173 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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| Midcontinent Independent System Operator, Inc.<br>Ameren Illinois Company | Docket Nos. | ER20-1078-001 |
| Midcontinent Independent System Operator, Inc.<br>Ameren Transmission Company of Illinois | | ER20-1079-001 |
| Midcontinent Independent System Operator, Inc.<br>Union Electric Company | | ER20-1080-001<br>(not consolidated) |

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING AND CLARIFICATION

(Issued October 15, 2020)

1. On February 26, 2020, pursuant to section 205 of the Federal Power Act (FPA)[1] and Part 35 of the Commission's regulations,[2] Midcontinent Independent System Operator, Inc. (MISO) filed, on behalf of Ameren Illinois Company (Ameren Illinois), Ameren Transmission Company of Illinois (Ameren Transmission), and Union Electric Company (Union Electric) (together, Ameren Companies), proposed revisions to each of the Ameren Companies' formula rate templates 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).[3]

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[1] 16 U.S.C. § 824d.

[2] 18 C.F.R. pt. 35 (2020).

[3] MISO joined in the filings in its role as the administrator of the Tariff but took no position on the substance of the filings. In this order, for ease of reference, we refer to the applicants as Ameren Illinois, Ameren Transmission, Union Electric, or, collectively, Ameren Companies.

2. In an order dated May 1, 2020, the Commission accepted Ameren Illinois's proposed formula rate revisions, effective June 1, 2020, which was the effective date requested by Ameren Illinois.[4] In orders dated May 21, 2020, the Commission accepted Ameren Transmission's and Union Electric's proposed formula rate revisions, effective June 1, 2020, also the effective date requested by those companies.[5] On June 1, 2020, Ameren Companies timely requested rehearing and clarification of the Ameren Illinois Order and Ameren Transmission Order. On June 17, 2020, Ameren Companies timely requested rehearing of the Union Electric Order.

3. Pursuant to *Allegheny Defense Project v. FERC*,[6] the rehearing requests filed in these proceedings may be deemed denied by operation of law. However, as permitted by section 313(a) of the FPA,[7] we are modifying the discussion in the Ameren Illinois Order, Ameren Transmission Order, and Union Electric Order (together, Ameren Companies Orders), and continue to reach the same result in these proceedings, as discussed below.[8]

## I. <u>Background</u>

4. In an order issued in *Duke Energy Progress, LLC*, regarding a formal challenge 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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[4] *Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,090 (2020) (Ameren Illinois Order).

[5] *Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,141 (2020) (Ameren Transmission Order); *Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,140 (2020) (Union Electric Order).

[6] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

[7] 16 U.S.C. § 825*l*(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

[8] *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Ameren Illinois Order, Ameren Transmission Order, or Union Electric Order. *See Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

instructions with respect to reporting M&S balances.[9] 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 had been included as an input to the formula rate, and report the sum of all construction-related M&S inventory on a different line in its Form 1 (line 5 of page 227 of Form 1), which had not been specified as an input to the formula rate.[10] 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."[11] 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."[12]

5. 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.[13]

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[9] 163 FERC ¶ 61,051 (2018) (DEP Order).

[10] *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.

[11] *Id.* PP 1, 24.

[12] *Id.* P 22.

[13] *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).

### A. Ameren Companies' Filings

6. Ameren Companies submitted substantially similar filings in these proceedings. Ameren Companies stated in their respective filings that they were adjusting M&S inventory costs reported on page 227 of their respective Form 1s to reflect the clarification provided in the DEP Order, beginning with the 2019 reporting year.[14] Ameren Companies stated that, consistent with the approach that DEP and other utilities have taken, they sought to revise their respective formula rates to continue appropriate recovery of all transmission-related M&S inventory costs. First, Ameren Companies proposed adding in their respective formula rates a reference to the estimated M&S amount assigned to construction in their respective Form 1s that effectively included in rate base the transmission portion of the estimated M&S assigned to construction. Second, Ameren Companies proposed to add language to a footnote of their respective formula rates stating these entities will report the transmission portion of M&S assigned to construction in a footnote in their respective Form 1s.[15]

7. Ameren Companies explained that their respective proposed revisions would 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 Companies stated that the filings were "substantially identical" to other utilities' revisions to formula transmission rate templates addressing the same issue that have been previously accepted.[16] Ameren Companies stated that the changes to their respective tariffs were intended to correct potential under-recovery of the revenue requirement associated with the reporting change in their respective Form 1s. Ameren Illinois and Ameren Transmission stated that, accordingly, there was no rate impact associated with the proposed change to their respective formula rates, as these entities continued to seek full recovery of the annual transmission revenue requirement (ATRR) associated with the average of the transmission-related M&S inventory balances that Ameren Companies had

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[14] Ameren Illinois Transmittal, Docket No. ER20-1078-000, at 1 (filed Feb. 26, 2020) (Ameren Illinois Transmittal); Ameren Transmission Transmittal, Docket No. ER20-1079-000, at 1 (filed Feb. 26, 2020) (Ameren Transmission Transmittal); Union Electric Transmittal, Docket No. ER20-1080-000, at 1 (filed Feb. 26, 2020) (Union Electric Transmittal).

[15] Ameren Illinois Transmittal at 3-4; Ameren Transmission Transmittal at 3-4; Union Electric Transmittal at 3-4.

[16] Ameren Illinois Transmittal at 2 & nn.6-7 (citing filings referenced *supra* note 13); Ameren Transmission Transmittal at 2 & nn.6-7 (citing filings referenced *supra* note 13); Union Electric Transmittal at 2 & nn.7-8 (citing filings referenced *supra* note 13).

been recovering prior to the change in inputs of their respective Form 1s.[17] For its part, Union Electric stated that there was no rate impact associated with the proposed change to its formula rate because it continued to seek full recovery of the revenue requirement associated with the end of year balance of the transmission-related M&S inventory that Union Electric had been recovering before the change in population of its Form 1.[18]

8. Ameren Companies requested that the proposed changes to the M&S inventory component of their respective formula rates be made effective on June 1, 2020.[19] Ameren Illinois and Ameren Transmission asserted that this effective date would ensure that the revisions will be reflected in the annual true-up such that their respective projected 2019 ATRRs would be trued-up based on actual 2019 Form 1 data. Ameren Illinois and Ameren Transmission stated that this 2019 true-up would be reflected in transmission rates effective January 1, 2021. Ameren Illinois and Ameren Transmission further stated that the requested effective date would also ensure that the revised template will be used when these entities prepare their respective projection of 2021 rates which will be posted by September 1, 2020.[20]

### B. Ameren Companies Orders

9. The Commission, in the Ameren Companies Orders, accepted Ameren Companies' formula rate revisions, effective June 1, 2020, as they requested. The Commission found that Ameren Companies' 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.[21]

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[17] Ameren Illinois Transmittal at 2-3; Ameren Transmission Transmittal at 2-3.

[18] Union Electric Transmittal at 3.

[19] Ameren Illinois Transmittal at 1; Ameren Transmission Transmittal at 1; Union Electric Transmittal at 1, 4-5.

[20] Ameren Illinois Transmittal at 4-5; Ameren Transmission Transmittal at 4-5.

[21] Ameren Illinois Order, 171 FERC ¶ 61,090 at P 19 (citing *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)); Ameren Transmission Order, 171 FERC ¶ 61,141 at P 6 (same); Union Electric Order,

171 FERC ¶ 61,140 at P 6 (same).

10. However, the Commission found that the Ameren Companies may only apply the formula rate revisions prospectively from the requested and accepted effective date of the revisions.[22] Thus, when Ameren Illinois and Ameren Transmission calculate their respective true-ups of estimated 2019 charges to actual 2019 costs in June 2020, the Commission stated that Ameren Illinois and Ameren Transmission must calculate their actual costs using the formula provisions that were effective for the applicable time period (i.e., Ameren Illinois's and Ameren Transmission's revisions that became effective June 1, 2020 could not be applied to their respective formula rate true-ups for the 2019 rate year).[23]

11. The Commission also noted in the Ameren Companies Orders that an audit of Ameren Corporation was previously commenced by Commission audit staff in Docket No. FA20-6-000, and that among the various areas being evaluated, are Ameren Corporation'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 Corporation's jurisdictional rates on file. The Commission stated that it expected Commission audit staff to ensure, as part of the ongoing audit, that Ameren Corporation's historical Form 1 reporting and transmission

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[22] Ameren Illinois Order, 171 FERC ¶ 61,090 at P 22 (citing *Midcontinent Indep. Sys. Operator, Inc.,* 157 FERC ¶ 61,250, at P 27 (2016) (*MISO*), *order on reh'g*, 161 FERC ¶ 61,020, at PP 6-8 (2017) (*MISO Rehearing*)); Ameren Transmission Order, 171 FERC ¶ 61,171 at P 7 (citing same and Ameren Illinois Order, 171 FERC ¶ 61,090 at P 22); Union Electric Order, 171 FERC ¶ 61,140 at P 7 (same).

[23] Ameren Illinois Order, 171 FERC ¶ 61,090 at P 22 (citing *Wisc. Elec. Power Co*., 165 FERC ¶ 61,223, at P 25 & n.40 (2018) (*Wisconsin Electric*), *order on reh'g*, 167 FERC ¶ 61,163, at PP 20-22 (2019) (*Wisconsin Electric Rehearing*); Ameren Transmission Order, 171 FERC ¶ 61,171 at P 7 (same); Union Electric Order, 171 FERC ¶ 61,140 at P 7 (same). The Commission stated that, similarly, when Ameren Companies calculate their respective true-up of estimated 2020 charges to actual 2020 costs in June 2021, these entities should only use the revised formula to calculate their true-ups for that portion of 2020 that the revised formula rate was in effect (i.e., June 1, 2020 through December 31, 2020). Ameren Illinois Order, 171 FERC ¶ 61,090 at P 22; Ameren Transmission Order, 171 FERC ¶ 61,171 at P 7 & n.13 (citing Ameren Illinois Order, 171 FERC ¶ 61,090 at P 22). The Commission had originally made a similar observation with respect to Union Electric using the revised formula to calculate a true-up only for the portion of 2020 that its revised formula rate was in effect, *see* Union Electric Order, 171 FERC ¶ 61,140 at P 7 & n.13, but the Commission in an errata notice later removed that statement. *See Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER20-1080-000, at 1 (June 1, 2020) (errata notice).

formula rate recoveries for prior years are in full compliance with the Commission's regulations and Ameren Corporation's filed formula rate.[24]

12. As relevant here, the Commission in the Ameren Illinois Order rejected Ameren Illinois's answers to protests filed by Norris Electric Cooperative, Rural Electric Convenience Cooperative, and Southwestern Electric Cooperative, Inc. (Southwestern).

## II. Ameren Companies' Requests for Rehearing and Clarification

### A. Commission's Requirement That the Formula Revisions Apply Only Prospectively From the Effective Date

13. Ameren Illinois and Ameren Transmission argue that the Commission erred in prohibiting them from using their respective formula rate revisions for the 17-month period commencing January 1, 2019. Ameren Illinois and Ameren Transmission assert that the prior notice concerns in cases cited by the Commission in the respective Orders are not present here. According to Ameren Illinois and Ameren Transmission, "charges under a trued-up rate are not charged until the next year, so whatever the rate treatment of M&S in the 2019 true-up, it would not be reflected in customer rates until 2021. Consequently, customers would have more than ample notice of the change (if there was one)."[25]

14. Ameren Illinois and Ameren Transmission maintain that *Wisconsin Electric Rehearing* and *MISO Rehearing* did not concern Form 1 inputs and concurrent changes to Form 1 reporting, whereas in the instant proceedings the Form 1 change arose after the rate year. Specifically, Ameren Illinois and Ameren Transmission state that, until April 2020, they recorded all transmission-related M&S balances on line 8 of page 227. Ameren Illinois and Ameren Transmission state that their projected rates for 2019 that were calculated in 2018 recorded transmission-related M&S balances in line 8 of page 227. Ameren Illinois and Ameren Transmission represent that once they changed recording transmission construction-related M&S balances in line 5 (i.e., removing such expenses from line 8), they were compelled to file a rate change to avoid under-recovery of costs.[26]

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[24] Ameren Illinois Order, 171 FERC ¶ 61,090 at P 23; Ameren Transmission Order, 171 FERC ¶ 61,171 at P 8; Union Electric Order, 171 FERC ¶ 61,140 at P 8.

[25] Ameren Illinois and Ameren Transmission Request for Rehearing at 11-13 (citing *Wisconsin Electric Rehearing*, 167 FERC ¶ 61,163 at P 20; *MISO Rehearing*, 161 FERC ¶ 61,020 at PP 7-11).

[26] *Id.* at 13.

15. Ameren Illinois and Ameren Transmission argue that the instant proceedings are also different from *Wisconsin Electric Rehearing* and *MISO Rehearing* because the instant proceedings did not involve changes in customer charges and that reporting transmission construction-related M&S expenses in line 8 of page 227 of the Form 1 is the same as reporting these balances in line 5. According to Ameren Illinois and Ameren Transmission, the filings in these proceedings at most constitute retroactive rate reporting rather than retroactive ratemaking. Ameren Illinois and Ameren Transmission state that their customers would have paid no increase in 2019 charges if the Commission had permitted these entities to apply line 5 to the 2019 true-up and the first five months of 2020. Instead, Ameren Illinois and Ameren Transmission state that the Ameren Illinois Order and Ameren Transmission Order will require construction-related M&S balances in the 2019 and 2020 projections to be removed from the 2019 true-ups and the first five months of 2020 true-ups, thereby causing a 17-month windfall to intervenors in these proceedings.[27]

16. Ameren Illinois and Ameren Transmission argue that allowing the rate changes in the instant proceedings to take effect for the 2019 true-ups would strictly follow these entities' respective tariffs, which require using Form 1 data and effective tariffs when calculating true-ups. Ameren Illinois and Ameren Transmission describe the Ameren Illinois Order and Ameren Transmission Order as violating the filed rate doctrine because these entities will have to use formulae in superseded tariffs for calculating the true-ups.[28]

17. Ameren Illinois and Ameren Transmission argue that the Ameren Illinois Order and Ameren Transmission Order rendered the formula rate inconsistent with the Form 1 data upon which it relies, thereby unlawfully stranding otherwise recoverable costs for 17 months and establishing a standard that cannot be satisfied. According to Ameren Illinois and Ameren Transmission, the Commission has construed forward-looking formula rates as entailing true-ups of actual Form 1 account balances against projected Form 1 account balances. Ameren Illinois and Ameren Transmission represent that this trued-up amount is added to, or subtracted from, the revenue requirement for the subsequent rate year. Under this regime, Ameren Illinois and Ameren Transmission contend that the actual Form 1 account balances for 2019 that are filed in April 2020 become the basis for true-ups against the 2019 projections, which is included in the rates charged in 2021. Therefore, Ameren Illinois and Ameren Transmission state that the Commission's ordering public utilities to change the recording of Form 1 data retroactively requires changing the way these public utilities state their accounts. Ameren Illinois and Ameren Transmission maintain that moving transmission construction-related M&S balances out of page 227, line 8 of the Form 1, and into line 5 of the same page forces these entities to

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[27] *Id.* at 13-14.

[28] *Id.* at 14-15.

use a formula rate that does not recover costs on line 5 for the relevant rate year even though the Commission has also stated that M&S balances are recoverable in rates.[29]

18. Ameren Illinois and Ameren Transmission argue that the Ameren Illinois Order and Ameren Transmission Order are inconsistent with prior Commission decisions that permitted, via delegated authority, the same rate changes in other similar proceedings to have immediate effect. Ameren Illinois and Ameren Transmission maintain that it would be discriminatory for the Commission to require different rate treatment in the instant proceedings, notwithstanding that the relevant prior decisions were made through delegated authority.[30] As part of its rehearing request regarding delegation to Commission audit staff discussed below, Union Electric also asserts that the Commission departed from precedent permitting public utilities to make similar formula rate changes without an audit or investigation.[31]

19. Ameren Illinois and Ameren Transmission argue that the Commission erred in rejecting Ameren Illinois's April 3 and May 1 answers. Given the Commission's prior acknowledgement that construction-related M&S expenses are recoverable in rate base, Ameren Illinois and Ameren Transmission represent that they presented evidence in those answers that Ameren Illinois did not violate its filed rate because it properly accounted for transmission-related M&S expenses once they were assigned to specific construction projects or expensed.[32]

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[29] *Id.* at 15-18 (citing *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 690 (1923); *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944)).

[30] *Id.* at 19-21 (citing *Balt. Gas & Elec. Co. v. FERC*, 954 F.3d 279, 284 (D.C. Cir. 2020); *ANR Storage Co. v. FERC*, 904 F.3d 1020, 1024 (D.C. Cir. 2018); *Duke Energy Carolinas LLC and Duke Energy Progress LLC*, Docket Nos. ER18-2367-000 and ER18-2368- 000 (Oct. 19, 2018) (delegated letter order); *PJM Interconnection, L.L.C. & Commonwealth Edison Co.*, Revisions to PJM Interconnection, L.L.C. Open Access Transmission Tariff, Docket No. ER20-379-000, Transmittal Letter at 2 (Nov. 14, 2019); *PJM Interconnection, L.L.C. & Va. Elec. and Power Co.*, Changes to the Materials & Supplies Inventory Component of the Formula Rate, Docket No. ER19-1569-000, Transmittal Letter at 2 (Apr. 12, 2019)).

[31] Union Electric Request for Rehearing and Clarification at 13-15.

[32] *Id.* at 30-31.

### B. Commission's Reference to Ongoing Audit

20. Ameren Companies state that the Commission ignored evidence that they proposed the formula rate changes to avoid under-recovery due to changes in how Form 1 is recorded, even though the Commission acknowledged that the formula rate changes are consistent with precedent permitting construction-related M&S balances to be included in rate base.[33]

21. Ameren Companies assert that the Commission erred in directing Commission audit staff to investigate Ameren Corporation's past compliance with Form 1. Ameren Companies maintain instead that the Commission should have found that no refunds are warranted for any past period given that these entities did not misapply their formula rates, these entities did not charge rates contrary to rates on file, and there is industry confusion on the proper reporting requirements for Form 1. Ameren Companies state that construction-related M&S costs are recoverable in rate base, and there is neither evidence that these entities' expenditures were imprudent nor that these entities violated their formula rates for past periods. Ameren Companies contend that they followed the specific instructions of their respective effective tariffs and maintain that there is also no evidence that these entities "erred in the accounting of either the M&S inventory costs in Account 154, or the subsets of those costs ultimately capitalized to Account 107 (in the case of construction-related costs) or expensed (in the case of operations and maintenance ('O&M')-related costs)."[34]

22. Ameren Companies state that at most there is an error in their reporting, which they attribute to the vague instructions on page 227 of Form 1 on allocating M&S costs between construction and O&M.[35] Ameren Companies represent that they used footnotes to functionalize M&S balances because due to lack of space in Form 1, the preamble to the rule requiring functionalization provides discretion to the respondent, and these entities had to adjust their prior practice of recording transmission-related M&S

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[33] Ameren Illinois and Ameren Transmission Request for Rehearing and Clarification at 18; Union Electric Request for Rehearing and Clarification and 7-8.

[34] Ameren Illinois and Ameren Transmission Request for Rehearing and Clarification at 22-23; Union Electric Request for Rehearing and Clarification at 8-9.

[35] Ameren Illinois and Ameren Transmission Request for Rehearing and Clarification at 24-25; Union Electric Request for Rehearing and Clarification at 9-10.

inventory on page 227, line 8 of Form 1.[36] Given this confusion, Ameren Companies assert that no equitable remedy or refund is warranted.[37]

23. Ameren Companies describe the Commission as erring in delegating an issue of law and policy for Commission audit staff that only the Commission itself may determine. Ameren Companies assert they preserve their right to seek rehearing pending the outcome of the audit and that, if the Commission pre-judged the outcome of audit staff's investigation before it was complete, then the Commission arbitrarily ignored evidence provided by Ameren Companies that no filed rate doctrine violation occurred.[38]

24. Should the Commission decline to grant rehearing on the Commission's delegation to Commission audit staff, Ameren Companies request in the alternative that the Commission clarify that it has not pre-judged the audit due to the lack of record on the clarity of the instructions in Form 1 regarding recording M&S balances. Ameren Companies request that the Commission clarify that it did not conclude that these entities' past practice of recording Form 1 amounts to a filed rate violation.[39]

## III. Discussion

25. As discussed below, we are not persuaded by arguments Ameren Companies raise on rehearing.

26. Ameren Companies in the instant proceedings proposed formula rate revisions that changed the references for certain balances from Form 1 from which construction-related M&S inputs would be developed to calculate their respective formula rates. As

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[36] Ameren Illinois and Ameren Transmission Request for Rehearing and Clarification at 25-26 (citing *Final Rule to Revise FERC Form No. 1, Annual Report of Electric Utilities, Licensees and Others*, Order No. 200, 47 Fed. Reg. 1267, 1274-75 (Jan. 12, 1982)); Union Electric Request for Rehearing and Clarification at 10-12 (same).

[37] Ameren Illinois and Ameren Transmission Request for Rehearing and Clarification at 23-24, 26-27; Union Electric Request for Rehearing and Clarification at 12.

[38] Ameren Illinois and Ameren Transmission Request for Rehearing and Clarification at 28-29; Union Electric Request for Rehearing and Clarification at 17.

[39] Ameren Illinois and Ameren Transmission Request for Rehearing and Clarification at 29-30; Union Electric Request for Rehearing and Clarification at 17-18.

the Commission stated in each order, these changes are acceptable.[40] However, Ameren Companies requested a June 1, 2020 effective date for the changes, and absent waiver of prior notice requirements,[41] the Commission could only accept Ameren Companies' changes to their respective formulae prospectively from the effective date requested and granted. The Commission's approach here is consistent with its approach accepting other formula rate changes in response to *DEP*.[42] Specifically, in *DEP*, the Commission interpreted Form 1 as requiring that the filer "estimate the M&S balance that will be used in construction regardless of capital functionalization and report the sum of all construction-related M&S inventory on line 5 on page 227. Construction-related M&S inventory is not includable within the O&M line items."[43] In *MISO Rehearing,* the Commission explicitly stated the principle, specifically with respect to a filing by Ameren Illinois and Ameren Transmission, that applying a tariff revision to a true-up for a rate year before the revision was in effect was barred by the filed rate doctrine and the rule against retroactive ratemaking.[44] Thus, Ameren Illinois and Ameren Transmission erred when they incorrectly asserted that "a June 1, 2020 effective date for the revised

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[40] Ameren Transmission Order, 171 FERC ¶ 61,141 at P 6; Union Electric Order, 171 FERC ¶ 61,140 at P 6; Ameren Illinois Order, 171 FERC ¶ 61,090 at P 19.

[41] *See Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

[42] *See PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,094, at P 29 (2020); *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,093, at P 26 (2020).

[43] DEP Order, 163 FERC ¶ 61,051 at P 23.

[44] *See MISO Rehearing*, 161 FERC ¶ 61,020 at PP 6-8 & n.18 ("In short, the rate on file for service provided in the 2016 rate year is the rate that preceded the Tariff revisions accepted in the December 30 Order, regardless of when the true-up for the 2016 rate year is calculated and reflected in rates. As the Tariff provisions became effective as of January 1, 2017, we affirm that Ameren may not, consistent with the rate on file for the 2016 rate year, apply the proration methodology in the Tariff revisions to the annual true-up calculation for the 2016 rate year.") (citing *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248, at P 12 n.14 (2011) (explaining that "a pipeline may only impose a true-up that is consistent with the pipeline's tariff at the time the costs were incurred") (citations omitted); *Sabine Pipe Line LLC*, 127 FERC ¶ 61,267, at P 15 (2009) ("even though true-up tracker mechanisms permit later recovery of under- or over-collections that occur in a prior period, such provisions may only apply prospectively to under- and over-recoveries occurring in periods of service after the effective date of the tariff provisions") (citation omitted))).

template will allow [each utility] to calculate its true-up for 2019, in accordance with its 2019 FERC Form 1."[45]

27. Moreover, whether Ameren Companies have historically misreported construction-related M&S balances is beyond the scope of this proceeding.[46] With respect to Ameren Illinois's answers, the Commission's rules generally do not permit an answer to an answer except when the decisional authority decides otherwise. Here, in considering whether to accept Ameren Illinois's answers, the Commission determined that Ameren Illinois's answers did not provide the Commission with information that would be helpful in its decision-making process. The Commission therefore did not abuse its discretion in rejecting Ameren Illinois's April 3 and May 1 answers.

28. Ameren Illinois's and Ameren Transmission's respective True-Up Procedures require that these entities base their True-Ups on Form 1 data for the prior calendar year and "any changes to the data inputs, including but not limited to revisions to [these entities' respective Form 1s] . . . shall be incorporated into the formula rate and the charges produced by the formula rate in the projected net revenue requirement for the next Rate Year."[47] Therefore, as relevant here, we agree with Ameren Companies that the true-ups using Ameren Illinois's and Ameren Transmission's 2019 Form 1 data filed in 2020 will be added or subtracted to the revenue requirement charged to customers in 2021. The filed rates accepted in the Ameren Illinois and Ameren Transmission Orders became effective *after* service was provided for the 2019 year and the Commission appropriately followed the language in these entities' tariffs' True-Up Procedures.[48] While this true-up of charges for 2019 service will be added or subtracted from what

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[45] Ameren Illinois Transmittal at 5; Ameren Transmission Transmittal at 4.

[46] We note that Southwestern has initiated a formal challenge against Ameren on this issue in Docket No. ER20-1237-000.

[47] 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)); Tariff, Attachment O-ATXI, Annual True-Up, Information Exchange, and Challenge Procedures at Section II.E.2 (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. Union Electric's tariff does not contain a true-up procedure and Union Electric has not requested rehearing on this issue.

[48] *See Wisconsin Electric Rehearing*, 167 FERC ¶ 61,163 at P 21 ("We see nothing in the terms of Wisconsin Electric's Wholesale Tariff that provides that in implementing its tariff it need not comply with an effective date that the Commission adopts.").

these entities' customers will pay for service provided in 2021 because the actual Form 1 data will not be available until after the rate year, customers still can only be charged according to the formula rate provisions that govern the service provided during that rate year.[49]

29. As the Commission stated in *MISO Rehearing*, "[t]he filed rate doctrine and prohibition against retroactive ratemaking bar a public utility from charging a rate other than the rate properly filed with the Commission."[50] The Ameren Companies filed formula rate for 2019 rates did not include the revisions that became effective June 1, 2020. Contrary to Ameren Illinois's and Ameren Transmission's assertions, it is irrelevant that in *MISO Rehearing* and *Wisconsin Electric Rehearing*, the Commission did not focus on revisions to rates using Form 1 data. We therefore disagree with Ameren Illinois and Ameren Transmission that the Commission rendered these entities' respective formula rates inconsistent with the Form 1 data upon which they rely or stranded otherwise recoverable costs for 17 months. The Commission is requiring that the filed rate be followed. We acknowledge that the Commission allowed a different result in the two delegated letter orders cited by Ameren Companies, but those orders do not include reasoning for the Commission to distinguish here and, in any event, do not overrule clearly established Commission precedent, following the filed rate doctrine, for which Ameren had notice.[51]

30. We also reject Ameren Companies' arguments with respect to the Commission's reference to Commission audit staff's audit of Ameren Corporation in Docket No. FA20-6-000. The Commission's public announcement of that audit pre-dated Ameren

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[49] *See W. Deptford Energy LLC v. FERC*, 766 F.3d 10, 18 (D.C. Cir. 2014) ("if a utility makes any changes to a filed 'rate, charge, classification, or service,' its public filing with the Commission must 'stat[e] plainly' both the changes made to the tariff 'then in force,' and 'the time when the change or changes will go into effect.'") (quoting 16 U.S.C. § 824d(d)).

[50] *MISO Rehearing*, 161 FERC ¶ 61,020 at P 7.

[51] *See PJM Interconnection, L.L.C. and Va. Elec. and Power Co.*, Docket No. ER19-1569-000 (May 7, 2019) (delegated letter order); *Commonwealth Edison Company PJM Interconnection L.L.C.*, Docket No. ER20-379-000 (Jan. 8, 2020) (delegated letter order). Moreover, the Commission has reached the same result it reached here in other orders. *See PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,094 at P 29; *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,093 at P 26.

Companies' filings in the instant proceedings by over one month.[52] The Commission has not prejudged the results of that audit and the Commission's announcement of that audit was not predicated on the filings in the instant proceedings. The Commission accepted Ameren Companies' proposed formula rates as just and reasonable in the instant proceedings. The Commission has also delegated to audit staff authority to conduct audits,[53] and, in the event that Ameren Corporation desires to challenge the results of that audit, it may request a hearing before the Commission pursuant to section 301(a) of the FPA.[54]

The Commission orders:

In response to Ameren Illinois's, Ameren Transmission's, and Union Electric's requests for rehearing, the Ameren Illinois Order, Ameren Transmission Order, and Union Electric Order are hereby modified and the results sustained, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[52] *See* Letter from Larry R. Parkinson, Director, Office of Enforcement, to David B. Hennen, Director and General Counsel, Ameren Corporation, Docket No. FA20-6-000 (Jan. 10, 2020).

[53] 18 C.F.R. § 375.311(j), (n), (s) (2020).

[54] 16 U.S.C. § 825(a) ("The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited."); *see also* 18 C.F.R. pt. 41 (2020) (Accounts, Records, Memoranda and Disposition of Contested Findings and Proposed Remedies).