

148 FERC ¶ 61,034  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Kansas City Power & Light Company

Docket No. EL14-74-000

KCP&L Greater Missouri Operations Company

Docket No. EL14-75-000

ORDER ON FORMULA RATE PROTOCOLS

(Issued July 17, 2014)

1. In this order, pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> we direct Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company (GMO) to file revisions to their formula rate protocols under Southwest Power Pool, Inc.'s (SPP) Open Access Transmission Tariff (SPP Tariff), and direct GMO to file revisions to GMO's formula rate protocols under GMO's Open Access Transmission Tariff (GMO Tariff),<sup>2</sup> or show cause why they should not be required to do so.

**I. Background and Summary**

2. The Commission is responsible for ensuring that the rates, terms and conditions of service for wholesale sales and transmission of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential. It has been the

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<sup>1</sup> 16 U.S.C. § 824e (2012).

<sup>2</sup> While KCP&L's formula rate and formula rate protocols are only included in the SPP Tariff, GMO's formula rate and formula rate protocols are included in the GMO Tariff and the SPP Tariff. As all three formulas and protocols contain the same provisions, when referencing a particular provision, for economy we only cite the provision in one of the three tariffs, even though the same provisions are contained in all three tariffs.

Commission's policy to permit utilities to establish rates through formulas. We recognize that the integrity and transparency of formula rates and particularly formula rate protocols are critically important in ensuring just and reasonable rates, and especially so given that more utilities are using formula rates to recover the cost of their transmission investments.

3. Regarding formula rates, the Commission has stated that "the formula itself is the rate, not the particular components of the formula."<sup>3</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>4</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, 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>5</sup> The safeguard that has often been employed is formula rate protocols.

4. 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 and review of, 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.

5. The Commission has recently addressed formula rate protocols in a particular region. On May 17, 2012, the Commission instituted an investigation, pursuant to section 206 of the FPA, to determine whether the formula rate protocols under Attachment O of the Midcontinent Independent System Operator's (MISO) Open Access

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<sup>3</sup> *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,544 (1994).

<sup>4</sup> *Id.* at 61,545 (citing 16 U.S.C. § 824d (2012); *see also Ala. Power Co. v. FERC*, 993 F.2d 1557, 1567-68 (D.C. Cir. 1993)).

<sup>5</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).

Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) were sufficient to ensure just and reasonable rates.<sup>6</sup> In that order, the Commission identified three areas of concern: (1) scope of participation (i.e., who can participate in the information exchange); (2) the transparency of the information exchange (i.e., what information is exchanged); and (3) the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange (i.e., how the parties may resolve their potential disputes).<sup>7</sup>

6. After receiving comments from parties to the proceeding, on May 16, 2013, the Commission found that the formula rate protocols under the MISO Tariff were insufficient to ensure just and reasonable rates, and therefore, directed MISO and its transmission owners to file revised formula rate protocols to address the Commission's concerns about the scope of participation, the transparency of the information exchange, and the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange.<sup>8</sup> On March 20, 2014, the Commission conditionally accepted, subject to further compliance, MISO's proposed MISO Tariff revisions made in compliance with the MISO Investigation Order.<sup>9</sup> Among the requirements addressing the transparency of the information exchange, in the MISO Investigation Order, the Commission required MISO to include a provision in the formula rate protocols that transmission owners make annual informational filings of their formula rate updates with the Commission.<sup>10</sup>

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<sup>6</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *order on reh'g*, 146 FERC ¶ 61,209 (2014), *order on compliance*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order). In order to address whether MISO's *pro forma* formula rate protocols and the formula rate protocols of independent transmission owners are sufficient to ensure just and reasonable rates, the Commission established paper hearing procedures.

<sup>7</sup> 139 FERC ¶ 61,127 at P 8.

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

<sup>9</sup> MISO Compliance Order, 146 FERC ¶ 61,212. 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); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,211 (2014) (evaluating the compliance filing of Northern Indiana Public Service Company).

<sup>10</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 92.

7. The Commission has undertaken a review of the transmission formula rates and formula rate protocols of jurisdictional public utilities to identify utilities that currently are not required to make annual informational filings of their formula rate updates with the Commission, and identified KCP&L and GMO as two such utilities.<sup>11</sup> The Commission has also undertaken an analysis of the KCP&L/GMO formula rate protocols using the standards established in the MISO Investigation Order and MISO Compliance Order to determine if the KCP&L/GMO formula rate protocols meet the other requirements established in those orders. As further discussed below, based on that analysis, we find that the KCP&L/GMO formula rate protocols are deficient in the three areas of concern identified above, and thus appear to be unjust and unreasonable. Therefore, as discussed below, pursuant to section 206 of the FPA we direct KCP&L/GMO to file revisions to the 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.<sup>12</sup>

## II. Discussion

### A. Overview of KCP&L's and GMO's Formula Rate Protocols

8. KCP&L/GMO's protocols for their forward-looking rates provide that KCP&L/GMO shall determine their projected annual transmission revenue requirements for the next year by no later than September 24 of the current year.<sup>13</sup> KCP&L/GMO's formula rate protocols provide that KCP&L/GMO must post in an accessible location on KCP&L/GMO's and SPP's Open Access Same-Time Information System (OASIS) websites the annual updates and true-up adjustments each September 24 and June 1, respectively. KCP&L/GMO must provide such postings, as well as a populated formula rate formula template in fully functional spreadsheets showing the calculation of such annual update and true-up adjustments with documentation supporting such

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<sup>11</sup> In orders being issued concurrently, the Commission also directs the filing of formula rate protocols or revisions to the existing formula rate protocols of several other public utilities: *Black Hills Power, Inc.*, 148 FERC ¶ 61,035 (2014); *UNS Electric, Inc.*, 148 FERC ¶ 61,032 (2014); *The Empire District Electric Company*, 148 FERC ¶ 61,030 (2014); *Louisville Gas and Electric Company and Kentucky Utilities Company*, 148 FERC ¶ 61,031 (2014); *Westar Energy, Inc.*, 148 FERC ¶ 61,033 (2014).

<sup>12</sup> Concurrently with the issuance of this order, the Commission will post on its website general guidance for formula rate updates which will aid utilities in the preparation of their annual updates and annual update informational filings in order to avoid common deficiencies.

<sup>13</sup> KCP&L/GMO Formula Rate Protocols, section I.3(a).

calculations.<sup>14</sup> Further, KCP&L/GMO's formula rate protocols provide that the true-up adjustment for the prior rate year shall, as and to the extent specified in the SPP Tariff and GMO Tariff, provide sufficiently detailed supporting documentation for data and all adjustments thereto or allocations thereof that are used to develop the formula rates and are not otherwise available directly from the FERC Form No. 1.<sup>15</sup> The protocols require KCP&L and GMO to each notify its transmission customers and designated staff of the Missouri Public Service Commission (Missouri Commission) or the Kansas Corporation Commission (Kansas Commission), as appropriate, of the annual update posting and the true-up adjustment posting.<sup>16</sup>

9. The KCP&L/GMO protocols state that after the annual updates are posted on or before each September 24, "interested parties"<sup>17</sup> are to be afforded a 30-day information request period (starting on the annual update posting date), and that KCP&L/GMO each will make a good faith effort to respond to reasonable information requests within 10 days.<sup>18</sup> The KCP&L/GMO protocols also state that KCP&L/GMO must provide transmission customers and designated state commission staff at least 30 days advance notice of the annual update public meeting, which is held at least 10 days after the annual update posting, but no later than October 16. The protocols provide that, if changes to the annual updates are required, KCP&L/GMO must post a revised annual update no later than November 20.<sup>19</sup>

10. Similarly, the KCP&L/GMO protocols require KCP&L/GMO to each provide its transmission customers and designated state commission staff at least 30 days advance notice of the true-up adjustment meeting, which is held at least 10 days after the true-up posting, but no later than July 18.<sup>20</sup> The protocols each state that interested parties are to be afforded a 105-day information request period (starting on the true-up posting date) and that KCP&L/GMO will make a good faith effort to respond to reasonable information requests within 10 days.

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<sup>14</sup> *Id.*, section I.3(e).

<sup>15</sup> KCP&L/GMO Formula Rate Protocols, sections I.4(a) and I.4(d).

<sup>16</sup> *Id.*, section I.3(f).

<sup>17</sup> The undefined term "interested parties" is used throughout the KCP&L/GMO formula rate protocols.

<sup>18</sup> KCP&L/GMO Formula Rate Protocols, sections I.3(e) and I.3(g).

<sup>19</sup> *Id.*, section I.3(h).

<sup>20</sup> *Id.*, section II.1.

11. Additionally, the protocols provide interested parties a 150-day informal challenge period (also starting on the true-up posting date) that can be extended to 30 days after KCP&L's/GMO's last response to reasonable information requests.<sup>21</sup> If informal challenges to the true-up are not resolved within 60 days of the informal challenge period, the protocols provide a 30-day period for senior management of the interested parties and for KCP&L/GMO to make a good faith effort to resolve any outstanding issues.<sup>22</sup>

12. If the senior management review period does not resolve all of the outstanding issues, the interested parties may file a complaint pursuant to section 206 or 306 of the FPA<sup>23</sup> to formally challenge the true-up adjustment.<sup>24</sup> In any proceeding ordered by the Commission in response to such a formal challenge, KCP&L/GMO will bear the burden of proving that it has properly calculated the challenged true-up adjustment pursuant to the formula.<sup>25</sup> The protocols state that KCP&L/GMO each will bear the burden of proof in any proceeding ordered by the Commission in response to a formal challenge.<sup>26</sup> In the event that a formal challenge of KCP&L's or GMO's formula rates results in a refund or surcharge, the protocols state that there will be no mid-year rate adjustments and that the necessary adjustments shall be reflected, with interest, in the true-up adjustment and annual update for the following year.<sup>27</sup>

**B. Analysis of KCP&L's and GMO's Formula Rate Protocols and Findings**

13. Based on our examination, we find that KCP&L's and GMO's formula rate protocols do not meet the standards identified in the MISO Investigation Order and MISO Compliance Order. Specifically, we find three areas of concern with the KCP&L/GMO formula rate protocols. The areas of concern are categorized as follows: (1) scope of participation (i.e., who can participate in the information exchange); (2) the transparency of the information exchange (i.e., what is exchanged); and (3) the ability to

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<sup>21</sup> *Id.*, section II.2.

<sup>22</sup> *Id.*, sections III.1-III.2(a).

<sup>23</sup> 16 U.S.C. § 825e (2012).

<sup>24</sup> KCP&L/GMO Formula Rate Protocols, section III.2(a).

<sup>25</sup> *Id.*, section III.3.

<sup>26</sup> *Id.*, section III.3.

<sup>27</sup> *Id.*, section III.4.

challenge the transmission owners' implementation of the formula rate as a result of the information exchange (i.e., how the parties may resolve their potential dispute). Because the KCP&L/GMO formula rate protocols may each be deficient in the three identified areas, as further discussed below, we will direct KCP&L/GMO, pursuant to section 206 of the FPA, to each cause revisions to be filed to its formula rate protocols within 60 days or show cause why they should not be required to do so.

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

14. In the MISO Investigation Order, the Commission found that the MISO formula rate protocols inappropriately limit the ability of certain interested parties to obtain information and participate in review processes. As a result, the Commission directed MISO and the transmission owners to revise the formula rate protocols to include all interested parties in information exchange and review processes, including but not exclusive to customers under the MISO Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorneys general.<sup>28</sup> In the MISO Compliance Order, the Commission accepted MISO's proposed definition of interested parties.<sup>29</sup>

15. Similarly, the KCP&L/GMO formula rate protocols limit the ability of certain interested parties to obtain information about annual updates from transmission owners.<sup>30</sup> For example, only KCP&L/GMO's transmission customers and "designated" Missouri Commission and Kansas Commission staff participates in the true-up adjustment meeting.<sup>31</sup> Further, KCP&L/GMO allows "interested parties" to submit information requests and participate in the challenge procedures, but its protocols do not define the term "interested parties" to identify what parties can participate.

16. Based on our analysis, we find that the protocol language that limits the participation of interested parties in the review of the inputs to the formula rate and of the

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<sup>28</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 34.

<sup>29</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 18 (finding MISO's definition of interested parties as "all interested parties in information exchange and review processes, including but not exclusive to customers under the [MISO] Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorney[s] general" just and reasonable).

<sup>30</sup> See MISO Investigation Order, 143 FERC ¶ 61,149 at P 34 (where the Commission similarly found that "the MISO formula rate protocols...inappropriately limit the ability of certain interested parties to obtain information and participate in review processes and are, thus, unjust and unreasonable").

<sup>31</sup> KCP&L/GMO Formula Rate Protocols, section II.1.

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 KCP&L/GMO 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. Therefore, to afford adequate opportunity for participation and access to information, we direct KCP&L/GMO to revise their formula rate protocols to provide all interested parties and the Commission access to information regarding annual updates as provided by the MISO Investigation Order and the MISO Compliance Order, or show cause why they should not be required to do so.

## 2. Transparency

17. In the MISO Investigation Order, the Commission found that MISO's formula rate protocols provided insufficient transparency with respect to information about the transmission owners' costs and revenue requirements. The Commission found that the protocols must be revised to provide interested parties 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 of the costs to be recovered in the formula rate.<sup>32</sup> The Commission required transmission owners to annually post their revenue requirements and relevant information on both MISO's website and OASIS, and to hold an annual meeting open to all interested parties to review and discuss the posted information. The Commission stated that the annual update should include underlying data and calculations supporting all inputs that are not supported in the FERC Form No. 1 and provide information about the transmission owner's implementation of the formula rate in sufficient detail and with sufficient explanation to demonstrate that each input to the formula rate is consistent with the requirements of the formula rate, without forcing interested parties to make extensive data requests to understand the transmission owner's implementation of the formula and verify its correctness. The Commission further required transmission owners to disclose any accounting changes during the rate period that affect the inputs into the formula rate or the resulting charges, including accounting associated with any reorganization or merger transaction.<sup>33</sup>

18. The Commission also provided that, following the annual update, interested parties must be afforded the opportunity to review the information posted and submit reasonable information and document requests to the transmission owner, provided they are relevant to the implementation of the formula rate. They must also be allowed the opportunity to request further information regarding the transmission owner's accounting

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<sup>32</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 82.

<sup>33</sup> *Id.* PP 86-88.



practices to the extent the accounting impacts items included in the determination of the annual revenue requirement, and to obtain upon request information on procurement methods and cost control methodologies used by the transmission owner.<sup>34</sup> Further, the Commission required that transmission owners make a good faith effort to respond to information requests within a set, reasonable period of time.<sup>35</sup>

19. Additionally, the Commission required that transmission owners make annual informational filings of their formula rate updates with the Commission. The Commission stated that the informational filing must be made following the information exchange period and must include any corrections or adjustments made during that period. The Commission also required that the informational filing note any aspects of the formula rate or its inputs that are the subject of an ongoing dispute under the challenge procedures. The Commission found that the MISO formula rate protocols must specifically provide that the informational filing include the information that is reasonably necessary to determine: (1) that input data under the formula rate is properly recorded in any underlying workpapers; (2) that the transmission owner has properly applied the formula rate and the procedures in the protocols; (3) the accuracy of data and the consistency with the formula rate of the actual revenue requirement and rates (including any true-up adjustment) under review; (4) the extent of accounting changes that affect formula rate inputs; and (5) the reasonableness of projected costs included in the projected capital addition expenditures (for forward-looking formula rates).<sup>36</sup>

20. In the MISO Compliance Order, the Commission conditionally accepted MISO's compliance filing subject to further revisions. In particular, among other things, the Commission required MISO to: (1) provide electronic notice of the annual update/true-up postings; (2) to propose a process for transmission owners with transmission projects that use a regional cost sharing methodology to coordinate and hold joint meetings; and (3) to revise the protocols to ensure that the forward-looking protocols apply to the projected revenue requirement, in addition to the true-up revenue requirements. In addition, the Commission required revisions to the provision relating to mergers and reorganizations, so as to not limit its applicability to mergers or reorganizations that required the submission of a filing under sections 203 or 205 of the FPA.<sup>37</sup>

21. Based on our analysis, we find that the KCP&L/GMO formula rate protocols do not provide all interested parties with the information necessary to understand and

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<sup>34</sup> *Id.* PP 89-90.

<sup>35</sup> *Id.* P 91.

<sup>36</sup> *Id.* P 92.

<sup>37</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at PP 59-73.

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>38</sup> For example, KCP&L/GMO's formula rate protocols state that they will post their annual updates and true-up adjustments in an accessible location on KCP&L/GMO's and SPP's OASIS websites. However, in the MISO Investigation Order, the Commission held that transmission owners must post their revenue requirement and relevant information on both the RTO's website and OASIS to ensure accessibility to all interested parties.<sup>39</sup>

22. Furthermore, KCP&L/GMO's protocols do not explicitly require KCP&L/GMO to endeavor to hold a joint meeting with other SPP transmission owners to discuss transmission projects which utilize regional cost allocation.<sup>40</sup> In the MISO Compliance Order, the Commission noted that absent such a provision, an interested party would otherwise have to "separately participat[e] in each transmission owner's annual meeting," and that joint meetings "ease the burden of both transmission customers and owners by limiting the number of annual meetings necessary."<sup>41</sup> Accordingly, we direct KCP&L/GMO to propose, in their compliance filing, a process for KCP&L/GMO to endeavor to coordinate with other transmission owners that use a regional cost sharing mechanism and hold joint meetings to enable all interested parties to understand how KCP&L/GMO and the other transmission owners are implementing their formula rates to recover the costs of projects subject to such regional cost sharing. We find that this type of process will ease the burden on both transmission customers and owners by limiting the number of annual meetings necessary.

23. Further, the KCP&L/GMO protocols provide their transmission customers and any "designated" Missouri Commission or Kansas Commission staff electronic notice of the annual update/true-up postings. However, the KCP&L/GMO protocols do not provide any other interested party notification of such postings. In the MISO Compliance Order, the Commission directed MISO to provide through an email "exploder" list, notification of those postings. We will also require KCP&L/GMO to notify any interested party,

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<sup>38</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).

<sup>39</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 86.

<sup>40</sup> The Commission acknowledges that other SPP transmission owners' formula rate protocols may not require such efforts. In such instances, cooperation of such SPP transmission owners would be necessary for Westar to provide for joint meetings.

<sup>41</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 59.

through an email distribution list, of its postings related to the annual updates and, if appropriate, true-up adjustments.

24. Lastly, the KCP&L/GMO formula rate protocols currently do not provide a requirement for KCP&L/GMO to make annual informational filings with the Commission. In the MISO Investigation Order, the Commission directed MISO to include a requirement that transmission owners make annual informational filings of their formula rate updates with the Commission.<sup>42</sup> Therefore, to allow the Commission to perform its duty to ensure just and reasonable rates, information such as the annual updates, true-up adjustments, and data and workpapers sufficiently detailed to support such information must be filed with the Commission in the form of an annual informational filing.

25. Based on our analysis above, we find that KCP&L/GMO's formula rate protocols appear to be unjust and unreasonable. Therefore, we direct KCP&L/GMO to revise their formula rate protocols to provide interested parties the information necessary to understand and evaluate the implementation of the formula rate for both the correctness of inputs and calculations, and the reasonableness and prudence of the costs to be recovered in the formula rate, as provided by the MISO Investigation Order and MISO Compliance Order,<sup>43</sup> or show cause why they should not be required to do so.

### **3. Challenge Procedures**

26. In the MISO Investigation Order, the Commission found that the MISO formula rate protocols were insufficient in setting forth the specific challenge procedures. In order to ensure that transmission owners implement their annual updates in accordance with their Commission-approved formula rates, the Commission held 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.<sup>44</sup> In particular, the Commission stated that the MISO formula rate protocols must set out a procedure through which interested parties can informally challenge transmission owners' proposed inputs.<sup>45</sup> The Commission required that, at a minimum, such procedures permit interested parties to raise informal challenges for a reasonable period of time after transmission owners initially post their annual updates.<sup>46</sup> The Commission

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<sup>42</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 92.

<sup>43</sup> *Id.* at PP 81-92; MISO Compliance Order, 146 FERC ¶ 61,212 at PP 58-73.

<sup>44</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 118.

<sup>45</sup> *Id.* P 119.

<sup>46</sup> *Id.*

added that, where applicable, transmission owners must appoint senior representatives to work with interested parties to resolve informal challenges.<sup>47</sup> Furthermore, if, after a reasonable period of time, the parties are unable to resolve their dispute informally, interested parties must be permitted to raise a formal challenge with the Commission, in which the transmission owner would bear the burden of demonstrating the correctness of its update or true-up.<sup>48</sup>

27. In the MISO Compliance Order, the Commission conditionally accepted MISO's compliance filing subject to further revisions. Specifically, the Commission required, among other things: (1) additional revisions to MISO's proposed deadline for interested parties' submission of informal challenges in order to ensure an opportunity to evaluate all responses to information requests; (2) modification of the proposed six-issue limitation on challenges to ensure that all parties have the opportunity to raise issues as discussed in the order;<sup>49</sup> and (3) modifications to ensure that interested entities are not precluded from exercising their statutory rights.<sup>50</sup>

28. Based on our analysis, we find that the KCP&L/GMO formula rate protocols regarding challenge procedures do not fully provide the ability to challenge a transmission owner's annual update and resolve related disputes through straightforward and defined procedures, as provided by the MISO Investigation Order. At a minimum, the Commission required such procedures to permit interested parties to raise informal

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

<sup>48</sup> *Id.* P 120.

<sup>49</sup> The Commission directed the MISO transmission owners to modify section IV.D of their protocols to allow interested parties to raise all issues:

that may be necessary to determine: (1) the extent or effect of an accounting change; (2) whether the annual true-up fails to include data properly recorded in accordance with the protocols; (3) the proper application of the formula rate and procedures in the proposed protocols; (4) the accuracy of data and consistency with the formula rate of the calculations shown in the annual true-up; (5) the prudence of actual costs and expenditures; and (6) the effect of any change to the underlying Uniform System of Accounts or applicable form; or any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula.

MISO Compliance Order, 146 FERC ¶ 61,212 at P 107.

<sup>50</sup> *Id.* PP 103-117.

challenges for a reasonable period of time after annual updates are posted, in order to avoid the financial and informational burden associated with filing a formal challenge or with filing a complaint with the Commission pursuant to section 206 of the FPA. If, after a reasonable period of time, the parties are unable to resolve their dispute informally, interested parties must be permitted to raise a formal challenge with the Commission, in which the transmission owner would bear the burden of demonstrating the correctness of its update or true-up.<sup>51</sup> Such formal challenges are distinct from, and in addition to, the ability to file complaints pursuant to section 206 of the FPA.<sup>52</sup> Here, the informal challenge provisions within the KCP&L/GMO formula rate protocols appear to be applicable only to disputes related to true-up adjustments, and therefore may not be sufficient to allow interested parties to resolve any other disputes related to the implementation of the KCP&L/GMO formula rates as provided by the MISO Investigation Order. Further, KCP&L/GMO's protocols include provisions for formal challenges, but require that formal challenges be complaints filed pursuant to section 206 or 306 of the FPA.

29. Based on our analysis above, we find that KCP&L/GMO's protocols appear to be unjust and unreasonable. Therefore, we direct KCP&L and GMO to revise their formula rate protocols to provide specific procedures for challenges, as described above, sufficient to ensure that transmission customers pay just and reasonable rates as provided by the MISO Investigation Order and MISO Compliance Order,<sup>53</sup> or show cause why they should not be required to do so.

### C. Compliance Filing

30. Based on our analysis above, we find that the KCP&L/GMO formula rate protocols on file with the Commission appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we find that it is appropriate to institute investigations in these proceedings, in Docket No. EL14-74-000 and Docket No. EL14-75-000, to investigate KCP&L/GMO's formula rate protocols. We direct KCP&L/GMO to file revisions to the formula rate protocols within 60 days, or show cause why they should not be required to do so.

31. 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

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<sup>51</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 74.

<sup>52</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 109; *Midcontinent Independent System Operator, Inc.*, 146 FERC ¶ 61,210, at P 53 (2014).

<sup>53</sup> See MISO Investigation Order, 143 FERC ¶ 61,149 at PP 103-123; MISO Compliance Order, 146 FERC ¶ 61,212 at PP 103-117.

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>54</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 investigations in Docket No. EL14-74-000 and Docket No. EL14-75-000 is published in the *Federal Register*.<sup>55</sup>

32. 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>56</sup>

33. Any entity desiring to participate in Docket No. EL14-74-000 and Docket No. EL14-75-000, 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 (2013), within 30 days of publication of notice in the *Federal Register* of the Commission's initiation of section 206 proceedings in Docket No. EL14-74-000 and Docket No. EL14-75-000.

The Commission orders:

(A) Pursuant to section 206 of the Federal Power Act, KCP&L and GMO each must, within 60 days of the date of this order, submit revised formula rate protocols, or show cause why they should not be required to do so, as discussed in the body of this order.

(B) Any entity desiring to participate in Docket No. EL14-74-000 or Docket No. EL14-75-000 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

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<sup>54</sup> 16 U.S.C. § 824e(b) (2012).

<sup>55</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 confers the Commission with discretion and 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>56</sup> 16 U.S.C. § 824e(b) (2012).

Practice and Procedure, 18 C.F.R. § 385.214 (2013), within 30 days of publication of notice in the *Federal Register* of the Commission's initiation of section 206 proceedings in Docket No. EL14-74-000 and Docket No. EL14-75-000.

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL14-74-000 and in Docket No. EL14-75-000.

(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 )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.