

168 FERC ¶ 61,189  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Wabash Valley Power Association, Inc.

Docket Nos. ER19-1213-000  
ER19-1213-001

ORDER REJECTING FILING WITHOUT PREJUDICE

(Issued September 23, 2019)

1. On March 7, 2019, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and section 35.13(a)(2) of the Commission's regulations,<sup>2</sup> Wabash Valley Power Association, Inc. (Wabash) submitted for filing twenty-one new Wholesale Power Supply Contracts (New Contracts) with most of its distribution cooperative members (Executing Members),<sup>3</sup> to be included in Section 3 of its FERC Electric Tariff Volume No. 1 (Formulary Rate Tariff). Wabash also submitted notices of cancellation for its existing Wholesale Power

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> 18 C.F.R. § 35.13(a)(2) (2019).

<sup>3</sup> The Executing Members are: Boone County Rural Electric Membership Corporation; Carroll White Rural Electric Membership Corporation; Hancock Rural Telephone Corporation; Corn Belt Energy Corporation; EnerStar Power Corp.; Fulton County Rural Electric Membership Corporation; Heartland Rural Electric Membership Corporation; Hendricks County Rural Electric Membership Corporation; Jasper County Rural Electric Membership Corporation; Jay County Rural Electric Membership Corporation; Kankakee Valley Rural Electric Membership Corporation; Kosciusko Rural Electric Membership Corporation; LaGrange County Rural Electric Membership Corporation; M.J.M. Electric Cooperative, Inc.; Marshall County Rural Electric Membership Corporation; Miami-Cass Rural Electric Membership Corporation; Newton County Rural Electric Membership Corporation; Noble County Rural Electric Membership Corporation; Parke County Rural Electric Membership Corporation; Steuben County Rural Electric Membership Corporation; and Warren County Rural Electric Membership Corporation.

Supply Contracts between Wabash and the Executing Members. In this order, we reject the filing, without prejudice, as discussed below.

**I. Filing**

2. Wabash states that it is a generation and transmission cooperative based in Indianapolis, Indiana. Wabash explains that it was formed by its members for the purpose of providing wholesale power and transmission service to its members for resale to their retail customers. Wabash adds that its membership consists of twenty-five members, twenty-three of which are non-profit distribution cooperatives serving electric energy to their members at retail, and two members that are energy marketers and not retail-serving entities.<sup>4</sup>

3. Wabash states that it and each of its members currently have two existing Wholesale Power Contracts (Existing Contracts), which expire on April 13, 2028, and December 31, 2050, respectively. Wabash maintains that it began developing the New Contracts as a result of a strategic initiative which identified the need to extend and amend the Existing Contracts to provide its members with flexibility in addressing distributed generation in the members' service territories.<sup>5</sup>

4. According to Wabash, under the New Contracts, each distribution cooperative member is required to pay Wabash for power in accordance with the Formulary Rate Tariff. Wabash adds that the Formulary Rate Tariff is intended to allow Wabash to recover its costs and expenses from ownership, operation, maintenance, and termination of its generating plants, transmission system, distribution facilities, or related facilities, purchased power and associated costs and expenses, plus a small margin.<sup>6</sup>

5. Wabash states that the New Contracts: (1) extend the term to December 31, 2060 and provide for automatic renewal; (2) allow for flexibility in addressing distributed generation in the members' service territories under a referenced Policy D-11.1 (Distributed Generation Policy); and (3) provide that the members jointly participate with Wabash in seeking from the Commission partial waiver of certain Commission regulations implementing section 210 of the Public Utility Regulatory Policies Act of

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<sup>4</sup> Wabash Filing at 9. Wabash states that two members of Wabash, Tipmont Rural Electric Membership Corporation (Tipmont) and Citizens Electric Corporation (Citizens), did not sign the New Contracts and will continue to receive their wholesale service pursuant to their existing contracts. *Id.* at n.7.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* at 9-10.

1978 (PURPA)<sup>7</sup> during the term of the New Contracts in exchange for added flexibility in addressing distributed generation.<sup>8</sup>

6. Wabash requests that both the New Contracts and the cancellation of the Executing Members' Existing Contracts be made effective as of July 1, 2019.<sup>9</sup>

## II. Notice of Filing and Responsive Pleadings

7. Notice of Wabash's filing was published in the *Federal Register*, 84 Fed. Reg. 9511 (2019), with interventions and protests due on or before March 28, 2019. Tipmont filed a timely motion to intervene, motion to reject, and protest.<sup>10</sup> On April 12, 2019, Wabash filed a motion for leave to answer and answer to Tipmont's protest. On April 26, 2019, Tipmont filed a motion for leave to answer and answer to Wabash's answer. On May 3, 2019, Tipmont filed a supplement to its answer. On May 6, 2019, Wabash filed an answer to Tipmont's supplemental answer.

### A. Protest

8. Tipmont states that it is currently a member of Wabash and has entered into the Existing Contracts with Wabash. Tipmont states that it has not executed the New Contract because, as set forth in its Complaint filed in Docket No. EL19-2-000, Tipmont is seeking to terminate its relationship with Wabash as Tipmont's requirements power supplier.<sup>11</sup> Tipmont adds that, depending on the outcome of that Complaint proceeding, Tipmont may wish to purchase power under the terms of the New Contract in the future and is, therefore, directly affected by the filing in this proceeding.<sup>12</sup>

9. Tipmont argues that the Commission should reject the New Contracts as incomplete because, according to Tipmont, Wabash has failed to file significant rates, terms, and conditions associated with the New Contracts, and that other unfiled "side

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<sup>7</sup> 16 U.S.C. § 824a-3 (2018).

<sup>8</sup> Wabash Filing at 8.

<sup>9</sup> *Id.* at 11.

<sup>10</sup> On April 23, 2019, Tipmont filed an errata to its motion to intervene and protest.

<sup>11</sup> Tipmont Protest at 1-2 (citing Tipmont Rural Electric Member Cooperative, Docket No. EL19-2-000 (Oct. 1, 2018) (Tipmont Complaint)).

<sup>12</sup> *Id.* at 2.

documents” conflict with the terms of the New Contracts.<sup>13</sup> Specifically, Tipmont contends that Board Policy D-2 (Buyout Policy) and the Distributed Generation Policy were not filed as attachments to the New Contracts despite the fact that they significantly affect the rates, terms, and conditions of service.<sup>14</sup>

10. Tipmont states that the New Contracts have a term that lasts through December 31, 2060 and do not have provisions for early termination. However, Tipmont argues that despite having no early termination provisions, sections 10(a) and 14(a) of the New Contracts refer to an early termination of the New Contracts, which Tipmont alleges is proof that the parties intended to have some means of early termination.<sup>15</sup> Tipmont further argues that such references to early termination appear to conflict with the unfiled Buyout Policy, which provides for a three-year notice of early termination.<sup>16</sup>

11. Furthermore, Tipmont alleges that the current Buyout Policy, which provides for a three-year buyout term, demonstrates that the combination of a ten-year buyout term and payment of an exit fee that Tipmont is obliged to fulfill under its Existing Contracts is unjust and unreasonable.<sup>17</sup> Tipmont argues that no reason exists why it should not be given the same three-year buyout term immediately, even if it remains under the Existing Contracts.<sup>18</sup>

12. Tipmont states that the Distributed Generation Policy provides for the amount of “distributed generation which the Member is permitted to own or is permitted to purchase directly from interconnected sources.”<sup>19</sup> Tipmont argues that knowing the size of the distributed generation allowance is critical to understanding the impacts of the New Contracts on: (1) a member’s ability to own resources or purchase power from distributed or other resources to reduce the amount of load served by Wabash; and (2) potential Qualifying Facility developers in the region, who will only receive Wabash’s avoided cost rate for sales to Wabash’s members. Tipmont contends, therefore, that the

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<sup>13</sup> *Id.* at 6-7.

<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> *Id.* at 9-10.

<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.* at 32.

<sup>18</sup> *Id.* at 33.

<sup>19</sup> *Id.* at 16 (citing New Contract at section 2).

Distributed Generation Policy significantly affects the terms of the New Contracts and should be filed alongside the New Contracts because it limits the amount of load that a member can self-serve.<sup>20</sup>

13. Tipmont asks that the Commission issue a deficiency letter stating that the New Contracts are incomplete. Tipmont argues that if Wabash refuses to amend its filing to include the rest of the contract terms, the Commission should reject the filing, as it would be impossible to determine the justness and reasonableness of the terms of service. Tipmont adds that if the Commission rejects the instant filing, it should initiate an FPA section 206 proceeding into the justness and reasonableness of the Existing Contracts, given that the Buyout Policy and the Distributed Generation Policy are not filed and they significantly affect the rates, terms, and conditions of those contracts.<sup>21</sup>

14. Regardless of whether the Buyout Policy and Distributed Generation Policy are filed, Tipmont alleges that the New Contracts contain unjust and unreasonable provisions.<sup>22</sup> Tipmont also alleges that the Buyout Policy and Distributed Generation Policy also contain unjust and unreasonable provisions.<sup>23</sup>

#### **B. Wabash Answer**

15. Wabash contends that Tipmont has not met the threshold showing for intervention required by the Commission. Wabash argues that because Tipmont has not executed the New Contract that is the subject of this proceeding, and because Tipmont has not shown that Commission acceptance of the New Contracts would directly affect Tipmont's interests, Tipmont has not demonstrated that it has a direct interest that may be affected by the outcome of the case.<sup>24</sup>

16. Wabash disputes Tipmont's argument that the Commission's ruling in the Tipmont Complaint proceeding could impact Tipmont's interest in entering into the New Contract. According to Wabash, Tipmont does not have a unilateral right to enter into the New Contract whenever it wishes. Wabash explains that Tipmont, like all other Wabash members, knew it had until February 28, 2019 to execute the New Contract and it did

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<sup>20</sup> *Id.* at 16-17.

<sup>21</sup> *Id.* at 19.

<sup>22</sup> *Id.* at 20-31.

<sup>23</sup> *Id.* at 31-35.

<sup>24</sup> Wabash Answer at 15-16.

not do so, and, therefore, it has no right to execute the New Contract.<sup>25</sup> Wabash further alleges that the real reason for Tipmont's motion to intervene is to affect precedent that may affect the outcome of Tipmont's Complaint proceeding. Wabash contends that Tipmont raises arguments in the instant proceeding that it has already argued in the Tipmont Complaint proceeding, including requesting that the Commission reform the buyout term in the Existing Contracts, which is not part of the instant proceeding.<sup>26</sup> Wabash argues that because Tipmont's interests are not relevant to the Commission's consideration of the New Contracts, the Commission should not grant Tipmont's intervention in this proceeding.<sup>27</sup>

17. Wabash states that the New Contracts are complete, and fully comply with FPA section 205 and the Commission's regulatory requirements. Wabash contends that the New Contracts are not missing essential provisions and the terms do not conflict with the Buyout Policy or Distributed Generation Policy, nor are the New Contracts missing materials that would otherwise be filed under the rule-of-reason test that the Commission applies to determine whether provisions or practices must be placed on file.<sup>28</sup>

18. Wabash states that the Commission should reject Tipmont's proposal that the Commission initiate an FPA section 206 investigation into the justness and reasonableness of the Existing Contracts, arguing that the justness and reasonableness of those contracts are not at issue in this case.<sup>29</sup> Wabash contends that Tipmont's arguments go beyond the limited scope of this proceeding.<sup>30</sup> In response to Tipmont's argument that the revised Buyout Policy demonstrates that the buyout provisions of the Existing Contracts are unjust and unreasonable, Wabash states that those termination provisions are not before the

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<sup>25</sup> *Id.* at 16-17. Wabash cites to its Board Policy D-2, which provides that if the Board of Directors requests members to execute a new or extended power supply contract by a date certain, those members not executing it will not later be able to execute it except on terms and conditions applicable to new members.

<sup>26</sup> *Id.* at 18-19.

<sup>27</sup> *Id.* at 19.

<sup>28</sup> *Id.* at 21.

<sup>29</sup> *Id.* at 21-22.

<sup>30</sup> *Id.* at 29.

Commission in this proceeding and are irrelevant to whether the New Contracts are just and reasonable.<sup>31</sup>

19. Wabash contends that Tipmont has not demonstrated that the Buyout Policy and the Distributed Generation Policy are inconsistent with the New Contracts. Wabash states that the Buyout Policy is not mentioned, and is not incorporated by reference, in the New Contracts. Wabash adds that because the New Contracts do not offer a buyout option, the Buyout Policy is not implicated by the terms of the New Contracts.<sup>32</sup> Additionally, Wabash clarifies that section 10(a) only prohibits a member from taking certain actions that could be detrimental to Wabash and the remaining members, such as merging, consolidating, selling all its assets or terminating the New Contract, without Wabash's consent, which it cannot unreasonably withhold or condition.<sup>33</sup> With regard to the Distributed Generation Policy, Wabash submits that the references in the New Contracts merely clarify that load served by a member's own committed resources described by the Distributed Generation Policy would not be served by Wabash under the New Contracts.<sup>34</sup> Furthermore, Wabash argues that the Commission should reject Tipmont's request to investigate provisions of the New Contracts as a transparent attempt to delay their effectiveness.<sup>35</sup>

### C. Tipmont Answer

20. Tipmont claims that it has standing to intervene because it is an existing customer, a Member-Owner of Wabash, a potential customer under the New Contract, and a potential competitor.<sup>36</sup> First, Tipmont states that it chose not to execute the New Contract in its current form because the New Contract contains unjust, unreasonable, and anti-competitive terms and conditions, and had Tipmont agreed to execute the New Contract, the New Contract would have prohibited Tipmont from challenging any of its terms and conditions in this proceeding. Thus Tipmont claims that no customer or potential

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 22-23.

<sup>33</sup> *Id.* at 26.

<sup>34</sup> *Id.* at 23-24.

<sup>35</sup> *Id.* at 30.

<sup>36</sup> Tipmont Answer at 2-3.

customer would ever have the right to challenge the New Contract when it is filed under section 205 of the FPA.<sup>37</sup>

21. Second, Tipmont also contends that it is entitled under the FPA to receive service on the same rates, terms, and conditions as the other members of Wabash. Tipmont argues that those rates, terms, and conditions will be established in this proceeding and denying Tipmont's right to choose to take service under the version of the New Contract that is established in this proceeding would violate the requirement of FPA sections 205 and 206 that rates, terms, and conditions not be unduly discriminatory. Tipmont alleges that as a full Member-Owner of Wabash, subject to all of the requirements of its bylaws and policies, no basis exists for the Commission to find that Tipmont is not similarly situated to the other Member-Owners. Tipmont submits that it is therefore entitled to intervene in this proceeding and then choose whether to execute the New Contract once the Commission has determined the just and reasonable rates, terms, and conditions of service.<sup>38</sup>

22. Third, Tipmont argues that as a non-profit cooperative, members' capital contributions provide them ownership interests that are similar in nature to that of a security holder in a public or private company. Tipmont contends that, as a Member-Owner, it has a strong interest in this matter.<sup>39</sup> Tipmont argues that it has a direct and substantial interest in the financial well-being and operations of its current requirements supplier, of which it also owns a portion, whether or not it chooses to execute the New Contract in the future. Therefore, Tipmont states that its interests are directly affected by the outcome of this proceeding.<sup>40</sup>

23. Fourth, Tipmont argues that, even if it had no intention of ever executing the New Contract, it would have standing to intervene as a potential competitor to the other members

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<sup>37</sup> *Id.* at 3.

<sup>38</sup> *Id.* at 4.

<sup>39</sup> *Id.* at 5 (citing Wabash Answer at 11).

<sup>40</sup> *Id.*



of Wabash.<sup>41</sup> For example, Tipmont argues that, under Commission precedent, it is sufficient that an entity be a potential customer in order to obtain standing.<sup>42</sup>

24. With regard to the Buyout Policy, Tipmont argues that Wabash does not deny that the revised Buyout Policy will set forth the rates, terms, and conditions associated with the termination of service under the New Contract when the terminating customer withdraws as a member. Tipmont contends that this is the case even though the New Contract does not reference the revised Buyout Policy.<sup>43</sup>

25. Tipmont reiterates that section 10(a) of the New Contract states that a member may “withdraw as a Member of Wabash Valley and terminate this Agreement.” Tipmont adds that Wabash admits that the same section prohibits “terminating the New Contract, without [Wabash’s] consent, which it cannot unreasonably withhold or condition.”<sup>44</sup> Tipmont argues that this means that the New Contract permits termination under section 10(a) of the New Contract, with Wabash’s consent, which is provided through the revised Buyout Policy.<sup>45</sup> Tipmont states if the Buyout Policy was not applicable to the New Contracts, then Wabash would not have revised the Buyout Policy on the same date as the New Contracts and given them the same effective date.<sup>46</sup>

26. Tipmont notes that, in a separate filing pending with the Commission,<sup>47</sup> Wabash suggests that another non-signing member, Citizens, still has the option of signing the New Contract, noting that it had not executed the New Contract “to date.” Tipmont contends that the words “to date” imply that such option still exists and that there is no absolute prohibition against signing the New Contract after February 28, 2019. Therefore, Tipmont contends that it is being treated in a discriminatory fashion and is

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 5-6 (citing *Great Lakes Gas Transmission Co.*, 43 FERC ¶ 61,008, at 61,034 (1988); *Public Service Company of Indiana*, 49 FERC ¶ 61,346, at 62,241 (1989)).

<sup>43</sup> *Id.* at 9-10.

<sup>44</sup> *Id.* at 10 (citing Wabash Answer at 26).

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

<sup>46</sup> *Id.* at 10-11.

<sup>47</sup> Notice of Change in Implementation Plan and Request for Continued Partial Waivers at 4, Docket Nos. EL19-26-001 and EL18-22-001 (Apr. 30, 2019).

being punished for its Complaint in Docket No. EL19-2-000 and protest in this proceeding by not being afforded the same opportunities as other Wabash members.<sup>48</sup>

**D. Wabash Answer**

27. In its May 6, 2019 answer, Wabash reiterates that Tipmont has no interest that may be directly affected by the outcome of this proceeding because: (1) Tipmont refused to sign the New Contract by the February 28, 2019 deadline; and (2) Tipmont has demonstrated no other credible interest in this matter as required by Rule 214(b)(2). Wabash also clarifies that, since Citizens did not execute the New Contract by February 28, 2019, it cannot do so now.<sup>49</sup>

**III. Deficiency Letter and Deficiency Letter Response**

28. On June 28, 2019, Commission staff issued a deficiency letter seeking additional information about a term in the New Contracts relating to adjustment factors for meter data, and how Wabash would allow and provide for the appropriate review and approval by the Commission before implementing any new adjustment factors.

29. Wabash filed its response to the deficiency letter (Deficiency Letter Response) on July 25, 2019.

30. In its Deficiency Letter Response, Wabash states that of its approximately 600 metering points at which it delivers power and energy to its member distribution cooperatives, only 43 of those metering points currently use adjustment factors for losses.<sup>50</sup> Wabash states that of the 43 meters that have an applied adjustment factor, 31 meters are associated with Corn Belt Energy metering points that are located on the high-side of delivery point transformers and are adjusted downward by 1.5 percent to the nominal distribution voltage of 12,470 volts.<sup>51</sup> Wabash adds that the remaining 12 metering points that are adjusted are associated with Citizens metering points. Wabash states that the adjustment factors for those metering points were agreed to by Wabash and Citizens in special contracts entered into pursuant to Wabash's market-based rate authority for service to retail industrial customers of Citizens. Wabash states that 10 of those 12 metering points have an adjustment factor of 1.3 percent and the remaining

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<sup>48</sup> Tipmont Supplement at 1-2.

<sup>49</sup> Wabash May 6 Answer at 1-2.

<sup>50</sup> Deficiency Letter Response at 2.

<sup>51</sup> *Id.*

two metering points have an adjustment factor of 2.3 percent.<sup>52</sup> Wabash states that it commits to filing with the Commission “any change in the loss factor adjustments for the 31 Corn Belt [Energy] meters and any new meter loss factor adjustments for Commission review and acceptance before implementation of the changed or new adjustment factors.”<sup>53</sup> Wabash further states that “in the event that the adjustment factors for the twelve [Citizens] metering points currently subject to the market based rate contracts are no longer subject to a contract under Wabash’s market based rate authorization, Wabash will file any changes to those adjustment factors with the Commission for Commission review and acceptance prior to implementation of such changes.”<sup>54</sup>

31. Wabash also states that, in preparation of its Deficiency Letter Response, it became aware of language in Section 6 of the New Contracts describing the point where energy would be metered that conflicts with language in its Formulary Rate Tariff, and that the language in the New Contracts needs to be amended by Wabash and the Executing Members. Wabash states that it commits to working with the Executing Members to amend the New Contracts to correct this discrepancy and conform the language to its Formulary Rate Tariff.<sup>55</sup>

32. Notice of Wabash’s Deficiency Letter Response was published in the *Federal Register*, 84 Fed. Reg. 37,271 (2019), with interventions and protests due on or before August 15, 2019. None was filed.

#### IV. Discussion

##### A. Procedural Matters

33. With regard to Wabash’s objection to Tipmont’s intervention in this proceeding, under our Rules of Practice and Procedure, a would-be intervenor must demonstrate that it has a right to participate conferred by statute, order or rule; it has or represents an interest that may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party; or that its participation is in the public interest.<sup>56</sup> Although Tipmont may not be directly affected by the executed

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<sup>52</sup> *Id.* at 4.

<sup>53</sup> *Id.* at 4.

<sup>54</sup> *Id.* at 4-5.

<sup>55</sup> *Id.* at 2.

<sup>56</sup> 18 C.F.R. § 385.214(b)(2) (2019).

New Contracts filed in this proceeding, we find that Tipmont, as a Wabash Member-Owner and current wholesale power supply customer of Wabash, has demonstrated a sufficient interest to justify its participation in the current proceeding regarding Wabash's filing of new wholesale power supply contracts with other Wabash members.<sup>57</sup> Accordingly, we grant Tipmont's motion to intervene.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept Wabash's and Tipmont's answers because they have provided information that assisted us in our decision-making process.

### **B. Substantive Matters**

35. We reject Wabash's filing of the New Contracts and associated notices of cancellation without prejudice to Wabash refileing the New Contracts in a manner that includes the provisions of the Distributed Generation Policy that detail a member's rights to offset its purchase obligation from Wabash, such as the type of resources that may be used for the offset and the allowed quantity of the offset.

36. Section 2 of the New Contracts establishes the member's purchase obligation by stating in part as follows:

Except for distributed generation which the Member is permitted to own or is permitted to purchase directly from interconnected resources pursuant to Wabash Valley's Distributed Generation Policy D-11.1. . . Wabash Valley shall during the Term (as hereinafter defined) sell and deliver to Member, and Member shall purchase and receive from Wabash Valley, all electric power and energy which Member shall require for the operation of the Member's system. . . Notwithstanding the foregoing, if the Board of Directors amends Policy D-11.1 to reduce the Member's [Distributed Generation] Allowances (as defined therein) or eliminate the exclusion for battery storage or similar energy storage facilities, the Member shall have the right notwithstanding such amendment to continue purchasing energy and capacity produced by those Distributed Generation Facilities (as defined therein) that it has under contract or owns. . . .

Under the Commission's "rule of reason," public utilities must file practices "that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation

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<sup>57</sup> See *QST Energy Trading v. Central Illinois Pub. Serv. Co.*, 85 FERC ¶ 61,166, at 61,664-65 (1998).

superfluous.”<sup>58</sup> The Distributed Generation Policy, as referenced in section 2 of the New Contracts, contains provisions that specify the amount and types of resources that a member may use to reduce its requirements purchases from Wabash, and thus establish the amount of the Executing Members’ requirements that must be purchased from Wabash under the New Contracts. We find that such provisions significantly affect the rates, terms, and conditions of service under the New Contracts. Therefore, we cannot accept the New Contracts for filing without including as part of the filed rate the provisions specifying the amount and types of resources that a member may use to reduce its requirements purchases from Wabash.

37. We also note that Wabash states in its Deficiency Letter Response that the New Contracts contain certain language relating to meter reading that conflicts with language in Wabash’s Formulary Rate Tariff, and that the New Contract language “needs to be amended by Wabash and the Executing Members to reflect the fact that metering is to be on the low side rather than the high-side” of the delivery point transformers.”<sup>59</sup> Wabash committed to working with the Executing Members to amend the New Contracts to correct the discrepancy. We expect that Wabash will correct this error prior to any re-filing of the New Contracts.

38. Finally, Wabash’s Deficiency Letter Response provides its current adjustment loss factors. We note and accept Wabash’s commitment to filing with the Commission, for review and acceptance before implementation, any new or changed adjustment factors.<sup>60</sup> Given this commitment, we expect Wabash to include the adjustment loss factors, as identified in its Deficiency Letter Response, in any refiled New Contract.

39. Because we are rejecting the filing of the New Contracts without prejudice, we are not making any determinations in this order with respect to the justness and reasonableness of the rates, terms, and conditions of the New Contracts or any other issues not specifically discussed herein.

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<sup>58</sup> *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985); see 16 U.S.C. § 824d(c) (2018) (requiring utilities to file practices affecting jurisdictional rates and charges); 18 C.F.R. § 35.1(a) (2019) (requiring the filing of “full and complete rate schedules and tariffs” that “clearly and specifically set[] forth” practices affecting jurisdictional rates); *Demand Response Coal. v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,061, at P 17 (2013) (“The FPA requires all practices that significantly affect rates, terms and conditions of service to be on file with the Commission, and these practices must be included in a Commission-accepted tariff rather than other documents.”).

<sup>59</sup> Deficiency Letter Response at 2.

<sup>60</sup> *Id.* at 4-5.

The Commission orders:

Wabash's filing is hereby rejected, without prejudice, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.