

169 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Upper Missouri G. & T. Electric Cooperative, Inc. Docket Nos. ER19-2818-001
ER19-2820-000

ORDER REJECTING FILINGS WITHOUT PREJUDICE

(Issued December 12, 2019)

1. On September 16, 2019, in Docket Nos. ER19-2818-000 and ER19-2820-000,¹ Upper Missouri G. & T. Electric Cooperative, Inc. (Upper Missouri) filed, pursuant to section 205 of the Federal Power Act (FPA)² and Part 35 of the Commission's regulations,³ a formula rate template (Formula Rate) and 11 long-term, wholesale power supply contracts (Wholesale Power Contracts), respectively.⁴ As discussed below, we reject the filings without prejudice to Upper Missouri submitting a more complete set of filings that cure the issues discussed below.

¹ On November 5, 2019, Upper Missouri filed an amendment captioned in both Docket Nos. ER19-2818 and ER19-2820 but submitted a tariff record in only Docket No. ER19-2818-001. On November 6, 2019, a letter was issued in Docket No. ER19-2820-000 notifying Upper Missouri that the filing date of its amended filing is November 5, 2019.

² 16 U.S.C. § 824d (2018).

³ 18 C.F.R. pt. 35 (2019).

⁴ On September 19, 2019, Upper Missouri made an errata filing in Docket No. ER19-2818-000 to include PDF versions of the Wholesale Power Contracts rate schedules.

I. Background

2. Upper Missouri is a generation and transmission cooperative that provides wholesale electricity to 11 electric distribution cooperatives (Members) in eastern Montana and western North Dakota. An 11-Member Board of Trustees (Board) governs Upper Missouri, with one trustee representing each Member. Upper Missouri leases its 60-kV, 115-kV, and 41.6-kV transmission assets to Basin Electric Power Cooperative (Basin). In turn, Basin has turned over functional control of these assets to the Midcontinent Independent System Operator, Inc. (MISO) and the Southwest Power Pool, Inc. (SPP).⁵ Basin is a generation and transmission cooperative of which Upper Missouri is a Class A member cooperative.⁶

3. Upper Missouri provides wholesale electric requirements service to its Members through the monthly allocation of demand and energy it receives from Western Area Power Administration (WAPA). Each Member is granted its monthly share of that allocation based on the original allocation to individual Member systems. All power requirements beyond the WAPA allocation are purchased from Basin. Upper Missouri sells power only to its Members at wholesale and makes no sales of energy or capacity at retail.

II. Filings

4. Upper Missouri explains that, under FPA section 201(f),⁷ it is exempt from the Commission's jurisdiction under Part II of the FPA because it is wholly-owned by entities that are themselves exempt from Commission jurisdiction under FPA section 201(f) because they are cooperatives that sell less than 4 million MWh of electric

⁵ The 60-kV and 115-kV transmission assets receive cost recovery via Basin's transmission revenue requirement under the SPP Open Access Transmission Tariff, and the 41.6-kV assets receive cost recovery via section 30.9 credits under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.

⁶ Basin's membership structure includes 18 Class A Members, 1 Class B Member, 121 Class C Members, and 1 Class D Member. Class A Members are generation and transmission and distribution cooperatives that have entered into long-term wholesale power contracts with Basin; Class B Members are municipalities that are members of and purchase power from a Class A Member; Class C Members are distribution cooperatives and public power districts that are members of and purchase power from a Class A Member; and Class D Members are electric cooperatives or municipalities that purchase power directly from Basin on a basis other than the Class A long-term power contracts.

⁷ 16 U.S.C. § 824(f).

energy per year and/or have financing from the Rural Utilities Service (RUS).⁸ Upper Missouri states that it expects to cease to be wholly-owned by such entities about 60 days from the date of its filings (i.e., on or around November 15, 2019) because one of its Members that is not an RUS borrower will have sales of electric energy exceeding 4 million MWh per year.⁹

A. Formula Rate Tariff

5. In Docket Nos. ER19-2818-000 and ER19-2818-001, Upper Missouri filed a Formula Rate to establish a comprehensive cost-of-service rate for the services Upper Missouri provides to its Members pursuant to the Wholesale Power Contracts. Upper Missouri represents that the rates developed under the Formula Rate are approved by its Board as part of an annual budget process. Upper Missouri states that its rates are designed to collect required revenues to cover its budgeted costs and maintain reasonable reserves to maintain the financial integrity of the cooperative.

6. Upper Missouri explains that it passes through the charges for power supply from WAPA and Basin to its Members with no mark-up or changes. Upper Missouri further explains that the expenses related to North American Electric Reliability Corporation compliance, facility charges (which include maintenance and some communications charges), and the Upper Missouri metering program are calculated monthly and passed along directly to the Members. Upper Missouri also states that it charges its Members the UMPC Charge, which is an allocation of Upper Missouri's costs of providing service to each Member. Upper Missouri states that its Board approves the UMPC Charge and that Upper Missouri currently reviews and updates the rates comprising the UMPC Charge once each calendar year. Upper Missouri adds that the Wholesale Power Contracts authorize Upper Missouri to revise the rates within the year as needed. Upper Missouri adds that its current rates, which were approved by the Board, have been in effect since January 1, 2019.¹⁰

7. Upper Missouri states that it does not have or use any cost-of-service, rate design, or other studies in connection with the determination of rates. Upper Missouri explains that all of its costs are (a) passed directly on to the Members; (b) allocated based on MWh sales to each Member system (i.e., load ratio share); (c) allocated based on the number of consumers served by each Member system; (d) allocated based on the number

⁸ Upper Missouri Formula Rate Filing, Docket No. ER19-2818-000, at 1-2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

of delivery points for each Member system; or (e) allocated on a per capita basis among the 11 Members.

8. Upper Missouri states that as part of its rate-setting process, it performs a reconciliation between the current year's revenue and actual costs to ensure that Upper Missouri is able to recover its costs and maintain a reasonable level of reserves.¹¹ If revenues received in the current year result in margins exceeding the approved margins, Upper Missouri issues credits to the Members based on each Member's portion of the UMPC Charge revenue collection in order to force margins to the budgeted amount. Upper Missouri states that it prepares an estimated rate for the upcoming year, based on the forecast cost and true-up, which it then presents to the Board for review and approval at the November Board meeting. If approved by the Board, the rates go into effect starting January 1 of the upcoming calendar year.

B. Wholesale Power Contracts

9. In Docket No. ER19-2820-000, Upper Missouri submitted Rate Schedules Nos. 1 through 11, which represent existing long-term Wholesale Power Contracts between Upper Missouri and its 11 Members. Upper Missouri explains that each Wholesale Power Contract is a long-term contract establishing the obligation that Upper Missouri sell and deliver to the Member, and the Member purchase and receive from Upper Missouri, all its electric service including capacity and energy which the Member requires for the operation of the Member's system. Upper Missouri states that it is filing each Wholesale Power Contract as it was originally executed as well as the most recent amendments to the Wholesale Power Contracts. Upper Missouri also states that the terms of each Wholesale Power Contract are materially the same and, although the specific terms of each contract may vary based on the date of execution, each Wholesale Power Contract contains terms regarding points of delivery, metering, rate, payment, right of access, continuity of service, term, and resale of electricity.

III. Notice of Filings and Responsive Pleadings

10. Notices of the filings in Docket Nos. ER19-2818-000 and ER19-2820-000 were published in the *Federal Register*, 84 Fed. Reg. 49,726 (2019), with interventions and protests due on or before October 7, 2019. Notices of Upper Missouri's amended filing in Docket Nos. ER19-2818-001 and Docket No. ER19-2820-000 were published in the *Federal Register*, 84 Fed. Reg. 61,052 (2019), with interventions and protests due on or before November 26, 2019.

¹¹ *Id.* at 8.

11. Mountrail-Williams Electric Cooperative and Basin filed timely motions to intervene and McKenzie Electric Cooperative, Inc. (McKenzie) filed a timely motion to intervene and protest in Docket Nos. ER19-2818-000 and ER19-2820-000. McKenzie protested Upper Missouri's formula rate and wholesale power contracts, raising concerns regarding: (1) the lack of sufficient cost support; (2) the lack of transparency for the costs related to the Dakota Gasification Company; (3) the failure to provide the terms and conditions for a Member to terminate its Wholesale Power Contract; and (4) the failure to provide an exit fee estimate to a Member that considers withdrawing from Basin.

12. In addition, the following entities filed out-of-time motions to intervene in both dockets: Burke-Divide Electric Cooperative, Inc.; Capital Electric Cooperative, Inc.; Central Montana Electric Power Cooperative, Inc.; Central Power Electric Cooperative, Inc.; Corn Belt Power Cooperative; Crow Wing Power; Dakota Energy Cooperative, Inc.; Dakota Valley Electric Cooperative, Inc.; East River Electric Power Cooperative, Inc.; Goldenwest Electric Cooperative; Grand Electric Cooperative, Inc.; Guzman Energy, LLC; Highline Electric Association; Hill County Electric Cooperative, Inc.; KEM Electric Cooperative, Inc.; Lower Yellowstone Rural Electric Cooperative; McCone Electric Co-op, Inc.; Meeker Cooperative Light and Power Association; Members 1st Power Cooperative; Mid-Yellowstone Electric Cooperative; Minnesota Valley Cooperative Light and Power Association; Minnesota Valley Electric Cooperative; Minnkota Power Cooperative, Inc.; Mor-Gran-Sou Cooperative, Inc.; Old Dominion Electric Cooperative; National Rural Electric Cooperative Association; North Central Electric Cooperative, Inc.; Northern Plains Cooperative, Inc.; North Iowa Municipal Electric Cooperative Association; Northwest Iowa Power Cooperative; Northwest Rural Public Power District; Rosebud Electric Cooperative, Inc.; Roughrider Electric Cooperative, Inc.; Rushmore Electric Power Cooperative, Inc.; Slope Electric Cooperative, Inc.; Southeast Colorado Power Association; and, Verendrye Electric Cooperative, Inc.

13. Yellowstone Valley Electric and McLean Electric Cooperative, Inc. filed motions to intervene out-of-time in Docket No. ER19-2820-000.

14. On October 22, 2019, Basin and Upper Missouri each filed motions for leave to answer and answers in both dockets supporting the filings and arguing that the formula rate proposed by Upper Missouri is just and reasonable, and disputing McKenzie's arguments regarding the Dakota Gasification Company, the terms and conditions for termination of a Member's Wholesale Power Contract, and the Member exit fee estimate. On November 6, 2019, McKenzie filed a motion for leave to answer and answer in both dockets, reiterating and elaborating on the arguments it raised in its protest regarding the termination provisions in its Wholesale Power Contract with Upper Missouri. Basin and Upper Missouri filed additional motions for leave to answer and answers in both dockets on November 21, 2019, countering the arguments McKenzie made in its answer.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they filed them. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant the late-filed motions to intervene given their interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rule 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 the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

17. As discussed below, we find that Upper Missouri's Formula Rate filing in Docket No. ER19-2818 fails to comply with the Commission's filing requirements. We therefore find this filing to be patently deficient and reject it without prejudice to Upper Missouri submitting a more complete filing that cures the issues discussed below.¹² Further, because the Wholesale Power Contract filing in Docket No. ER19-2820 is dependent upon the Formula Rate, we also reject that filing without prejudice to Upper Missouri submitting a more complete filing that cures the issues discussed below.

18. First, we find that Upper Missouri has provided insufficient cost support and has failed to comply with the Commission's rate schedule filing requirements.¹³ Upper Missouri must submit a summary statement of all cost computations involved in deriving the rate in sufficient detail to justify the rate, including, but not limited to, detailed work

¹² See *Kentucky Utilities Co. v. FERC*, 689 F.2d 207, 211 (D.C. Cir. 1982) (citing *City of Groton v. FERC*, 584 F.2d 1067, 1070 (D.C. Cir. 1978) (the Commission "'retains broad discretion' to determine the adequacy of a filing to satisfy the objective of affording notice to the Commission and the public.")). This order identifies only those deficiencies that render the filing patently deficient, and therefore should not be deemed a comprehensive list of possible inadequacies in Upper Missouri's filings. Our findings here do not reach the merits of Upper Missouri's filings, nor any protests.

¹³ See *PP&L, Inc.*, 88 FERC ¶ 61,235, at 61,769 (1999) (citing 18 C.F.R. § 35.12(b)(5)).

papers.¹⁴ However, Upper Missouri did not provide sufficient cost support materials to justify the Formula Rate. For example, the rates used in the Formula Rate to derive the Members' monthly WAPA demand charges (\$5.25/kW/month), the WAPA Energy charges (\$0.01327/kWh), Basin Demand charges (\$19.64/kW/month), and Basin Energy charges (\$0.03242/kWh) are different than the rates specified in the Members' contracts, without any explanation.¹⁵ Further, in support of the design of the proposed rate, Upper Missouri must submit a complete explanation as to the method it uses in arriving at the cost of service allocated to the sales and services for which the rate is charged or proposed.¹⁶ In addition, Upper Missouri must provide support including supplemental documents to demonstrate that its proposed margin is reasonable.¹⁷

19. Commission policy requires that a formula rate be specific.¹⁸ The blank formula rate template must be specific enough so that Upper Missouri does not have discretion to modify the calculation of the charges resulting from the formula without filing with the Commission to change the formula rate. Further, many of the inputs to the Formula Rate are not defined and their sources are not specified within the Formula Rate template. For example, Upper Missouri did not reference and provide contract documents that support payments Upper Missouri receives for the substations and transmission facilities it leases to Basin, nor did Upper Missouri explain or support its allocation of costs used in the

¹⁴ See *Terra-Gen Dixie Valley, LLC*, 134 FERC ¶ 61,027 (2011) (citing 18 C.F.R. § 35.12(b)(2)(ii)).

¹⁵ For example, section 4 of the Wholesale Power Contract with Burke-Divide Electric Cooperative, Inc. states "the Member shall pay the Seller for all electric power and energy furnished hereunder at the rates and on the terms and conditions set forth in Rate Schedule, Exhibit B." Exhibit B of the same Wholesale Power Contract states the Demand rate is \$1.15/kW/month and the Energy rate is 3.25 mills/kWh.

¹⁶ 18 C.F.R. § 35.12(b)(5). One way Upper Missouri may meet this requirement is to provide a blank formula template fully annotated to explain the assumptions, allocations, and calculations, and the filing should explain how the assumptions, allocations, and calculations are just and reasonable.

¹⁷ For example, other filing utilities have submitted, among other things, their debt covenants to support their proposed margin, which was required by their financing arrangements.

¹⁸ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,221, at P 64 (2002), *order on reh'g*, 103 FERC ¶ 61,035 (2003), *order on paper hearing and compliance filing*, 108 FERC ¶ 61,235, at PP 60-62, 68-75 (2004) (formulas must be specific enough to avoid discretion in the calculation of the charges).

UMPC Charge. The Formula Rate's inputs, including supporting documentation and allocations, should either be taken directly from publicly available data such as FERC Form No. 1, or be reconcilable to such publicly available data. If Upper Missouri is voluntarily preparing a RUS-12 report, it should so specify and provide a copy of the report.¹⁹ Given these deficiencies, potentially interested parties cannot determine how the proposed Formula Rate might affect them and the Commission cannot assess whether Upper Missouri's proposed Formula Rate is just and reasonable. As a result, Upper Missouri's filing is deficient.

20. We also reject Upper Missouri's filing of Rate Schedules Nos. 1 through 11 (i.e., the Wholesale Power Contracts) because the rate schedules are dependent on the Formula Rate, which we are rejecting here. As Upper Missouri explains, the Formula Rate establishes a comprehensive cost-of-service rate for the full requirements service that Upper Missouri provides to its 11 Members pursuant to the terms of the Wholesale Power Contracts filed herein as Rate Schedules Nos. 1 through 11.²⁰ The Wholesale Power Contracts include in Exhibit B stated rates but do not reference the Formula Rate template nor the various charges shown on the Formula Rate template. Moreover, we note that Upper Missouri did not submit conformed copies of its agreements as required by Order No. 714.²¹ The conformed copies of its agreements should specify each rate being charged and contain the blank Formula Rate template, as discussed above.

21. Finally, we do not address the issues raised in the protest and answers because we reject Upper Missouri's filings for other reasons, as discussed above.

¹⁹ Upper Missouri committed to revising its Formula Rate to reference FERC Form No. 1 within 60 days of filing its FERC Form No. 1. See Upper Missouri November 5 Filing at 3.

²⁰ Upper Missouri Wholesale Power Contract Filing, Docket No. ER19-2820-000, at 1.

²¹ See, e.g., *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270, at P 51 n.37 (2008), *order on reh'g*, Order No. 714-A, 147 FERC ¶ 61,115 (2014); *Boston Edison Co.*, 98 FERC ¶ 61,292, at PP 20-21, 34 (2002) (citing *Designation of Electric Rate Schedules*, Order No. 614, FERC Stats. & Regs. ¶ 31,096, at 31,507 (2000) (cross-referenced at 90 FERC ¶ 61,352) (rate schedules must be filed consistent with the designation and pagination requirements)).

The Commission orders:

The proposed filings are hereby rejected without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.