

171 FERC ¶ 61,090  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.  
Ameren Illinois Company

Docket No. ER20-1078-000

ORDER ACCEPTING FORMULA RATE REVISIONS

(Issued May 1, 2020)

1. On February 26, 2020, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> Midcontinent Independent System Operator, Inc. (MISO) filed, on behalf of Ameren Illinois Company (Ameren), proposed revisions to Ameren's formula rate template in the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to address the recovery of costs associated with Materials and Supplies (M&S).<sup>3</sup> As discussed below, we accept Ameren's proposed formula rate revisions, effective June 1, 2020.

**I. Background**

2. In an order issued in *Duke Energy Progress, LLC*, regarding a formal challenge brought by the Public Works Commission of the City of Fayetteville (Fayetteville) to Duke Energy Progress, LLC's (DEP) annual formula rate true-up to the production-related revenue requirements in a power supply and coordination agreement (PSCA), the Commission held that DEP had not complied with FERC Form No. 1 (Form 1)

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> 18 C.F.R. pt. 35 (2019).

<sup>3</sup> MISO joins in the filing in its role as the administrator of the Tariff but takes no position on the substance of the filing. In this order, for ease of reference, we refer to the applicant as Ameren.

instructions with respect to reporting M&S balances.<sup>4</sup> The Commission found that DEP was incorrectly reporting all of its M&S inventory balance in its Form 1 to operations and maintenance (O&M) line items, resulting in an overstatement of charges to Fayetteville under the formula in the PSCA. The Commission required DEP to estimate the M&S inventory balance that will be assigned to construction, remove that amount from the functionalized amounts assigned to O&M, including the production-related O&M amount that was included as an input to the formula rate, and report the sum of all construction-related M&S inventory on a line in its Form 1 that was not specified as an input to the formula rate.<sup>5</sup> The Commission directed DEP to refile its Form 1 for calendar years 2014, 2015, and 2016 with the revised M&S reporting and to make refunds for the over-recovery of M&S through the formula rate “in accordance with the Protocols and the PSCA.”<sup>6</sup> The Commission stated in the DEP Order that “[t]he purpose of designating M&S inventory as construction or O&M is to provide the Commission with information about how the M&S inventory ultimately will be used, which has significant ratemaking implications.”<sup>7</sup>

3. In response to the DEP Order, several utilities filed revisions to their formula rate templates to ensure continued recovery of their M&S inventory costs after revising their Form 1 reporting. These utilities proposed revisions to incorporate construction-related M&S, assigned to line 5 of page 227 of Form 1, as an input to their formula rate templates in order to accommodate the revisions in M&S reporting to be consistent with the Commission’s guidance in the DEP Order. These filings were accepted via delegated letter orders.<sup>8</sup>

## **II. Ameren’s Filing**

4. Ameren is an electric and gas utility that serves wholesale and retail customers located in Illinois. Ameren is a transmission-owning member of MISO, and its Annual

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<sup>4</sup> 163 FERC ¶ 61,051 (2018) (DEP Order).

<sup>5</sup> *Id.* P 23. Account 154 (M&S) is reported on page 227 of Form 1. Line 5 of page 227 of Form 1 is M&S balances estimated to construction.

<sup>6</sup> *Id.* PP 1, 24.

<sup>7</sup> *Id.* P 22.

<sup>8</sup> *Duke Energy Carolinas LLC, Duke Energy Progress, LLC, and Duke Energy Florida, LLC*, Docket Nos. ER18-2367-000 and ER18-2368-000 (Oct. 19, 2018) (delegated order); *PJM Interconnection, L.L.C. and Va. Elec. and Power Co.*, Docket No. ER19-1569-000 (May 7, 2019) (delegated order); *PJM Interconnection, L.L.C. and Commonwealth Edison Co.*, Docket No. ER20-379-000, Jan. 8, 2020 (delegated order).

Transmission Revenue Requirement (ATRR) is calculated pursuant to its company-specific rate formula set forth in Attachment O-AIC to the Tariff. Ameren states that Attachment O-AIC is a forward-looking formula rate that is trued-up to actual costs using data derived from its Form 1.<sup>9</sup>

5. Ameren states that it is adjusting M&S inventory costs reported on Page 227 of its Form 1 to reflect the clarification provided in the DEP Order, beginning with the 2019 reporting year.<sup>10</sup> Ameren states that, consistent with the approach that DEP and other utilities have taken, it seeks to revise its formula rate to appropriately continue recovery of all transmission-related M&S inventory costs. First, Ameren proposes adding in its formula rate a reference to the estimated M&S amount assigned to construction in its Form 1 that effectively includes in rate base the transmission portion of the estimated M&S assigned to construction. Second, Ameren proposes to add language to a footnote of its formula rate stating it will report the transmission portion of M&S assigned to construction in a footnote in its Form 1.<sup>11</sup>

6. Ameren explains that its proposed revisions will allow the transmission portion of M&S assigned to both construction and O&M to be reflected in the total amount of transmission-related M&S costs used to establish the M&S inventory balance in the transmission rate calculation. Ameren states that the filing herein is “substantially identical” to other utilities’ revisions to formula transmission rate templates addressing the same issue that have been previously accepted.<sup>12</sup> Ameren states that the proposed changes to Attachment O-AIC are intended to correct potential under-recovery of the revenue requirement associated with the reporting change in its Form 1. Ameren states that, accordingly, there is no rate impact associated with the proposed change to the formula rate, as Ameren continues to seek full recovery of the ATRR associated with the average of the transmission-related M&S inventory balances that Ameren had been recovering prior to the change in inputs of its Form 1.<sup>13</sup>

7. Ameren requests that the proposed changes to the M&S inventory component of its formula rate be made effective on June 1, 2020. Ameren states that this effective date will ensure that the revisions will be reflected in the annual true-up such that the projected 2019 ATRR is trued-up based on actual 2019 Form 1 data. Ameren states

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<sup>9</sup> Transmittal at 2.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> *Id.* 2 & nn.6-7 (citing filings referenced *supra* note 8).

<sup>13</sup> *Id.* at 2-3.

that this 2019 true-up will be reflected in transmission rates effective January 1, 2021. Ameren further states that the requested effective date would also ensure that the revised template will be used when Ameren prepares its projection of 2021 rates which will be posted by September 1, 2020.<sup>14</sup>

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

8. Notice of Ameren's filing was published in the *Federal Register*, 85 Fed. Reg. 12,780 (March 4, 2020), with interventions and protests due on or before March 18, 2020.

9. The following entities filed timely motions to intervene: GridLiance Heartland LLC; Illinois Municipal Electric Agency (IMEA); Norris Electric Cooperative (Norris); Rural Electric Convenience Cooperative (Rural Electric); Southwestern Electric Cooperative, Inc. (Southwestern). On March 20, 2020, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) filed a motion to intervene out-of-time.

10. Norris, Rural Electric, and Southwestern (collectively, Cooperative Customers) and IMEA filed protests. On April 3, 2020, Ameren filed an answer to the protests. On April 21, 2020, Cooperative Customers and IMEA filed answers to Ameren's answer.

### **Protests**

11. Cooperative Customers state that the Commission should direct Ameren to make refunds for previous over-collections of M&S assigned to construction for periods prior to the effectiveness of its proposed revisions to its Form 1 and formula rate. Cooperative Customers assert that Ameren's proposed revisions to M&S in its formula rate template to prevent under-recovery of transmission-related costs are a concession that Ameren has previously failed to assign any of its M&S to construction and that its assignment of all M&S to the O&M classification has resulted in a historic over-recovery. Thus, Cooperative Customers argue that, consistent with the DEP Order, the Commission should direct Ameren to revise M&S in its prior Form 1 submissions and to calculate refunds pursuant to those revisions.<sup>15</sup> Cooperative Customers further note that, in Docket No. ER18-2368-000, Duke Energy Florida, LLC offered refunds to its customers for its over-recovery of M&S. Cooperative Customers explain that Ameren has not sought to remedy its over-recovery proactively and therefore does not follow the example it cited.<sup>16</sup>

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<sup>14</sup> *Id.* at 4-5.

<sup>15</sup> Cooperative Customers Protest at 4-7.

<sup>16</sup> *Id.* at 7.

12. In addition, Cooperative Customers contend that Ameren's proposed formula rate revisions should be rejected. Cooperative Customers state that the Commission does not allow plant costs to be included in rates until that plant is used and useful and that those costs should be included in Construction Work in Progress (CWIP) until the plant is placed into service. Cooperative Customers assert that by proposing to include M&S costs assigned to construction in its rates, rather than capitalizing and recovering those costs as CWIP, Ameren is essentially asking for an exception to the Commission's CWIP-related policies. Moreover, Cooperative Customers state that, even when the Commission does approve the inclusion of CWIP in transmission rates, utilities are typically only permitted 50% recovery but that Ameren's proposal affords it 100% recovery.<sup>17</sup> Cooperative Customers also argue that the Commission should reject Ameren's proposed formula rate revisions as an impermissible single-issue rate filing.<sup>18</sup>

13. IMEA states that Ameren's filing violates Ameren's formula rate and the filed rate doctrine and lacks transparency and certainty. IMEA contends that Ameren's filing is motivated by the DEP Order, in which the Commission determined that a public utility must distinguish between M&S that will be used in O&M and M&S that will be used in future construction.<sup>19</sup> IMEA states that Ameren's formula rate is identical to DEP's formula rate in that the formula rate precludes recovery of M&S assigned to construction and only permits M&S assigned to O&M and functionalized to transmission. IMEA alleges that Ameren has been over-recovering M&S for at least nine years, asserting that this over-recovery is in direct violation of the formula rate.

14. IMEA notes that, in Ameren seeking to continue recovery of transmission-related M&S costs, Ameren betrays the fact that it has been recovering construction-related M&S for a number of years. IMEA states that it has reviewed Ameren's Form 1 submissions from 2009 to 2018 and did not find any estimations of construction-related M&S in that time period.<sup>20</sup> IMEA asserts that the Commission should require Ameren not only to revise its previous Form 1 submissions, but also to calculate and issue refunds for any over-recovery of construction-related M&S. IMEA states that the Commission is not prohibited from directing refunds for over-charges dating back to the date of misreporting of M&S because it would be consistent with, *inter alia*, the Commission's

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<sup>17</sup> *Id.* at 8-9.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> IMEA Protest at 5-6 (citing DEP Order, 163 FERC ¶ 61,051 at P 24).

<sup>20</sup> *Id.* at 6-7.

approach in the DEP Order.<sup>21</sup> IMEA asserts that the Commission should not allow Ameren to avoid refunds for past over-recoveries that violate its formula rate.

15. Additionally, IMEA states that Ameren's proposed formula rate revisions are not specific enough to explain how Ameren will implement the proposed M&S calculations. IMEA alleges that Ameren's proposed formula rate revisions, starting as of its 2019 Form 1, will begin assigning a portion of Ameren's M&S inventory balances to construction; however, the proposed revisions amount to a new "policy, practice, or methodology" of estimating its M&S assigned to construction, which has never before been estimated nor functionalized.<sup>22</sup> IMEA contends that the Commission should require Ameren to include within its formula rate a methodology for estimating the portion of M&S assigned to construction that will be charged to Ameren's customers. Further, according to IMEA, Ameren's filing violates the Commission's policy that a formula rate should be self-effectuating and should limit the discretion that the public utility has because Ameren does not explain how the M&S assigned to construction will be derived or how Ameren will functionalize the M&S assigned to construction as transmission-related.<sup>23</sup>

#### **IV. Commission Determination**

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

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

17. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Hoosier's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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<sup>21</sup> *Id.* (citing *Appalachian Power Co.*, 23 FERC ¶ 61,032, at 61,088 (1983); *DTE Energy Trading, Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,062, at P 28 (2005); *Quest Energy, L.L.C. v. The Detroit Edison Co.*,

106 FERC ¶ 61,227, at P 21 (2004); *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at 62,723-24 (2008); *Yankee Atomic Electric Co.*, 60 FERC ¶ 61,316, at 62,096-97 (1992)).

<sup>22</sup> *Id.* at 8-9.

<sup>23</sup> *Id.* at 8-10 (citing *Tampa Elec. Co.*, 133 FERC ¶ 61,023, at P 54 (2010)).

18. 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 answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers, and will, therefore, reject them.

**B. Substantive Matters**

19. We accept Ameren's proposed formula rate revisions, effective June 1, 2020, as requested, as discussed below. We find that Ameren's revisions are just and reasonable and consistent with Commission precedent that allows M&S assigned to construction to be included in rate base prior to being assigned to specific construction projects and transferred to accounts that are capitalized.<sup>24</sup>

20. We reject Cooperative Customers' argument that Ameren's filing constitutes an impermissible single-issue rate filing. Regarding Ameren's formula rate, Cooperative Customers do not allege, let alone support, that other components of Ameren's formula need to be justified in light of the proposed change that is the subject of the instant filing. We find no merit in the argument that the proposed change and its interaction with the unchanged components of the formula would result in an unjust and unreasonable rate.<sup>25</sup>

21. Regarding protestors' concerns about transparency of Ameren's formula rate, though M&S reported as assigned to construction and O&M is estimated in the Form 1, we agree that Ameren is required to provide all detailed workpapers, documentation and calculations in its annual formula rate true-up and informational filings for any accounting change or change to formula rate inputs, pursuant to Ameren's Formula Rate

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<sup>24</sup> See *Cleveland Elec. Illuminating Co.*, Opinion No. 242, 32 FERC ¶ 61,381, at 61,861 (1985); *Union Elec. Co.*, Initial Decision, 8 FERC ¶ 63,026, at 65,243 (1979) ("Union Electric argues, and their argument is accepted, that the [M&S] are not earmarked to either maintenance or construction while in that status. They only become earmarked when removed; hence, there is no prohibition against including the full [M&S] inventory amount in the rate base."), *summarily aff'd in relevant part*, Opinion No. 94, 12 FERC ¶ 61,239 (1980).

<sup>25</sup> See *Midcontinent Independent System Operator, Inc.*, 153 FERC ¶ 61,371, at P 41 (2015) (citing *Southwestern Pub. Serv. Co.*, 152 FERC ¶ 61,126, at PP 11-14).

Protocols in Attachment O-AIC of the Tariff.<sup>26</sup> This means that Ameren is required to provide detailed information and workpapers in future true-up and informational filings to show how M&S assigned to construction is estimated and functionalized to transmission.

22. Here, in accepting Ameren's proposed formula rate revisions effective June 1, 2020, we find that Ameren can only apply the formula rate revisions prospectively.<sup>27</sup> Thus, when Ameren calculates its true-up of estimated 2019 charges to actual 2019 costs in June 2020, it must calculate its actual costs using the formula that was in effect for the applicable time period (i.e., Ameren's revisions cannot be applied to its 2019 formula rate true-up).<sup>28</sup> We dismiss protestors' requests for refunds for alleged past over-recovery by Ameren as beyond the scope of Ameren's proposed revisions to its formula's reference to Form 1 inputs in this proceeding, which would have only prospective effect when those formulas are populated with data. We note that, in the DEP Order, the Commission required DEP to refile Form 1 and make refunds in a proceeding addressing Fayetteville's formal challenge to DEP's 2015 annual true-up for a formula rate on file, and not in response to a filing by a utility to revise its formula rate prospectively.

23. Finally, we note that an audit of Ameren Corporation was previously commenced by Commission audit staff in Docket No. FA20-6-000. Among the various areas being evaluated under audit are Ameren's compliance with the Commission's accounting requirements under 18 C.F.R. Part 101, the Commission's reporting requirements in the Form 1 under 18 C.F.R. Part 141, and Ameren's jurisdictional rates on file. We expect Commission audit staff to ensure, as part of the ongoing audit, that Ameren's historical Form 1 reporting and transmission formula rate recoveries for prior years are in full compliance with the Commission's regulations and Ameren's filed formula rate.

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<sup>26</sup> See Tariff, Attachment O-AIC, Annual True-Up, Information Exchange, and Challenge Procedures at Section II (Annual True-Up and Projected Net Revenue Requirement), Section V (Changes to True-Up Adjustment or Projected Net Revenue Requirement), and Section VII (Calculation of True-Up Adjustment).

<sup>27</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,250, at P 27 (2016), *order on reh'g*, 161 FERC ¶ 61,020, at PP 6-8 (2017).

<sup>28</sup> *Wisconsin Elec. Power Co.*, 165 FERC ¶ 61,223, at P 25 & n.40 (2018), *order on reh'g*, 167 FERC ¶ 61,163, at PP 20-22 (2019). Similarly, when Ameren calculates its true-up of estimated 2020 charges to actual 2020 costs in June 2021, it should only use the revised formula to calculate its true-up for that portion of 2020 that the revised formula rate was in effect (i.e., June 1, 2020 through December 31, 2020).

The Commission orders:

Ameren's proposed formula rate revisions are hereby accepted, effective June 1, 2020, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.