU shall cause all information requests from interested parties and LG&E/KU's responses to be posted on OASIS.

²⁴ *Id.* at 7.

²⁵ *Id.* (citing Offer of Settlement of Maine Public Service Company, Docket Nos. ER12-1650-000, -001 and EL12-76-000, - 001, Attachment J Formula Rate Protocols, Section II (Mar. 5, 2013), *accepted, Maine Public Service Company*, 144 FERC ¶ 61,116 (2013) (*Maine Public Service*)). LG&E/KU state that they are taking a similar approach to Maine Public Service Company, but are referring to more recently updated Financial Accounting Standards Board guidelines on material changes for the basis of their materiality standard.

²⁶ *Id.*

²⁷ *Id.* (citing MISO Investigation Order, 143 FERC ¶ 61,149 at P 91).

c. Protests

20. AMP argues that LG&E/KU's proposed protocols omit, without explanation, language that was included in the MISO Transmission Owners' protocols to address certain obligations arising from participation in a regional cost-sharing mechanism pursuant to Order No. 1000.²⁸ AMP assumes that the omission is based on the belief that LG&E/KU will not be parties to such an arrangement because they are not members of a regional transmission organization (RTO). However, AMP argues that RTO membership is not the only scenario under Order No. 1000 in which a regional cost-sharing mechanism might be adopted. AMP suggests that such a mechanism might be adopted in connection with the development of a large transmission upgrade that has benefits in non-RTO regions as well. Thus, AMP reasons that the omitted language might be important for LG&E/KU transmission customers in the future, and it should not be omitted just because it might not be operative in the current circumstances.²⁹

21. AMP also opposes proposed paragraph II.D.8 of the protocols whereby LG&E/KU would be required to notify customers of a change in accounting only if it were "material."³⁰ AMP states that LG&E/KU acknowledge that the Commission rejected a materiality qualifier in the MISO Compliance Order, and AMP disputes LG&E/KU's justification for this deviation from the MISO Compliance Order. First, AMP argues that LG&E/KU's reliance on *Maine Public Service* is misplaced, because the Commission stated that its approval of the settlement did not constitute approval of, or precedent regarding, any principle or issue involved in that proceeding.³¹ Second, AMP notes that the Commission's order accepting the settlement in *Maine Public Service* predates by

²⁸ See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom., S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

²⁹ AMP Protest at 6-7.

³⁰ AMP states that the limitation on the imposition of obligations to material accounting changes carries over into paragraphs III.A.1, IV.B.1.c.i, IV.C, and VI.A of the LG&E/KU protocols.

³¹ AMP Protest at 3-4 (citing *Maine Public Service*, 144 FERC ¶ 61,116 at P 11).

several months the MISO Compliance Order, which directly addressed and rejected the MISO Transmission Owners' use of a "materiality" qualifier.³²

22. Third, AMP disputes LG&E/KU's claim that they could resolve the Commission's concern about the lack of detail of how the concept and threshold of materiality would be applied through LG&E/KU's proposed definition of "material accounting change." This definition ties the materiality determination to Topic 250 of the FASB Accounting Standards Codification. AMP argues that, to the extent the FASB Accounting Standards Codification addresses the matter of assessing materiality, it simply cross-references SEC Staff Accounting Bulletin No. 99.³³ AMP asserts, however, that the SEC Staff accounting bulletin rejects any sort of quantitative threshold that would define "materiality," noting instead that "[e]valuation of materiality requires a registrant and its auditor to consider all the relevant circumstances" and that "[q]ualitative factors may cause mistreatments of quantitatively small amounts to be material."³⁴ According to AMP, the SEC Staff also notes that, in the relevant literature, "[t]he predominant view is that materiality judgments can properly be made only by those who have all the facts."³⁵ AMP argues that, in the context of LG&E/KU's protocols, the use of materiality as a qualifier would allow LG&E/KU complete discretion to decide which accounting change satisfies the qualitative as well as quantitative factors germane to materiality. AMP asserts that transmission customers would not be in a position to challenge that determination, because: (1) if LG&E/KU decide an accounting change is not material, transmission customers would not be advised of the change in the annual update; and (2) even if transmission customers were to learn of the change, they will not have the facts that might equip them to challenge LG&E/KU's determination of non-materiality.³⁶

23. Kentucky Municipals also object to LG&E/KU's proposal to identify in their update only "material" accounting changes instead of all accounting changes. They cite the MISO Compliance Order in which the Commission directed the MISO Transmission Owners to remove the word "material" from all instances of the phrase "material

³² *Id.* at 4 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 65).

³³ *Id.* (citing FASB Accounting Standards Codification Topic 250, paragraph 855-1, at <https://asc.fasb.org/section&trid=2558582#d3e28003-122692>).

³⁴ *Id.* (quoting SEC Staff Accounting Bulletin No. 99, at <http://www.sec.gov/interps/account/sab99.htm> at 4.).

³⁵ *Id.* (quoting SCE Staff Accounting Bulletin No. 99 at 3).

³⁶ *Id.* at 4-5.

accounting changes” in their protocols. Kentucky Municipals note that the Commission explained that: (1) the MISO Investigation Order required disclosure of any accounting change; (2) adding the concept of materiality reduces transparency; and (3) the lack of definition for materiality can lead to varying interpretations.³⁷

24. Kentucky Municipals dispute LG&E/KU’s contention that the proposed definition for “material accounting change” addresses the Commission’s concerns. They contend that, while adding LG&E/KU’s proposed “material accounting change” definition reduces the likelihood of varying interpretations, it does not eliminate the risk. More importantly, according to Kentucky Municipals, it does not address the Commission’s first point that any accounting change must be identified as part of a transparent formula rate. In addition, they argue that the proposed definition does not address the fundamental problem of excluding interested parties from having input on what is relevant.³⁸

25. In addition, Kentucky Municipals argue that good public policy dictates that all accounting changes be reported, because customers and other interested parties should have the opportunity to decide for themselves if they wish to challenge the impact of any accounting change. Also, Kentucky Municipals assert that some accounting changes could have a non-material impact in the year they are made, but have material impact in future rate years. For example, they state that an accounting change made late in the year might not have a significant dollar impact until the following year.³⁹

26. AMP also requests some language changes to make LG&E/KU’s proposed protocols clearer or more precise. Regarding section II.D.4, AMP asserts that a reference to data not otherwise available in FERC Form No. 1 should be moved to a different place in the sentence to read, “Provide sufficient information including any data not otherwise available in the FERC Form No. 1, to enable interested parties (as that term is defined in Section II.E of these protocols) to replicate the calculation of the formula results.”

27. AMP requests that the provision in section III.A.4, “that the charges shown in the Annual Update have been calculated with accurate data and in a manner consistent with the formula rate,” be changed to read, “whether the charges shown in the Annual Update have been calculated using correct and accurate data, and whether the calculations

³⁷ Kentucky Municipals Protest at 5-6 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 65).

³⁸ *Id.* at 6.

³⁹ *Id.* at 7.

underlying those charges have been performed in a manner consistent with the formula rate.” AMP requests this change because: (1) data may be accurate but not the correct data for a specific purpose; and (2) the use of correct/accurate data and performance of the calculations are two distinct questions.

d. Answer

28. LG&E/KU contend that the materiality standard for identifying accounting changes in their proposed protocols is just and reasonable and satisfies the Commission’s directives in the MISO Compliance Order.⁴⁰ LG&E/KU argue that, while the Commission required disclosure of “any” accounting changes, it did so because the MISO Transmission Owners had not defined in their proposed protocols how the concept and threshold of materiality would be identified in each year’s annual update. LG&E/KU explain that, by contrast, their filing defines “material accounting change.” LG&E/KU also argue that the Topic 250 of FASB Accounting Standards Codification on which the proposed materiality definition rests and which provides guidelines from the SEC regarding the quantitative and qualitative analysis a reporting entity should apply when determining materiality, is sufficient. LG&E/KU contend that Topic 250 of FASB Accounting Standards Codification standards’ combination of quantitative and qualitative analyses that make up the materiality standard will ensure that interested parties are informed of changes that have a significant impact on the calculation of charges under their formula rates.⁴¹

29. LG&E/KU argue that the materiality condition is particularly appropriate with respect to the requirement in proposed section II.D.8.a that accounting changes be disclosed that represent a “correction of errors and prior period adjustments that impact the revenue requirement.” LG&E/KU explain that they make numerous minor adjustments or corrections each year that would have “miniscule” impacts on revenue requirement, but are extremely difficult to track accurately.⁴² LG&E/KU state that these include routine activities such as correcting the account to which an invoice was charged or accruing in January the costs for work that outside contractors performed in December. They argue that, without the materiality standard, it would be onerous for LG&E/KU and its customers to track and report all past period adjustments. LG&E/KU also contend

⁴⁰ LG&E/KU Answer at 6 (citing MISO Transmission Owners’ Compliance Order at 65).

⁴¹ *Id.* at 10.

⁴² *Id.* at 8.

that, as entities regulated by the SEC, they are already held to exceptionally high accounting standards. Removing the materiality standard, according to LG&E/KU, would hold them into an even higher standard than normal reporting requirements do.

30. In response to AMP's contention that LG&E/KU should not have removed language about regional cost sharing from their protocols, LG&E/KU argue that they deleted such language because it applies to regional cost sharing that is specific to MISO transmission owners and regional planning under the MISO Tariff. LG&E/KU contend that the language was added to the MISO Transmission Owners' protocols based on the Organization of MISO States' concern that the costs of certain regional projects may be recovered from more than one MISO Transmission Owner, such that a joint meeting would be more efficient. LG&E/KU assert that, in compliance with the requirements of Order No. 1000, they are members of the Southeastern Regional Transmission Planning Process regional planning group, and may at some point develop or be allocated costs associated with a regional transmission project. LG&E/KU argue that the costs would likely be recovered pursuant to the Attachment O formula rate and it is not clear why they would need to hold a separate meeting to discuss recovery of such costs. LG&E/KU also argue that they omitted language regarding joint meetings because such language is appropriate in an RTO context where all impacted transmission owners are governed by a single tariff. Additionally, according to LG&E/KU, the formula rate protocols under LG&E/KU's Tariff only govern LG&E/KU's activities in calculating charges pursuant to the formula rate, and do not address rates charged by other Southeastern Regional Transmission Planning Process members. Thus, according to LG&E/KU, even if LG&E/KU included the provision regarding joint meetings in their proposed protocols, there is no mechanism under the LG&E/KU tariff for members of the Southeastern Regional Transmission Planning Process to participate in such meetings.⁴³

31. LG&E/KU state that they do not object to making AMP's requested modification of section II.D.4 regarding the provision of sufficient information. LG&E/KU note, however, that the proposed change would be duplicative of section II.D.3, which states that LG&E/KU is to "[p]rovide the formula rate calculations and inputs thereto, as well as supporting documentation and workpapers for data that are used in the formula rate that are no longer available in the FERC Form No. 1."⁴⁴ LG&E/KU also do not object to making AMP's proposed modification of section III.A.4, regarding the calculation of charges shown in the annual update.⁴⁵

⁴³ *Id.* at 13-14.

⁴⁴ *Id.* at 15.

⁴⁵ *Id.* at 16.

e. **Commission Determination**

32. We find that the provisions in LG&E/KU's proposed protocols relating to transparency generally comply with the directives of the July 17 Order. We therefore conditionally accept them, subject to further compliance, as discussed below.

33. We find that LG&E/KU should include tariff language regarding joint meetings with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects subject to the same regional cost allocation. Despite not being members of an RTO, LG&E/KU recognize that as members of the Southeastern Regional Transmission Planning Process regional planning group, they may at some point develop regional transmission projects whose costs may be recovered through their formula rate. A joint meeting with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects that they develop that are subject to the same regional cost allocation would be an efficient way for such transmission owners to conduct annual meetings to discuss their annual updates, so that parties interested in the annual updates of multiple transmission owners with projects subject to the same regional cost allocation do not have to separately participate in each transmission owner's annual meeting.⁴⁶ This could ease the burden of both transmission customers and owners by limiting the number of annual meetings necessary.⁴⁷ We agree with AMP that a provision for joint meetings should not be omitted just because it might not be operative under current circumstances. Accordingly, we will direct LG&E/KU to include a requirement, in the compliance filing ordered below, that they endeavor to coordinate with other transmission owners using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism and hold joint meetings to enable all interested parties to understand how those transmission owners are implementing their formula rates for recovering the costs of such projects.⁴⁸

⁴⁶ MISO Compliance Order, 146 FERC ¶ 61,212 at P 59.

⁴⁷ *Id.* While we recognize that the formula rate protocols under LG&E/KU's Tariff only govern LG&E/KU's annual updates, we expect other public utility transmission owners using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism to cooperate in coordinating to hold joint meetings.

⁴⁸ LG&E/KU would not need to coordinate with transmission owners that do not use formula rates and thus do not update their rates each year.

34. We also will require that LG&E/KU's formula rate protocols include language to provide remote access to their annual update meetings. We find it reasonable to allow for remote access to ease burdens (e.g., travel costs) to ensure all interested parties have the opportunity to participate in the meetings. We will therefore direct LG&E/KU to modify their formula rate protocols to explicitly require remote access for participation at annual update meetings.

35. We also find that LG&E/KU should not filter the accounting changes disclosed to interested parties by establishing materiality limits. In the MISO Investigation Order, the Commission directed that the formula rate protocols disclose "any" change in accounting during the rate period that affects inputs to the formula rate or the resulting charges billed under the formula rate.⁴⁹ Subsequently, in the MISO Compliance Order, the Commission rejected the MISO TOs' proposed use of the materiality standard with respect to accounting changes, noting that the concept and threshold of materiality was not defined in the proposed protocols, which can lead to varying interpretations by transmission owners and excludes the input of interested parties. LG&E/KU's proposed protocols attempt to address the concerns noted in the MISO Compliance Order by defining a "material accounting change" as those defined by the Topic 250 of FASB Accounting Standards Codification. However, we find that reliance on this accounting literature does not meet the transparency needs of the Commission and interested parties.

36. Specifically, we note that Topic 250 of FASB Accounting Standards Codification provides guidance on assessing materiality that is applied by a company's financial management or independent auditor, and relies considerably on their professional judgment. As noted by AMP, this application of Topic 250 by LG&E/KU for the purpose of disclosing accounting changes that affect formula rate charges gives LG&E/KU sole discretion to determine which items are material.⁵⁰ LG&E/KU state that they would inform interested parties of accounting changes they determine to have a significant impact on charges under the formula rate but that accounting changes that they determine to be miniscule would not be disclosed. We find LG&E/KU's proposed protocols on this matter to be problematic because they have not defined the threshold or process of determining what has a miniscule or significant impact on formula rate charges and have not sought the input of interested parties. Furthermore, under LG&E/KU's proposed protocols, interested parties would not have any disclosure of accounting changes affecting formula rate charges that LG&E/KU determines not to be material. Therefore, we find LG&E/KU's application of materiality reduces the

⁴⁹ MISO Investigation Order, 143 FERC ¶ 61,149 at P 87.

⁵⁰ *Supra* P 20.

transparency of financial information used in formula rate billings. Consistent with the Commission's determination in the MISO Investigation Order, we will direct LG&E/KU to revise their protocols to require disclosure of any accounting changes that affect inputs to the formula rate as part of their annual updates.

37. Finally, we will direct LG&E/KU to make the clarifying revisions to sections II.D.4 and III.A.4, as proposed by AMP, which LG&E/KU in their answer agreed to make.

38. We find that LG&E/KU complies with the Commission's directives in the July 17 Order to file an annual informational filing. We remind LG&E/KU, consistent with the directives in the NIPSCO and Southern Indiana Second Compliance Orders,⁵¹ that they are required to file their annual informational filing in a new docket each year.

3. Challenge Procedures

a. July 17 Order

39. In the July 17 Order, the Commission found that because the formula rate contained in LG&E/KU's Tariff lacked protocols, that there were no challenge provisions to allow interested parties to informally resolve disputes related to implementation of the formula rates or, in the event disputes are not resolved informally, to bring formal challenges to the Commission without needing to file a formal complaint with the Commission. The Commission has stated that interested parties must be afforded the ability to challenge a transmission owner's annual update and resolve related disputes through straightforward and defined procedures. Accordingly, the Commission found that LG&E/KU's formula rate appeared to be unjust and unreasonable. Therefore, the Commission directed LG&E/KU to propose formula rate protocols that provide specific procedures for informal and formal challenges, as provided by the MISO Investigation Order and MISO Compliance Order, or show cause why they should not be required to do so.⁵²

⁵¹ See NIPSCO Second Compliance Order, 150 FERC ¶ 61,022 at P 17; Southern Indiana Second Compliance Order, 150 FERC ¶ 61,023 at P 18.

⁵² July 17 Order, 148 FERC ¶ 61,031 at PP 21-22 (citing MISO Investigation Order, 143 FERC ¶ 61,149 at PP 118,103-123; MISO Compliance Order, 146 FERC ¶ 61,212 at PP 103-117).

b. LG&E/KU Compliance Filing

40. LG&E/KU state that section IV of LG&E/KU's proposed protocols contains structured, well-defined challenge procedures that follow the guidance provided in the MISO Investigation Order and MISO Compliance Order. The protocols allow interested parties a period between the publication date and January 31 to review the data and supporting material provided by LG&E/KU and to notify LG&E/KU of any informal challenge. LG&E/KU state that this review period provides interested parties with a reasonable period of time in which to raise informal challenges, and is consistent with the informal challenge period approved in the MISO Investigation Order and MISO Compliance Order. The protocols require LG&E/KU to appoint a senior representative to work with the party that submitted the informal challenge (or its representative) to resolve the challenge.⁵³

41. LG&E/KU's proposed protocols also specify the manner and procedures for submitting informal and formal challenges, based on MISO's protocols (as currently proposed), and the Commission's requirements in the MISO Investigation Order and MISO Compliance Order. Specifically, a party raising an informal challenge must specify "the inputs, supporting explanations, allocations, calculations, or other information to which it objects, and provide an appropriate explanation and documents to support its challenge." Informal and formal challenges are also limited to: (1) the extent or effect of a material accounting change; (2) whether the annual update fails to include data properly recorded in accordance with the protocols; (3) the proper application of the formula rate and procedures in the protocols; (4) the accuracy of data and consistency with the formula rate of the charges shown in the annual update; (5) the prudence of actual costs and expenditures; (6) the effect of any change to the underlying Uniform System of Accounts or LG&E/KU's FERC Form No. 1; and (7) any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula. To provide even greater transparency and promote efficiency, the protocols require LG&E/KU to post all informal challenges from interested parties and LG&E/KU's response to such informal challenges, subject to the applicable confidentiality protections under the Tariff.⁵⁴

42. LG&E/KU's proposed protocols state that any changes or adjustments to the annual update resulting from the information exchange and informal challenge processes that LG&E/KU agree to make will be reported in the annual Informational Filing and reflected in the annual update in the following rate year, with interest. LG&E/KU

⁵³ LG&E/KU Compliance Filing at 8.

⁵⁴ *Id.* at 8-9.

explain how the interest associated with any such adjustment that is carried over to the following rate year is to be calculated. LG&E/KU state that this provision is identical to what has been approved in the MISO Second Compliance Order and provides a well-defined process for adjusting LG&E/KU's future rates to the extent any changes arise from a challenge.⁵⁵

43. LG&E/KU also contend that their proposed protocols provide structured and well-defined requirements for formal challenges, which must be made by March 31 of each year. Consistent with the MISO Compliance Order, LG&E/KU's proposed protocols detail specifically the filing requirements that an interested party must satisfy in submitting a formal challenge to the Commission.⁵⁶ Interested parties filing formal challenges will be required to identify the alleged violation and explain how it violates the filed rate, how it impacts the interested party, and the specific relief requested, and will be required to include any relevant documents or other information necessary to support their formal challenge. The formal challenge procedures also specify the requirements for serving the formal challenge on LG&E/KU.

44. LG&E/KU's proposed protocols also state that, except as expressly provided otherwise, nothing in the protocols is intended to limit the rights of LG&E/KU to file unilaterally under section 205 of the FPA⁵⁷ to change the applicable formula rate or any of its inputs or to replace the formula rate with a stated rate, or the right of any other party to request such changes pursuant to section 206. The protocols also provide that no party can use the challenge procedures to seek to modify the formula rate, and that the annual update is not subject to challenge for the purpose of modifying the formula rate. Instead, any modifications to the formula rate will require the appropriate filing pursuant to sections 205 or 206 of the FPA. LG&E/KU state that these provisions are also consistent with the purpose of the protocols, which is to allow challenges to the implementation of the formula rate rather than to the formula rate itself, which is the filed rate, and consistent with the MISO protocols approved by the Commission.⁵⁸

⁵⁵ *Id.*

⁵⁶ *Id.* (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 112).

⁵⁷ 16 U.S.C. § 824d (2012).

⁵⁸ *Id.* (citing MISO Investigation Order, 143 FERC ¶ 61,149 at P 82).

c. Protests

45. AMP opposes LG&E/KU's proposed deviation from the language of the MISO protocols with respect to the requirements for stating an informal challenge in section IV.A.2 of LG&E/KU's proposed protocols. AMP contends that LG&E/KU offer no insight into why they consider it necessary to change from the MISO protocols' requirement to provide "an appropriate explanation and documents" to support a challenge to a requirement to provide "a detailed and sufficient" explanation and documents to support a challenge. AMP states that the proposed language is more strict and more subjective than the language from the MISO protocols accepted by the Commission.⁵⁹ In addition, AMP requests two minor corrections: (1) in the second line of section IV.B.1.g, the word "attainable" should be changed to "obtainable;"⁶⁰ and (2) in the penultimate line of section IV.B.2, the reference to "LG&E's Informational Filing" should be changed to "LG&E/KU's Informational Filing."

d. Answer

46. LG&E/KU explain that their rationale for changing "appropriate" to "detailed and sufficient" was that the term "appropriate" is vague in the context of an interested party following the protocols by providing "appropriate explanation and documents to support its challenge." LG&E/KU argue that "detailed and sufficient" is no more subjective than "appropriate" and that their intent was not to make it more difficult for interested parties to raise informal challenges.⁶¹ LG&E/KU also argue that, in order to address an informal challenge, they must have enough information to understand the challenge and craft a satisfactory response. Additionally, LG&E/KU contend that, were they to not respond to an informal challenge because they deem it "insufficient," the interested party could still make a formal challenge. Finally, LG&E/KU assert that their proposed language is consistent with the Commission's requirements that they include, in their protocols,

⁵⁹ AMP Protest at 5.

⁶⁰ AMP notes that "attainable" is the word used in the MISO protocols, but AMP asserts that "obtainable" appears to be more in line with the intent. AMP states that deviation from the MISO protocols language would therefore be appropriate in this instance lest the original error be propagated and carried forward. *Id.* at 8, n.8.

⁶¹ LG&E/KU Answer at 11.

specific procedures for both formal and informal challenges.⁶² Finally, LG&E/KU do not object to AMP's proposed revisions to correct errors in sections IV.B.1.g and IV.B.2.⁶³

e. **Commission Determination**

47. We find that the provisions in LG&E/KU's proposed protocols relating to challenge procedures generally comply with the Commission's directives in the July 17 Order. We therefore conditionally accept them, subject to further compliance, as discussed below.

48. Consistent with the Commission's directives in the MISO Second Compliance Order, we will require LG&E/KU to add language which states that an interested party must submit an informal challenge *on any issue* in order to submit a formal challenge.⁶⁴ We find that this modification will lend clarity to interested parties that the subject of formal challenges does not need to be the same as an interested party's previous informal challenge. Therefore, we will direct LG&E/KU to revise section IV.F of their formula rate protocols, in the compliance filing order below, within 60 days of the date of this order.

49. We disagree with AMP's contention that LG&E/KU should revise their protocols to specify that informal challenges should provide "an appropriate" explanation and documents rather than LG&E/KU's proposed "a detailed and sufficient" explanation and documents. We find that the two are similar in effect and that a "detailed and sufficient" explanation would be "appropriate" such that either may be just and reasonable.⁶⁵

50. Consistent with the Commission's directives in the MISO Second Compliance Order, we find that the deadline for submitting a formal challenge should be extended to

⁶² *Id.* at 12 (citing July 17 Order, 148 FERC ¶ 61,031 at P 22).

⁶³ *Id.* at 16.

⁶⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 at P 49.

⁶⁵ *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (finding that the Commission's review is limited to determining whether a proposal is just and reasonable and not unduly discriminatory or preferential, not "whether a proposed rate schedule is more or less reasonable than alternative rate designs"); *see also Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that, under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate one").

a date that allows reasonable time for review of the informational filing by interested parties.⁶⁶ We find that LG&E/KU's proposed March 31 formal challenge deadline may not allow adequate review of the informational filing, which must be submitted by March 15. Thus, we will direct LG&E/KU in their compliance filing to revise their formula rate protocols to propose a date for any interested party to submit a formal challenge with the Commission that allows reasonable time for interested parties to review the informational filing.

51. Finally, we will direct LG&E/KU to make the clarifying revisions to sections IV.B.1.g, and IV.B.2, as proposed by AMP, which LG&E/KU agree to make in their answer.

The Commission orders:

(A) LG&E/KU's Compliance Filing is hereby conditionally accepted, effective January 1, 2015, as requested, as discussed in the body of this order.

(B) LG&E/KU are hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁶ 150 FERC ¶ 61,025 at P 55.