

168 FERC ¶ 61,068  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

Tucson Electric Power Company

Docket No. ER19-2019-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 31, 2019)

1. On May 31, 2019, Tucson Electric Power Company (Tucson Electric) filed, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and section 35.13 of the Commission's regulations,<sup>2</sup> revisions to its Open Access Transmission Tariff (OATT) to change from stated transmission rates to a transmission formula rate (Formula Rate), update its loss factors, and make various ministerial revisions. In this order, we accept Tucson Electric's proposed OATT revisions, suspend them for a nominal period, to become effective August 1, 2019, subject to refund, and establish hearing and settlement judge procedures.

**I. Background**

2. Tucson Electric is a vertically-integrated public utility that serves customers in the greater Tucson, Arizona metropolitan area.<sup>3</sup> Tucson Electric owns or has rights on certain electric transmission facilities, and provides transmission service pursuant to its OATT. For its retail electric rates, Tucson Electric is subject to regulation by the Arizona Corporation Commission (Arizona Commission).<sup>4</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. § 35.13 (2018).

<sup>3</sup> Tucson Electric is a subsidiary of UNS Energy Corporation, which is in turn a subsidiary of Fortis Inc. Tucson Electric is affiliated with UNS Electric, Inc. Filing at 3.

<sup>4</sup> *Id.* at 2-3.

3. Tucson Electric's stated transmission rates were the result of a 1997 settlement.<sup>5</sup> Under Tucson Electric's stated transmission rates, customers pay a bifurcated rate that includes one charge for high voltage facilities (EHV)—345 kilovolt (kV) to 500 kV—and a different one for lower voltage facilities (non-EHV)—138 kV and below. Recently, Tucson Electric reduced its stated transmission rates to reflect the 21 percent federal corporate income tax rate set forth in the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act),<sup>6</sup> effective March 21, 2018.<sup>7</sup>

## II. Tucson Electric's Filing

4. Tucson Electric states that, due to increased investments and higher transmission construction costs, its current stated transmission rates no longer recover its costs. Tucson Electric explains that to address this issue, it proposes OATT revisions to implement the Formula Rate that will track and adjust its transmission revenue requirement over time and update its transmission rates. According to Tucson Electric, its projected annual transmission revenue requirement (ATRR) for 2019 under the proposed Formula Rate is \$95,399,951, as compared to its current stated ATRR of \$51,687,262.<sup>8</sup>

5. Tucson Electric states that another reason for its filing is to eliminate its current bifurcated transmission rate structure. Tucson Electric asserts that its wholesale transmission customers generally benefited from its bifurcated structure because customers paid for either EHV or non-EHV facilities, while the bundled rate paid by retail customers reflected both. According to Tucson Electric, the Commission generally does not favor bifurcated rates for integrated transmission systems.<sup>9</sup>

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<sup>5</sup> See *Tucson Elec. Power Co.*, 80 FERC ¶ 61,064 (1997); see also *Tucson Elec. Power Co.*, Docket No. ER97-4237-000 (Oct. 10, 1997) (delegated order).

<sup>6</sup> Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017). Section 13001 of the Tax Cuts and Jobs Act reduces the federal corporate income tax rate from a maximum of 35 percent to a flat 21 percent rate.

<sup>7</sup> See *Tucson Elec. Power Co.*, 165 FERC ¶ 61,103 (2018); *Tucson Elec. Power Co.*, Docket Nos. ER19-550-000 and EL18-119-000 (Feb. 21, 2019) (delegated order).

<sup>8</sup> Filing at 4, 35.

<sup>9</sup> *Id.* at 6-7, 29-34 (citing *Buckeye Power, Inc. v. Am. Transmission Sys. Inc.*, Opinion No. 533, 148 FERC ¶ 61,174 (2014)).

6. Tucson Electric requests that the Commission accept its proposed OATT revisions effective August 1, 2019.<sup>10</sup>

### **III. Notice of Filing and Responsive Pleadings**

7. Notice of Tucson Electric's filing was published in the *Federal Register*, 84 Fed. Reg. 26,412, with interventions and protests due on or before June 21, 2019. On June 17, 2019, and June 27, 2019, the Commission's Secretary granted motions filed by Trico Electric Cooperative, Inc. (Trico) and the Arizona Commission requesting extensions of time to June 28, 2019, and July 5, 2019, respectively to file interventions and protests.<sup>11</sup> Timely motions to intervene and protests were filed by Pattern New Mexico Wind LLC (Pattern NM Wind) and Tri-State Generation and Transmission Association, Inc. (Tri-State). Timely motions to intervene, protests, and motions to consolidate were filed by Trico, Freeport-McMoran Copper & Gold Energy Services LLC (FM Energy Services), and Arizona Electric Power Cooperative, Inc. (Arizona Cooperative). The Arizona Commission filed a notice of intervention and protest. The International Brotherhood of Electrical Workers, Local 1116 (Electrical Workers Union) filed a motion to intervene and comments in support of the filing.<sup>12</sup> On July 22, 2019, Tucson Electric filed an answer to the protests.

8. As further discussed below, protestors argue that Tucson Electric's proposed OATT revisions are unjust, unreasonable, and substantially excessive, and raise issues of material fact. Accordingly, protestors contend that the Commission should suspend Tucson Electric's proposed OATT revisions for the maximum five-month period, subject to refund, and establish hearing and settlement judge procedures.<sup>13</sup> In response, Tucson Electric argues that the Commission should not suspend its proposed OATT revisions for the maximum suspension period, but states that it is amenable to setting its proposed OATT revisions for hearing and settlement judge procedures.<sup>14</sup>

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<sup>10</sup> *Id.* at 2.

<sup>11</sup> Notice of Extension of Time, Docket No. ER19-2019-000 (Jun. 17, 2019); Notice of Extension of Time, Docket No. ER19-2019-000 (Jun. 27, 2019).

<sup>12</sup> Electrical Workers Union Comments at 1.

<sup>13</sup> Arizona Commission Protest at 4-5; Arizona Cooperative Protest at 3-7; FM Energy Services Protest at 3-4, 11-12, 13-14; Pattern NM Wind Protest at 1, 4-5, 12-13; Tri-State Protest at 5, 51-54; Trico Protest at 4, 25-27.

<sup>14</sup> Tucson Electric Answer at 1, 40-41.

#### **IV. Discussion**

##### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Tucson Electric's answer because it has provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

###### **1. OATT Revisions**

###### **a. Formula Rate Template**

###### **i. Tucson Electric's Filing**

11. Tucson Electric proposes to use a forward-looking Formula Rate template with a true-up mechanism to calculate its ATRR.<sup>15</sup> Tucson Electric explains that, by October 1 of each year, it will project its net ATRR based on its projected costs for the upcoming Rate Year, which runs from January 1 to December 31. Tucson Electric states that the resulting projected net ATRR will be charged to customers throughout the Rate Year as a single rolled-in rate.<sup>16</sup>

12. Tucson Electric states that, no later than June 1 following the Rate Year, it will calculate the true-up amount, which is the difference between its actual transmission revenues and its actual net revenue requirement for the Rate Year. Tucson Electric explains that it will then apply the true-up amount with appropriate interest in accordance

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<sup>15</sup> The Formula Rate template and protocols are included in Attachments H-1 and H-2 of the OATT, respectively. The Formula Rate template includes the determination of the ATRR, which produces the rates found in Schedules 7 (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service) and 8 (Non-Firm Point-to-Point Transmission Service) of the OATT.

<sup>16</sup> Filing at 9, 17.

with the Commission's regulations under 18 C.F.R. § 35.19a to the next Rate Year's projected net ATRR and resultant rates.<sup>17</sup>

13. According to Tucson Electric, the projected gross ATRR is determined by summing operation and maintenance expenses, depreciation and amortization expenses, taxes other than income taxes, income taxes, and return on rate base. Tucson Electric explains that, thereafter, the projected net ATRR is determined by adjusting the gross ATRR for revenue credits.<sup>18</sup>

14. Tucson Electric states that its rate base is calculated as the sum of total net plant, adjustments to rate base, land held for future use, and total working capital. According to Tucson Electric, the return on rate base is the rate base multiplied by the overall rate of return.<sup>19</sup>

## ii. Protests

15. The Arizona Commission argues that Tucson Electric's proposed elimination of its bifurcated rates should be substantiated further.<sup>20</sup> Arizona Cooperative, FM Energy Services, and Pattern NM Wind protest Tucson Electric's proposed single, rolled-in rate, arguing that the Commission employs a fact-intensive analysis to determine whether a rolled-in rate is appropriate, which they argue Tucson Electric has not met.<sup>21</sup>

16. The Arizona Commission argues that the Formula Rate template calculates Tucson Electric's allowance for funds used during construction (AFUDC), but that the Formula Rate template should be modified to reflect that AFUDC capitalization will cease during the period where a project has interrupted construction or is suspended. The Arizona Commission also argues that, with regard to capital structure, Tucson Electric should be required to use the gross proceeds method in determining the total long-term debt component of its proposed capital structure.<sup>22</sup>

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<sup>17</sup> *Id.* at 9-10.

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Id.* at 12.

<sup>20</sup> Arizona Commission Protest at 15.

<sup>21</sup> Arizona Cooperative Protest at 6-8; FM Energy Services Protest at 4-7; Pattern NM Wind Protest at 10-12.

<sup>22</sup> Arizona Commission Protest at 12-15.

17. Pattern NM Wind contends that Tucson Electric has not demonstrated that all of its investment in lower voltage facilities is properly included in transmission rate base.<sup>23</sup> Similarly, Tri-State argues that the Formula Rate template includes line items for certain facilities that should be excluded from wholesale rates, but that there are no adjustments to transmission plant to account for the cost of facilities that Tucson Electric will potentially recover from other customers.<sup>24</sup>

18. According to Tri-State, Tucson Electric's FERC Form No. 1 notes that Tucson Electric receives corporate cost allocations from UNS Energy Corporation. However, Tri-State argues that Tucson Electric has not provided sufficient detail regarding how these costs are allocated to Tucson Electric and requests that Tucson Electric provide its cost allocation manual and relevant service agreements. Tri-State also argues that Tucson Electric failed to demonstrate that its proposed Formula Rate complies with the Commission's precedent requiring Fortis Inc. to hold customers harmless from the costs associated with its merger activities.<sup>25</sup>

19. Tri-State alleges that unfunded reserves are a component of working capital and should be included in a formula rate as a rate base deduction, but Tucson Electric failed to include sufficient information (including workpapers) for customers to determine whether Tucson Electric properly reflected all of its unfunded reserves as a credit to rate base. Tri-State also argues that Tucson Electric's capital structure is incorrectly computed based on net long-term debt, rather than gross long-term debt. Further, Tri-State argues that Tucson Electric overstated its ATRR by including construction-related material and supply costs in rate base.<sup>26</sup>

20. In addition, the Arizona Commission and Tri-State contend that Tucson Electric inappropriately included certain costs in various accounts, including, but not limited to the following: (1) sponsorship costs in Account 930.2 (Miscellaneous General Expenses); (2) expenses related to unapproved regulatory assets in Account 182.3 (Other Regulatory Assets); and (3) retail rate case expenses in accounts other than Account 928 (Regulatory Commission Expenses).<sup>27</sup> Further, Tri-State argues that, because public

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<sup>23</sup> Pattern NM Wind Protest at 10.

<sup>24</sup> Tri-State Protest at 38-39.

<sup>25</sup> *Id.* at 6-11.

<sup>26</sup> *Id.* at 14-20, 23-24, 29-30.

<sup>27</sup> Arizona Commission Protest at 9-12; Tri-State Protest at 22-29. Tri-State also argues that the Formula Rate template includes various miscellaneous errors. Tri-State

utilities have incorrectly recorded certain amounts in Account 165 (Prepayments), the Commission should require Tucson Electric to include a note in its Formula Rate that states that income tax overpayments and refunds are to be excluded from Account 165.<sup>28</sup>

**iii. Answer**

21. Tucson Electric argues that it supported its proposal for a single, rolled-in rate and that its one-line diagram included with its filing shows that its non-EHV facilities loop into and out of its EHV facilities. Tucson Electric also contends that the presumption that its facilities are integrated stands until challenged by customers.<sup>29</sup>

22. Tucson Electric alleges that it cannot accrue AFUDC when construction-work-in-progress (CWIP) is included in rate base. Further, Tucson Electric contends that the arguments regarding construction-related materials and supplies costs are flawed because these costs are recorded to Account 154 (Plant Materials and Operating Supplies) and do not represent CWIP. In addition, Tucson Electric argues that protestors fail to show that the use of gross, rather than net, proceeds to calculate the long-term debt component of Tucson Electric's capital structure is appropriate.<sup>30</sup>

23. Tucson Electric disagrees with Tri-State's argument regarding service company cost allocation, arguing that the issue involves inputs to the Formula Rate template, not the template itself. According to Tucson Electric, its proposed Formula Rate protocols require it to provide a description of the methodologies used to allocate and assign costs between Tucson Electric and its affiliates. Tucson Electric also argues that there is no basis to speculate that any of Fortis' activities require Tucson Electric to incur any significant post-merger-related costs.<sup>31</sup>

24. Regarding unfunded reserves, Tucson Electric argues that protestors did not consider other relevant factors that speak to whether an item is an unfunded reserve, such as whether funds have been set aside in trust or whether the liability is offset by another

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Protest at 43-44.

<sup>28</sup> *Id.* at 11-14 (citing *PPL Corp.*, Docket No. FA12-12-000 (Oct. 9, 2014) (delegated order) and *Union Elec. Co.*, Docket No. FA13-2-000 (March 27, 2015) (delegated order)).

<sup>29</sup> Tucson Electric Answer at 29-36.

<sup>30</sup> *Id.* at 10-11, 13-14.

<sup>31</sup> *Id.* at 38-39, 45-48.

balance sheet account. Finally, Tucson Electric contends that it should not be required to add a note about Account 165 in its Formula Rate template because doing so is akin to including a note that Tucson Electric will follow the Commission's accounting rules, which it is already required to do.<sup>32</sup>

**b. Return on Equity (ROE)**

**i. Tucson Electric's Filing**

25. Tucson Electric requests an ROE of 10.4 percent. Tucson Electric states that the ROE is based on the recommendations and analysis of Mr. McKenzie. Tucson Electric asserts that, due to shortcomings of the financial models proposed by the Commission in a recent order,<sup>33</sup> Mr. McKenzie's approach in determining the proposed ROE retained the Expected Earnings approach and Risk Premium method used by the Commission but substituted a one-step, constant growth discounted cash flow (DCF) model (instead of the two-step DCF model) and an empirical Capital Asset Pricing Model (CAPM) (instead of the CAPM).<sup>34</sup>

**ii. Protests**

26. Arizona Cooperative, FM Energy Services, Pattern NM Wind, and Trico argue that Tucson Electric's proposed ROE has not been shown to be just and reasonable and is excessive. These protestors argue that Mr. McKenzie's use of multiple adjustments to the Commission's standard ROE analysis skew the proposed ROE upward and are unsupported. For example, these protestors argue that Mr. McKenzie uses a single-step

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<sup>32</sup> *Id.* at 7, 12. Tucson Electric also asserts that its reference in Note F to Account 282.2 is a typographical error and should be Account 228.2.

<sup>33</sup> Filing at 18 (citing *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018) (*Coakley*)).

<sup>34</sup> *Id.* at 18-27.



DCF analysis that the Commission rejected in Opinion No. 531<sup>35</sup> and an improper proxy group.<sup>36</sup>

**iii. Answer**

27. Tucson Electric alleges that the Commission's ROE policy is currently in transition and that there is no binding *Coakley* precedent, as the Commission's order contained a proposal that was to be litigated through a paper hearing. According to Tucson Electric, the Commission expects that participants in ongoing proceedings should address the merits and application of the proposed *Coakley* methodology in their proceedings.<sup>37</sup>

**c. Income Taxes**

**i. Tucson Electric's Filing**

28. Tucson Electric states that the reduction in the federal corporate income tax rate set forth in the Tax Cuts and Jobs Act resulted in excess accumulated deferred income taxes (ADIT) on Tucson Electric's books and records. Tucson Electric asserts that, to address excess ADIT on an on-going basis, the Formula Rate template reflects an excess (and deficient) ADIT adjustment. According to Tucson Electric, its proposed approach for excess and deficient ADIT is consistent with the principles set forth in the Commission's ADIT notice of proposed rulemaking.<sup>38</sup> Tucson Electric also states that it amortizes excess or deficient ADIT (including both protected and unprotected amounts) over the life of the underlying asset using the Average Rate Assumption Method.<sup>39</sup>

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<sup>35</sup> *Coakley v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234, *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

<sup>36</sup> Arizona Cooperative Protest at 10-13; FM Energy Services Protest at 7-11; Pattern NM Wind Protest at 6-9; Trico Protest at 12-20.

<sup>37</sup> Tucson Electric Answer at 14-16 (citing *Gulf Power Co.*, 165 FERC ¶ 61,265, at P 15 (2018)).

<sup>38</sup> Filing at 13 (citing *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, 165 FERC ¶ 61,117 (2018)).

<sup>39</sup> *Id.* at 12-13 and Attachment A, Direct Testimony of John Wolfram at 25 (Wolfram Testimony).

29. For taxes other than income taxes, Tucson Electric states that such costs are allocated as follows: (1) labor-related taxes using a wages and salaries allocator; (2) real and personal property taxes using a net plant allocator; and (3) miscellaneous other taxes and payments in lieu of taxes using a gross plant allocator. According to Tucson Electric, all of its tax worksheets found in the Formula Rate template incorporate the proration of deferred tax activity, as required by the Internal Revenue Code.<sup>40</sup>

**ii. Protests**

30. The Arizona Commission and Tri-State argue that Tucson Electric has not properly applied the Internal Revenue Service (IRS) proration methodology. The Arizona Commission and Tri-State contend that Tucson Electric's proposal to apply the proration methodology to certain Account 190 (ADIT) items and excess ADIT is improper.<sup>41</sup>

31. According to the Arizona Commission, Tucson Electric's income tax calculation for permanent differences is ambiguous.<sup>42</sup> Further, Tri-State contends that Tucson Electric inappropriately included ADIT related to contributions in aid of construction and all plant-related regulatory assets based on a net plant allocator, as well as inappropriately excluded ADIT items that have been amortized. Tri-State also alleges that Tucson Electric has not supported its calculation for excess ADIT, and that certain portions of the excess ADIT (i.e., the unprotected amounts) should be amortized over five years. Finally, Tri-State argues that Tucson Electric includes gross receipts tax in its actual ATRR and projected ATRR, which is improper.<sup>43</sup>

**iii. Answer**

32. Tucson Electric alleges that its use of the proration methodology is consistent with Commission precedent and that the methodology is not limited to a particular account.<sup>44</sup> According to Tucson Electric, the IRS provided guidance that the proration methodology should apply to excess ADIT and that Tucson Electric intends to modify its ratemaking

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<sup>40</sup> *Id.* at 11 and Wolfram Testimony at 27.

<sup>41</sup> Arizona Commission Protest at 6-9; Tri-State Protest at 31-32.

<sup>42</sup> Arizona Commission Protest at 12.

<sup>43</sup> Tri-State Protest at 36-38, 40-41.

<sup>44</sup> Tucson Electric Answer at 5 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,250 (2016)).

computations with respect to excess ADIT, as necessary, to reflect the guidance from the IRS.<sup>45</sup>

33. Regarding permanent differences, Tucson Electric argues that it cannot provide a list of all possible permanent differences that could result from the application of the Internal Revenue Code. Tucson Electric asserts that the permanent differences included in its Formula Rate template for any rate year can be reviewed through the information exchange process under the Formula Rate protocols.<sup>46</sup>

**d. Post-Retirement Benefits Other than Pensions (PBOP)**

**i. Tucson Electric's Filing**

34. According to Tucson Electric, its costs are supported by an actuarial report performed by an independent third party. Tucson Electric asserts that the PBOP costs cannot be changed absent a separate FPA section 205 or section 206<sup>47</sup> filing with the Commission. Tucson Electric states that it established an irrevocable trust fund into which the annual allowance for PBOP costs will be deposited. Tucson explains that the trust provides that any disbursements made from the trust are limited to payments for the benefit of employees and for expenses of the trust.<sup>48</sup>

**ii. Protests**

35. The Arizona Commission argues that Tucson Electric's proposed use of a fixed PBOP expense amount should be denied because it is inconsistent with Commission precedent and that Tucson Electric has not shown such practice to be just and reasonable.<sup>49</sup> Tri-State argues that Tucson Electric failed to provide five-year historical or projected PBOP amounts in its filing, which would allow Tri-State to determine whether the proposed fixed PBOP amount is appropriate.<sup>50</sup>

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

<sup>46</sup> *Id.* at 13-14.

<sup>47</sup> 16 U.S.C. § 824e (2012).

<sup>48</sup> Filing at 14.

<sup>49</sup> Arizona Commission Protest at 13-14.

<sup>50</sup> Tri-State Protest at 39-40.

**iii. Answer**

36. Tucson Electric argues that there is no requirement to provide five-year historical or projected PBOP amounts, but in any event, such information could be requested through discovery. According to Tucson Electric, its proposal to use a fixed PBOP amount is consistent with the Midcontinent Independent System Operator, Inc. (MISO) generic formula rate template.<sup>51</sup>

**e. Depreciation**

**i. Tucson Electric's Filing**

37. Tucson Electric proposes to use depreciation rates of 1.55 and 0.14 percent for transmission and net salvage transmission, respectively, which Tucson Electric explains are a result of a 2018 study. For general plant depreciation rates, Tucson Electric proposes to use the current Arizona Commission-approved depreciation rates. Tucson Electric states that the depreciation rates that yield its depreciation expenses cannot change absent Commission approval.<sup>52</sup>

**ii. Protests**

38. Pattern NM Wind argues that Tucson Electric's proposal to change its depreciation rates raise concerns that should be further explored in hearing and settlement judge procedures, and that neither Tucson Electric's 2018 depreciation study nor expert testimony provide sufficient information regarding plant additions and retirements.<sup>53</sup>

39. According to Tri-State, in periods where Tucson Electric submits new depreciation rates for Commission approval, Tucson Electric can include those depreciation rates in its projected transmission plant worksheet. Tri-State argues that the Commission should require Tucson Electric to use only Commission-approved depreciation rates. Tri-State also argues that the Commission should reject Tucson Electric's proposal to use state-approved depreciation rates because ratemaking structures of state commissions are different than those of the Commission.<sup>54</sup>

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<sup>51</sup> Tucson Electric Answer at 8-9.

<sup>52</sup> Filing at 13, 34-35.

<sup>53</sup> Pattern NM Wind Protest at 12.

<sup>54</sup> Tri-State Protest at 20-22.

**iii. Answer**

40. Tucson Electric contends that information on plant additions and retirements is available on public documents, such as the trade press and FERC Form No. 1. Tucson Electric also alleges that, contrary to Tri-State's arguments, it proposes to apply Commission-approved depreciation rates in the Formula Rate template at all times.<sup>55</sup>

**f. Abandoned Plant Recovery**

**i. Tucson Electric's Filing**

41. Tucson Electric states that the Formula Rate template includes a provision for including the amortization of any unrecovered abandoned plant costs that are directly assigned to the transmission function and that any abandoned plant recovery must be approved by the Commission. Tucson Electric states that it submitted a filing in Docket No. ER19-2023-000 requesting recovery of certain abandoned plant costs. Tucson Electric explains that, unless or until that separate request is approved by the Commission, the amount of recoverable abandoned plant costs in the Formula Rate template will remain at zero.<sup>56</sup>

**ii. Protests**

42. Arizona Cooperative, FM Energy Services, and Trico request that the Commission consolidate the instant proceeding with the proceeding in Docket No. ER19-2023-000 for purposes of administrative efficiency. According to these protestors, the abandoned plant costs that Tucson Electric is seeking to recover in Docket No. ER19-2023-000 will be inputs to the Formula Rate once approved by the Commission and are included in Tucson Electric's projected ATRR.<sup>57</sup>

**iii. Answer**

43. Tucson Electric argues that the instant proceeding has nothing in common as to the legal and factual issues in Docket No. ER19-2023-000 and should not be consolidated.<sup>58</sup>

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<sup>55</sup> Tucson Electric Answer at 16-19.

<sup>56</sup> Filing at 2, 13, and Wolfram Testimony at 20.

<sup>57</sup> Arizona Cooperative Protest at 13-17; FM Energy Services Protest at 4, 14; Trico Protest at 24.

<sup>58</sup> Tucson Electric Answer at 39-40.

**g. Formula Rate Protocols**

**i. Tucson Electric's Filing**

44. Tucson Electric states that its proposed Formula Rate protocols include, among other things, mechanisms for (1) allowing advance notice of Tucson Electric's implementation of the Formula Rate through notifications and open meeting requirements; (2) exchanging information with interested parties through information and document requests; (3) governing informal and formal challenges; and (4) submitting an information filing to the Commission annually, including the true-up for each Rate Year.<sup>59</sup>

45. Tucson Electric asserts that its proposed protocols are similar to the standard protocols adopted for certain MISO transmission owners. Tucson Electric explains that the major difference between its protocols and those of certain MISO transmission owners is that interested parties have 120 days to ask questions of Tucson Electric and the review period ends in 140 days, whereas interested parties have 183 days to ask questions of certain MISO transmission owners and the review period ends in 224 days. According to Tucson Electric, the difference is reasonable given the size and scope of certain MISO transmission owners as compared to Tucson Electric.<sup>60</sup>

**ii. Protests**

46. Arizona Cooperative, FM Energy Services, Tri-State, and Trico contend that Tucson Electric's proposed Formula Rate protocols do not comply with Commission precedent, lack transparency measures common in Commission-approved protocols, and do not allow interested parties sufficient time to review, among other things, the annual true-up and projected ATRR.<sup>61</sup> FM Energy Services also argues that the protocols limit the scope of future FPA section 205 filings, which is improper.<sup>62</sup>

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<sup>59</sup> Filing at 15.

<sup>60</sup> *Id.* at 16-17.

<sup>61</sup> Arizona Cooperative Protest at 8-10; FM Energy Services Protest at 12-13; Tri-State Protest at 44-51; Trico Protest at 23-24.

<sup>62</sup> FM Energy Services Protest at 12.

**iii. Answer**

47. Tucson Electric argues, among other things, that its Formula Rate protocols are similar in certain respects to the MISO formula rate protocols; its proposed timelines are reasonable; and the provision addressing the scope of future FPA section 205 filings should be set for hearing.<sup>63</sup>

**h. Other Revisions**

**i. Tucson Electric's Filing**

48. Tucson Electric proposes to revise its loss factor to 3.44 percent in Sections 15.7 (Service Availability—Real Power Losses), 28.5 (Nature of Network Integration Transmission Service (NITS)—Real Power Losses), and 36.5 (Nature of Retail Direct Access NITS—Real Power Losses) of its OATT. Tucson states that currently the loss factors are 3.3 percent and 1.0 percent for EHV and non-EHV facilities, respectively. Tucson Electric explains that it developed the new loss factor based on an internal analysis that used actual source and use data to validate a loss study performed by Siemens Power Technologies International in 2018.<sup>64</sup>

49. Tucson Electric also proposes the following ministerial changes to the OATT: (1) replacing its indices of customers in Attachments E and I with a reference to its Electric Quarterly Reports; (2) conforming the billing procedures in Section 7.1 to the *pro forma* OATT; (3) adding the defined term “Tariff” to the Definitions section; and (4) correcting errors in Attachment references in Sections 37 and 43.<sup>65</sup>

**ii. Protests**

50. According to Tri-State, Tucson Electric has not provided adequate support for its proposed loss factor, including the models used, dispatch of generation in seasonal cases, treatment of long term transmission or generation outages, treatment of new generation or transmission, or effect of seasonal loop flows<sup>66</sup> Similarly, Trico argues that the proposed

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<sup>63</sup> Tucson Electric Answer at 19-28.

<sup>64</sup> Filing at 7, 34.

<sup>65</sup> *Id.* at 7.

<sup>66</sup> Tri-State Protest at 41-43.

loss factor is unjust and unreasonable and unduly discriminates against Trico and similarly-situated customers.<sup>67</sup>

**iii. Answer**

51. Tucson Electric alleges that Trico provides no support for its argument that EHV-only customers should be assessed lower losses than other customers. Tucson Electric also asserts that Tri-State's concerns can be addressed in hearing and settlement judge procedures.<sup>68</sup>

**2. Commission Determination**

52. Our preliminary analysis indicates that Tucson Electric's proposed OATT revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that Tucson Electric's proposed OATT revisions 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. Therefore, we accept Tucson Electric's proposed OATT revisions, suspend them for a nominal period,<sup>69</sup> to become effective August 1, 2019, subject to refund, and establish hearing and settlement judge procedures.

53. We deny the motions to consolidate the instant proceeding with the pending proceeding in Docket No. ER19-2023-000 as premature. In general, the Commission consolidates proceedings only if a trial-type evidentiary hearing is required and there are common issues of law and fact and consolidation will ultimately result in greater administrative efficiency.<sup>70</sup> The Commission has not yet addressed Tucson Electric's

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<sup>67</sup> Trico Protest at 21-23.

<sup>68</sup> Tucson Electric Answer at 36-37.

<sup>69</sup> In *West Texas Utilities Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982) (*West Texas*), the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. In the instant proceeding, our preliminary analysis indicates that the proposed rates may not be substantially excessive, as defined in *West Texas*, and therefore we deny protestors' requests for the maximum suspension period.

<sup>70</sup> *Sw. Elec. Power Co.*, 163 FERC ¶ 61,155, at P 14 (2018).



filing in Docket No. ER19-2023-000 and therefore, decisions regarding the issues of law and fact in that proceeding have not yet been made.

54. 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 are commenced. 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.<sup>71</sup> 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.<sup>72</sup> 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 assignment of the case to a presiding judge.

The Commission orders:

(A) Tucson Electric's proposed OATT revisions are hereby accepted for filing and suspended for a nominal period to be effective as of August 1, 2019, 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 by the Federal Power Act, particularly section 205 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER19-2019-000 concerning the justness and reasonableness of Tucson Electric's proposed OATT revisions, 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.

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<sup>71</sup> 18 C.F.R. § 385.603 (2018).

<sup>72</sup> If the parties 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>).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), the Chief Administrative Law 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 a 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 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. Commissioner McNamee is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.