

formula rate to calculate its annual transmission revenue requirement (ATRR), based on data reported in Duke's previous year's FERC Form No. 1.⁵

3. Duke explains that the depreciation rates from its FERC Form No. 1 are used as inputs to MISO's generic Attachment O formula rate. Duke states that the depreciation rates included in the proposed rate schedule reflect the result of proceedings before the Indiana Utility Regulatory Commission (Indiana Commission), which approved Duke's depreciation rates effective January 1, 2013.⁶ According to Duke, the Indiana Commission-approved depreciation rates have been reflected in Duke's annual Attachment O informational filings for transmission rates effective June 1, 2014 forward,⁷ and as such, have been subject to the information exchange and challenge provisions in the generic MISO Attachment O Formula Rate Protocols.⁸

4. Duke states that it recently became aware that certain other companies that also utilize MISO's generic Attachment O formula rate have filed stand-alone depreciation rate schedules to serve as inputs to their formula rates.⁹ Duke further states that it worked with MISO to similarly develop a stand-alone depreciation rate schedule to apply to its formula rate, which Duke submits in the instant filing.¹⁰ Duke characterizes its filing as "ministerial" in nature because it does not change rates and only places Duke's existing depreciation rates in a stand-alone rate schedule.¹¹ Duke states that the depreciation rates in its proposed rate schedule are based upon a depreciation study using the straight-line

⁵ Filing at 1-2.

⁶ *Id.* at 2 (citing Final Order Phase I and Phase II, IURC Cause No. 43114 IGCC 4S1 ([Indiana Utility Regulatory Commission] Dec. 27, 2012)).

⁷ MISO's generic Attachment O formula rate specifies a June 1 to May 31 rate year. MISO, FERC Electric Tariff, Attachment O, MISO Formulaic Rates (33.0.0), § 2.

⁸ Filing at 2 (citing MISO Attachment O Formula Rate Protocols, § 3).

⁹ *Id.* (citing *Union Electric Co.*, 151 FERC ¶ 61,168 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER18-56-001 (Feb. 28, 2018) (delegated order) (accepting Consumers Energy Company's depreciation rate schedule)).

¹⁰ *Id.*

¹¹ *Id.* at 3.

remaining-life method of depreciation with the equal life group procedure.¹² Duke asserts that the annual depreciation is based on a method of depreciation accounting that seeks to distribute the unrecovered cost of fixed capital assets over the estimated remaining useful life of each unit, or group of assets, in a systematic and rational manner.¹³ Duke requests an effective date of February 12, 2020.

5. On February 7, 2020, Commission staff issued a deficiency letter requesting additional information regarding the December 13, 2019 filing. On March 9, 2020, in Docket No. ER20-598-001, Duke submitted its response (Deficiency Response).

6. In its Deficiency Response, Duke states that no filing was made to place its depreciation rates on file effective January 1, 2013 because it was not clear at the time how transmission owners using MISO's generic Attachment O formula rate would be able to place depreciation rates on file. According to Duke, it made the instant filing once it became aware that certain companies using MISO's generic Attachment O formula rate had obtained Commission approval of separate company-specific depreciation rate schedules.¹⁴

7. Duke also explained that the depreciation rates included in the proposed rate schedule that were changed in 2013 had the effect of decreasing annual depreciation expense related to plant in service accounts that flow through the transmission formula rate, compared to using its prior depreciation rates. According to Duke, using 2012 year-end plant balances, annual depreciation expense would decrease by approximately \$428,000 using the depreciation rates approved by the Indiana Commission to take effect January 1, 2013, compared to using its prior depreciation rates.¹⁵ Duke contends that, although the deficiency letter asked that Duke demonstrate the effect on its ATRR for rate years 2014 through the present, a comparison could not be reliably made because the transmission rate accounts were no longer depreciated pursuant to the expired rates.¹⁶

¹² Duke states that this depreciation study was the source of the depreciation rates approved by the Indiana Commission. *Id.* (citing Ex. DEI-001 (Testimony of John J. Spanos) and Ex. DEI-002 (Depreciation Study)).

¹³ *Id.*

¹⁴ Deficiency Response at 2.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

8. Duke also notes that it is currently pursuing new depreciation rates in proceedings before the Indiana Commission and plans to file them with the Commission once the rates are finalized.¹⁷

II. Notice of Filing and Responsive Pleadings

9. Notice of the December 13, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 70,181 (Dec. 20, 2019), with interventions and protests due on or before January 3, 2020. None was filed.

10. Notice of the Deficiency Response was published in the *Federal Register*, 85 Fed. Reg. 14,936 (Mar. 16, 2020), with interventions and protests due on or before March 30, 2020. None was filed.

III. Discussion

11. Our preliminary analysis indicates that the proposed Tariff revisions establishing Duke's depreciation rate schedule have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. For example, we find that Duke has not demonstrated that the use of the equal life group procedure in this instance is appropriate.¹⁸ We thus find that Duke's proposed depreciation rates raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we accept Duke's proposed depreciation rate schedule, suspend it for a nominal period, to become effective February 12, 2020, subject to refund, and establish hearing and settlement judge procedures.¹⁹

¹⁷ *Id.*

¹⁸ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,225, at P 13 (2020).

¹⁹ We remind Duke that it must obtain Commission approval before changing the depreciation rates it uses for ratemaking purposes, consistent with Order No. 618. *Depreciation Accounting*, Order No. 618, 92 FERC ¶ 61,078, at n.25 (2000) (companies may change their method of depreciation for accounting purposes; however, they must seek Commission approval before reflecting the change in depreciation in prices charged for power sales or transmission services).

12. While we are setting these matters for a trial-type evidentiary hearing,²⁰ we encourage efforts to reach settlement before hearing procedures commence. To aid 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.²¹ If 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.²² The settlement judge shall report to the Chief Judge and the Commission within 60 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 additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Duke's proposed Tariff revisions establishing Duke's depreciation rate schedule are hereby accepted for filing and suspended for a nominal period, to become effective February 12, 2020, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Duke's proposed depreciation rate schedule, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

²⁰ Trial Staff is a participant in the hearing and settlement judge procedures. *See* 18 C.F.R. § 385.102(b), (c) (2019).

²¹ 18 C.F.R. § 385.603.

²² If 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 (2019), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 45 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the participants 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 60 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 45 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, or remotely (by telephone or electronically), as appropriate. 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.

(F) Given that the circumstances caused by the COVID-19 pandemic may disrupt, complicate, or otherwise change the ability of participants to engage in normal hearing procedures, the Chief Judge is hereby authorized to set or change the dates for the commencement of the hearing and the issuance of the initial decision as may be appropriate.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.