UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Mammoth North LLC) Docket No. ER24-627-000

ANSWER IN OPPOSITION TO REQUEST FOR WAIVERS, MOTION TO DISMISS WITHOUT PREJUDICE, AND PROTEST OF AMERICAN MUNICIPAL POWER, INC., BLUE RIDGE POWER AGENCY INDIANA MUNICIPAL POWER AGENCY, MICHIGAN PUBLIC POWER AGENCY, AND WABASH VALLEY POWER ASSOCIATION, INC.

On December 12, 2023, Mammoth North LLC ("Mammoth") filed pursuant to section 205 of the Federal Power Act ("FPA")[1] its proposed annual revenue requirement of $6,015,315.84 for the provision of cost-based Reactive Supply and Voltage Control ("Reactive Filing") under Schedule 2 of the PJM Interconnection, L.L.C. ("PJM") Open Access Transmission Tariff ("Tariff").[2] Pursuant to Rules 211, 212, and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"),[3] American Municipal Power, Inc. ("AMP"), Blue Ridge Power Agency ("BRPA"), Indiana Municipal Power Agency ("IMPA"), Michigan Public Power Agency ("MPPA"), and Wabash Valley Power Association, Inc. ("WVPA") (collectively, the "Joint Customers")[4] respectfully submit this Answer in Opposition to Request for Waivers, Motion to Dismiss Without Prejudice, and Protest in response to Mammoth's Reactive Filing.

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1 16 U.S.C. § 824d.

2 Mammoth North, LLC, Transmittal Letter, Docket No. ER24-627-000 (filed December 12, 2023) (hereinafter "Transmittal Letter").

3 18 C.F.R. §§ 385.211-213.

4 AMP, BRPA, IMPA, MPPA, and WVPA each submitted a doc-less intervention in this proceeding.

As demonstrated below, Mammoth failed to meet its burden of providing substantial evidence to support a finding that the proposed rates are just and reasonable. Mammoth either declined or failed to provide material information such as reactive testing data and cost support for substantial components of the proposed revenue requirement.[5] Because the Reactive Filing is incomplete and patently deficient, the record does not support a finding that Mammoth's proposed rates can be approved as just and reasonable. Rather, to fulfill its obligation to engage in reasoned decision-making, the Commission should reject the Reactive Filing without prejudice to Mammoth resubmitting a filing that complies with minimum filing requirements, contains adequate testing data and cost support, and addresses the uncertainty that currently surrounds the facility's commercial operation date.

If the Commission does not grant the Motion to Dismiss, the Joint Customers ask the Commission to fulfill its consumer-protection mandate[6] by conditionally accepting the Reactive Filing subject to investigation under section 206 of the FPA,[7] maximum refund protections, and the outcome of evidentiary hearing and settlement judge procedures. To avoid a situation that leaves customers with inadequate refund protection, the Joint Customers respectfully request that the Commission : (1) reject Mammoth's request for waiver of Part 35's notice requirements and proposed effective date of June 30, 2024; (2) establish a rate effective date and refund effective date to avoid leaving customers without refund protection upon expiration of Section 206's 15-month refund period; (3) set the evidentiary hearing procedures on a Track I schedule and order

[5] As demonstrated in Section III, *infra*, Mammoth's generic request for waiver of the Commission cost support regulations is unsupported. As such, that request cannot serve as a basis for excusing Mammoth of its failure to support its proposal with substantial evidence.

[6] *See, e.g.*, *Pa. Water & Power Co. v. FPC*, 343 U.S. 414, 418 (1952) ("A major purpose of the whole [FPA] is to protect power consumers against excessive prices."); *ISO New England, Inc.*, 146 FERC ¶ 61,038 at P 26 (2014) ("[T]he Commission's statutory mandate under the FPA entails protecting consumer interests.").

[7] 16 U.S.C. § 824e.

settlement judge procedures to be held run concurrently, not consecutively; and (4) consider other consumer safeguards, such as whether the refund period should be extended due to Mammoth's dilatory behavior, and only authorizing an early rate effective date in exchange for Mammoth's voluntary agreement to provide full refunds. These procedures and protections are necessary to mitigate the negative effects on consumers that result from the Commission's inability to suspend initial rates under FPA section 205 and limits on its refund authority to minimize the likelihood that this proceeding will extend beyond the 15-month refund period under FPA section 206.

In support of their requests for relief, the Joint Customers state as follows:

I. INTRODUCTION

Mammoth states that its facility will be a 400 MW alternating current ("AC") solar electric generating facility interconnected with the transmission system of AEP Indiana Michigan Transmission Company, Inc. in Indiana, within the PJM region, and is expected to achieve commercial operation on June 30, 2024.[8] Based on their initial review of the Reactive Filing, Joint Customers have identified several components of Mammoth's proposed annual revenue requirement that are unjust and unreasonable, or not adequately supported, as discussed below. Though the Joint Customers' review is hampered by the fact that Mammoth has not provided any of the test data that the Commission required in *Wabash* and subsequent proceedings,[9] they identify

[8] Transmittal Letter at 1.

[9] *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245 at P 29 (2016) ("Wabash") ("Lastly, the Commission's regulations require a 'summary statement of all cost . . . computations involved in arriving at the derivation of the level of the rate, in sufficient detail to justify the rate . . . .' To satisfy this requirement, reactive power revenue requirement filings must include cost information for all equipment used to produce reactive power, including for turbogenerators, generators, exciters, and step-up transformers. Moreover, to support the reactive power allocator used in the AEP methodology, reactive power revenue requirement filings must include reactive power test reports. In other words, the cost figures provided with reactive power revenue requirement filings must be sufficiently detailed for the Commission to be able to evaluate and analyze the proposed revenue requirement.") (quoting 18 C.F.R. § 35.12(b)(2)(ii) (2015)); *see MD Solar 2, LLC*, 183 FERC ¶ 61,053 at P 11 (2023) ("[W]e first note that MD Solar 2's proposed reactive power allocator may be excessive since MD Solar 2 has not provided reactive power capability test results for the facility to support its power factor and reactive power allocator."); *Bellflower Solar 1, LLC*, 182 FERC ¶ 61,219 at P 14 (2023) ("Further, Bellflower has not provided reactive power output test reports at full real power output, such as the PJM Reactive Capability Testing Form Sheet 1 and 2, the NERC

material omissions and patent deficiencies that are sufficient to warrant rejection of the Reactive Filing, without prejudice. Joint Customers reserve their right to raise additional issues if the Commission establishes hearing and settlement judge procedures or issues a deficiency notice, particularly in light of the limited time frame allotted for protests and Mammoth's lack of test data.

Joint Customers' concerns are heightened by their understanding that Mammoth's Reactive Filing constitutes an initial rate under the Commission's regulations. In *Middle South*,[10] the D.C. Circuit concluded that initial rates, unlike changed rates, may not be suspended and are not subject to the full refund protection afforded by section 205 of the FPA.[11] The Commission has applied this reasoning in the context of reactive power revenue requirement filings by treating rate filings by generators who have not yet achieved commercial operation as initial rate filings and rate filings by generators who are already operational at the time of filing as changed rates.[12]

In the instant case, Mammoth states that it is expected to achieve commercial operation on June 30, 2024, and requests an effective date of June 30, 2024.[13] Accordingly, the Commission's past practice suggests that the Commission would treat the Reactive Filing as an initial rate. Such treatment creates ramifications that are inconsistent with the FPA's "primary aim" of protecting

MOD25- 002 report, and the PJM accepted E-Dart data and graph of MVAR output versus the time of the test for the Bellflower facility. Therefore, without such test data, the power factor and reactive power allocator values provided by Bellflower lack support.").

[10] *Middle S. Energy, Inc. v. FERC*, 747 F.2d 763 (D.C. Cir. 1984) ("*Middle South*").

[11] 16 U.S.C. § 824d.

[12] *See, e.g., Ledyard Windpower, LLC*, 180 FERC ¶ 61,224 (2022) (Treating Ledyard Windpower, LLC's rate filing as an initial rate filing); *Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050 at PP 13-18 (2015). As explained in Section II below, the Reactive Filing makes no mention of initial rates suggests that Mammoth believes its application seeks approval of a rate change. That view is not supported by the Commission's past practice.

[13] Transmittal Letter at 10.

consumers from excessive rates and charges.[14] Joint Customers will not be able to request that the rate be suspended and will not have full refund protection under section 206.

Joint Customers have already borne the costs associated with this artificial distinction between "initial" and "changed" rates. In some dockets where the Commission treated reactive power filings as initial rates, customers have been able to incorporate voluntary refund protection into settlement agreements. In others, customers have not been able to negotiate voluntary refund protections. In both cases, the inability to rely on refund protections has complicated the settlement process. In at least one instance in which the case did not settle and proceeded to hearing (*Fern Solar, LLC*, Docket Nos. ER20-2186 and EL20-62), the 15-month refund period lapsed some 17 months before the Initial Decision was issued, leaving customers unprotected by refunds while still paying the proposed rate that far exceeds the rate that the Initial Decision would authorize. Such a plainly unjust situation should not be permitted to reoccur in the instant proceeding.

Mammoth argues that if "a June 30, 2024, effective date is not assigned for Mammoth North's Rate Schedule, Mammoth North will be required to provide reactive service without compensation."[15] If Mammoth were only concerned with ensuring it did not provide a service without compensation, it could have mitigated the negative impacts to ratepayers by filing one day after it achieves commercial operation and asking for an effective date of the day after the facility achieves commercial operation (ensuring it is a "changed rate" and not an "initial rate").

Regardless of Mammoth's intentions, the effect of its choice is to place the Reactive Filing within a known gap in the Commission's authority that could result in a windfall payment from ratepayers to Mammoth. While Mammoth has a right to be compensated for its services, ratepayers

[14] *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016) (quoting *Mun. Light Bds. of Reading & Wakefield, Mass. v. FPC*, 450 F.2d 1341, 1348 (D.C. Cir. 1971)).

[15] Transmittal Letter at 10.

should not pay unjust and unreasonable rates. In balancing these two interests, the Commission should consider first and foremost the adverse impacts on ratepayers, recognizing that Mammoth had less harmful means to fulfill its interests and that ratepayers are dependent on the Commission for relief.

II. ANSWER IN OPPOSITION TO REQUEST FOR WAIVERS OF COST SUPPORT REGULATIONS

Mammoth includes in its Reactive Filing a request for "waivers of the Commission's cost support regulations in 18 C.F.R. § 35.13" in order to allow the Reactive Filing to become effective on June 30, 2024.[16] According to Mammoth, waivers are appropriate because "[t]he documents, testimony and exhibits accompanying [its] filing substantially comply with the Commission's cost support regulations[.]"[17] As explained below, the Commission should reject Mammoth's request for waivers.

The Joint Customers recognize that the Commission has, in fact, granted waiver of cost support regulations and minimum filing requirements where the applicant's filing is in substantial compliance with those regulations and requirements. But Mammoth failed to demonstrate substantial compliance. Instead, it simply offered a conclusory statement about substantial compliance. In addition to being insufficient on its face, the Commission should not rely on that conclusory statement to excuse Mammoth's failure to provide a complete filing because that statement is demonstrably false.

As demonstrated in Sections III and IV below, Mammoth's Reactive Filing omits material information, analyses, and cost support. In light of those omissions, the Joint Customers ask the Commission to dismiss the Reactive Filing without prejudice or, at a minimum, accept the filing

[16] Transmittal Letter at 12.

[17] *Id.*

subject to further procedures and the adoption of mechanisms that protect customers from rates Mammoth failed to justify. The Commission would violate its obligation to engage in reasoned decision-making if it relied on waivers or the unsupported claim of substantial compliance to excuse Mammoth of its failure to meet its burden of proof.

In addition, the Joint Customers understand the Reactive Filing to seek approval of an "initial rate." As such, Mammoth would need to seek waivers of, or demonstrate substantial compliance with, the filing requirements set forth in 18 C.F.R. § 35.12. Mammoth does neither. Instead, Mammoth appears to believe the Reactive Filing seeks approval of a rate change that is governed by 18 C.F.R. § 35.13.[18] Indeed, Mammoth seeks "waivers of the Commission's cost support regulations in 18 C.F.R. § 35.13."[19] There is no basis for granting a waiver of regulations that Mammoth does not understand to be applicable. Likewise, it strains credulity that Mammoth could demonstrate substantial compliance with regulations governing initial rate applications when it does not recognize that it is seeking approval of an initial rate.

III. MOTION TO DISMISS WITHOUT PREJUDICE

As demonstrated below, the Commission would advance the interests of administrative efficiency and fulfill its obligation to protect consumers by rejecting the Reactive Filing without prejudice on the grounds that is premature and patently deficient.

[18] *See id*. at 11-12 (discussing "35.13 filing requirements," "18 C.F.R. § 35.13(b) requirements," and "18 C.F.R. § 35.13(c) requirements") (capitalization omitted).

[19] *Id*. at 12.

A. To Fulfill Its Obligation to Protect Customers from Excessive Rates, the Commission Should Dismiss the Reactive Filing, Without Prejudice, as Premature.

In the instant case, Mammoth states that it expects to achieve commercial operation by June 30, 2024, and requests an effective date of the same.[20] As discussed in Section II, *supra*, the Commission's past practice suggests the Commission will treat the Reactive Filing as a request for approval of an initial rate.

An initial rate, as opposed to a changed rate, requires both a new customer and a new service.[21] In *Middle South*,[22] the D.C. Circuit concluded that initial rates, unlike changed rates, may not be suspended and are not subject to the full refund protection afforded by section 205 of the FPA.[23] In the context of reactive power revenue requirement filings, the Commission has treated rate filings by generators who have not yet achieved commercial operation as initial rate filings and rate filings by generators who are already operational at the time of filing as changed rates.[24] Initial rates are only set for hearing under section 206, which limits the refund period to a maximum of 15 months.[25] However, such treatment conflicts with the FPA's "primary aim" of the protection of consumers from excessive rates and charges.[26] Because of Mammoth's choice, Joint Customers are at risk of not having refund protection pursuant to section 205 if resolution of this

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[20] *Id.* at 10. Joint Customers note that the terms of Mammoth's Interconnection Service Agreement do not require the facility to be operational until July 31, 2024. *See* Filing, Attachment C.

[21] *See Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050 at P 3 (2015).

[22] *Middle South*, 747 F.2d 763.

[23] 16 U.S.C. § 824d.

[24] *See, e.g.*, *Ledyard Windpower, LLC*, 180 FERC ¶ 61,224 (2022).

[25] 16 U.S.C. § 824e.

[26] *Xcel Energy Servs. Inc.,* 815 F.3d at 952 (quoting *Mun. Light Bds. of Reading & Wakefield, Mass.,* 450 F.2d at 1348).

case takes more than 15 months, which is certain to occur absent a timely settlement and timely approval of that settlement by the Commission.[27]

Customers in PJM have long borne the financial burden arising out of this distinction between "initial" and "changed" rates. For example, the *Fern Solar, LLC* proceeding went to hearing after failed settlement discussions and the Initial Decision, issued on April 13, 2023, is pending before the Commission. That case has so far extended for some 25 months[28] beyond the expiration of the 15-month refund period, providing a huge and still growing windfall for Fern Solar at the expense of transmission customers who are still paying the filed rate, which by one estimation is nearly 10 times greater than the rate that the Initial Decision would authorize.[29] The Commission should not permit such a plainly unjust situation to re-occur in the instant proceeding.

The adverse impacts of Mammoth's filing on customers are further aggravated by the lack of test data to support the rate and the timing by which any such data will be submitted. Mammoth states in its filing letter that it will conduct tests of its capability within 12 months of its commercial

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[27] As the Commission is aware, there are several reactive revenue settlements pending before the Commission which have been pending for quite some time. *See, e.g.*, Certification of Uncontested Settlement in *Ingenco Wholesale Power, L.L.C*, 177 FERC ¶ 63,022, Docket No. ER20-1863 (issued on Dec. 9, 2021); Certification of Uncontested Settlement in *Bluestone Farm Solar, LLC*, 179 FERC ¶ 63,014, Docket No. ER21-1696 (issued on May 18, 2022); Report of Contested Settlement in *Pleinmont Solar 1, LLC*, 179 FERC ¶ 63,030, Docket No. ER20-2819 (issued on June 29, 2022); Report of Contested Settlement in *Highlander Solar Energy Station 1, LLC*, 179 FERC ¶ 63,030, Docket No. ER21-350 (issued on June 29, 2022); Report of Contested Settlement in *Richmond Spider Solar, LLC*, 179 FERC ¶ 63,030, Docket No. ER21-521 (issued on June 29, 2022); Report of Contested Settlement in *Hawtree Creek Farm Solar, LLC*, 182 FERC ¶ 63,004, Docket No. ER22-1076 (issued on Jan. 20, 2023); Report of Contested Settlement in *Wildwood Lessee, LLC*, 182 FERC ¶ 63,007, Docket No. ER22-763 (issued Jan. 26, 2023); Certification of Contested Settlement in *Albemarle Beach Solar, LLC*, 182 FERC ¶ 63,014, Docket No. ER21-2364 (issued on Feb. 24, 2023); Certification Of Contested Settlement in *Holloman Lessee, LLC*, 182 FERC ¶ 63,018, Docket No. ER20-2576 (issued Feb. 28, 2023); Report of Contested Settlement in *Covanta Fairfax, LLC*, 183 FERC ¶ 63,014, Docket No. ER22-967 (issued on May 2, 2023).

[28] Pursuant to the Commission's notice of Aug. 25, 2020, the refund effective date is the date of the publication of the notice of the Commission's initiation of a Section 206 proceeding in the Federal Register. The *Fern* notice was published in the Federal Register on Aug. 31, 2020: https://www.federalregister.gov/documents/2020/08/31/2020-19107/fern-solar-llc-notice-of-institution-of-section-206-proceeding-and-refund-effective-date.

[29] *See Fern Solar, LLC*, Initial Decision, 183 FERC ¶ 63,004 (2023) (Hempling, A.L.J.) ("*Fern*"), *exceptions pending*; *see also* Brief of Joint Customers, Docket Nos. EL20-62-001 and ER20-2186-003, at 32 (May 15, 2023) (accession number 20230515-5247).

operation date, meaning that test data may not be submitted until sometime in the second half of 2025. As the Commission has explained, reactive test data is necessary to properly analyze a proposed revenue requirement.[30] Despite that fact, Mammoth is filing without reactive test data with the promise that the Commission might receive it *up to a year after the effective date of its $6 million proposed annual rate*.[31] Moreover, while Mammoth misstates the premise underlying reactive testing,[32] the purpose of testing under the *AEP* methodology is for its use as "an indication of the resource's capability under real-world conditions."[33] In the meantime -- six months before the facility becomes operational and possibly eighteen months until testing is conducted -- it is speculative to assume that the resource will be able to attain its nameplate capability in the real-world conditions identified as critical to the *AEP* methodology by *Bishop Hill*.

Mammoth's sole stated justification for its choice of filing is that "[i]f a June 30, 2024, effective date is not assigned…[Mammoth] will be required to provide reactive service without compensation."[34] This explanation neither explains nor justifies Mammoth's decision to file so far in advance of its anticipated commercial operation date and desired effective date.

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30 *Bishop Hill Energy LLC*, 185 FERC ¶ 61,056 (2023).

31 Transmittal Letter at 9.

32 Mammoth asserts that its testing should not count if it fails to achieve nameplate only because of degradation, rather than transmission system constraints or presumably some other limitation. Transmittal Letter at 9. As explained above, the Commission uses *real-world* reactive testing data.

33 *Bishop Hill Energy LLC*, 185 FERC ¶ 61,056, P 29 (2023) ("However, the purpose of the reactive power testing required for compensation under PJM's Schedule 2 in this circumstance is to help analyze the power factor proposed for use for compensation purposes under the *AEP*-methodology as an indication of the resource's capability under real-world conditions. This requirement for compensation under Schedule 2 of the PJM Tariff helps ensure that the reactive power compensation appropriately reflects the facility's reactive power capability such that customers pay only for the actual capability offered. With respect to Bishop Hill's claims regarding difficulties in demonstrating the full lagging reactive power capability, real-world conditions can include limitations such as the voltage schedule of the interconnected transmission system and wind conditions during testing. **The fact that Bishop Hill believes it could receive a more favorable reactive power allocator if it were able to isolate certain variables of testing negates the premise of real-world testing**.") (citations omitted) (bold added).

34 Transmittal Letter at 10.

Irrespective of Mammoth's intentions, the effect of its choice is to place the reactive filing within a known gap in the Commission's authority that could result in a windfall payment from ratepayers to Mammoth. Mammoth could avoid providing reactive service without compensation without exposing transmission customers to the risk of lapsed refund protection. Mammoth could revise its filing to request an effective date no sooner than the day following the date on which the Mammoth facilities enter commercial operation. In that instance, the effective date would post-date rather than precede the commercial operation date and the rate filing would be treated as a change in rate under section 205 of the FPA that would remain subject to refund for the duration of the proceeding. In the alternative, Mammoth could voluntarily agree to make full refunds to customers for the full difference between the as-filed rate and the rate ultimately approved by the Commission, for the full period between the effective date and the date on which refunds are made. But Mammoth's proposal includes none of these types of consumer safeguards.

The Commission should consider first and foremost the adverse impacts on ratepayers, recognizing that Mammoth has other means to fulfill its interests without adversely prejudicing ratepayers. Ratepayers have only the protection of the Commission. The Commission should fulfill its obligation to protect consumers by rejecting the premature Reactive Filing without prejudice to re-filing at a later date.

B. The Commission Should Reject Mammoth's Reactive Filing as Incomplete Because It Omits Material Information that Is Necessary to Ensure Customers Do Not Pay Excessive Rates.

The Commission "'retains broad discretion' to determine the adequacy of a filing to satisfy the objective of affording notice to the Commission and the public."[35] The Commission possesses

[35] *Ky. Utils. Co. v. FERC*, 689 F.2d 207, 211 (D.C. Cir. 1982) (quoting *City of Groton v. FERC*, 584 F.2d 1067, 1070 n.10 (D.C. Cir. 1978)); *see also Papago Tribal Util. Auth. v. FERC*, 628 F.2d 235 (D.C. Cir. 1980).

significant discretion as to how to manage its docket,[36] and "is not required to process incomplete filings[.]"[37] In *Tri-State*, FERC rejected several tariff filings as "patently deficient" without prejudice for the applicant to submit "a more complete set of filings[.]"[38] The Commission explained that, *inter alia*, Tri-State had provided insufficient cost support and did not comply with the Commission's rate schedule filing requirements at 18 C.F.R. § 35.12.[39]

Under 18 C.F.R. § 35.12(b)(2)(ii), the Commission's regulations require a "summary statement of all cost . . . computations involved in arriving at the derivation of the level of the rate, in sufficient detail to justify the rate[.]"[40] In the reactive power context, the Commission has explained that:

> To satisfy [18 C.F.R. § 35.12(b)(2)(ii)], reactive power revenue requirement filings must include cost information for all equipment used to produce reactive power, including for turbogenerators, generators, exciters, and step-up transformers. Moreover, to support the reactive power allocator used in the AEP methodology, reactive power revenue requirement filings must include reactive power test reports. In other words, the cost figures provided with reactive power revenue requirement filings must be sufficiently detailed for the Commission to be able to evaluate and analyze the proposed revenue requirement.[41]

The Commission's own regulations require the submission of adequate test data. The Commission has already rejected several recent reactive revenue rate schedules without prejudice for failing to provide the documentation required by *Wabash*. For example, in *Bishop Hill Energy,*

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[36] *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003).

[37] *Equitrans, L.P.*, 109 FERC ¶ 61,214 at P 14 (2004); *see also Tri-State Generation & Transmission Ass'n, Inc.*, 169 FERC ¶ 61,012 (2019).

[38] *Tri-State Generation & Transmission Ass'n, Inc.*, 169 FERC ¶ 61,012 at P 22 (2019).

[39] *Id.* at P 23.

[40] 18 C.F.R. § 35.12(b)(2)(ii); *see also Terra-Gen Dixie Valley, LLC*, 134 FERC ¶ 61,027 at P 104 (2011) ("We remind Terra-Gen that, pursuant to section 35.12 of the Commission's regulations, Terra-Gen must submit all cost computations involved in deriving the rate in sufficient detail to justify the filing, including, but not limited to, detailed work papers."), *reh'g granted in part* 135 FERC ¶ 61,134 (2011).

[41] *Wabash*, 154 FERC ¶ 61,245 at P 29.

LLC, the Commission rejected Bishop Hill's reactive power revenue requirement filing because it had not provided the testing data requested in a deficiency request,[42] which meant that the Commission did not have "sufficiently detailed testing information to enable [the Commission] to analyze and evaluate the proposed revenue requirement."[43] In *Middletown Coke Company LLC*, the Commission rejected Middletown's reactive power filing because "Middletown's Deficiency Response failed to include the requested reactive power output test data and reports, [thus] the Commission is unable to evaluate the proposed revenue requirement."[44]

As in both *Middletown* and *Bishop Hill*, Mammoth has not provided sufficient reactive power output test data to enable the Commission to evaluate its proposed revenue requirement. Unlike Middletown and Bishop Hill, Mammoth has not provided any reactive power test data of any kind, nor can it because the facility is not yet operational.[45] Mammoth concedes that it will not be providing reactive capability testing until after commercial operation, and therefore not until after it has begun collecting revenue from a rate whose justness and reasonableness depends, in substantial part, on the results of reactive capability testing. Mammoth's witness Mr. Kimbrough remarks:

> The Facility has not yet been able to conduct reactive capability testing because, at the time of this filing, it has not yet reached commercial operations. The Facility expects to conduct reactive capability testing within one year of its commercial operation date,

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[42] *Bishop Hill Energy, LLC*, 181 FERC ¶ 61,003 at P 13 (2022) ("*Bishop Hill*") ("With respect to the NERC MOD-25-2 test data, Bishop Hill provided NERC MOD-25-2 test data for only two wind turbine units. While Bishop Hill provided a spreadsheet with reactive power test data, there is no indication that the data was verified by NERC or PJM, and the measurement point was at the wind turbines rather than at the Point of Interconnection, as required by the Facility's interconnection agreement and PJM's Tariff. Bishop Hill also did not identify the specific parameters under which such testing occurred.") (internal citations omitted), *reh'g denied* 181 FERC ¶ 62,133 (2022).

[43] *Id.* at P 14.

[44] *Middletown Coke Co. LLC*, 178 FERC ¶ 61,183 at P 11 (2022) ("*Middletown*").

[45] Transmittal Letter at 1, 7.

> consistent with the applicable North American Electric Reliability Corporation ("NERC") standards.[46]

Mr. Kimbrough conflates NERC testing requirements for grid reliability with the Commission's requirement to submit testing in support of a reactive revenue requirement. There is no appreciable distinction between Mammoth's lack of *Wabash* documentation and the lack of *Wabash* documentation of *Middletown* and *Bishop Hill*. The Commission should therefore reject the Reactive Filing without prejudice, so that Mammoth may re-file when it has the requisite documentation that is required for a reactive power revenue requirement filing.[47]

Significantly, Mammoth made the affirmative decision to use the *AEP* methodology instead of proposing an alternative methodology for its revenue requirement calculation, as the Commission invited applicants to do in Order No. 827.[48] Consequently, Mammoth knew or should have known that the methodology it selected relied on testing data and it would be unjust and unreasonable for the Commission to excuse Mammoth from the consequences of its decision and, instead, subject customers to rates that cannot be validated. Therefore, Mammoth only has itself to blame for the deficient nature of its filing and is certainly no victim of circumstance.

As demonstrated in Section IV.A below, the Reactive Filing also omitted other material information or failed to provide adequate explanation and cost support for major aspects of the proposed revenue requirement. Rather than burden the record by repeating those points here, the

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[46] Reactive Filing, Attachment D, Ex. MNS-1 at 15:7-11.

[47] *Bishop Hill*, 181 FERC ¶ 61,003 at P 10 ("Reactive power revenue requirement filings must include, among other things, reactive power test reports and cost figures that are sufficiently detailed for the Commission to be able to evaluate and analyze the proposed revenue requirement.").

[48] *See Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277 at P 52 (2016) ("While the Commission asked for comments on principles for compensating non-synchronous generators for reactive power, the comments, aside from noting that the current *AEP* methodology[] does not translate to non-synchronous generation, did not provide a sufficient record for determining a new method. Therefore, any non-synchronous generator seeking reactive power compensation would need to propose a method for calculating that compensation as part of its filing.") (footnote omitted).

Joint Customers incorporate that discussion by reference as further support for the Motion to Dismiss the Reactive Filing as incomplete and patently deficient.

If the Commission does not reject the Reactive Filing, it will permit a rate to go into effect without the proper cost support required by 18 C.F.R. § 35.12 and without the full refund protection that would ordinarily protect customers while the rate is being litigated. To be sure, the Commission has made a policy of instituting section 206[49] proceedings to afford some refund protection to customers from the "initial rates" of generators that have not achieved commercial operation as of the date of the filing.[50] However, refund protection is limited in time to 15 months under FPA section 206.[51] The Commission itself has recognized that section 206 proceedings take far longer than 15 months to resolve.[52] Rather than subject customers to those circumstances again, the Commission should act, consistent with its precedent in *Bishop Hill* and *Middletown Coke*, and reject the Reactive Filing without prejudice until Mammoth can supply the required reactive test data.

IV. PROTEST

If the Commission does not grant Joint Customers' Motion to Dismiss, it should find that the Reactive Filing cannot be approved in light of the deficiencies and omissions identified in Section IV.A below. Consequently, the Commission should conditionally accept the Reactive Filing subject to the procedures and consumer safeguards identified in Section IV.B.

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[49] 16 U.S.C. § 824e.

[50] *See, e.g., CPV Three Rivers, LLC*, 182 FERC ¶ 61,224 (2023); *Black Rock Wind Force, LLC*, 178 FERC ¶ 61,246 (2022); *Hill Top Energy Ctr. LLC*, 175 FERC ¶ 61,254 (2021); *Fern Solar, LLC*, 172 FERC ¶ 61,160 (2020); *Hickory Run Energy, LLC*, 170 FERC ¶ 61,061 (2020); *Wolf Run Energy LLC*, 166 FERC ¶ 61,151 (2019).

[51] 16 U.S.C. § 824e(b).

[52] *Ass'n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Op. No. 569, 169 FERC ¶ 61,129 at PP 570-573 (2019). As previously noted, customers have been litigating the *Fern Solar, LLC* case in Docket Nos. ER20-2186 *et al.* in which the section 206 15-month refund period expired some 17 months before the recent Initial Decision was issued. *See Fern*, 183 FERC ¶ 63,004 (2023).

A. The Decisional Record Does Not Support Approval of the Reactive Filing Given the Filing's Substantial Deficiencies and the Existence of Genuine Issues of Material Fact.

In the limited time available for review, Joint Customers have identified the following deficiencies and outstanding issues of material fact that militate against approval of the Reactive Filing. The Commission should find that, individually and collectively, these deficiencies and issues prevent the Commission from approving the Reactive Filing.

1. Mammoth Failed to Provide Adequate Cost or Other Support for Investment in Reactive Power Components, and for Administrative and General, Fixed Operation and Maintenance Costs, and Other Costs Related to Developing the Fixed Charge Rate.

The Joint Customers are unable to verify investment in key components used in the *AEP* methodology[53] to calculate an appropriate annual revenue requirement for provision of reactive power. Nor have the Joint Customers been able to verify Mammoth's allocation of indirect costs to the total reactive investment. In its public version, Mammoth sees fit to redact any and all cost support, and even to redact from testimony any listing of actual components included in the various categories. Instead, Mammoth relies on using the descriptions for FERC Accounts for Other Power Production, and Transmission.

The Joint Customers also take issue with the complete lack of support for the O&M and A&G expense components of the Fixed Charge Rate ("FCR"). Mammoth fails to even include in unredacted testimony what O&M or A&G cost may entail. Mammoth's hypersensitivity to data further extends to the cost of capital used in its FCR calculation. Commission precedent supports use of the interconnected utility's cost of capital as a proxy for merchant generators. Yet this, too,

[53] *See Am. Elec. Power Serv. Corp.*, Op. No. 440, 88 FERC ¶ 61,141 (1999), *withdrawal of reh'g granted*, 92 FERC ¶ 61,001 (2000).

is redacted from the filing. Likewise, any meaningful discussion or support for taxes or ADIT are absent.

Additional review, including discovery, is necessary before it can be determined whether the FCR or the resulting revenue requirement included in Mammoth's filing is just and reasonable.

2. Mammoth Failed to Demonstrate that Its Treatment of AC and DC Collection Systems, the LV Substation, and Portions of SCADA as Reactive Power Production Facilities Is Consistent with Established Practice and Just and Reasonable.

Mammoth witness Kimbrough makes several attributions to reactive power production that are inconsistent with the most recent Commission decision on the matter, that being the Initial Decision in Fern Solar, Docket Nos. ER20-2186-003 and EL20-62-001. In addition to the inverter-power station assemblies ("inverters"), Mammoth includes the entirety of both the AC and DC Collection Systems, portions of SCADA, and the components comprising the low-voltage side of the substation as reactive power producing facilities subject to the Reactive Power Allocation Factor ("RPAF"). As the Presiding Judge determined in *Fern*, these facilities do not contribute to the production of reactive power and should be excluded from the costs used to develop the reactive revenue requirement.[54]

Similarly, the second transformer, or high voltage transformer located at the substation, which Mammoth describes as the GSU, is not the generator step-up transformer ("GSU") for a solar facility with respect to determining a reactive power revenue under *AEP*. In *Fern*, the Presiding Judge determined that the first transformers, that is those located at the inverters, are the GSU for the purposes of the *AEP* method.[55] Like the AC Collection System, the second

[54] *Fern*, 183 FERC ¶ 63,004 at PP 138, 156, 218, 263.

[55] *Id.* at P 64, 178.

transformer, and associated substation costs, including allocated portions of SCADA, should be excluded from reactive recovery entirely.

3. Mammoth Failed to Demonstrate that Its Accessory Electric Equipment Allocation Factor Is Just and Reasonable and Not Excessive.

Witness Kimbrough's testimony devotes considerable length to the discussion of the history of the Accessory Electric Equipment Allocation Factor ("AEAF"), and to the development of his own allocation approach, the result of which is redacted. Mr. Kimbrough's process relied on a forecast and an approximation, which may or may not be close to accurate. Regardless, these machinations are unnecessary, as Mr. Kimbrough fails to follow the simple method outlined in the determination of the remaining AEE, *i.e.* SCADA, in *Fern*. As discussed in the *Fern* Initial Decision, a facility's costs are grouped into three major cost buckets: (i) reactive allocator bucket, (ii) balance of plant bucket, and (iii) the excluded bucket. The allocation of the SCADA and PPC costs need only be allocated among the three major buckets in proportion to the costs in those buckets.[56]

4. Mammoth's Balance of Plant Allocator Overstates Losses Associated with Reactive Power Production and Results in an Unjust and Unreasonable Allocation of Costs.

Mammoth's calculation of the Balance of Plant ("BoP") Allocator is not consistent with current precedent for non-synchronous generators. As stated by Mr. Kimbrough, Mammoth's BOP Allocator is as follows:

BOP Allocator = Exciter MW / Nameplate MW * Max. MVAr / Nameplate MVAr

As described in *Fern*, "[t]he Commission labels the first ratio's numerator "Exciter MW." It represents the amount of capacity needed to produce the electric current that replaces the real

[56] *Id.* at P 278.

power lost to resistance when the facility is producing maximum reactive power."[57] However, without the benefit of the privileged version of the filing and manufacturer's inverter specifications, the Joint Customers have not been able to verify that witness Kimbrough is correctly interpreting the numerator in the first fraction.

With regard to the second fraction, the decisional record supports a finding that Mr. Kimbrough is not correct. Mr. Kimbrough declares that the second fraction is unity since "there is no basis to account for operational diversity."[58] This position is patently inconsistent with *Fern*. "The second ratio is the portion of the facility's total reactive-power capability reflected in the facility's highest actual production of reactive power. [Applying the second ratio] recognizes that the portion of real power capacity actually devoted to replacing the lost electricity (reflected in the first ratio) will depend on the amount of reactive power actually produced (reflected in the second ratio)…[and] recognizes that the facility will not likely supply an amount of reactive power equal to the nameplate level."[59] As such, Mammoth's BoP Allocator in using unity as the second ratio, overstates losses associated with reactive power production, and when applied to the investment in the balance of plant, results in an excessive contribution from the balance of plant costs to the reactive revenue requirement.

The Commission should find that the outstanding questions of material fact regarding the first fraction and the flaw in the second fraction prevent a finding that the Reactive Filing should be approved as just and reasonable.

[57] *Id.* at P 681.

[58] Kimbrough Testimony, 35:19-20.

[59] *Fern*, 183 FERC ¶ 63,004 at PP 664, 665.

5. At a Minimum, Genuine Issues of Material Fact Exist Regarding Whether Mammoth's Revenue Requirement Adequately Reflects Investment Tax Credits.

Mr. Kimbrough's testimony describes the income tax allowance that he includes as a component of the fixed charge rate calculation, but his description omits any discussion of whether Mammoth has reflected any investment tax credits as part of its revenue requirement calculations. Solar facilities can generate substantial investment tax credits that have a meaningful impact on the annual revenue requirement calculations when reflected correctly. The Joint Customers request that the Commission find Mammoth's filing deficient to the extent that (1) Mammoth has generated or is expected to generate investment tax credits and (2) Mammoth has not properly reflected such investment tax credits in its revenue requirement calculations. The Joint Customers also request that, to the extent the Commission finds Mammoth's filing to be deficient, the Commission also direct Mammoth to submit complete versions of any tax equity financing agreements related to the Mammoth facility in its deficiency response, along with any attachments or addenda thereto, which are documents critical to understanding the totality of the financing arrangement and to many of an applicant's claimed cost items.

6. Mammoth Failed to Demonstrate the Justness and Reasonableness of Using the Nameplate Power Factor to Calculate the Reactive Power Allocation Factor.

The reactive capability as demonstrated at a full load lagging condition during the reactive testing should be used to determine the appropriate power factor and Reactive Power Allocation Factor ("RPAF"), from which the allocation of reactive power equipment investment is determined. Mammoth instead is using the nameplate rating of the inverter of 0.85 to calculate its revenue requirement for the provision of its reactive power service. The use of the nameplate rating is wholly unsupported by any test results and thus any resulting revenue requirement has not been shown to be just or reasonable. The power factor to be used in determining a reactive power

revenue requirement requires reactive power testing, consistent with the MOD-025 standard at full load lagging, measured at the high side of the plant substation, and adjusted for full megawatt output (if Mammoth cannot reach full megawatt output during the test).

B. If the Commission Does Not Grant the Motion to Dismiss, It Should Establish Procedures and Safeguards that Provide Consumers with Maximum Protection from Rates that Mammoth Has Not Demonstrated to be Just and Reasonable.

As demonstrated in Sections III and IV.A, *supra*, the decisional record does not support approval of the Reactive Filing. If the Commission does not grant the Joint Customers' Motion to Dismiss, it should adopt the following measures to facilitate development of the evidentiary record necessary to establish just and reasonable rates while also affording customers maximum protections given the limitations on suspension and refunds for "initial rates."

1. The Commission Should Deny Mammoth's Request for Waiver of Part 35's Notice Requirements as Unnecessary, Unsupported, and Harmful to Consumers.

The Commission's regulations at 18 C.F.R. § 35.3 provide in relevant part: "[a]ll rate schedules or tariffs…shall be tendered for filing with the Commission and posted not less than sixty days nor more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective under an initial rate schedule or tariff…unless a different period of time is permitted by the Commission."[60] Mammoth states that it "requests a waiver of any applicable requirement of Part 35 and any other section of the Commission's regulations, as necessary, to allow its Rate Schedule to become effective June 30, 2024,"[61] but Mammoth provides no explanation of why it needs to file so early in order to request an effective date of June 30, 2024. Although the Commission may waive the 120-day advance notice requirement at its

[60] 18 C.F.R. § 35.3(a)(1).

[61] Transmittal Letter at 12.

discretion, the Commission should deny the request to waive the advance notice requirement for the reasons set forth below.

First, as in *Canal Electric Company*,[62] Mammoth's filing is premature because there is a lack of certainty about when Mammoth will actually begin commercial operation. Mammoth has not definitively stated when it will achieve commercial operation. Mammoth instead states that it is *expected* to be operational by June 30, 2024, while the ISA indicates that it must be operational by July 31, 2024. Major projects are frequently delayed, and the Commission should wait to review the rate until Mammoth can prove its commercial operation date.

Second, Mammoth's request would contravene a key policy purpose behind the 120-day advance notice requirement. As the Commission explained in *Allegheny*, the advance notice requirement is to ensure that "when the Commission evaluates a proposed rate, the cost data reflecting the time period when the rate will be effective will not be highly speculative."[63] As noted above, Mammoth may not be providing reactive test data for more than 18 months after the filing of this rate. Test data is needed to support the power factor used to develop the rate.[64] Given the timing set forth by Mammoth, Mammoth's rate would be speculative for a considerable time in view of its statement that it could be a year or more after the desired effective date before Mammoth submits test data to support the rate.

Finally, if the Commission were to conditionally accept the Reactive Filing and set it for hearing and settlement judge procedures on February 12, 2024 (60 days from the date of filing), it presumably would set the refund effective date for that same date. In that scenario, four months of the 15-month refund period protection would elapse even before Mammoth begins collecting a

[62] *Canal Elec. Co.*, 44 FERC ¶ 61,324 (1988).

[63] *Allegheny Generating Co.*, 29 FERC ¶ 61,177 (1984).

[64] *Bishop Hill Energy LLC*, 185 FERC ¶ 61,056 (2023).

rate (at a proposed level of $500,000 per month). Granting the waiver would effectively enable Mammoth to diminish every transmission customer's refund protection period, which increases the likelihood it will begin collecting a refund-free windfall after the 15-month refund period lapses. To fulfill its consumer-protection mandate, the Commission should deny the waiver request.

2. If the Commission Does Not Grant the Motion to Dismiss, It Should Conditionally Accept the Reactive Filing Subject to Section 206 Investigation, Refund, and the Outcome of Track I Evidentiary Hearing Procedures or Concurrently Held Settlement Judge Procedures.

Typically, for electric rate cases, the Commission will hold hearing procedures in abeyance to give the participants an opportunity to settle. In cases where customers are protected by full section 205 refund rights, this is a reasonable and prudent approach for the Commission to take. If the Commission treats Mammoth's filing as an initial rate schedule because Mammoth elected to file it before the facility entered commercial operation and the Commission initiates a section 206 investigation to afford refund protection to customers, that protection will last no more than 15 months from the date that the Commission sets as the refund effective date. Setting that date at the earliest permissible date only lessens the protection to customers by starting the 15-month countdown even before the rate goes into effect – customers need no protection before the rate becomes effective and starts being charged. Where, as here, Mammoth has filed no test data even though the Commission regularly requires test data,[65] Joint Customers cannot afford to fritter away

[65] *See, e.g., Fern Solar LLC*, 172 FERC ¶ 61,160 at P 14 (2020) ("In addition, we note that Fern Solar's Exhibit FS-3, Appendix B-1 does not appear to provide support for the power factor and reactive allocator used by Fern Solar since the active power is at 60% percent of full real power output which is inappropriate since testing for reactive power output should occur when the generator is at full real power output."); *Holloman Lessee, LLC*, 172 FERC ¶ 61,290 at P 18 (2020) ("We also note that Holloman has not provided reactive power output testing data at full real power output for the facility as required by the Commission."); *Pleinmont Solar 1, LLC*, 173 FERC ¶ 61,126 at P 20 (2020) ("Pleinmont Solar has not provided reactive power capability testing results for the facility to support its reactive power allocator."); *Airport Solar LLC*, 172 FERC ¶ 61,276 at P 22 (2020) ("[W]e are concerned that Airport Solar may not have performed sufficient testing to support the requested reactive power allocation

months of refund protection while Mammoth assembles its reactive test data.[66] Therefore, the Commission's interest in promoting settlement is best served by setting the latest rate effective date possible, with a corresponding refund date, and running the settlement and hearing procedures concurrently.

In addition, to expedite the resolution of this proceeding and mitigate the harm arising from Mammoth's decision to deprive Joint Customers of refund protection from their overstated rate, Joint Customers respectfully request that the Commission explicitly set this proceeding on a Track I hearing schedule.[67] Under a Track I procedural time schedule, the hearing date will be within 19.5 weeks of, and the Initial Decision will be due within 29.5 weeks of, the designation of the Presiding Judge. There is good cause to grant this request. Coupled with a concurrent settlement track, the Track I time schedule will maximize Joint Customers' refund coverage by resolving the proceeding a bit more expeditiously.

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factor and that Airport Solar may need to demonstrate the level of reactive power it is actually able to supply."); *Harts Mill Solar, LLC*, 173 FERC ¶ 61,194 at P 23 (2020) ("[W]e note that Harts Mill's proposed reactive power allocator may be excessive since Harts Mill has not provided reactive power capability testing results for the facility to support its power factor and reactive power allocator."); *Whitetail Solar 3*, LLC, 173 FERC ¶ 61,288 at P 23 (2020) ("[W]e note that Whitetail 3's proposed power factor and reactive power allocator are not supported by Whitetail 3's reactive power test data at full power output."); *Assembly Solar I, LLC*, 175 FERC ¶ 61,072 at P 22 (2021) ("[W]e note that the information in Assembly Solar I's filing raises concerns about the justness and reasonableness of Assembly Solar I's proposed Rate Schedule, including but not limited to, Assembly Solar I's lack of support of nameplate power factor."); *Highlander Solar Energy Station 1 LLC*, 174 FERC ¶ 61,003 at P 22-23 (2021) ("[W]e highlight that Highlander Solar 1's proposed reactive power allocator may be excessive since Highlander Solar 1 has not provided reactive power capability testing results for the facility to support its power factor and reactive power allocator."); *Altavista Solar, LLC*, 176 FERC ¶ 61,020 at P 18 (2021) ("Altavista Solar has not provided reactive power output test reports at maximum real power output; therefore, the power factor and reactive power allocator numbers lack support.").

[66] Conversely, Mammoth has an economic incentive to delay obtaining test data from PJM (a prerequisite to serious settlement discussions) for as long as possible to maximize the number of months of revenue it can collect beyond expiration of the 15-month refund period.

[67] Tracks for Proceedings Set for Hearing (December 8, 2023), https://cms.ferc.gov/administrative-litigation-0.

3. The Commission Should Address Whether Mammoth's Failure to Provide Test Data and Other Necessary Information and Cost Support Constitutes Dilatory Behavior that Justifies Extending the Refund Period Under FPA Section 206(b).

Assuming that the Commission does not reject this incomplete filing without prejudice but sets it for hearing and settlement judge procedures and institutes a section 206 proceeding *sua sponte* as it traditionally does to provide protection to customers,[68] the Commission should address the "dilatory" impact of filing without the reactive test data required by *Wabash*[69] and the information and data discussed in Section IV.A above. Such consideration is appropriate because section 206 limits refunds to 15 months after the refund effective date with one exception:

> [I]f the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding. The refunds shall be made, with interest, to those persons who have paid those rates or charges which are the subject of the proceeding.[70]

Mammoth will not be providing reactive test data that the Commission has determined is necessary[71] to evaluate and analyze the proposed revenue requirement for an indeterminate period following commercial operation of the solar facility.[72] Because Mammoth has an economic incentive to prolong the proceeding,[73] Joint Customers respectfully request that the Commission find that Mammoth's decision to utilize a ratemaking methodology that it could not possibly have

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[68] *See Fern*, 172 FERC ¶ 61,160 (2020).

[69] *Wabash*, 154 FERC ¶ 61,245 at P 29.

[70] 16 U.S.C. § 824e(b).

[71] *Bishop Hill,* 181 FERC ¶ 61,003 at P 10 ("Reactive power revenue requirement filings must include, among other things, reactive power test reports and cost figures that are sufficiently detailed for the Commission to be able to evaluate and analyze the proposed revenue requirement.").

[72] Reactive Filing, Attachment D, Ex. MNS-1 at 15:7-11.

[73] *See* section IV.B.1, s*upra*.

complete data for (*i.e.*, its inability to provide reactive test data with its filing) constitutes "dilatory" behavior, and exercise its discretion to order complete refunds with interest for any period beyond the 15-month limit, as Mammoth's failure to submit reactive test data with its filing may delay the commencement of the hearing.

There is good cause to grant this request. It encourages Mammoth to act with alacrity to complete its filing and produce the reactive test data and prevents Mammoth from reaping a windfall because of the filing date it chose. Granting the request recognizes that reactive power cases have tended to linger in settlement for months without progress because the applicants take time to procure the reactive test data necessary to support a counteroffer. Every month without reactive test data erodes another month of the 15 months of refund protection the Commission typically affords ratepayers pursuant to section 206. If the Commission is going to accept incomplete reactive power revenue requirement filings, it is unreasonable to make ratepayers subsidize the applicant while it assembles the reactive test data. It should thus view such premature filings as a dilatory tactic that will not be permitted to hand an applicant a windfall from the customers' pockets.

4. Given the Inability to Suspend Initial Rates and the Limits on the Commission's Refund Authority, the Commission Should Delay the Effective Date Until Mammoth Submits a Complete Rate Filing.

The Commission's regulations define the filing date as follows:

> The term filing date as used herein shall mean the date on which a rate schedule, tariff or service agreement filing is completed by the receipt in the office of the Secretary of all supporting cost and other data required to be filed in compliance with the requirements of this part, unless such rate schedule, tariff or service agreement is rejected as provided in § 35.5.38.[74]

[74] 18 C.F.R. § 35.2(d).

Kentucky Utilities Co. established that FERC has the "discretion to delay assignment of a filing date" until a filing is complete.[75] The Commission clarified the extent of its ability to set a new filing date in *Duke Power Co.*, where it stated:

> We take this opportunity to remind utilities that filings are not complete and a filing date cannot be established under our regulations until all supporting materials that are required to be submitted are submitted, and the Commission here announces that, for all rate filings made after thirty days after publication of this order in the *Federal Register*, the Commission will consider *any* amendment or supplemental filing filed after a utility's initial filing — whether submitted *sua sponte* or not — to establish a new filing date for the filing in question.[76]

The filing date is important because, "absent waiver, a rate may be made effective no earlier than 60 days after the filing and no later than 120 days after the filing."[77] The Commission has explained that "whether a rate is an initial rate or a changed rate is irrelevant . . . because the . . . notice requirement of FPA section 205(d) applies to both initial rates and changed rates."[78] Thus, an initial rate cannot take effect without sixty-days' notice (absent waiver) pursuant to FPA section 205(d) from the filing date, which is the date on which the rate schedule is complete.[79]

As Joint Customers explain above in Section III, the Commission requires *Wabash* reactive test data to consider a reactive capability compensation filing complete. Because Mammoth has not filed reactive test results as part of its filing, it has not completed its filing. If the Commission

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[75] *Ky. Utils. Co.*, 689 F.2d at 210-211.

[76] *Duke Power Co.*, 57 FERC ¶ 61,215 at p. 61,713 (1991) (italics in original) (internal citations omitted).

[77] *Id.* n.10 (citing 16 U.S.C. § 824d(d); 18 C.F.R. § 35.3(a)); *see also Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1226 (D.C. Cir. 2018) ("[A] utility . . . must provide sixty-days' notice . . . . The Commission may waive the sixty-day notice requirement for good cause[.]").

[78] *Cross-Sound Cable Co., LLC*, 176 FERC ¶ 61,073 at P 35 (2021) (internal citations omitted); *see also Bos. Edison Co. v. FERC*, 856 F.2d 361, 368 (1st Cir. 1988); *ISO New England Inc.*, 172 FERC ¶ 61,251 at P 19 (2020) ("By contrast, whether a rate is an initial rate or a changed rate is irrelevant here because the above-noted notice requirement of FPA section 205(d) applies to both initial rates and changed rates.") (internal citations omitted).

[79] 18 C.F.R. § 35.2(f) ("The effective date shall be 60 days after the filing date . . . .").

does not reject the filing as incomplete, it should exercise its discretion to protect ratepayers and assign a filing date only once Mammoth has submitted its reactive test results, and should not permit the rate to go into effect until sixty days after the filing date. If the effective date arising from the new filing date occurs after Mammoth has commenced commercial operation, the Commission should treat the Mammoth filing as a changed rate, consistent with its precedent,[80] and accord Joint Customers refund protection pursuant to section 205 of the FPA.[81]

5. The Commission Should Only Consider an Early Rate Effective Date if Mammoth Voluntarily Commits to Provide Full Refund Protection.

As the Commission does with respect to non-jurisdictional rates, the Commission could consider a commitment by Mammoth to make voluntary refunds, with interest, for the period from the effective date of its proposed rate to the date on which refunds are made. If Mammoth does not volunteer to make refunds, then the Commission should take the other steps recommended by the Joint Customers in this Protest to ensure that there is no lapse of refund protection that results in a windfall to Mammoth at the customers' expense. The Commission frequently accepts voluntary refund commitments from applicants that would not ordinarily be obligated to provide refunds.[82] It should consider a similar mechanism here as another way to protect customers from excessive and unjustified rates.

V. CONCLUSION

WHEREFORE, Joint Customers respectfully request that the Commission:

1. Reject Mammoth's request for waivers of cost support regulations, and find that Mammoth's Reactive Filing does not substantially comply with those regulations;

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[80] *Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050 at PP 13-18 (2015).

[81] 16 U.S.C. § 824d.

[82] *See e.g., Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,173 at P 39 (2019).

2. Reject Mammoth's Reactive Filing, without prejudice, as premature and patently deficient; and

3. In the event the Commission does not reject the Reactive Filing, conditionally accept the Reactive Filing subject to section 206 investigation, maximum refund protections, and the outcome of Track I evidentiary hearing procedures or concurrent settlement procedures.

Respectfully submitted,

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Dated: January 2, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

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Dated at Washington, DC, this 2nd day of January, 2024.

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