

193 FERC ¶ 61,126
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Central Hudson Gas & Electric Corporation
New York Independent System Operator, Inc.

Docket Nos. ER25-2636-001
EL26-22-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS, SUBJECT TO
CONDITION, AND ESTABLISHING A SHOW CAUSE PROCEEDING

(Issued November 17, 2025)

1. On June 26, 2025, as amended on September 18, 2025, Central Hudson Gas & Electric Corporation (Central Hudson), pursuant to section 205 of the Federal Power Act (FPA),¹ filed proposed revisions to its transmission formula rate for its Hurley Avenue System Deliverability Upgrade project under Rate Schedule 12 of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (NYISO OATT).² In this order, we accept Central Hudson's filing, subject to condition, as discussed below, effective as of August 26, 2025. We also find that the Hurley Avenue Formula Rate implementation protocols³ appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we institute a show cause proceeding pursuant to section 206 of the FPA,⁴ and we direct Central Hudson, within 60 days of the date of this order, to either: (1) show cause as to why the Hurley Avenue Protocols under the NYISO OATT remain just and reasonable and not unduly discriminatory or preferential; or (2) explain what changes to the Hurley Avenue Protocols it believes would remedy the identified concerns if the Commission were to determine that the Hurley Avenue Protocols have, in fact, become unjust and

¹ 16 U.S.C. § 824d.

² NYISO, NYISO Tariffs, NYISO OATT, § 6.12.5.2.1 (Formula Rate Template) (4.0.0) (Hurley Avenue Formula Rate).

³ NYISO, NYISO Tariffs, NYISO OATT, § 6.12.5.2.2 (Description of Annual Update Process) (1.0.0) (Hurley Avenue Protocols).

⁴ 16 U.S.C. § 824e.

unreasonable or unduly discriminatory or preferential and, therefore, Central Hudson proceeds to establish replacement formula rate protocols.

I. Filing

2. Central Hudson is a public utility engaged in the transmission, distribution, and retail sale of electric power and natural gas in the Hudson Valley of upstate New York.⁵ Central Hudson is a participant in the NYISO electricity markets on behalf of certain of its end-use customers and is a load-serving entity to its retail customers. Central Hudson uses Attachment 1 to Rate Schedule 12 to calculate its annual transmission revenue requirement (ATRR) for its Hurley Avenue System Deliverability Upgrade project.⁶

3. Central Hudson proposes to revise the depreciation rates in the Hurley Avenue Formula Rate⁷ to synchronize them with those approved by the New York Public Service Commission (New York Commission) in Central Hudson's retail transmission and distribution rates, effective July 1, 2024.⁸ Central Hudson provides a June 2022 depreciation study in support of its proposed depreciation rates.⁹

4. In addition, Central Hudson seeks to make what it describes as corrections and enhancements to the Hurley Avenue Formula Rate.¹⁰ For example, Central Hudson contends that the Hurley Avenue Formula Rate needs additional worksheets to address potential changes in income tax rates in the future pursuant to Order No. 864¹¹ and to prorate accumulated deferred income taxes (ADIT) in accordance with U.S. Treasury

⁵ June 26, 2025 Filing, Transmittal Letter at 2 (Filing).

⁶ *Id.* at 1.

⁷ *Id.* at 2-3.

⁸ *See Proc. on Motion of the Comm'n as to the Rates, Charges, Rules & Reguls. of Cent. Hudson Gas & Elec. Corp. for Elec. Serv.*, Docket No. 23-E-0418 (N.Y. Pub. Serv. Comm'n May 1, 2024); *see also Proc. on Motion of the Comm'n as to the Rates, Charges, Rules & Reguls. of Cent. Hudson Gas & Elec. Corp. for Elec. Serv.*, Docket No. 24-E-0461 (N.Y. Pub. Serv. Comm'n May 13, 2025).

⁹ Filing, attach. A1.

¹⁰ *Id.*, Transmittal Letter at 3.

¹¹ *Pub. Util. Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (2019), *order on reh'g*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

regulations. Specifically, in Appendix A of the Hurley Avenue Formula Rate, Central Hudson proposes to spell out “Accumulated Deferred Income Taxes (Note A)” on line 21 and add “Excess or Deficient Accumulated Deferred Taxes (Note N)” to line 22.¹² Central Hudson also proposes to add a new worksheet, Attachment 5 – EADIT to comply with Order No. 864’s directive that required public utilities with transmission formula rates to incorporate a new worksheet that annually tracks information related to excess or deficient ADIT.¹³

5. Central Hudson proposes to delete “CWIP [Construction Work in Progress],” “Unamortized Regulatory Asset,” and “Unamortized Abandoned Plant” in lines 26, 28, and 29 of Appendix A of the Hurley Avenue Formula Rate because these were not used before the project was in service.¹⁴ Additionally, Central Hudson proposes to subtract Asset Retirement Obligation (ARO) related amounts from plant and accumulated depreciation.¹⁵ Central Hudson also proposes to eliminate unused worksheets or sections of worksheets and correct references (e.g., line references, FERC Form No. 1 references, etc.) throughout the Hurley Avenue Formula Rate.¹⁶

6. Central Hudson requests that the revised depreciation rates be effective July 1, 2024, to coincide with the effective dates for the depreciation rates used in determining Central Hudson’s retail transmission and distribution rates and by Central Hudson for accounting purposes.¹⁷ For revisions to the Hurley Avenue Formula Rate not related to the depreciation rates, Central Hudson requests an effective date of June 1, 2025. Central Hudson argues that good cause exists to waive the prior notice requirements to permit both effective dates.¹⁸ For the depreciation rates, Central Hudson argues that a July 1,

¹² Filing, attach. C, app. A, ll. 21-22; *see also id.*, attach. E (List of Hurley Avenue Formula Rate Changes) at 1.

¹³ *Id.*, attach. C, attach. 5 (Excess or Deficient Accumulated Deferred Income Taxes); *see also id.*, attach. E (List of Hurley Avenue Formula Rate Changes) at 4; Order No. 864, 169 FERC ¶ 61,139 at P 5.

¹⁴ Filing, attach. C, app. A, ll. 26, 28, 29; *see also id.*, attach. E (List of Hurley Avenue Formula Rate Changes) at 2.

¹⁵ *Id.*, attach. C, attach. 2 (Cost Support); *see also id.*, attach. E (List of Hurley Avenue Formula Rate Changes) at 3.

¹⁶ *Id.*, attach. E (List of Hurley Avenue Formula Rate Changes).

¹⁷ *Id.*, Transmittal Letter at 5.

¹⁸ *Id.* (citing 18 C.F.R. § 35.11 (2025)).

2024, effective date is consistent with the Hurley Avenue Formula Rate, which provides that the rates for transmission service shall reflect actual costs, including depreciation expense resulting from the rates Central Hudson adopted for accounting purposes. Central Hudson asserts that the depreciation rates became effective for accounting purposes on July 1, 2024, and states that these updated rates will be reflected in Central Hudson's actual depreciation expenses in the formula rate. For the non-depreciation rate changes, Central Hudson argues that the June 1, 2025, effective date allows the Hurley Avenue Formula Rate to determine the ATRR and an annual true-up adjustment for the rate year June 2025 to May 2026, to avoid Central Hudson needing to use two different formula rates for that rate year.¹⁹

II. Notices and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 90 Fed. Reg. 28734 (July 1, 2025), with interventions and protests due on or before July 17, 2025. None was filed.

8. On August 22, 2025, Commission staff issued a letter informing Central Hudson that its filing was deficient and that additional information was necessary to process the filing (Deficiency Letter). On September 18, 2025, Central Hudson filed a response to the Deficiency Letter (Deficiency Response).

9. Notice of Central Hudson's Deficiency Response was published in the *Federal Register*, 90 Fed. Reg. 45760 (Sep. 23, 2025), with interventions and protests due on or before October 9, 2025. None was filed.

10. In the Deficiency Letter, Commission staff asked Central Hudson to explain if the depreciation expenses reported on its 2024 FERC Form No. 1 are based on the proposed depreciation rates in the instant filing and, if so, explain how it will account for any differences between the depreciation expenses for accounting purposes and those assigned for ratemaking purposes.²⁰ Additionally, Commission staff asked if any such differences would be resolved via the annual update or any true-up processes. Commission staff asked if the proposed depreciation rates would result in a rate decrease or increase, noting Central Hudson's request for waiver of the prior notice requirements to permit the depreciation rates to become effective July 1, 2024.²¹ Commission staff

¹⁹ *Id.* at 6.

²⁰ Deficiency Letter at 1.

²¹ *Id.* at 2.

also asked Central Hudson to clarify the source of the depreciation rates for intangible plant.²²

11. Central Hudson responds that, for general and intangible assets, the depreciation or amortization expenses reported in FERC Form No. 1 for the period of July 1, 2024 through December 31, 2024 are based on the depreciation/amortization rates proposed in this filing, as reflected on revised Attachment 8 of the Hurley Avenue Formula Rate.²³ Central Hudson states that the depreciation expense for these assets is allocated to Rate Schedule 12 using the wage and salary allocator. Central Hudson contends that it began using the proposed depreciation/amortization rates for general and intangible assets on July 1, 2024, because it cannot maintain two sets of depreciation rates for the same assets. Central Hudson concedes that it should have made a timely filing with the Commission to change the depreciation rates to those approved by the New York Commission, and that it has implemented a process to ensure that it makes timely filings with the Commission.

12. Central Hudson asserts that, in contrast to the general and intangible assets, the transmission assets are directly assigned to Rate Schedule 12 and that Central Hudson used the transmission depreciation rates contained in the currently effective Hurley Avenue Formula Rate to determine depreciation expense for the period of July 1, 2024 through December 31, 2024.²⁴ Central Hudson also contends that the implementation of the proposed depreciation rates would result in a slightly lower annual depreciation and amortization expense and a slightly lower annual transmission revenue requirement under Rate Schedule 12.²⁵ Regarding the source of its depreciation rates for intangible plant, Central Hudson states that these rates are aligned with those approved by the New York Commission and that the intangible plant amortization rates are a function of the underlying assets.

13. In the Deficiency Letter, Commission staff asked Central Hudson to explain discrepancies between the Excel version of the Hurley Avenue Formula Rate provided in Attachment D to the instant filing, and the versions provided in Attachment B and Attachment C, which contain clean and redlined versions of the proposed formula rate,

²² *Id.* (referencing Filing, attach. C, at attach. 8 (Depreciation and Amortization Rates)).

²³ Deficiency Response at 2.

²⁴ Central Hudson states that, if the Commission approves this request, Central Hudson would include the change in its transmission depreciation expense and related rate base impacts for the period July 1, 2024, through December 31, 2024, as a revenue requirement adjustment in its June 2026 projected formula rate. *Id.*

²⁵ *Id.* at 3.

respectively.²⁶ For instance, Commission staff noted that Attachment D includes new Notes K, L, M, and N in Appendix A, page 5, while Attachment B and Attachment C do not. Additionally, Commission staff asked Central Hudson to explain Note M in the Attachment D version of the Hurley Avenue Formula Rate, which was revised to state that “Balances exclude Asset Retirement Costs.” Specifically, Commission staff asked Central Hudson to explain why this note was not included in the Attachment B or Attachment C versions and to identify any rate impact of this proposed change. Commission staff also noted that in the Attachment D version of the Hurley Avenue Formula Rate, Note N states that “Attachment 10 will be used in the event there is a future change to federal or state income tax rates,” but that Attachment 10 is not included in the Hurley Avenue Formula Rate.

14. Regarding the discrepancies, Central Hudson states that it inadvertently did not extend Attachments B and C beyond Note J and provides updated Attachments to correct this oversight.²⁷ Regarding Note N of Attachment D, Central Hudson explains that AROs have never been included in its Hurley Avenue Formula Rate and, accordingly, there is no rate impact from this proposed change. Central Hudson also clarifies that Note N of Attachment D should refer to Attachment 5 of the Hurley Avenue Formula Rate, rather than Attachment 10, and provides corrected tariff sheets.²⁸

15. Finally, in the Deficiency Letter, Commission staff stated that Central Hudson proposes to eliminate Post-Employment Benefits Other Than Pensions (PBOP) expense from line 44 of Appendix A of the Hurley Avenue Formula Rate and deleted lines from 189 – 243 on Attachment 3 – Cost Support because Central Hudson is using “actual PBOP expense.”²⁹ Commission staff asked how “actual PBOP expense” will flow through the Hurley Avenue Formula Rate and how this proposal is consistent with Commission precedent and policy, including customer refund obligations.³⁰ Commission

²⁶ Deficiency Letter at 3.

²⁷ Deficiency Response at 4-5.

²⁸ *Id.* at 5-6.

²⁹ Deficiency Letter at 3-4 (referencing Filing, attach. E (List of Hurley Avenue Formula Rate Changes) at 2).

³⁰ *Id.* at 4 (citing *Me. Yankee Atomic Power Co.*, 66 FERC ¶ 61,375 (1994); *Post-Emp. Benefits Other Than Pensions*, 61 FERC ¶ 61,330 (1992), *order on reh'g*, 65 FERC ¶ 61,035 (1993) (requiring companies to establish an irrevocable external trust fund into which the annual test period allowance for PBOPs would be deposited to ensure that the amounts customers are paying for PBOPs will, in fact, be utilized for such purpose, or in the event that they are not, customers would obtain refunds from the funds

staff further asked whether Central Hudson will use the accrual method for ratemaking and accounting purposes, whether Central Hudson will provide supporting actuarial studies to customers, and how PBOP expense included in formula rates are reflected in its FERC Form No. 1.

16. Regarding the questions related to PBOP expense, Central Hudson states that actual PBOP expense will be included in administrative and general expense on Line 34 of the Hurley Avenue Formula Rate.³¹ Additionally, Central Hudson states that it uses the accrual method for PBOP expense for Commission jurisdictional ratemaking and accounting purposes.³² Further, Central Hudson maintains that it uses an accrual for PBOP expense in Account 926 in its administrative and general expense in FERC Form No. 1. Central Hudson also states that it will provide PBOP actuarial studies to stakeholders at their request during the annual rate review process. Central Hudson argues that lines from 189 to 243 on Attachment 3 – Cost Support do not apply to Central Hudson, but rather were imported from the formula rate template design of another transmission developer in New York where the PBOP expense is a function of that transmission developer’s multiple utility owners. Central Hudson states that, because it does not have multiple utility owners, it did not use this worksheet. Central Hudson also avers there is no rate impact from its proposed PBOP changes.

III. Discussion

A. Proposed Tariff Revisions

17. We accept Central Hudson’s proposed Hurley Avenue Formula Rate, in part, subject to condition and a compliance filing, effective as of August 26, 2025.³³ We find

accrued in the trust)).

³¹ Deficiency Response at 6. While Central Hudson states that actual PBOP expense will be included in administrative and general expense on line 34 of the Hurley Avenue Formula Rate, we note that the administrative and general expense item is located on line 35.

³² Deficiency Response at 7.

³³ We find that Central Hudson has not demonstrated good cause to grant waiver of the 60-day prior notice requirement. *See* 18 C.F.R. §§ 35.3(a), 35.11 (2025); *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338-39 (1992); *see also PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,189, at PP 18-22 (2015) (denying a requested retroactive depreciation rate effective date that would have required the restating of depreciation expense amounts on FERC Form No. 1s that had been filed with the Commission and the recalculating of previous years’ trued-up annual transmission

that, with the exceptions described below, the proposed revisions are just and reasonable because they provide clarity and transparency to the Hurley Avenue Formula Rate.

18. We accept Central Hudson's proposed PBOP revisions, subject to the compliance filing directed below. In response to the Deficiency Letter question asking how the proposed revisions comply with the Commission's PBOP Policy Statement, Central Hudson states that it:

will make available to stakeholders its PBOP actuarial studies that support the accrual amounts included in the Hurley Avenue [Formula Rate]. During the annual review process (as set forth in Section 6.12.5.2.2 of Attachment 1 to Rate Schedule 12 of the NYISO OATT), Central Hudson will provide such studies to any stakeholder that requests them.³⁴

Accordingly, we accept Central Hudson's proposed PBOP revisions, subject to Central Hudson submitting a compliance filing adding language to the Hurley Avenue Formula Rate to reflect the commitment it made in the Deficiency Response, within 30 days of the date of this order.

19. However, in the filing, the values in the "Year" column appear to be inadvertently hard-coded, rather than variable inputs that are updated annually, in the following attachments: Attachment 2 – Cost Support, Attachment 3 – Cost Support, Attachment 6c – Accumulated Deferred Income Taxes – Prorated Projection, Attachment 7 – True Up, Attachment 7a – Interest Rate, and Attachment 9 - Workpapers. Accordingly, in the compliance filing ordered below, we direct Central Hudson to revise the Hurley Avenue Formula Rate template such that the "Year" columns are inputs, as opposed to hard-coded values.

20. We find that the proposed Hurley Avenue Formula Rate revisions updating the depreciation rates stated in Attachment 8 are just and reasonable, based on the studies provided by Central Hudson in the instant filing,³⁵ and accept them effective as of August 26, 2025, rather than July 1, 2024. Accordingly, in the compliance filing ordered below, we direct Central Hudson to remove the reference to July 1, 2024, on Attachment 8 of the Hurley Avenue Formula Rate.³⁶ We note that, while Commission precedent allows

revenue requirements).

³⁴ Deficiency Response at 7.

³⁵ See 18 C.F.R. § 35.13(h)(10) (2025).

³⁶ Central Hudson must make a compliance filing using Type of Filing Code 80 in this docket by including the associated filing identifier (`associated_filing_id`) for this

public utilities to change depreciation rates for accounting purposes without first obtaining Commission approval, utilities must seek Commission approval in order to use updated depreciation rates in formula rates on file with the Commission.³⁷

21. Additionally, we reject Central Hudson's proposed revisions to comply with Order No. 864 and direct Central Hudson to remove them in the compliance filing ordered below. First, Central Hudson's proposed revisions do not comply with the substantive requirements of Order No. 864. For example, it is unclear how the proposed Rate Base Adjustment Mechanism on Line 22 of Appendix A ensures rate base neutrality, since it does not appear to be linked to the balances on the proposed ADIT Worksheet in Attachment 5 – EADIT.³⁸ Central Hudson has not explained how its proposed ADIT Worksheet complies with the five requirements set forth in Order No. 864.³⁹ Further, it does not appear that Central Hudson has proposed an Income Tax Allowance Adjustment Mechanism, as required by Order No. 864.⁴⁰

22. Second, Order No. 864 required public utilities to submit compliance filings pursuant to FPA section 206 by the later of (1) 30 days of the final rule or (2) the public utility's next annual informational filing following the issuance of the final rule.⁴¹ Order No. 864 provides that a utility need not make the compliance filing and instead may comply under FPA section 205 – as Central Hudson proposes in the instant filing – when a public utility is transitioning from a stated rate to a formula rate.⁴² Central Hudson is not making such a transition here. Accordingly, we direct Central Hudson to remove all Order No. 864 related changes in Hurley Avenue Formula Rate (e.g., Attachment 5 – EADIT) in the compliance filing ordered below.⁴³ Finally, we remind Central Hudson

filing at the filing level.

³⁷ See *Depreciation Acct.*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,695 n.25 (2000) (cross-referenced at 92 FERC ¶ 61,078). The terms of the Hurley Avenue Formula Rate itself also prohibit changing depreciation and amortization rates without Commission approval. Hurley Avenue Formula Rate, attach. 8.

³⁸ Order No. 864, 169 FERC ¶ 61,139 at P 28.

³⁹ *Id.* PP 52, 62.

⁴⁰ *Id.* P 42.

⁴¹ *Id.* P 100.

⁴² *Id.* P 103.

⁴³ See *supra* note 36.

that Order No. 864 was made effective on January 27, 2020,⁴⁴ and that Central Hudson has a remaining outstanding obligation to submit an Order No. 864 compliance filing.⁴⁵

B. Hurley Avenue Protocols

1. Background on Formula Rates and Formula Rate Protocols

23. The Commission is responsible for ensuring that the rates, terms, and conditions of transmission of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential. The Commission permits transmission service rates to be established through formulas. Under a formula rate, “the formula itself is the rate, not the particular components of the formula.”⁴⁶ Thus, periodic adjustments to the inputs to the formula, 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 FPA section 205 filings.”⁴⁷ Because the formula rates for transmission service on file with the Commission do not typically require transmission owners to make an FPA section 205 filing to update their annual transmission revenue requirement, safeguards need to be in place to ensure that the input data is correct, 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 resulting rates are just and reasonable.⁴⁸

⁴⁴ See Order No. 864-A, 171 FERC ¶ 61,044 at P 41.

⁴⁵ See Order No. 864, 169 FERC ¶ 61,139 at P 100 (“Additionally, on compliance, we expect public utilities with transmission formula rates to make their proposed tariff sheets effective on the effective date of this final rule”). We also note that Central Hudson’s first annual informational filing for the Hurley Avenue Formula Rate following the issuance of Order No. 864 was due and submitted to the Commission on May 15, 2023.

⁴⁶ *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,544 (1994).

⁴⁷ *Id.* at 61,545 (citing 16 U.S.C. § 824d; *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1567-68 (D.C. Cir. 1993)).

⁴⁸ While a party that challenges the transmission owner’s 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 Serv. Corp.*, 124 FERC ¶ 61,306, at P 36 (2008).

24. Formula rate protocols are one such safeguard.⁴⁹ Formula rate protocols provide the parties paying for transmission service specific procedures for notice of, review of, and challenges to the rates that they will be charged.⁵⁰ In order to fulfill this purpose, formula rate protocols must afford adequate transparency to affected customers, state regulators, or other interested parties, as well as provide mechanisms for resolving potential disputes. Formula rate protocols therefore play an important role in ensuring just and reasonable rates.

25. The Commission established its policy regarding transmission formula rate protocols in a series of orders that began with the Commission initiating an investigation, pursuant to section 206 of the FPA, to determine whether the formula rate protocols in Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) were sufficient to ensure just and reasonable rates.⁵¹ The Commission directed MISO and its transmission owners to file revisions to their formula rate protocols regarding the following areas of concern: (1) the 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).⁵²

26. Since the MISO Protocol Orders, the Commission initiated numerous proceedings pursuant to section 206 of the FPA to investigate the justness and reasonableness of formula rate protocols.⁵³ In each of those proceedings, the Commission explained that it

⁴⁹ See, e.g., *Black Hills Power, Inc.*, 148 FERC ¶ 61,035, at P 3 (2014).

⁵⁰ *Id.* P 4.

⁵¹ *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, *order on compliance*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order), *order on reh'g*, 150 FERC ¶ 61,024, *order on compliance*, 150 FERC ¶ 61,025 (2015) (MISO Compliance Order II) (collectively, MISO Protocol Orders). In order to address whether MISO's *pro forma* formula rate protocols and the formula rate protocols of individual transmission owners were sufficient to ensure just and reasonable rates, the Commission established paper hearing procedures.

⁵² *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 at P 8.

⁵³ See, e.g., *Black Hills Power, Inc.*, 148 FERC ¶ 61,035; *UNS Elec., Inc.*, 148 FERC ¶ 61,032 (2014); *The Empire Dist. Elec. Co.*, 148 FERC ¶ 61,030 (2014); *Kan. City Power & Light Co.*, 148 FERC ¶ 61,034 (2014); *Louisville Gas & Elec. Co.*, 148 FERC ¶ 61,031 (2014); *Westar Energy, Inc.*, 148 FERC ¶ 61,033 (2014). The

analyzed the utility's formula rate protocols using the standards established in the MISO Protocol Orders and determined that, based on that analysis, the utility's formula rate protocols appeared to be unjust and unreasonable.⁵⁴ Those proceedings were resolved with each of the utilities filing revisions to their tariff that were ultimately accepted by the Commission.⁵⁵

2. Overview of Hurley Avenue Protocols

27. The Hurley Avenue Protocols, established pursuant to a 2021 settlement,⁵⁶ require Central Hudson to make an annual informational filing with the Commission on or before May 15 of each year recalculating the rates to be charged over the following June through May Rate Year (Annual Update Filing). The Annual Update Filing is required to reflect FERC Form No. 1 data from the most recent calendar year for all components of the allocation methodology, projected costs, associated income taxes, and an updated megawatt-hour forecast for billing to load serving entities.

28. The Hurley Avenue Protocols require Central Hudson to coordinate with NYISO to post the proposed Annual Update Filing to the NYISO website by April 15 of each year. They allow interested parties to submit comments on the Annual Update Filing to Central Hudson no later than May 1 of each year and oblige Central Hudson to coordinate with NYISO to post all of these comments to the NYISO website. The Hurley Avenue Protocols require Central Hudson's Annual Update Filing to be submitted to the Commission to reflect any changes made in response to comments and require Central Hudson to coordinate with NYISO to post the results of the Annual Update filing to NYISO's website.

3. Review of the Hurley Avenue Protocols and Findings

29. We have reviewed the Hurley Avenue Protocols using the standards established in the MISO Protocol Orders and subsequent precedent⁵⁷ to determine if the Hurley Avenue

Commission has also reviewed formula rate protocols filed pursuant to section 205 of the FPA. *See, e.g., Black Hills Power, Inc.*, 148 FERC ¶ 61,035 at P 7.

⁵⁴ *See, e.g., Black Hills Power, Inc.*, 148 FERC ¶ 61,035 at P 7.

⁵⁵ *Black Hills Power, Inc.*, 150 FERC ¶ 61,198 (2015); *UNS Elec., Inc.*, 153 FERC ¶ 61,132 (2015); *The Empire Dist. Elec. Co.*, 153 FERC ¶ 61,127 (2015); *Kan. City Power & Light Co.*, 153 FERC ¶ 61,150 (2015); *Louisville Gas & Elec. Co.*, 153 FERC ¶ 61,126 (2015); *Westar Energy, Inc.*, 153 FERC ¶ 61,143 (2015).

⁵⁶ *See Cent. Hudson Gas & Elec. Corp.*, 177 FERC ¶ 61,007 (2021) (approving settlement).

Protocols meet the requirements established in those orders. As discussed below, based on that review, we find that the Hurley Avenue Protocols appear to be unjust and unreasonable. Specifically, the Hurley Avenue Protocols are deficient in the three areas the Commission identified in the MISO Investigation Order: (1) the 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).⁵⁸

a. Scope of Participation

30. In the MISO Investigation Order, the Commission found that the MISO formula rate protocols inappropriately limited the ability of certain interested parties to obtain information and participate in the review processes.⁵⁹ 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. In the MISO Compliance Order, the Commission accepted MISO's proposed definition of interested parties.⁶⁰

31. Based on our review, we find that the Hurley Avenue Protocols may unintentionally limit the ability of certain interested parties to obtain information about annual updates from Central Hudson.⁶¹ While the Hurley Avenue Protocols allow interested parties to submit comments, they do not define the term "interested party." Without such a definition, the Hurley Avenue Protocols may not provide sufficient clarity and may provide Central Hudson with the sole discretion to determine who is an interested party, and therefore appear to be unjust and unreasonable. Therefore, to afford

⁵⁷ See, e.g., *Ala. Power Co.*, 178 FERC ¶ 61,207 (2022); *Commonwealth Edison Co.*, 182 FERC ¶ 61,156 (2023).

⁵⁸ See MISO Investigation Order, 143 FERC ¶ 61,149 at P 8.

⁵⁹ *Id.* P 34.

⁶⁰ MISO Compliance Order, 146 FERC ¶ 61,212 at P 18 (accepting 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").

⁶¹ See Hurley Avenue Protocols.

adequate opportunity for participation and access to information, we find that the Hurley Avenue Protocols should be revised to provide a definition of the “interested parties” provided by the MISO Protocol Orders and subsequent precedent, or Central Hudson should show cause why it should not be required to do so.

b. Transparency

32. 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.⁶² The Commission found that the formula rate 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.⁶³ Based on our review, we find that the Hurley Avenue Protocols may not provide interested parties the information necessary to understand and evaluate the implementation of the formula rate for either the correctness of inputs and calculations or the reasonableness and prudence of the costs to be recovered in the formula rate, which would form the basis of any potential challenge, as specified in the MISO Investigation Order and MISO Compliance Order.⁶⁴

33. Additionally, the Hurley Avenue Protocols only provide that interested parties may submit comments to Central Hudson during its annual update process and that Central Hudson will submit an informational filing to the Commission that reflects “to the extent necessary” any changes in response.⁶⁵ However, in the MISO Investigation Order, the Commission found that the formula rate protocols must specify an adequate time period for interested parties to review information following its posting on Open Access Same-Time Information System (OASIS) and MISO’s website, and make document requests.⁶⁶ Further, the Commission required that transmission owners make a good faith effort to respond to information requests within a set, reasonable period of time. In contrast to these requirements, the Hurley Avenue Protocols fail to: (i) establish interested parties’ rights to request documentation; (ii) delineate a specific time period for

⁶² MISO Investigation Order, 143 FERC ¶ 61,149 at P 82.

⁶³ *Id.* P 83.

⁶⁴ 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).

⁶⁵ *See* Hurley Avenue Protocols.

⁶⁶ MISO Investigation Order, 143 FERC ¶ 61,149 at P 91.

interested parties to review information after the draft Annual Update Filing is posted on NYISO's website, and (iii) obligate Central Hudson to respond to interested parties' comments.

34. In the MISO Compliance Order, the Commission required the relevant formula rate protocols to specifically provide that the informational filing include the information that is reasonably 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 formula rate protocols; (3) the proper application of the formula rate and procedures in the proposed formula rate 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.⁶⁷ In contrast, the Hurley Avenue Protocols do not address the required information to be included in informational filings in sufficient detail.

35. In addition, in the MISO Investigation Order, the Commission found that interested parties must be afforded the opportunity to request further information regarding transmission owners' accounting practices to the extent the accounting impacts items included in the determination of the annual revenue requirement.⁶⁸ The Hurley Avenue Protocols do not address interested parties' ability to challenge Central Hudson's accounting practices as outlined in the MISO Investigation Order.⁶⁹

36. The Commission found in the MISO Investigation Order that the formula rate protocols must require transmission owners to 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.⁷⁰ Specifically, a change in accounting may involve: (1) the initial implementation of an accounting standard or policy; (2) the initial implementation of accounting practices for unusual or unconventional items where the Commission has not provided specific accounting direction; (3) corrections of errors and prior period adjustments; (4) the implementation of new estimation methods or policies that change prior estimates; and (5) changes to income tax elections. The formula rate protocols must also provide for identification of items included in the formula rate at an amount other than on a historical cost basis, e.g., fair value adjustments. The Hurley Avenue Protocols

⁶⁷ MISO Compliance Order, 146 FERC ¶ 61,212 at P 27.

⁶⁸ MISO Investigation Order, 143 FERC ¶ 61,149 at P 89.

⁶⁹ See Hurley Avenue Protocols.

⁷⁰ MISO Investigation Order, 143 FERC ¶ 61,149 at P 87.

do not require these disclosures, which under the MISO Investigation Order demonstrates a failure to ensure the appropriate level of transparency regarding the financial and cost information from which the Hurley Avenue Formula Rate's charges are developed.⁷¹

37. The same relevant precedent requires that all interested parties should be able to identify and understand all accounting changes that affect inputs to the formula rate or the resulting charges billed under the formula rate.⁷² We find that the Hurley Avenue Protocols do not explicitly include a provision that allows interested parties to obtain, upon request, information on procurement methods and cost control methodologies used by Central Hudson in order to facilitate interested parties' analysis of whether Central Hudson's costs were prudently incurred. This is contrary to Commission precedent.⁷³

38. The Hurley Avenue Protocols do not address affiliate transactions and associated cost allocation. The Commission has found that formula rate protocols must require a transmission owner to provide: a detailed description of the methodologies used to allocate and directly assign costs between the transmission owner and its affiliates by service category or function for the applicable rate year, including any changes to such cost allocation methodologies from the prior year, and the reasons and justification for those changes; and the magnitude of such costs that have been allocated or directly assigned between the transmission owner and each affiliate by service category or function for the applicable period.⁷⁴

39. Moreover, in the MISO Investigation Order, the Commission held that transmission owners must post their revenue requirement and relevant information on both MISO's website and OASIS, and then hold an annual meeting open to all interested parties, where the transmission owners can explain and interested parties can review and discuss the transmission owner's calculations.⁷⁵ The Hurley Avenue Protocols do not provide for an annual meeting and make no mention of posting information on OASIS.

⁷¹ *Id.*

⁷² MISO Compliance Order, 146 FERC ¶ 61,212 at P 66.

⁷³ MISO Investigation Order, 143 FERC ¶ 61,149 at P 90.

⁷⁴ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 127 (2016); *Xcel Energy Sw. Transmission Co., LLC*, 155 FERC ¶ 61,300, at P 12 (2016); *Xcel Energy Transmission Dev. Co., LLC*, 155 FERC ¶ 61,301, at P 16 (2016); *Transource Wis., LLC*, 155 FERC ¶ 61,302, at P 13 (2016).

⁷⁵ MISO Investigation Order, 143 FERC ¶ 61,149 at P 86.

40. Because the Hurley Avenue Protocols fail to provide for an annual meeting, there is no notice provision for such a meeting. In the MISO Compliance Order, the Commission held that the formula rate protocols must provide for notice within 10 days of posting the annual update or true-up, and must provide notice of the annual meeting no less than seven days prior to the meeting.⁷⁶ In a related case, the Commission found that formula rate protocols must include language providing remote access to annual update meetings in order to ease burdens (e.g., travel costs) to ensure all interested parties have an opportunity to participate.⁷⁷

41. Finally, the Hurley Avenue Protocols do not address reorganizations or mergers. This is inconsistent with the finding in the MISO Investigation Order that formula rate protocols must provide for identification of any reorganization or merger transaction and explain the effect of the accounting for such transactions on inputs to the formula rate. To the extent these accounting changes and other matters affect a transmission owner's inputs to its formula rate, the transmission owner must provide a narrative explanation of the individual impact of those items on charges billed under the formula rate.⁷⁸

c. Challenge Procedures

42. In the MISO Investigation Order, the Commission found that the MISO formula rate protocols were insufficient in setting forth the specific challenge procedures.⁷⁹ 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. In particular, the Commission stated that the formula rate protocols must set out a procedure through which interested parties can informally challenge transmission owners' proposed inputs and specified in detail what those procedures should include.⁸⁰ Here, the Hurley

⁷⁶ MISO Compliance Order, 146 FERC ¶ 61,212 at P 59. The Compliance Order also required MISO to provide notification of those postings through an email "exploder" list. *Id.*

⁷⁷ *Black Hills Power, Inc.*, 150 FERC ¶ 61,198 at P 30.

⁷⁸ MISO Investigation Order, 143 FERC ¶ 61,149 at P 87.

⁷⁹ *Id.* P 118.

⁸⁰ *Id.* P 119.

Avenue Protocols do not contain informal challenge procedures to the level of specificity required in the MISO Protocol Orders.⁸¹

43. In the MISO Compliance Order, the Commission also addressed the filing requirements for formal challenges. First, the Commission found that formula rate protocols should be clear that formal challenges are filed pursuant to the formula rate protocols, rather than Rule 206, and detail specifically the filing requirements that an interested party must satisfy in submitting a formal challenge to the Commission.⁸² Second, the Commission ordered MISO to file tariff revisions to clarify that the formal challenges should be filed in the informational filing dockets to reduce the Commission's administrative burden in tracking the status of informational filings and formal challenges.⁸³ The Hurley Avenue Protocols contain neither provision.

44. Finally, the Commission has held that "a transmission owner's formula rate protocols must not impede the statutory rights of the Commission or other interested parties to initiate complaint proceedings pursuant to section 206 of the FPA."⁸⁴ Because the Hurley Avenue Protocols do not contain any challenge procedures, it is unclear if any interested parties' or the Commission's statutory rights to initiate complaint proceedings are impeded.

4. Show Cause Proceeding

45. Based on our review, as described above, we find that the existing Hurley Avenue Protocols appear to be unjust, unreasonable, unduly discriminatory, or preferential. Pursuant to FPA section 206, we direct Central Hudson within 60 days of the date of this order either: (1) to show cause as to why its Hurley Avenue Protocols remain just and reasonable and not unduly discriminatory or preferential; or (2) to explain what changes to its Hurley Avenue Protocols it believes would remedy the identified concerns if the Commission were to determine that the Hurley Avenue Protocols have in fact become unjust and unreasonable or unduly discriminatory or preferential and, therefore, proceed to establish replacement Hurley Avenue Protocols.

⁸¹ See Hurley Avenue Protocols; see also *Ala. Power Co.*, 178 FERC ¶ 61,207, at PP 39-41, 44 (2022).

⁸² MISO Compliance Order, 146 FERC ¶ 61,212 at P 112.

⁸³ *Id.* P 113.

⁸⁴ *Id.* P 110 (citing *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 113 (2009)).

46. Interested entities may respond within 21 days of Central Hudson's filing, addressing either or both of: (1) whether Central Hudson's existing Hurley Avenue Protocols remain just and reasonable and not unduly discriminatory or preferential; and (2) if not, what changes to Central Hudson's Hurley Avenue Protocols should be implemented as a replacement rate.

47. If Central Hudson prefers to propose revisions to its Hurley Avenue Protocols on the subject of this order, then it may do so pursuant to its applicable FPA section 205 filing rights. In such a filing, Central Hudson should state explicitly that it is submitting its proposal under section 205. If Central Hudson wishes to have the Commission hold this proceeding in abeyance pending the Commission's consideration of any such FPA section 205 filing, Central Hudson should submit an appropriate motion in this docket explaining the basis for the abeyance.

The Commission orders:

(A) Central Hudson's proposed revisions to the Hurley Avenue Formula Rate, with the exception of the revisions related to Order No. 864, are hereby accepted, effective as of August 26, 2025, subject to condition, as discussed in the body of this order.

(B) Central Hudson's proposed revisions to the Hurley Avenue Formula Rate related to Order No. 864 are hereby rejected, as discussed in the body of this order.

(C) Central Hudson is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL26-22-000, concerning the justness and reasonableness of the Hurley Avenue Protocols, as discussed in the body of this order.

(E) Pursuant to FPA section 206, we direct Central Hudson, within 60 days of the date of this order, either to: (1) show cause as to why its Hurley Avenue Protocols remain just and reasonable and not unduly discriminatory or preferential; or (2) explain what changes to its Hurley Avenue Protocols it believes would remedy the identified concerns if the Commission were to determine that the formula rate protocols have, in fact, become unjust and unreasonable or unduly discriminatory or preferential and, therefore, proceed to establish replacement formula rate protocols.

(F) Any interested person desiring to be heard in Docket No. EL26-22-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, within 30 days of the date of the issuance of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may file by U.S. mail addressed to Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426, or by hand (including courier) delivery to Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

(G) The refund effective date in Docket No. EL26-22-000 established pursuant to section 206 of the FPA shall be the date of issuance of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.