

186 FERC ¶ 61,127  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Jr., Chairman;  
Allison Clements and Mark C. Christie.

Oklahoma Gas and Electric Company

Docket No. ER24-718-000

ORDER ACCEPTING FORMULA RATE TEMPLATE

(Issued February 16, 2024)

1. On December 20, 2023, Oklahoma Gas and Electric Company (OG&E) filed, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> revisions to correct a formula error in its transmission formula rate template (Formula Rate) contained in: (1) Attachment H, Addendum 2-A to the OG&E Open Access Transmission Tariff (OATT) and (2) Attachment H, Addendum 2-A to the Southwest Power Pool, Inc. (SPP) OATT.<sup>3</sup> OG&E requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of July 1, 2008, the date on which the OG&E Formula Rate took effect. In this order, we accept OG&E's proposed Formula Rate revisions, effective February 19, 2024, as discussed below.

**I. Background**

2. OG&E is an electric utility providing electric service at retail and wholesale in Oklahoma and Western Arkansas, and a transmission, generation, and distribution-owning member of SPP. SPP provides service over OG&E's transmission facilities pursuant to the SPP OATT. OG&E recovers the costs associated with transmission services provided over its facilities pursuant to its Formula Rate set out at both Attachment H, Addendum 2-A to the SPP OATT and Attachment H to the OG&E OATT. On November 30, 2007, OG&E proposed, pursuant to FPA section 205, to replace its stated wholesale transmission rates with a formula rate. The Commission set

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. pt. 35 (2023).

<sup>3</sup> OG&E submitted only the OG&E OATT sheets in eTariff format, and states that SPP has agreed to make a filing of the SPP OATT tariff sheets in eTariff format within 30 days of a Commission order approving the tariff changes.

the matter for hearing and settlement judge procedures,<sup>4</sup> and on June 25, 2009, it approved an uncontested Settlement (2009 Settlement) establishing OG&E's Formula Rate, effective July 1, 2008.<sup>5</sup> The Formula Rate establishes OG&E wholesale transmission rates based on a Projected Annual Transmission Revenue Requirement (ATRR) in September prior to the rate year, which corresponds to the calendar year. In June following the end of each rate year, OG&E "true up" the difference between the Projected ATRR and the actual ATRR by calculating any under- or over-recovery and incorporating it into the Projected ATRR for the subsequent rate year.<sup>6</sup>

## II. OG&E's Filing

3. OG&E states that it seeks to correct an error in the Formula Rate.<sup>7</sup> OG&E explains that, under the Formula Rate, its Net Revenue Requirement (i.e., its total revenue requirement less revenue credits) is determined at page 2 of Attachment H, Addendum 2-A. OG&E notes that the Net Revenue Requirement is then separated into two parts: (1) the SPP OATT Related Upgrades Revenue Requirement (which includes Base Plan Upgrades, Transmission Service Upgrades, Sponsored or Economic Portfolio Upgrades, and Generator Interconnection Facilities); and (2) the OG&E Zonal Revenue Requirement (i.e., the costs of transmission projects that are allocated by SPP solely to the OG&E Zone). OG&E states that the error it seeks to correct appears in the calculation of the OG&E Zonal Revenue Requirement. OG&E explains that the Formula Rate erroneously includes the SPP OATT Related Upgrades Revenue Requirement True-up in the determination of *both* the Projected Net SPP OATT Related Upgrades Revenue Requirement *and* the Projected OG&E Zonal Revenue Requirement. OG&E contends that this results in double-counting of the SPP OATT Related Upgrades Revenue Requirement True-up amount and an inaccurate determination of the Projected OG&E Zonal Revenue Requirement. OG&E states that this error may result in an over- or under-recovery of OG&E's actual costs in a given rate year, and this over- or under-recovery is not addressed by the Prior Year True-up Adjustment (i.e., the true-up adjustment related to the Projected OG&E Zonal Revenue Requirement).<sup>8</sup>

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<sup>4</sup> *Okla. Gas & Elec. Co.*, 122 FERC ¶ 61,071 (2008).

<sup>5</sup> *Okla. Gas & Elec. Co.*, 127 FERC ¶ 61,296 (2009).

<sup>6</sup> Transmittal, attach. 1 (Testimony of Paul A. Dumais), Ex. OG&E-001, at 8 (Dumais Test.).

<sup>7</sup> Transmittal at 2.

<sup>8</sup> *Id.* at 2-4.

4. OG&E contends that the SPP OATT Related Upgrades Revenue Requirement True-up should not be included in the determination of the Projected OG&E Zonal Revenue Requirement, as it is the true-up for SPP OATT Related Upgrades, not the true-up for OG&E's Zonal projects.<sup>9</sup> OG&E explains that the true-up adjustment related to the OG&E Zonal Revenue Requirement is the Prior Year True-up Adjustment, which is properly included with the Projected OG&E Zonal Revenue requirement in the Formula Rate.<sup>10</sup>

5. To correct this error, OG&E proposes to revise the Formula Rate to incorporate the SPP OATT Related Upgrades Revenue Requirement True-up only in the determination of the SPP OATT Related Upgrades Revenue Requirement, and not also the OG&E Zonal Revenue Requirement. Specifically, OG&E proposes to subtract the two true-up adjustments from the Net Revenue Requirement and then subtract the Net SPP OATT Related Upgrades Revenue Requirement on Line 21 (which is reduced by the SPP Related Upgrades Revenue Requirement True-up) in determining the OG&E Zonal Revenue Requirement on Line 22.<sup>11</sup> By reducing the Net Revenue Requirement by the subject true-up and then adding the subject true-up back via the SPP Related Upgrades Revenue Requirement, OG&E is, essentially, eliminating the subject true-up from the calculation of the OG&E Zonal Revenue Requirement.

6. OG&E states that this error has been a part of the Formula Rate since it was established pursuant to the 2009 Settlement and began to have an impact on OG&E's rates with the 2010 Projected ATRR.<sup>12</sup> OG&E claims that the error cumulatively caused an under-recovery of OG&E's Zonal Revenue Requirement of \$47.3 million since 2010, or \$61.1 million including interest.<sup>13</sup> OG&E states that, as the largest transmission service customer in the OG&E Zone, 88% of the under-recovery from past years is allocable to OG&E, with the remaining 12% allocable to transmission service customers other than OG&E.<sup>14</sup>

7. OG&E requests Commission approval to recover this \$47.3 million under-recovery, plus interest, over a five-year period beginning January 1, 2024. OG&E

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<sup>9</sup> *Id.* at 4.

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

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* (citing Dumais Test., Ex. OG&E-006, at 2).

<sup>14</sup> *Id.*

proposes that SPP bill the under-recovered amount to each customer using load ratio shares for the applicable year, the same allocation method used by SPP for the OG&E Zonal Revenue Requirement. OG&E states that by allocating the amounts they erroneously did not pay in prior years on a year-by-year load factor basis, transmission service customers will pay only what they would have paid had the formula not contained the error. OG&E contends that this method does not pose intergenerational inequities to OG&E's customers and is otherwise just and reasonable. Further, OG&E states that if the Commission approves OG&E's proposal, SPP will both bill and credit OG&E for the applicable under-recovered amounts.<sup>15</sup>

8. OG&E also requests waiver of the Commission's 60-day prior notice requirement to make these proposed changes effective July 1, 2008, the date on which the Formula Rate first took effect pursuant to the 2009 Settlement. OG&E contends that good cause exists for the waiver because the requested effective date is consistent with the parties' agreement in the 2009 Settlement, and the mistaken double-counting resulting from the error in the Formula Rate was not a bargained-for component of the negotiated settlement. OG&E asserts that in the process of revising the Formula Rate to reflect the settling parties' agreement to have two separate revenue requirements for different categories of projects—the SPP OATT Related Upgrades Revenue Requirement and the OG&E Zonal Revenue Requirement—the template included in the 2009 Settlement inadvertently failed to correctly separate out the true-up adjustments for the two categories. OG&E further argues that the requested effective date is just and reasonable because its customers will only pay the rates that would have been charged absent the formula error, without which they will have received an unjustified windfall at OG&E's expense.<sup>16</sup>

9. Finally, OG&E argues that the requested effective date is consistent with Commission precedent authorizing retroactive effective dates to correct "inadvertent errors" in a formula rate template.<sup>17</sup> OG&E states that, in *MISO*, the Commission allowed Entergy Texas, Inc. (Entergy Texas) to correct an error in its formula rate, concluding that "it is reasonable to grant the same effective date for the Entergy Texas transmission formula rate template" that was granted in the settlement proceeding

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<sup>15</sup> *Id.* at 5-6; Dumais Test., Ex. OG&E-001, at 18-19.

<sup>16</sup> Transmittal at 6-7.

<sup>17</sup> *Id.* at 7 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,199 (2016) (*MISO*); *AMP Transmission LLC*, Docket No. ER20-2942-000 (Oct. 30, 2020) (delegated order) (*AMP*)).

because the error was inadvertent and not intended by the settlement agreement that established the formula rate.<sup>18</sup>

10. OG&E also asserts that, in *AMP*, the Commission granted the effective date proposed by AMP Transmission LLC (AMP) for corrections to its formula rate to match the original effective date of the template. OG&E notes that AMP also claimed that, without the proposed corrections, it might be deprived of the recovery of its full ATRR, and that waiver of the Commission's 60-day prior notice requirement was appropriate as it involved a one-time accommodation with a narrow effect to ensure full recovery of costs, consistent with the purpose of its formula rate and the descriptions in AMP's original formula rate filing. OG&E asserts that, similarly here, the Formula Rate errors that OG&E seeks to correct were inadvertent and produce a result contrary to the intent and design of the Formula Rate as agreed to in the 2009 Settlement.<sup>19</sup>

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

11. Notice of OG&E's filing was published in the *Federal Register*, 88 Fed. Reg. 89,442 (Dec. 27, 2023), with interventions and protests due on or before January 10, 2024. People's Electric Cooperative and Oklahoma Industrial Energy Consumers filed timely motions to intervene. Arkansas Electric Cooperative Corporation, Oklahoma Municipal Power Authority, and Western Farmers Electric Cooperative (collectively, Customers) filed timely motions to intervene and a joint protest. On January 22, 2024, SPP filed a motion to intervene out of time. On January 25, 2024, OG&E filed a motion for leave to answer and answer. On February 8, 2024, Customers filed an answer. On February 12, 2024, OG&E filed a motion for leave to answer and answer.

#### **A. Customers' Protest**

12. Customers contend that OG&E's request for a July 1, 2008 effective date violates the filed rate doctrine and the rule against retroactive ratemaking. Customers argue that OG&E's customers relied on the fixed and predictable rate design established by the 2009 Settlement, and that granting OG&E's requested relief would upset the bedrock principle that permits formula rates to exist. Customers contend that FPA section 205 requires *advance* notice to the public of changes to the filed rate and that the United States Court of Appeals for the District of Columbia Circuit has made clear that the

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<sup>18</sup> *Id.* at 8 (quoting *MISO*, 157 FERC ¶ 61,199 at P 22).

<sup>19</sup> *Id.* (citing *AMP*, Filing, Docket No. ER20-2942-000, at 4-5 (filed Sept. 21, 2020)).

Commission has no authority, statutory or equitable, to permit a retroactive change to the filed rate.<sup>20</sup>

13. Customers argue that while there are two circumstances in which a party may benefit from a “notice” exception to the filed rate doctrine, such an exception does not apply here.<sup>21</sup> Customers argue that here, OG&E seeks to retroactively change the formula rate itself without any prior notice, and the terms of the 2009 Settlement have never been challenged, much less invalidated by a court.<sup>22</sup> Customers maintain that OG&E inappropriately relies on a single published Commission decision in *MISO* and another unpublished letter order in *AMP*. Customers assert that it is unclear whether *MISO* remains valid precedent given the subsequent *Old Dominion* and *OG&E* decisions. Customers further argue that the Commission’s delegated letter order in *AMP* is not precedent because it was unpublished and issued in an uncontested proceeding.<sup>23</sup>

14. Additionally, Customers argue that the facts here dramatically differ from those in *MISO* and *AMP*. Customers state that, in *MISO*, Midcontinent Independent System Operator, Inc. (MISO) and Entergy Services, Inc. (Entergy), on behalf of Entergy Texas, filed revisions to correct the formula rate for Entergy Texas less than two months after the Commission accepted the formula rate, and the “inadvertent error” related to a settlement which established nearly identical formula rate templates for five “Entergy Operating Companies,” one of which was Entergy Texas. Customers note that because the settlement dictated that the Entergy Operating Companies’ formula rate templates were to be identical unless a variation was specifically identified, the Commission could determine that the “inadvertent error” in the Entergy Texas formula deviated from the other Entergy Operating Companies’ formula templates in a way that was not specifically identified and against the settling parties’ intent. Customers also note that the change affected only two rate years and the total customer impact from those two years was less than \$1 million dollars.<sup>24</sup> Furthermore, Customers state that, in *AMP*, the company sought correction of an inadvertent “cross-referencing error in the formula rate” which would result in certain costs to be omitted from the calculation. Customers note that in

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<sup>20</sup> Customers Protest at 5-6 (citing *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821 (D.C. Cir. 2021) (*OG&E*); *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223 (D.C. Cir. 2018) (*Old Dominion*)).

<sup>21</sup> *Id.* at 6-7 (citing *OG&E*, 892 F.3d at 830-31).

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

<sup>23</sup> *Id.* at 7-8.

<sup>24</sup> *Id.* at 8-9 (citing *MISO*, 157 FERC ¶ 61,199 at PP 2, 5, 17, 21).

both *AMP* and *MISO*, the parties acted to correct the inadvertent errors within a year of the Commission acceptance of their respective formula rates.<sup>25</sup> Customers argue that, unlike in *MISO* and *AMP*, OG&E cannot point to any documentary evidence from the 2009 Settlement or any other objective facts that support its claim of “inadvertent error,” and OG&E offers no explanation for its “extreme tardiness” in failing to discover this error for nearly 15 years. Customers add that, unlike in *AMP*, OG&E is not claiming its formula rate has errant references, but instead proposes to substitute an entirely different mechanism for reflecting project true-ups.<sup>26</sup>

15. Furthermore, Customers argue that the Formula Rate under the 2009 Settlement does not contain an “inadvertent error,” as nothing in the template requires a double-counting of project true-ups. Rather, Customers claim that OG&E’s problem arises from its practice of using an OG&E-created worksheet that is not part of an accepted tariff to report data to SPP that SPP uses to establish the SPP Tariff Schedule 11<sup>27</sup> rates. Customers assert that OG&E has also proposed modifications to reflect the true-up of projects on Worksheet G, but OG&E’s filing does not even mention, much less explain, the changes to Worksheet G.

16. Therefore, Customers request that any tariff changes accepted by the Commission should only be effective prospectively, effective February 19, 2024. Customers request that the Commission condition this prospective acceptance on OG&E explaining the changes it has proposed to Worksheet G and how they will be used for purposes of calculating rates, particularly Schedule 11 rates that will recover the costs of SPP OATT Related Upgrades.<sup>28</sup> Alternatively, if the Commission establishes a retroactive effective date, Customers request that the Commission establish hearing and settlement judge procedures to verify OG&E’s calculations.<sup>29</sup>

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<sup>25</sup> *Id.* at 9-10 (quoting *AMP*, Filing, Docket No. ER20-2942-000, at 2 (filed Sept. 21, 2020)).

<sup>26</sup> *Id.* at 10-11.

<sup>27</sup> Based on Schedule 11 of the SPP OATT, Base Plan Zonal Charges and Region-wide Charges are assessed to Network Customers, Transmission Owners based on Resident Load where applicable, and to each Transmission Customer taking Point-To-Point Transmission Service under the Tariff based on Reserved Capacity.

<sup>28</sup> Customers Protest at 13-14.

<sup>29</sup> *Id.* at 14-15.

**B. OG&E's January 25 Answer**

17. OG&E argues that Customers' assertions that the 2009 Settlement does not contain an "inadvertent error" are baseless, reiterating that the double-counting skews the Formula Rate's revenue requirement calculations.<sup>30</sup> OG&E maintains that the specific tariff changes proposed to remedy the error in the Formula Rate are narrowly focused on correcting the double-counting of the true-up adjustment and do not represent a new methodology for incorporating the true-ups into rates.<sup>31</sup>

18. Additionally, OG&E maintains that a July 1, 2008 effective date remains appropriate because correcting this error is consistent with the 2009 Settlement. OG&E asserts that Customers' argument that the filed rate doctrine categorically bars a July 1, 2008 effective date is refuted by *MISO* and *AMP*, in which the Commission accepted proposed tariff change to correct an inadvertent error over objections that doing so violates the filed rate doctrine and the rule against retroactive ratemaking. OG&E further argues that the time since the error took place is irrelevant, as the underlying principle stands that a formula error contrary to the intent of the settling parties should be correctable retroactively.<sup>32</sup> Finally, OG&E argues that there is no need or purpose for settlement or hearing procedures because there is no actual dispute on genuine issues of material fact.<sup>33</sup>

19. OG&E also explains that the proposed changes to Worksheet G add clarity by including the sum of the revenue requirement for projects with the project true-up, which has historically been shown in a supplemental worksheet. Consequently, OG&E avers that such changes are non-substantive but benefit customers by enhancing transparency.<sup>34</sup>

**C. Customers' Answer**

20. Customers assert that OG&E is wrong to insist that the Formula Rate double-counts a true-up adjustment. Customers maintain that, while the Formula Rate properly applies the SPP OATT Related Upgrades Revenue Requirement True-up to the OG&E Zonal Revenue Requirement, the Formula Rate does not actually apply that same true-up

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<sup>30</sup> OG&E January 25 Answer at 3-7.

<sup>31</sup> *Id.* at 7-9.

<sup>32</sup> *Id.* at 9-14.

<sup>33</sup> *Id.* at 14-16.

<sup>34</sup> *Id.* at 9.



to the SPP OATT Related Upgrades Revenue Requirement.<sup>35</sup> Customers state that any duplicative crediting of a true-up adjustment is not due to an error in the Formula Rate, but a result of OG&E's additional calculations in a separate spreadsheet.<sup>36</sup> Customers add that to the extent that an "inadvertent error" exception to the filed rate doctrine exists, it does not apply here because there is no actual error in the Formula Rate.<sup>37</sup>

**D. OG&E's February 12 Answer**

21. OG&E reiterates its argument that the Formula Rate incorrectly includes the SPP OATT Related Upgrades Revenue Requirement True-up twice, and that the error occurs in the calculation of the OG&E Zonal Revenue Requirement. OG&E argues that Customers' focus on the supplemental worksheet is simply a distraction and is not relevant to the error in the Formula Rate or to OG&E's proposed corrections.<sup>38</sup>

**IV. Discussion**

**A. Procedural Matters**

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant SPP'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.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2023), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by OG&E and Customers because they have provided information that assisted us in our decision-making process.

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<sup>35</sup> Customers Answer at 3-4.

<sup>36</sup> *Id.* at 5-6.

<sup>37</sup> *Id.* at 6-7.

<sup>38</sup> OG&E February 12 Answer at 2-5.

**B. Substantive Matters**

25. We find that OG&E's proposed revisions to its Formula Rate in: (1) Attachment H, Addendum 2-A to the OG&E OATT and (2) Attachment H, Addendum 2-A to the SPP OATT are just and reasonable and not unduly discriminatory or preferential, and we, therefore, accept the proposed tariff revisions, effective February 19, 2024.

26. First, we accept OG&E's proposal to exclude the SPP OATT Related Upgrades Revenue Requirement True-up from the determination of the Projected OG&E Zonal Revenue Requirement. We find that OG&E's proposed revisions result in an accurate determination of the Projected OG&E Zonal Revenue Requirement. Second, we accept OG&E's proposed Worksheet G. We find that proposed Worksheet G, which shows the calculation of the Revenue Requirement and true-up for SPP OATT Related Upgrades, provides more clarity and transparency to the Formula Rate. With respect to Customers' argument that the Formula Rate applies the SPP OATT Related Upgrades Revenue Requirement True-up only once, we find that the proposed prospective revisions better delineate how the true-up adjustment applies and, therefore, are just and reasonable.

27. We deny waiver of the Commission's 60-day prior notice requirement. We find that OG&E has not made a strong showing of good cause to justify waiver of the Commission's 60-day prior notice requirement.<sup>39</sup>

28. We find that the cases to which OG&E cites in support of its request are unpersuasive. In *MISO*, the Commission found that the settlement agreement that established each of the five Entergy Operating Companies' formula rate templates was structured to set out the common provisions that are to be included in the formula rates of each Entergy Operating Company and then to list any company-specific customizations.<sup>40</sup> Based on the absence of a discussion of a company-specific customization that would explain the difference in the Entergy Texas formula rate template, the Commission determined that the parties to the settlement did not intend for that to be a company-specific customization and thus the Entergy Texas formula rate did indeed contain an inadvertent error.<sup>41</sup> Here, there is no evidence indicating that the parties to the 2009 Settlement intended the true-up adjustments to be incorporated any

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<sup>39</sup> See, e.g., *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339 (*Central Hudson*), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (stating that the Commission would deny requests for waiver of notice for rate increases absent a strong showing of good cause).

<sup>40</sup> *MISO*, 157 FERC ¶ 61,199 at PP 20-21.

<sup>41</sup> *Id.* P 21.

differently than as specifically provided in the Formula Rate. While OG&E proposes a correction to eliminate the double-counting issue by removing the SPP OATT Related Upgrades Revenue Requirement True-up from the determination of the Projected OG&E Zonal Projected Revenue Requirement, there is no basis from which to conclude that OG&E's proposed correction in this proceeding was intended by the parties in the 2009 Settlement.

29. To the extent that OG&E relies on *AMP*, we find that *AMP* misapplied the Commission's *Central Hudson* precedent, where the Commission held that "absent a strong showing of good cause," the Commission's policy is to "deny requests for waiver of notice for rate increases that do not implement a contract requirement, such as increases in requirements, coordination or transmission rates."<sup>42</sup> *AMP* did not provide the required strong showing of good cause, and therefore the grant of the requested waiver of prior notice in that case was in error.

The Commission orders:

OG&E's proposed revisions to its Formula Rate are hereby accepted, effective February 19, 2024, as discussed in the body of this order.

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Acting Secretary.

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<sup>42</sup> *Central Hudson*, 60 FERC at 61,339; *see also Entergy Ark., LLC*, 185 FERC ¶ 61,109, at PP 7, 14, 21 & n.30 (2023) (denying request for waiver of the Commission's 60-day prior notice requirement where applicant sought retroactive effective date for filing seeking to correct "inadvertent errors" in a formula rate).