

Attachment 1

NYSEG and RG&E
Response to Deficiency Letter Dated September 21, 2023
Schedule 19 Transmission Formula Rate
Docket No. ER23-1816-001 and ER23-1817-001
October 5, 2023

Protocols

The Commission established its policy regarding transmission formula rate protocols in a series of cases involving Midcontinent Independent System Operator, Inc.’s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff.¹ The resulting MISO Protocol Orders have served as the benchmark for proceedings involving the justness and reasonableness of formula rate protocols.²

1. This Commission precedent requires that formula rate protocols include certain provisions for the disclosure of information. NYSEG and RG&E’s proposed Protocols require NYSEG and RG&E, respectively, to disclose this information in its Actual Annual Revenue Requirements (ATTR)³ and Annual True Up Adjustments⁴ posting, but the Protocols do not require the disclosure of the information in the Annual Update posting for “Projected ATTRs.”⁵ While NYSEG’s and RG&E’s Annual Update postings for their “Projected ATTRs” provides for information exchange and challenge procedures for “Projected

¹ *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).

² *See, e.g., 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); *Kansas 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); *Alabama Power Co.*, 182 FERC ¶ 61,015 (2023).

³ NYSEG’s and RG&E’s Protocols Section 1.d. define Actual ATTRs as “the actual annual revenue requirement of [the utility’s] CLCPA Eligible Projects for a Rate Year calculated in accordance with the Formula Rate and posted on the ISO website no later than June 15 following the end of such Rate Year.”

⁴ NYSEG’s and RG&E’s Protocols Section 1.e. define Annual True-Up Adjustments as “the difference between the revenues collected for that Rate Year under the Formula Rate based upon the Projected ATRR (not including the True-up Adjustment or Corrections) and the Actual ATRR for the same Rate Year. The Annual True-up Adjustment is included in the Annual Update for the next Rate Year.”

⁵ For example, *see* NYSEG’s and RG&E’s Protocols, Section 3.c, 3.g (Actual ATRR Requirements), 3.h (Projected ATRR Requirements).

ATTRs,” they do not appear to specifically provide the necessary disclosures.⁶ For example, the Commission has found that 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. 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).⁷ Please explain how NYSEG’s and RG&E’s proposed Protocols comply with these requirements.

Response: As the question states, NYSEG’s and RG&E’s proposed formula rate implementation protocols (“Protocols”) require NYSEG and RG&E, respectively, to provide the above-described information for accounting changes and for any item at an amount recorded at other than original cost as part of its posting of its Actual ATRR and filing of the related Informational Filing. NYSEG’s and RG&E’s Protocols, respectively, require providing this information at the time of posting its Actual ATRR to provide transparency to stakeholders, and NYSEG and RG&E agree to revise their respective Protocols to require this information also be provided with the posting of its Projected ATRR. NYSEG and RG&E will provide with the posting of their respective Projected ATRR, information required for accounting changes, specifically, for any item which the amount recorded differs from original cost and for any reorganization or merger transactions, and NYSEG and RG&E will also provide a narrative explanation of the individual impact of any such changes on the Projected ATRR. NYSEG and RG&E provide, as Attachments 2, 3 and 4 to their respective filings, clean and two redlined versions, respectively, of the Protocols incorporating these changes.

2. The Commission has further found that all interested parties should be able to identify and understand all accounting changes that affect inputs to the formula

⁶ NYSEG’s and RG&E’s Protocols, Sections 3.h, 6.a, 8.a. NYSEG’s and RG&E’s Protocols, Section 1.p. defines Projected ATTRs as “the projected annual revenue requirement of [the utility’s] CLCPA Eligible Projects for the upcoming Rate Year calculated in accordance with the Formula Rate and posted on the ISO website no later than the Posting Date.”

⁷ MISO Investigation Order, 143 FERC ¶ 61,149 at P 87.

rate or the resulting charges billed under the formula rate.⁸ The Commission found that provisions that limit utility disclosure of accounting changes to only those that are “material” are insufficient to ensure just and reasonable rates and that the word “material” must be removed from the description of the accounting changes that will be disclosed.⁹ The Commission noted that “by adding the concept of materiality to the accounting changes that must be disclosed, the MISO Transmission Owners reduced the transparency of financial information used in formula rate billings without sufficient support.”¹⁰ NYSEG’s and RG&E’s proposed Protocols state that, with respect to Accounting Changes that NYSEG and RG&E will disclose, such disclosures are limited to “correction of *material* errors and *material* prior period adjustments that impact an Annual True-up Adjustment calculation or prior Annual True-up Adjustments.”¹¹ It appears that NYSEG’s and RG&E’s proposed Protocols also do not require NYSEG and RG&E to disclose this information in their Annual Update postings.¹² Please demonstrate how NYSEG’s and RG&E’s proposed Protocols comply with these requirements.

Response: NYSEG and RG&E agree to eliminate the materiality threshold from accounting change disclosures provided in both the Actual ATRR and Projected ATRR sections of their respective Protocols and to include this information with the posting of its Projected ATRR (Annual Update) (see the response to Item 1 above). NYSEG and RG&E provide, as Attachments 2, 3 and 4 to their respective filings, clean and two redlined versions, respectively, of the Protocols incorporating these changes.

3. The Commission has found that “formula rate protocols must require a transmission owner to provide: (1) 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 (2) the magnitude of such costs that have been allocated or directly assigned between the transmission owner and

⁸ MISO Compliance Order, 146 FERC ¶ 61,212 at P 66.

⁹ *Id.* P 65.

¹⁰ *Id.*

¹¹ NYSEG’s and RG&E’s Protocols, Section 3.g.vi.C.

¹² NYSEG’s and RG&E’s Protocols, Section 3.c., 3.g.

each affiliate by service category or function for the applicable period.”¹³ Please explain how NYSEG’s and RG&E’s proposed Protocols providing this information for the “prior Rate Year,” and not the “applicable rate year,” complies with this requirement.

Response: NYSEG and RG&E agree to change the language in Section 3.g.x of their respective Protocols from “prior Rate Year” to “applicable rate year.” NYSEG and RG&E provide, as Attachments 2, 3 and 4 to their respective filings, clean and two redlined versions, respectively, of the Protocols incorporating these changes.

4. The Commission also provided that, following the annual update, interested parties must be afforded the opportunity to obtain upon request, information on procurement methods and cost control methodologies used by the transmission owner.¹⁴ Please explain how NYSEG’s and RG&E’s proposed Protocols comply with this requirement.

Response: In Section 6.a.vii. and ix., the respective Protocols provide that Interested Parties can request information on “the accuracy of actual costs and expenditures” and “any other information that may reasonably have a substantive effect on the calculation of the Projected ATRRs or Actual ATRRs pursuant to the Formula Rate.” NYSEG and RG&E also agree to identify specifically in this section of their respective Protocols, among information that Interested Parties can request, procurement approaches and cost control methodologies. NYSEG and RG&E provide, as Attachments 2, 3 and 4 to their respective filings, clean and two redlined versions, respectively, of the Protocols incorporating these changes.

5. The Commission has found that formula rate protocols cannot define the scope of various types of future section 205 filings, and the Commission will determine the scope of any future section 205 filings when such filings are made.¹⁵ NYSEG’s and RG&E’s proposed Protocols provide that “[the utility] may also make a

¹³ *Commonwealth Edison Co.*, 182 FERC ¶ 61,156, at P 28 (2023) (emphasis added).

¹⁴ MISO Investigation Order, 143 FERC ¶ 61,149 at P 90.

¹⁵ *ATX Sw., LLC*, 152 FERC ¶ 61,193, at P 85 (2015) (“We reject ATX Southwest’s proposed Section IV.J, which attempts to define the scope of various types of future section 205 filings and is inappropriate to include in the formula rate protocols. The scope of any future section 205 filings will be addressed when such filings are made.”); *Transource Kansas, LLC*, 163 FERC ¶ 61,176, at PP 13-17 (2018); *Indicated RTO Transmission Owners*, 161 FERC ¶ 61,018, at P 13 (2017) (declining to make an advance determination on single issue ratemaking for transmission owners of PJM Interconnection, LLC and Southwest Power Pool, Inc. on the basis that it was “unclear whether the specific revisions [] will affect other unchanged components of their formula rates”); *Commonwealth Edison Co.*, 182 FERC ¶ 61,156 at P 27.

limited section 205 filing to request recovery of extraordinary property losses or to change or to add new depreciation and amortization rates. In each case, the sole purpose of any such limited section 205 filing shall be to address whether such proposed changes are just and reasonable and shall not include other aspects of the Formula Rate.”¹⁶ Please explain how NYSEG’s and RG&E’s proposed Protocols comply with this Commission precedent.

Response: In response to this inquiry, NYSEG and RG&E agree to remove this language from their respective Protocols. NYSEG and RG&E provide, as Attachments 2, 3 and 4 to their respective filings, clean and two redlined versions, respectively, of the Protocols incorporating these changes.

Additional Change to the Protocols: To add clarity to the respective Protocols that the Informational Filing will include details of projected capital costs, and consistent with edits Consolidated Edison Company of New York, Inc. made to their proposed formula rate protocols in a similar context,¹⁷ NYSEG and RG&E also add the following statement to Section 7 of the Protocols to clarify that the Informational Filing “will include supporting documentation and workpapers for all Schedule 19 Projects added to operating property in the Rate Year of the respective Projected ATRRs, including projected costs of each project, expected construction schedule and in-service dates.” NYSEG and RG&E provide, as Attachments 2, 3 and 4 to their respective filings, clean and two redlined versions, respectively, of the Protocols incorporating these changes.

¹⁶ NYSEG’s and RG&E’s Protocols, Section 3.k.

¹⁷ Consolidated Edison Company of New York, Inc., September 1, 2023 Response to Deficiency Letter Dated August 18, 2023, Docket No. ER23-2212.