

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

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**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)**  
**Duke Energy Indiana, Inc.**  
**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**

**REPLY BRIEF OF THE ORGANIZATION OF MISO STATES**

Pursuant to Rule 706 of the Commission’s Rules of Practice and Procedure<sup>1</sup> and the Order Initiating Investigation of Formula Rate Protocols and Establishing Paper Hearing Procedures issued by the Federal Energy Regulatory Commission (“Commission”) on May 17, 2012, (“May 17 Order”) in the above caption docket<sup>2</sup>, the Organization of MISO States (“OMS”) respectfully submits the following reply brief in this proceeding.

**I. INTRODUCTION**

On May 17, 2012, the Commission issued the May 17 Order launching an investigation pursuant to section 206 of the Federal Power Act to determine whether the formula rate protocols under the Midwest Independent Transmission System Operator, Inc’s (“MISO”) tariff are sufficient to ensure just and reasonable rates.<sup>3</sup>

On June 20, 2012, the OMS submitted its initial brief in this proceeding. In this reply brief, the OMS addresses portions of the initial briefs filed by Southwestern Electric Cooperative (“SWEC”), Interstate Power and Light Company (“IPL”), International Transmission Company (“ITC”), the Midwest Independent Transmission System Operator, Inc. (“MISO”) and the MISO Transmission Owners.

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<sup>1</sup> 18 C.F.R. § 385.706 (2011).

<sup>2</sup> *Order Initiating Investigation of Formula Rate Protocols and Establishing Paper Hearing Procedures*, 139 FERC ¶ 61,127 (2012).

<sup>3</sup> May 17 Order, at P 1.

## II. ARGUMENT

In their initial briefs, several commenters argue that the MISO's current Attachment O protocols are sufficiently transparent and provide opportunities for participation by interested parties who may review the publicly posted results and raise any concerns that they may have with the formula rate. These parties argue that the current formula rate protocols contained in MISO's tariff are sufficient to alleviate any concerns that the transmission charges developed through MISO's Attachment O formula rate template are unjust or unreasonable. Specifically, commenters justify their arguments on the basis that FERC Form 1 data is publicly available and that the formula rate templates are posted on the MISO website,<sup>4</sup> that MISO reviews the transmission owner's rate template, that there are opportunities for interested parties to challenge or discuss the formula rate calculations with the utility,<sup>5</sup> and that there is a MISO dispute resolution process available to address any unresolved issues concerning a formula rate input or calculation of the charge.<sup>6</sup>

As explained in more detail below, the OMS disagrees with the commenters and continues to urge the Commission to direct the MISO and the MISO transmission owners to amend both the *pro forma* and individual company formula rate tariff protocols to bring best industry practices to these tariffs, including but not limited to: (1) require that the annual updates of formula rate inputs and true-ups be submitted to the Commission as informational filings subject to comment by interested parties; (2) provide formal notice of each annual update to all interested parties; (3) require that sufficient information be provided in the annual updates to allow interested parties to confirm the calculations and understand changes made since the previous year's update; (4) allow interested parties to serve information requests on the

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<sup>4</sup> Initial Brief of MISO, at 4-9 and the MISO Transmission Owners, at 4-12.

<sup>5</sup> Initial Brief of MISO, at 6, 7 and 9 and the MISO Transmission Owners, at 10 and 12.

<sup>6</sup> Initial Brief of MISO, at 15 and the MISO Transmission Owners, at 24.

transmission owner to enable thorough analysis of the proposed changes; (5) create a process for interested parties to challenge the proposed input data and the prudence of costs proposed to be input into the formula; and (6) establish a formal dispute resolution process with Commission Staff oversight for disputes between interested parties and the transmission owner. During all stages of the process, regarding the justness and reasonableness of the charges that will flow from the formula rate, the burden of proof must not be shifted from MISO and the transmission owners where it rightly belongs.

**A. The Public Availability of FERC Form 1 Data is not Enough to Ensure Just and Reasonable Formula Rate Charges.**

Numerous commenters argue that FERC Form 1 data is publicly available for review and serves as an objective data source.<sup>7</sup> For example, ITC states that “this objectivity and transparency of the formula rate inputs, when combined with MISO’s existing protocol process for ensuring that the Attachment O formula of each Transmission Owner has been properly populated, provides significant safeguards against improper implementation of the filed rate.”<sup>8</sup>

The OMS acknowledges that FERC Form 1 data is publicly available. However, the OMS notes that the figures and expenditures that make up the data used to populate both the Form 1, and ultimately the transmission owner’s formula rate template, are not subject to challenge by interested parties, but rather are accepted by the Commission as filed. This effectively precludes affected parties from challenging the reasonableness of these figures. The inability of interested parties to challenge the figures that make up a transmission owner’s Form 1 filing runs counter to the Commission’s finding in *Northeast Utilities Service Company* that

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<sup>7</sup> Initial Brief of MISO, at 10, MISO Transmission Owners, at 10 and ITC, at 13.

<sup>8</sup> Initial Brief of ITC, at 13.

customers should have the ability to challenge the prudence of costs to offset the potential for formula rates to remove incentives for cost control by the utility.<sup>9</sup>

The OMS notes that the ability to challenge the underlying figures obtained from the FERC Form 1 for use in a formula rate update filing is critical, in that a company's Form 1 filing is essentially an accounting document that, and to a certain degree, is subject to the interpretation of the company producing the document. The OMS acknowledges that the Commission provides a standardized template and directions for the Form 1 report. However, the manner in which the transmission owner arrives at these company-specific figures that make up the Form 1 are subject to the subtleties and nuances of the accounting approaches used by individual companies and the accountants that they employ. In short, there is a "human element" in each Form 1 filing that needs to be addressed when assessing inputs into the formula rate that derive from the FERC Form 1.

With respect to claims that MISO's existing protocol process for ensuring that the Attachment O formula of each transmission owner has been properly populated provides significant safeguards against improper implementation of the filed rate, the OMS explains below that the MISO review process is insufficient to ensure that transmission charges produced via Attachment O are just and reasonable.

Given the above concerns, the OMS disagrees with the characterization by commenters that FERC Form 1 data is "objective" and provides "significant safeguards against improper implementation of the filed rate". To the contrary, the fact that Form 1 data is available on the Commission's website or a transmission owner's OASIS page does not necessarily ensure just and reasonable rates. Ensuring just and reasonable formula transmission rate charges should

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<sup>9</sup> Initial Brief of SWAC, at P 16 and *Northeast Utilities Service Company*, 62 FERC ¶ 61,294 at p. 62,906 (1993).

consist of more than just being able to review the Form 1 data used to develop the charges. Indeed, the charges that result from the application of a formula transmission rate cannot be found just and reasonable until formula rate protocols allow customers to address, not just the accuracy of the formula rate template and the Form 1 inputs, but also the appropriateness of the underlying data that makes up those Form 1 inputs.

**B. The MISO’s Review of a Transmission Owner’s Populated Attachment O Template is not Sufficient to Ensure Just and Reasonable Formula Rate Charges.**

As noted above, several commenters argue that MISO’s review of the Attachment O templates submitted to MISO by the transmission owners ensures that the resulting charges are just and reasonable. The OMS disagrees. Rather, it appears that much of the MISO review process is ensuring that the transmission owner has correctly transcribed the relevant Form 1 data into the formula rate template. For example, as noted by MISO, a significant portion of the MISO review process consists of ensuring that the line items on the Form No. 1, Form No. 12, or Form No. 412 and the Attachment O template match.<sup>10</sup> MISO also states that it performs a “reasonableness” check to, (a) examine each submission to ensure the calculations in the template are working properly, and (b) identify significant variances or unusual items.<sup>11</sup>

The OMS notes the initial brief filed by SWEC, where MISO defended its review of the MISO transmission owner’s Attachment O formula rate submission by stating that “The Attachment O review process under the Tariff does not require MISO to look at the details behind the amounts reported on the Attachment O if they correspond to what is reported in FERC Form 1.”<sup>12</sup> While MISO’s review of a transmission owner’s formula rate submission may

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<sup>10</sup> Initial Brief of MISO, at 7-8.

<sup>11</sup> Initial Brief of MISO, at 8.

<sup>12</sup> Initial Brief of SWEC, at P 21.

ensure that the figures in the template match those in a FERC Form 1, it is not sufficiently rigorous to ensure that the inputs are both accurate and appropriate. Further, while MISO's review to identify "significant variances or unusual items" is likely to be effective at catching gross or egregious errors, it is unlikely to catch subtle or less substantial errors. Again, in the case of SWEC, it was SWEC – not MISO, that identified a \$300,000 error in a transmission owner's formula rate submission.<sup>13</sup>

Contrary to the claims of MISO and other supporters of the current MISO Attachment O protocols, MISO's review appears to be largely clerical in nature and does not provide sufficient customer protection. While the OMS appreciates the review that MISO performs in the formula rate context, it appears that such a review is not sufficient to ensure that the resulting formula rate charges are just and reasonable. Given the experience of SWEC and MISO's own statements, MISO's review of a transmission owner's Attachment O template, by itself, is unlikely to ensure just and reasonable formula rate charges.

**C. The Commission Should Require the Implementation of a Formalized Discovery Process to Allow Interested Parties to Obtain the Information Necessary to Effectively Evaluate a Transmission Owner's Formula Rate Update or Charge.**

Several commenters contend that a formal discovery process is unnecessary because they currently have provisions in place that provide their customers with information concerning rate updates and projections.<sup>14</sup> While it is good that these utilities have voluntary procedures and protocols that provide interested parties with data and other information, voluntary procedures and protocols only work when the utility is willing to provide its customers with the information. Moreover, these provisions are unlikely to address the informational needs of interested parties located outside of the transmission owner's zone that are subject to regional cost allocations.

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<sup>13</sup> Initial Brief of SWEC, at P 18.

<sup>14</sup> Initial Brief of ITC, at 17-18, MISO Transmission Owners, at 19 and MISO at 19.

Such voluntary procedures and protocols require the transmission owner to be cooperative and/or willing to incorporate such provisions in the tariff in the first place. For example, the OMS notes the initial brief filed by SWEC wherein, SWEC alleges difficulty in obtaining information from its transmission owner when SWEC questioned the calculations and inputs of a formula rate charge.<sup>15</sup> The OMS also notes that in the initial brief of IPL, the Commission dismissed a complaint by IPL due to a lack of evidence provided by IPL. IPL contends that short of the transmission owner agreeing to provide the information IPL sought in support of its claim, IPL had no ability to collect needed information to support its complaint before the Commission.<sup>16</sup> Moreover, SWEC stated that when the transmission owner finally provided the information, it was under the condition that the information was to be held as confidential and in the event that the matter was elevated to a formal 206 complaint before the Commission, SWEC was not to use the information to help prove its case.<sup>17</sup> Irrespective of the specifics of the of the IPL situation, with a proper formula rate protocol to obtain needed information, it is possible that disputed issues could be resolved without a complaint filing.

The experiences detailed by both SWEC and IPL are examples of how, without a formalized discovery process, customers subject to formula rate charges could be left relying upon the voluntary goodwill and cooperation of the transmission owner to obtain the information necessary to ensure that the formula rate charges are just and reasonable. It is unreasonable and unjust to expect parties that are subject to formula rate charges to have to beg the transmission owner for such information or to allow transmission owners to assert claims of "confidentiality" to deny inspection of the cost support for the charges.<sup>18</sup> It is also unreasonable and unjust to

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<sup>15</sup> Initial Brief of SWEC, at P 8-20.

<sup>16</sup> Initial Brief of IPL, at 13.

<sup>17</sup> Initial Brief of SWEC, at P 14.

<sup>18</sup> Initial Brief of SWEC, at P 31.

allow transmission owners to condition the release of such information on the interested parties not using the information in any challenge of the annual update before the MISO or the Commission.<sup>19</sup> Such conditions clearly run counter to the Commission’s statement in its May 17 Order that formula rate protocols should provide interested parties with the information necessary to understand and evaluate the reasonableness and prudence of the costs to be recovered in the formula rate, which would form the basis of any potential challenge.<sup>20</sup>

All interested parties must have a right documented in a formula rate protocol to obtain information so they can determine not only that the transmission owner has properly entered in Form 1 data in its formula rate but that the expenditures reflected in the Form 1 data were reasonable and prudently incurred.

**D. The Avenues for Resolving Formula Rate Disputes under Attachment O do not Provide a Process for Parties to Resolve Disputes in an Efficient Manner.**

MISO contends that customers and other interested parties have sufficient avenues to raise issues with the implementation of Attachment O rates under the current process.<sup>21</sup> Specifically, MISO argues that MISO has a process in place for resolving issues through alternative dispute resolution (“ADR”) procedures under Attachment HH of the MISO tariff that can be used to address issues with any matter governed by the Tariff, including Attachment O formula rates, and parties may also utilize Commission procedures.<sup>22</sup>

With respect to the formula rate update process, the OMS has previously expressed concerns regarding the practicality and efficacy of MISO’s ADR process.<sup>23</sup> Under Attachment

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<sup>19</sup> Initial Brief of SWEC, at P 14.

<sup>20</sup> May 17 Order, at P 15.

<sup>21</sup> Initial Brief of MISO, at 15.

<sup>22</sup> Initial Brief of MISO, at 15.

<sup>23</sup> Initial Brief of the OMS, at 17-18.

HH, mediation is non-binding and completely voluntary.<sup>24</sup> If parties so desire, they can employ a general arbitration process in Attachment HH to achieve a binding decision.<sup>25</sup> However, this too requires two parties willing to abide by the decision of the MISO arbitrator. Indeed, the briefs of both SWEC and IPL illustrate that while the Attachment HH process provides an option for raising a complaint, it does not allow for challenges to be addressed and resolved efficiently. Given the voluntary nature of the MISO dispute resolution process, the only real solution available for customers to resolve a formula rate dispute with a MISO transmission owner is a formal Section 206 filing under the Federal Power Act. Indeed, under the current process, the Commission is the only party with the authority to effectively resolve such disputes. However, as noted previously by the OMS, a Section 206 complaint is a significant hurdle and in the context of a transmission formula rate dispute, results in an inappropriate shift of the burden of proof concerning the justness and reasonableness of the formula rate from the transmission owner to the transmission customer.<sup>26</sup>

### III. CONCLUSION

As noted by the OMS' initial brief, MISO's current formula rate protocols have become deficient and MISO's formula rate protocols must be revised to provide integrity and transparency and to ensure that the charges produced by the formula rates of MISO transmission owners are just and reasonable and not unduly discriminatory. While other parties argue that the current processes and protocols provide sufficient customer protections, the OMS remains convinced that the Commission needs to amend both the *pro forma* and individual company formula rate tariff protocols as the OMS explained in its initial brief.

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<sup>24</sup> Midwest ISO Tariff, Attachment HH, Section III.A.

<sup>25</sup> Midwest ISO Tariff, Attachment HH, Section IV.

<sup>26</sup> Initial Brief of the OMS, at 16.

The OMS submits this brief because a majority of the members have agreed to generally support them. Individual OMS members reserve the right to file separate comments regarding the issues discussed in this brief.

Respectfully Submitted,

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Dated: July 12, 2012

#### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.  
Dated at Des Moines, Iowa, this 12th day of July, 2012.

*William H. Smith, Jr*