

170 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Midcontinent Independent System Operator, Inc.

Docket No. ER20-855-000

ORDER ACCEPTING PROPOSED DEPRECIATION RATES AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 19, 2020)

1. On January 21, 2020, Northern Indiana Public Service Company LLC (NIPSCO) and Midcontinent Independent System Operator, Inc. (MISO) submitted, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² a request for approval of revised depreciation rates to be used in the calculation of charges for transmission services provided under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).³ In this order, we accept NIPSCO's proposed depreciation rates and suspend them for a nominal period, to become effective March 22, 2020, subject to refund, and set them for hearing and settlement judge procedures.⁴

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ The proposed Tariff revisions are designated as Midcontinent Independent System Operator, Inc., FERC FPA Electric Tariff FERC Electric Tariff, [41, NIPSCO Rate Formula Template, 44.0.0](#); [41B, NIPSCO Depreciation Rates, 33.0.0](#).

⁴ MISO notes that the proposed Tariff revisions contain highlighted language that is currently pending consideration in Docket No. ER17-215-000, and that it commits to file any revisions to the highlighted language, as necessary, to comply with Commission orders in that proceeding. Transmittal at n.33.

I. Background

2. NIPSCO is an Indiana corporation headquartered in Merrillville, Indiana and is a subsidiary of NiSource Inc. NIPSCO owns and operates approximately 2,825 megawatts of electric generating capacity and 2,802 miles of electric transmission lines serving approximately 473,000 electric customers across Northern Indiana. NIPSCO is an electric load-serving entity and a transmission-owning member of MISO and has transferred functional control of its transmission system to MISO.⁵

3. NIPSCO states that its Attachment O under the Tariff contains NIPSCO's forward-looking transmission rate formula pursuant to which NIPSCO recovers its annual revenue requirement and which establishes the charges for transmission service over its facilities. In the instant filing, NIPSCO proposes revised depreciation rates to be used in its formula rate.

II. Filing

4. NIPSCO states that it retained Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) to study and develop the proposed depreciation rates. NIPSCO explains that the depreciation rates are based on the "straight line remaining life method" using the equal life group procedure. NIPSCO states that this method of depreciation aims to distribute the unrecovered cost of fixed capital assets over the estimated remaining useful life of each unit or group of assets.⁶

5. NIPSCO explains that Gannett Fleming first estimated the service life and net salvage characteristics for each depreciable group identified as having similar characteristics. Next, NIPSCO states that Gannett Fleming calculated the composite remaining lives and annual depreciation accrual rates based on these service lives and net salvage estimates. NIPSCO submits that the depreciation study satisfies the requirements of Order No. 618⁷ and that the proposed depreciation rates will allow NIPSCO to systematically and rationally allocate the cost of property to the periods during which the property is used in NIPSCO's operations.⁸

⁵ *Id.* at 2.

⁶ *Id.* at 3.

⁷ *Depreciation Accounting*, Order No. 618, 92 FERC ¶ 61,078 (2000).

⁸ Transmittal at 3.

6. NIPSCO states that the Commission explicitly determined in Order No. 618 that it would not require that a single depreciation method be used and instead committed to review utilities' depreciation practices on a case-by-case basis.⁹ NIPSCO asserts that the Commission should approve use of the equal life group procedure in the instant case, as the depreciation rates approved by the Illinois Utility Regulatory Commission (Illinois Commission) utilized the equal life group procedure.¹⁰

7. NIPSCO states that the Illinois Commission compared the equal life group methodology with the average life group methodology, another method for determining depreciation rates. NIPSCO submits that the Illinois Commission found that the equal life group methodology is at least as accurate, if not more accurate, than the use of the average life group methodology. NIPSCO explains that the average life group methodology takes all equipment placed into service in a particular account and calculates depreciation expense for that group of equipment based on its expected average service life. In contrast, NIPSCO explains that the equal life group method starts with the same group of equipment and further subdivides each group into equipment with the same service life. NIPSCO explains that the depreciation expense is then calculated for each subgroup using its actual service life. NIPSCO argues that the use of the expected service lives of equipment for depreciation is more accurate than the use of expected average service lives.

8. NIPSCO asserts that under FPA section 302,¹¹ the Commission is required to receive and consider the views of state regulatory authorities before prescribing depreciation rates. NIPSCO states that if the Commission requires changes to the Illinois Commission-approved depreciation rates, NIPSCO will need to maintain two sets of books and track depreciation separately at the state and federal level.¹²

9. NIPSCO states that the impact of the proposed changes to depreciation rates will result in an increase in annual depreciation of approximately \$7.1 million. NIPSCO notes, however, that the Commission has recognized that a change in

⁹ *Id.* at 4 (citing Order No. 618, 92 FERC ¶ 61,078 at 31,695).

¹⁰ N. Ind. Pub. Serv. Co., Cause No. 43526, at 51 (Ind. Util. Regulatory Comm'n Aug. 25, 2010).

¹¹ 16 U.S.C. § 825a(b) (2018).

¹² Transmittal at 6.

depreciation rates affects the timing of recovery of the costs and does not change the overall amount of recovery.¹³

10. NIPSCO requests waiver of the Commission's 60-day prior notice requirement in order to make the proposed depreciation rates effective on January 1, 2020. NIPSCO contends that granting this waiver is appropriate because it will, among other things, promote consistency in the depreciation rates used for federal and state ratemaking purposes. NIPSCO contends that the development of processes and systems to maintain multiple depreciation rates in effect for the same time period would be cost prohibitive and detrimental to NIPSCO's customers.¹⁴

11. NIPSCO requests that if the Commission does not grant waiver of the 60-day prior notice requirement, the Commission should allow NIPSCO to make an adjustment during its 2020 Attachment O true-up process to recognize January 1, 2020 as the effective date for its depreciation rates, consistent with Commission precedent.¹⁵

III. Notice and Responsive Pleadings

12. Notice of NIPSCO's filing was published in the *Federal Register*, 85 Fed. Reg. 4964 (2020), with interventions and protests due on or before February 11, 2020. None was filed.

IV. Discussion

13. Our preliminary analysis indicates that NIPSCO's proposed depreciation rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. For example, we find that NIPSCO has not demonstrated that the use of the equal life group procedure in this instance is appropriate. We thus find that NIPSCO's proposed depreciation rates raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we accept NIPSCO's proposed depreciation rates, subject to refund, and establish hearing and settlement judge procedures.

14. Additionally, we deny waiver of the 60-day prior notice requirement. Accordingly, we accept NIPSCO's filing effective March 22, 2020, after 60 days'

¹³ *Id.* at 9.

¹⁴ *Id.* at 11.

¹⁵ *Id.* (citing *Sw. Power Pool, Inc.*, 167 FERC ¶ 61,202, at PP 15-18 (2019)).

notice. Thus, the proposed depreciation rates accepted in this proceeding may be used when calculating the 2020 True Up Year adjustment, which will be posted in 2021, for inclusion in the projected revenue requirement for the 2022 Rate Year.¹⁶

15. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.¹⁸ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) NIPSCO's proposed depreciation rates are hereby accepted for filing and suspended for a nominal period, to be effective March 22, 2020, subject to refund, as discussed in the body of this order.

(B) 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 sections 205 and 206

¹⁶ NIPSCO's Attachment O protocols require that on or before June 1 of each year, NIPSCO shall derive a True-Up Adjustment based on the Actual Net Revenue Requirement for the prior calendar year (True-Up Year) and include that Adjustment in the Projected Net Revenue Requirement for the subsequent calendar year (Rate Year). Therefore, on June 1, 2021, NIPSCO may apply the revised depreciation rates for the entire 2020 True-Up Year, and the resulting True-Up Adjustment will be included in the Projected Net Revenue Requirement for the 2022 Rate Year.

¹⁷ 18 C.F.R. § 385.603 (2019).

¹⁸ If the participants decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of NIPSCO's proposed depreciation rates, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(D) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.