

124 FERC ¶ 61,183  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER08-1169-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS ADDRESSING  
QUEUE REFORM

(Issued August 25, 2008)

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1. In this order, we address the application by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to revise its Open Access Transmission and Energy Markets Tariff (Tariff) to improve the process by which generators interconnect to the transmission grid it operates, particularly the queuing procedure. We will conditionally accept the application (Application) and make the tariff revisions effective August 25, 2008, as requested.

2. In Order No. 2003,<sup>1</sup> the Commission issued standardized interconnection procedures and agreements for the interconnection of large generating facilities. Our goal was to minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.

3. While Order No. 2003 has been largely successful in accomplishing what the Commission set out to do, we have found that “[s]urges in the volume of new generation development are taxing the current queue management approach in some regions.”<sup>2</sup> This is especially true in the Midwest ISO region.

4. To remedy this situation, Midwest ISO, along with its stakeholders, created the Interconnection Practices Task Force to identify and correct parts of its current queue management procedures that are not functioning well. As a result of this stakeholder

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<sup>1</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs., ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007) (Order No. 2003).

<sup>2</sup> *Interconnection Queuing Practices*, 122 FERC ¶ 61,252 at P 3 (2008) (Conference Order).

process, Midwest ISO has proposed a comprehensive and robust queue process that we believe will go a long way to make the interconnection process more transparent and more efficient. The basic approach is to replace the current “first-come, first-served” approach with an approach that orders the queue based on whether a generation project is making real progress towards coming on-line. Major changes include addition of a Pre-Queue Phase, addition of a Fast Track Process, revisions to the amount and timing of deposits, revisions to the milestones projects must meet to move forward, and limitations on the ability to suspend.

5. The addition of a Pre-Queue Phase will better prepare prospective interconnection customers to move through the interconnection procedures and will lead to more efficient use of Midwest ISO’s planning resources. A modified Feasibility Study will permit Midwest ISO to determine whether an interconnection request may be “fast tracked” because the transmission system can accommodate that interconnection request, and will get better information to customers sooner, allowing customers to decide earlier whether a project is viable and should remain in the queue. The proposed changes to the collection of study deposits will better reflect the actual costs of conducting various interconnection studies and will thus allow interconnection customers to better plan for those costs as they develop business plans while discouraging interconnection requests for projects that are not likely to achieve commercial operation. Similarly, the revised milestones are more rigorous than the milestones required by Order No. 2003 but are also appropriate and realistic. These milestones will better ensure that a project remains viable as Midwest ISO and lower-queued customers take into account such project in studies of those lower-queued customers. Finally, Midwest ISO’s revisions to the rules governing suspension will reduce the uncertainty now experienced by many lower-queued projects when the cost of network upgrades required by the lower-queued customer depend on the outcome of a higher-queued customer’s ultimate commercial operation and that higher-queued customer suspends its interconnection agreement for up to three years.<sup>3</sup>

6. We commend Midwest ISO and all the parties who worked on this proposal to resolve the problems with the queuing process. We note the wide-spread support that Midwest ISO’s queue reform proposal has received from stakeholders. Nearly all of the intervenors who filed adverse comments or protests on specific provisions of the

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<sup>3</sup> In fact, under current procedures, these three years need not be consecutive; thus, the period of time from the beginning of the first suspension until the last day of the last suspension may be longer than three years. That is, the chronological time from the start of the first suspension to the end of the last suspension can be more than three years; however, the cumulative time under suspension must not be more than three years. *See* section 5.16.1 of Midwest ISO’s Interconnection Procedures.

Application also made a point of stating their support for Midwest ISO's general approach towards reducing the queue backlog and improving interconnection procedures.

## **I. Background**

### **A. Queue Issues and Commission Response**

7. In the four years between issuance of Order No. 2003, in 2003, and 2007, there have come to be backlogs of interconnection requests for new or increased generation in the queue, notably in regions administered by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). Aware that a large amount of new generation, including renewable resource generation, would soon apply for grid interconnection, the Commission held a technical conference on December 11, 2007 in which it sought information about queue issues and possible solutions applicable to both traditional and renewable generation.<sup>4</sup>

8. In the Conference Order, the Commission recognized that the improved transmission planning required by Order No. 890<sup>5</sup> will eventually remedy some of the interconnection queue problems. Nevertheless, the Commission found that the existing queue delays need quicker resolution. Therefore, the Commission directed the RTOs and the ISOs to work with their stakeholders to develop proposals on queue procedures reform, and to file status reports within 30 days.<sup>6</sup> The Commission suggested that the RTOs and ISOs consider clustering system impact studies without regard to queue position, the use of third-party consultants, the replacement of the first-come, first-served basis for processing interconnection applications by another approach, changing the amounts of the deposits required at different stages of the queue process, and eliminating the feasibility study as a separate step as ways to make the queue process more efficient.

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<sup>4</sup> *Interconnection Queuing Practices*, Docket No. AD08-2-000, November 2, 2007 Notice of Technical Conference.

<sup>5</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008) 123 FERC ¶ 61,299 (2008).

<sup>6</sup> Conference Order, 122 FERC ¶ 61,252 at P 9-10.

**B. Midwest ISO's Queue Backlog**

9. In its status report,<sup>7</sup> Midwest ISO states that, in April 2008, it had 348 active generator interconnection requests in its queue, representing 80 GW of generation. Midwest ISO states also that, even when using techniques such as “semi-parallel” processing and group studies/clustering for projects, under its existing procedures it would not complete the processing of all 348 interconnection requests until 2050.

10. Midwest ISO cites several factors as contributing to its queue backlog. The low cost of queue entry, coupled with the high value of having a position in the queue and no cost for suspending projects, has encouraged entities to enter the queue early and sometimes repeatedly for the same project. When projects drop out of the queue, re-study and delay are likely to affect lower-queued generators. Although Midwest ISO attempts to group into a single study projects that are close in geographic proximity and queue position, this has not reduced the level of restudy.

11. Midwest ISO states that much of the recent influx of interconnection requests it has experienced is a result of states adopting Renewable Portfolio Standards (RPS).<sup>8</sup> Midwest ISO states in its present filing that current RPS standards in the Midwest ISO footprint mandate approximately 20 GW of renewable generation by 2025. Midwest ISO expects wind generation to be the principal provider of renewable energy and notes that more than 65 GW of wind interconnection requests are currently in the queue.<sup>9</sup> Thus, wind interconnection requests exceed existing state RPS requirements by 225 percent. Oversupply of requests may be one cause of high attrition experienced in the queue. Based on historical patterns, Midwest ISO predicts that only 32 percent of pending interconnection requests will actually begin construction.<sup>10</sup> Moreover, because of the growing volume of queued interconnection requests that are mismatched to projected demand, Midwest ISO expects the completion rate for queued projects to decrease in the future.

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<sup>7</sup> Midwest ISO's April 21, 2008 filing in Docket No. AD08-2-000 (Status Report).

<sup>8</sup> Renewable Portfolio Standards are state policies that require electricity providers to obtain a minimum percentage of their power from renewable energy resources by a certain date. *Id.* at 5.

<sup>9</sup> See Application, Tab F, Mr. Eric Lavery's testimony (Lavery Testimony) at 10-12.

<sup>10</sup> *Id.* at 13.

12. Also, wind projects are sited typically in rural areas where existing transmission lines were constructed for light loads, so they often require significant network upgrades to be interconnected. An example is the Buffalo Ridge area in Minnesota. There are approximately 23 GW of wind generation requests for interconnection in this area by 2014, while only approximately 1.9 GW of additional transmission capacity is planned for the region by that date.<sup>11</sup>

13. Midwest ISO says that suspensions of the interconnection agreement by higher-queued projects cause uncertainty and delay for lower-queued projects. Since December, 2001, when Midwest ISO assumed responsibility for processing interconnection agreements, 15.3 GW of generation resources (including 5.3 GW of wind resources) have reached interconnection agreements. However, 3.5 GW of generation capacity have been suspended (including 2.3 GW of wind resources).<sup>12</sup>

14. The cost of network upgrades needed to interconnect lower-queued projects often depends on the completion of the higher-queued projects, so that when the latter suspend, the former face commercial uncertainty. According to Mr. Lavery, the effects on lower-queued customers from such suspensions can be dramatic. As of January 2008, there were 26 suspended projects in the Midwest ISO queue. A preliminary study of the first 192 active projects in the queue revealed that, on average, each of the suspended projects affected (shared constraint) 116 later queued projects. In total, 155 unique projects were impacted by the suspended projects, or more than 80 percent of the 192 projects.<sup>13</sup>

15. Although Midwest ISO instituted procedures, in 2002, to group together into a single study interconnection requests that are close in geographic proximity and queue position, this process has not reduced the level of restudy. Its benefit is that lower-queued projects may be studied sooner than they would have been if studies were only done in chronological order.

16. Midwest ISO states that efforts at queue reform in its footprint affect fifteen states and are complicated by lack of a region-wide consensus regarding renewable energy policy and by issues regarding siting and cost sharing. Midwest ISO began a stakeholder process to improve its interconnection process so that interconnection requests would go through the study process more quickly. At the time of the Status Report, the Interconnection Process Task Force had begun developing a milestone-based queue approach that would allow projects to proceed based on readiness, rather than solely on

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<sup>11</sup> *Id.* at 11.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 52.

queue position. The Application is the culmination of these efforts. For the reasons discussed below, the Commission hereby accepts much of Midwest ISO's proposed methodology under the independent entity variation standard, subject to conditions.

### C. The Application

17. The following are some of the key aspects of Midwest ISO's proposal:

(1) Transitions queue management from "first-in, first-served" to "first-ready, first-served" as demonstrated through the achievement of milestones. This includes:

(a) a new Pre-Queue Phase to improve the rationality of interconnection requests;<sup>14</sup>

(b) a modified Feasibility Study that will make qualitative determinations on whether an interconnection request may be processed "fast lane" (i.e., whether few if any network upgrades are required, so that a System Impact Study is not required) so that projects located in areas of significant transmission constraints will not be permitted to delay projects that are otherwise prepared to go forward; and

(c) final queue position is determined based on the achievement of milestones so that projects that are not prepared to go forward will not be permitted to delay projects that are otherwise prepared to go forward.

(2) Increases deposit amounts based on size of the project and changes the timing of those deposits.

(3) Eliminates the ability to suspend for economic reasons.

(4) Introduces a temporary interconnection agreement.<sup>15</sup>

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<sup>14</sup> The proposed Pre-Queue Phase formalizes discussions between prospective interconnection customers and Midwest ISO prior to the formal filing of an interconnection request in order to help the interconnection customer be better prepared to move through the interconnection procedures.

<sup>15</sup> The temporary interconnection agreement is available for interconnection customers that are able to interconnect to the transmission system with little or no upgrades in order to use existing transmission capacity on an as-available basis.

(5) Covers all generator interconnection projects greater than 2 MW, thus eliminating the need for Attachment R<sup>16</sup> (except for the special processes required for projects under 2 MW).

(6) Changes requirements for Energy Resource Interconnection Service (ERIS).<sup>17</sup>

## II. Notice and Responsive Filings

18. Notice of the Application was published in the *Federal Register*, 73 Fed. Reg. 40,569, 40,570 (2008), with interventions or protests due on or before July 17, 2008. In response, the entities listed in Appendix A filed notices or motions to intervene. Additionally, the Detroit Edison Company (Detroit Edison) filed a motion to intervene out-of-time.

19. Intervenors who also commented supportively on the Application are: Alliant; ATCLLC; Competitive Power; Midwest ISO TOs; NIPSCO; and Xcel.

20. Intervenors who protested or commented adversely on aspects of the Application are: Acciona; AMP-Ohio; Consumers Energy; Dominion; E.ON; FPL; Iberdrola; Integrys; ITC; OMS; RES Americas; EPSA; LS Power; Wind Energy; and Wisconsin Electric.

21. On August 4, 2008, Midwest ISO filed an answer to the comments and protests. On August 14, 2008, FPL filed a response to Midwest ISO's answer. On August 15, 2008, Consumers Energy and Renewable Power each filed a response to Midwest ISO's answer.

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<sup>16</sup> Attachment R is Midwest ISO's Small Generator Interconnection Procedures. If the Midwest ISO's proposed revisions are accepted, generators that previously would have been under Attachment R (i.e., generators under 20 MW) would be covered by the new interconnection procedures. The special procedures for very small generators (i.e., generators under 2 MW) would be transferred from Attachment R to Attachment X.

<sup>17</sup> Under ERIS, the generator utilizes the existing transmission system on an as-available basis. See Midwest ISO Tariff, Definitions, section 1.86a.

### **III. Discussion**

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

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), 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) (2008), the Commission will grant Detroit Edison's late-filed motion to intervene, given its interest in the proceeding, the early state 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. § 213 (a)(2) (2008), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making process. We are not persuaded to accept the responses of Consumers Energy, FPL, and Renewable Power and will, therefore, reject them.

25. AMP-Ohio protests that with the Commission's rejection of a request by FPL for additional time to study the Application,<sup>18</sup> entities have had insufficient time to fully consider and address internally the many changes proposed in the Application.

26. Consistent with section 35.8 of the Commission's regulations,<sup>19</sup> entities were given twenty-one (21) days from the June 26, 2008 date of filing of the Application to review it and to submit interventions, comments and protests to the Commission.

27. Moreover, stakeholders had ample opportunity to be aware that Midwest ISO was considering interconnection process reforms of the nature proposed in this proceeding well before June 26, 2008. The Application makes proposals on subjects that Midwest ISO and its stakeholders have been considering since May 2007. In that month, as part of its long-term expansion planning process, Midwest ISO began to identify regions with remotely located generation resources, such as wind, and to address the problems associated with such projects interconnecting with the existing transmission infrastructure

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<sup>18</sup> On July 11, 2008, the Commission denied FPL's July 10, 2008 motion for an extension of time to file comments in response to the Application, and, by inference, Iberdrola's similar motion of July 11, 2008.

<sup>19</sup> 18 C.F.R. § 35.8 (2008).

(Midwest ISO calls this the Regionally Planned Generator Interconnection Projects). This program resulted in the April 2008 Regional Generation Outlet Study.<sup>20</sup>

28. Midwest ISO began a second stakeholder effort on September 25, 2007, with a stakeholder committee, the Interconnection Process Task Force, which reports to the Midwest ISO Planning Advisory Committee. This task force includes generation developers, transmission owners, load serving entities (LSEs) and state regulatory staff. It developed the milestone-based queue process and circulated draft tariff language in March and April 2008. Midwest ISO's Status Report stated that, during the second quarter of 2008, Midwest ISO anticipated bringing the outcome of discussions with stakeholders on these draft proposals to the Commission as a filing to modify Attachment X of the Tariff.<sup>21</sup> In summary, we find that stakeholders in Midwest ISO footprint have long had notice of the direction that Midwest ISO's interconnection reform proposals would take and did not need an extended time in which to comment on the precise terms of the Application.

**B. Substantive Matters**

**1. Standard of Review**

**a. Proposal**

29. Midwest ISO points out that as an independent system operator, it is entitled to propose variations from the Commission's *pro forma* Large Generator Interconnection Procedures (LGIP) that meet the "independent entity" variation standard. Under that standard, independent entities such as RTOs are entitled to more flexibility in proposing variations than are non-independent entities, primarily because they do not have affiliated generation and thus are less likely to favor one generator over another. However, a variation proposed by an independent entity cannot be unduly discriminatory.<sup>22</sup>

**b. Comments**

30. LS Power argues generally<sup>23</sup> that Midwest ISO's proposal for queue reform is unduly discriminatory because it puts unnecessary hurdles in the path of non-utility-

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<sup>20</sup> See Status Report at 7-8.

<sup>21</sup> *Id.* at 8-9.

<sup>22</sup> Transmittal letter at 5-6 *citing* Order No. 2003 at P 822-27; Order No. 2003-A at P 827.

<sup>23</sup> LS Power protest at 2, 17, 44.

affiliated generators and that the proposed variations cannot be justified under Order No. 2003's "independent entity variation" standard of review because they are unduly discriminatory, unduly preferential, and do not further the purposes of Order No. 2003.

**c. Commission Determination**

31. We agree with Midwest ISO that, under Order No. 2003, it is entitled to greater flexibility in proposing variations from the *pro forma* LGIP and LGIA under the "independent entity variation" standard than the "consistent with or superior to" standard or the regional differences standard.<sup>24</sup> We will respond to arguments that the standard is not met for specific proposals under the headings for those proposals throughout this order.

**2. Pre-Queue Phase**

**a. Proposal**

32. The proposed Pre-Queue Phase is designed to ensure that there are discussions between Midwest ISO and a potential interconnection customer before an application is made in order to ensure that the customer is as prepared as possible when entering the queue.<sup>25</sup> Midwest ISO hopes that the Pre-Queue Phase will reduce the number of interconnection requests clogging the queue by educating an interconnection customer early in the process and informing the customer's expectations about the outcome of a project before it files an Interconnection Request.

33. The Pre-Queue Phase follows Order No. 2003's guidance that "[p]roviding the Interconnection Customer with more information prior to authorizing an Interconnection Feasibility Study should lead to more efficient use of the Transmission Provider's

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<sup>24</sup> Order No. 2003 (at P 26) states: "Most importantly, we note that the Final Rule applies to independent and non-independent Transmission Providers alike, but non-independent Transmission Providers are required to adopt the Final Rule LGIP and Final Rule LGIA into their OATTs, with deviations from the Final Rule justified using either the "regional differences" or "consistent with or superior to" standard. We also allow [RTOs] and ISOs more flexibility to customize an LGIP and LGIA to meet their regional needs. This applies to terms and conditions as well as pricing. While RTOs and ISOs are required to submit compliance filings, they may submit LGIP and LGIA terms and conditions that meet an "independent entity variation" standard that is more flexible than the "consistent with or superior to" standard and the regional differences standard."

<sup>25</sup> Transmittal letter at 4.

planning resource and higher quality Interconnection Studies.”<sup>26</sup> The proposed Pre-Queue Phase will not bar projects from entering the queue. Midwest ISO anticipates that the proposal will enhance the overall efficiency of the queue.

**b. Comments**

34. Various intervenors support the proposed Pre-Queue Phase. Alliant favors the Pre-Queue Phase because it will discourage uneconomic projects from entering the queue.<sup>27</sup> Wind Energy states that the Pre-Queue Phase will help interconnection customers receive more information from Midwest ISO and transmission owners before entering the queue.<sup>28</sup> Similarly, OMS states that “the pre-queue phase should help reduce the number of premature interconnection requests while better educating customers and hopefully improving the high drop-out rate that is aggravating the present process.”<sup>29</sup> RES Americas states that evaluating the effects before entering the queue will reduce the number of interconnection requests clogging the interconnection queue and potential withdrawals.<sup>30</sup>

35. Acciona objects to the Pre-Queue Phase. It states that Midwest ISO can accomplish the same thing by increasing the transparency of the transmission system and market operations.<sup>31</sup> Acciona goes on to say that “it is greater transparency regarding the transmission system itself, the cost of interconnection, [and] the timeline for interconnection and market operation information that will enable project owners, not Midwest ISO, to determine whether a project is economic or not.”<sup>32</sup>

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<sup>26</sup> *Id.* at 8, *citing* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 90.

<sup>27</sup> Alliant comments at 3.

<sup>28</sup> Wind Energy comments at 5.

<sup>29</sup> OMS comments at 2.

<sup>30</sup> RES Americas comments at 12.

<sup>31</sup> Acciona protest at 4.

<sup>32</sup> *Id.* at 5.

**c. Midwest ISO Answer**

36. Midwest ISO responds to Acciona's comments by reiterating that the proposed Pre-Queue Phase will provide information to project owners early in the process, which will help project owners determine whether a project will be economic.<sup>33</sup>

**d. Commission Determination**

37. We accept Midwest ISO's proposed Pre-Queue Phase under the independent entity variation standard. The proposed revision follows guidance in Order No. 2003 where the Commission stated that giving interconnection customers information early would lead to more efficient use of the transmission provider's planning resources and higher quality interconnection studies.<sup>34</sup>

**3. Feasibility Study and Fast Tracking**

**a. Proposal**

38. Midwest ISO is proposing to change the nature of the Feasibility Study from an informational screen of the affected facilities to a qualitative screen of the affected facilities, which is then used to direct interconnection requests to the appropriate phase of the interconnection process.<sup>35</sup> The Feasibility Study will be performed at regular intervals<sup>36</sup> and will be used to determine whether the transmission system can accommodate the interconnection request and whether the request is eligible to be "fast tracked" to the Definitive Planning Phase, or whether additional work in the System Planning and Analysis Phase will be required.<sup>37</sup>

39. The System Planning and Analysis Phase is similar to the current System Impact Study Phase, but with a few very important distinctions: (1) actual queue position has less value because the order of position in the System Planning and Analysis Phase does not translate to the same order of position throughout the entire interconnection process

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<sup>33</sup> Midwest ISO answer at 57.

<sup>34</sup> Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 90.

<sup>35</sup> Transmittal letter at 8.

<sup>36</sup> Midwest ISO states that interconnection studies will be conducted on a regular schedule (posted on its website) and that the studies are not tied to any individual interconnection request.

<sup>37</sup> Transmittal letter at 9.

(i.e., during the Definitive Planning Phase, projects may proceed based on the achievement of milestones rather than strict queue position); and (2) projects located where significant transmission constraints exist will not be permitted to delay interconnection of other projects that could otherwise move ahead but for a lower queue position.<sup>38</sup>

40. In the Definitive Planning Phase, two studies will be performed. These studies will be similar to current studies, with a System Impact Restudy and a Facilities Study. If, during the review of previous System Impact Studies, a restudy is determined to be necessary, the restudy will be similar to the current System Impact Study. The proposed changes are expected to reduce considerably the amount of time it takes an interconnection request to progress through the generator interconnection process in relatively unconstrained areas. Currently, the Tariff provides for 554 days of processing time, *not including* wait time<sup>39</sup> and restudies.<sup>40</sup> In 2007, the average number of calendar days for a study, including wait time and restudies, was estimated to be 884 calendar days (roughly 2.5 years). If an interconnection request were able to proceed directly to the Definitive Planning Phase, it is estimated that the interconnection request processing time could be cut to 459 days (1.25 years) under the proposed process.<sup>41</sup>

**b. Comments**

41. In general, intervenors support Midwest ISO's proposal to reform the Feasibility Study. For example, Alliant says that this will improve queue management by helping

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<sup>38</sup> See Lavery Testimony at 30.

<sup>39</sup> *Id.* Mr. Lavery states that "wait time" is the time that a request has to wait in the queue, or pause in the study process, because there is an earlier-queued request in the same transmission area whose study must be completed before the later-queued request can go forward. See sections 6.3, 6.4, 7.4, 7.6, 8.3, and 8.5 of existing Attachment X. Midwest ISO has reduced wait time by running some studies in parallel, and also by conducting group studies. However, this still remains a key problem where significant transmission constraints exist.

<sup>40</sup> *Id.* at 31. Restudies, says Mr. Lavery, are due to projects dropping from the queue or going into suspension, and they are also a consequence of reducing serial interconnection request processing in favor of some parallel efforts.

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

developers determine if their projects can be fast tracked.<sup>42</sup> However, intervenors note that Midwest ISO has not posted a schedule as to when Feasibility Studies will occur.

42. FPL argues that Midwest ISO should eliminate the Feasibility Study as a separate step in the interconnection process or in the alternative, make it optional for interconnection customers who believe that their projects might be fast-tracked.<sup>43</sup> FPL expresses concern that interconnection customers that are proposing projects in constrained areas have little to no chance of being able to interconnect to the transmission system without significant network upgrades. Under these circumstances, it is unfair to require an interconnection customer to waste time or money when the outcome is already known. LS Power asserts that the gatekeeper function of the Feasibility Study would make the interconnection process more difficult.

**c. Midwest ISO Answer**

43. Midwest ISO says that using the Feasibility Study as a qualitative screen will provide better information, sooner, to the interconnection customer regarding its project's likelihood of reaching commercial operation. In response to concerns about when Feasibility Studies will start, Midwest ISO states that it will post a schedule on its website.

**d. Commission Determination**

44. We will accept Midwest ISO's proposal to use the Feasibility Study as a qualitative tool rather than just an informational screen. This is the type of change the Commission was trying to encourage in the Conference Order. Getting better information to customers sooner will help achieve the overall goals of interconnection queue reform – discouraging speculative or unviable projects from entering the queue, getting projects that are not making progress towards commercial operation out of the queue, and helping viable projects achieve commercial operation as soon as possible.

45. While it is true, as pointed out by FPL, that in some cases it will be obvious that an interconnection cannot be fast tracked, we will not direct Midwest ISO to make the Feasibility Study optional. Having all interconnection requests go through a Feasibility Study is helpful, especially when many interconnection requests are in the same geographic area (such as the wind farms in the Buffalo Ridge area). Feasibility Studies that include all proposed interconnection projects will allow Midwest ISO and customers to see a complete picture of the existing interconnection queue and the effect of higher-

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<sup>42</sup> Alliant comments at 3.

<sup>43</sup> FPL protest at 17.

queued projects on the transmission system; whereas allowing interconnection requests to skip the Feasibility Study would decrease such transparency.

#### 4. Deposits

##### a. Proposal

46. According to Midwest ISO, the current requirements to enter the queue process are low in total dollar amount as compared to the expected cost to process a request and complete the required studies, and as compared to the costs to install a new generator. This low initial fee makes it easy for anyone to enter the process, but does not provide an accurate view of the overall costs of studies. Midwest ISO's review of historical study costs demonstrated a step function in study costs related to the size of the interconnection request such that the larger requests generally resulted in higher study costs.<sup>44</sup> Thus, Midwest ISO proposes to revise both the deposit amounts and their timing so that the deposits collected are in line with the historical costs of conducting the interconnection studies.<sup>45</sup> It states that this will cause interconnection customers to diligently review their projects so that only projects that are likely to achieve commercial operation will actually enter the queue.

47. In the current process, the interconnection customer is required to make a \$10,000 deposit to enter the queue, a \$10,000 deposit before the Feasibility Study, a \$50,000 deposit before the System Impact Study, and a \$100,000 deposit before the Facilities Study. In contrast, Midwest ISO is proposing that an interconnection customer pay a \$5,000 application fee plus a study deposit based on capacity that ranges from \$10,000 for generators less than 6 MW to \$120,000 for generators greater than or equal to 1000 MW<sup>46</sup> to enter the Application Review Phase. Midwest ISO also proposes that an interconnection customer pay a study deposit in order to enter the Definitive Planning

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<sup>44</sup> Transmittal letter at 10.

<sup>45</sup> *Id.*

<sup>46</sup> In section 3.3.1 of the proposed GIP, Midwest ISO proposes a deposit schedule based on the following capacity amounts:

Less than or equal to 6 MW, \$10,000; greater than to 6 MW but less than or equal to 20 MW, \$20,000; greater than 20 MW but less than or equal to 50 MW, \$30,000; greater than 50 MW but less than or equal to 500 MW, \$60,000; greater than 500 MW but less than or equal to 1000 MW, \$90,000; and greater than 1000 MW, \$120,000.

Phase<sup>47</sup> that ranges from \$40,000 for projects less than 6 MW to \$520,000 for projects of 1000 MW or more.

48. With regard to the Definitive Planning Phase deposit, Midwest ISO states that under the current process, when a project withdraws from the queue, any lower-queued project whose study result and associated network upgrades were based upon assumptions regarding the withdrawn higher-queued request must bear the cost of any restudies. To relieve the lower-queued project from these costs, Midwest ISO proposes a deposit that is approximately twice the expected actual study cost. Midwest ISO explains that this deposit will cover the actual Facilities Study's cost and any costs incurred to restudy affected lower-queued projects. The unused balance will be returned to the customer.

**b. Comments**

49. Alliant, AMP-Ohio, OMS, and Competitive Power support Midwest ISO's proposal, saying that it better reflects the amount and timing of actual study costs, recognizes that larger projects generally cost more to study, and should help ensure that only financially viable projects proceed past the Pre-Queue Phase, thus reducing the likelihood of speculative projects clogging the queue.

50. Wind Energy, FPL, and E.ON generally support Midwest ISO's proposal. However, they request changes in its details. Specifically, Wind Energy requests that any deposits or security that are collected by Midwest ISO but that are not directly linked to the cost of studies be placed in escrow accounts so that they are not used for unrelated purposes. Wind Energy and FPL request that the Commission direct Midwest ISO to release any unused portions of the deposits no later than thirty days following either: (1) the interconnection customer's withdrawal; or (2) the generator achieving commercial operation. E.ON says that section 8.2 of the proposed Generation Interconnection Procedures (GIP) and any other applicable provisions should be revised to ensure that an interconnection customer has 30 days before the start of the Definitive Planning Phase to make its deposit.

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<sup>47</sup> In section 8.2 of the proposed GIP, Midwest ISO proposed a deposit schedule based on the following capacity amounts:

Less than or equal to 6 MW, \$40,000; greater than 6 MW but less or equal to 20 MW, \$100,000; greater than 20 MW but less than or equal to 50 MW, \$150,000; greater than 50 MW but less than or equal to 100 MW, \$210,000; greater than 100 MW but less than or equal to 200 MW, \$260,000; greater than 200 MW but less than or equal to 500 MW, \$360,000; greater than 500 MW but less than or equal to 1000 MW, \$440,000; and greater than 1000 MW, \$520,000.

51. LS Power argues that Midwest ISO's proposed deposits are unduly discriminatory and are higher than necessary to ensure that Midwest ISO recovers all of its actual costs. Furthermore, LS Power argues that the Commission specifically rejected similar proposals in Order No. 2003.

52. In contrast, FPL argues that the amounts are too low, and thus are not just and reasonable, because they fail to meet the objective of interconnection queue reform. That is, the proposed deposits are too low to prevent speculative projects from entering the queue.

**c. Midwest ISO Answer**

53. Midwest ISO states that the proposed study deposits are not unjust, unreasonable or unduly discriminatory, and would not be far above actual costs. The first study deposit is a more accurate representation of the study costs necessary for the interconnection customer to proceed through the equivalent of the current System Impact Study. Additionally, Midwest ISO states that while its proposed deposit levels are based on historical data, it is open to modifying them periodically based on actual study costs.

54. Furthermore, Midwest ISO asserts that requiring projects that withdraw from the queue to pay for any necessary restudies is not unjust or unreasonable. It is unreasonable for lower-queued projects to bear the costs of restudy solely because they are lower in the queue. Instead, Midwest ISO's proposal applies cost causation principles to generator interconnection procedures and would provide more financial certainty to those in the interconnection queue.

55. In response to E.ON's suggested changes to the timing of the deposits for the Definitive Planning Phase, Midwest ISO states that proposed section 8.2 provides a reasonable amount of time for an interconnection customer to fulfill its obligations and therefore does not require any modification.

**d. Commission Determination**

56. In the Conference Order, the Commission stated that it may be appropriate to increase the requirements for getting and keeping a queue position.<sup>48</sup> The Commission recognized that it could be appropriate to increase the amount of the deposits required at the different stages of the process to more accurately reflect the cost of studies. Here, Midwest ISO is proposing to bring the amounts into balance with the historical costs of conducting studies on projects of various sizes. We believe that the one-size-fits-all deposits that are currently used could be further refined to reflect the expected study costs

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<sup>48</sup> Conference Order, 122 FERC ¶ 61,252 at P 16.

in order to discourage interconnection requests for projects that are not likely to achieve commercial operation. The graduated deposit schedule proposed by Midwest ISO is a reasonable approach to achieving this objective because it ties deposits to actual historical costs, including potential costs for restudy if a project withdrawals from the queue, and allows the interconnection customer to better estimate its project costs before entering the queue. Therefore, we find that Midwest ISO's proposal will address this issue. Moreover, we find that the deposit amounts are not unduly discriminatory because they are based on expected study and potential restudy costs, based on generator size. We approve this provision under the independent entity variation standard.

57. For example, according to the testimony of Mr. Lavery,<sup>49</sup> an interconnection customer with a 21 MW project is currently making a total deposit of \$170,000 even though its expected study costs are only \$75,000. Under the proposed deposit schedule, the same 21 MW customer would pay only \$125,000 (with the extra \$50,000 being held in reserve for the cost of any restudies). In contrast, a 201 MW customer is currently paying the same \$170,000 as the 21 MW customer even though the 201 MW customer's expected study cost is \$245,000. Under the proposed deposit schedule, the 201 MW customers will deposit \$425,000 (with the extra \$180,000 being held in reserve for the costs of any restudies).

58. With respect to Wind Energy's and FPL's requests that deposits be held in escrow, we find that this is unnecessary. First, Midwest ISO has a fiduciary responsibility to use funds that it collects for the purpose for which they are collected. We note that Order No. 2003 does not require deposits, collected for the purpose of performing studies, to be placed into escrow. Absent a showing that Midwest ISO is abusing its authority, we are not willing to add administrative burdens as this would not streamline the interconnection process. Regarding when unused deposit money is returned to interconnection customers, section 3.3.1 of the proposed interconnection procedures states that "[a]ny remaining funds shall be refundable at the end of the System Planning and Analysis Phase if the Interconnection Customer withdraws its Interconnection Request, otherwise remaining deposit amounts shall be applied to the additional deposit requirements of the Definitive Planning Phase." Section 13.3 of the proposed interconnection procedures states that "[u]nused study deposits from the Definitive Planning Phase will be refunded upon Commercial Operation or forfeited if the Interconnection Customer terminates or suspends the project under the terms and conditions in the GIA." We find that this language satisfies the independent entity variation. Therefore, we will not direct Midwest ISO to make any changes regarding the disposition of unused deposit funds.

59. We agree with LS Power that the Commission has previously rejected deposits that are higher than the expected costs for studying a prospective interconnection.

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<sup>49</sup> See Lavery Testimony at 39.

However, the circumstances here are quite different. First and foremost, Midwest ISO's interconnection queue is not working to the satisfaction of the Commission, Midwest ISO, or interconnection customers. Second, the current \$10,000 initial deposit is not effective in preventing speculative interconnection requests from saturating the queue. Finally, the Commission is deeply concerned about the phenomenon of "queue churn" that occurs when an interconnection customer withdraws and causes chain reaction restudies.

60. While Midwest ISO's proposed deposit methodology is significantly different from its current methodology, we believe that it will be effective in addressing our concerns. We believe that the new methodology will help deter speculative interconnection requests by raising the bar with respect to projects entering the queue, will allow customers to make more informed decisions (without incurring significant cost) before entering the Definitive Planning Phase, and will hold customers responsible for the costs of restudying lower-queued requests caused by withdrawal from the queue.

61. Finally, we disagree with FPL's assertion that the proposed deposits are too low. The proposed deposit levels are appropriate to prevent speculative interconnection requests while not unreasonably pricing interconnection customers out of the market because they are based on expected study and potential restudy costs. With respect to when deposits are collected, we find that Midwest ISO's proposal is acceptable because it allows customers to better plan their financial obligations and it allows Midwest ISO to move forward with studies without having to wait on the customer. Similarly, we find that Midwest ISO's proposal with regard to returning unused portions of deposits is acceptable because it does not place any undue financial burden on customers.

## 5. Milestones

### a. Proposal

62. According to Midwest ISO, while the current interconnection process does contain milestones, these milestones do not accurately indicate a project's readiness to proceed. Midwest ISO is proposing new and more rigorous milestones designed to prevent lower-queued projects that are ready to proceed from being stalled behind higher-queued projects that are not ready to proceed. The proposed milestones will require an interconnection customer to demonstrate an increasing level of commitment as it progresses towards an interconnection agreement.

63. Midwest ISO states that it has focused on two areas: (1) the need for technical information before a project can proceed; and (2) creating a mix of financial and non-financial milestones in the Definitive Planning Phase. Midwest ISO further states that the milestones are intended to be objective criteria used to assess a customer's readiness to reach commercial operation.

**i. Application Milestones (M1)**

64. Midwest ISO's proposed revisions add a number of milestones to section 3.3.1 of its proposed GIP.<sup>50</sup> Furthermore, proposed section 3.3.3 provides that if Midwest ISO discovers a deficiency in an interconnection request, the Interconnection Customer must supply additional information to complete the request within fourteen days before the start of the Feasibility Study or have the processing of its project delayed until the deficiency is cured.

**ii. Definitive Planning Milestones (M2)**

65. Entry into the Definitive Planning Phase requires a project to meet specific milestones before the Facilities Study begins.<sup>51</sup>

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<sup>50</sup> Proposed section 3.3.1 of the GIP states:

To initiate an Interconnection Request, Interconnection Customer must submit all of the following: (i) a non-refundable \$5000 fee, (ii) a study deposit [as described in footnote 8 above], (iii) a completed application in the form of Appendix 1, (iv) demonstration of Site Control or a posting of an additional deposit of \$100,000 (which shall be refundable upon demonstration of Site Control up to ten (10) Business Days after start date of the Definitive Planning Phase or withdrawal of the Interconnection Request by either the Interconnection Customer or Transmission Provider before entry into the Definitive Planning Phase), (v) a representative stability model sufficient to represent the generator in the System Planning and Analysis Phase, (vi) all applicable technical data in the form of Appendix 1, Attachment A, and (vii) an Interconnection Study Agreement executed by the Interconnection Customer in the form of Appendix 1, Attachment B.

<sup>51</sup> The technical data in section 8.2 of the proposed GIP includes in part:

(i) detailed stability model; (ii) definitive Point of Interconnection; (iii) one line diagram showing the Generating Facility and associated electrical equipment with appropriate rating and impedance information; (iv) the definitive amount of capacity requested; (v) recertification of Site Control, and if Interconnection Customer provided \$100,000 deposit-in-lieu of Site Control with Interconnection Request this deposit becomes non-refundable ten (10) Business Days after start date of the Definitive Planning Phase; and (vi) any two of the following: (a) documentation of application for state or local air, water, land, or federal nuclear permits and that the application is

(continued)

**iii. Facilities Study Milestones (M3)**

66. Midwest ISO proposes additional milestones before starting a Facilities Study in order to objectively measure a project's readiness to proceed.<sup>52</sup> Midwest ISO states that its milestone-driven, first-ready, first-served interconnection process will encourage generators to focus on projects that are most likely able to reach commercial operation without raising the bar for entering the interconnection queue too high.

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proceeding per regulations; (b) approval of the facility by a state utility regulatory commission; (c) approval from an independent board of directors of the Interconnection Customer's company; or (d) security reasonably acceptable to the Transmission Provider equal to the requested gross nameplate capacity times the rate for one (1) month of drive-out point-to-point transmission service calculated on the notification date requesting submission of requirements to commence System Planning and Analysis Review may be provided in lieu of items (a), (b), or (c) above.

<sup>52</sup> The Facility Study milestones as proposed in section 8.2 are:

Upon the completion of the System Planning Analysis and Review, the Transmission Provider will submit a request for data in the form of Appendix 2 to this Attachment X. The Interconnection Customer must provide the requested data within thirty (30) Calendar Days or less from the receipt of notification. The data required is one of the following: (i) security reasonably acceptable to the Transmission Provider for the cost of the Network Upgrades as determined in the System Planning and Analysis Review, (ii) execution of a contract for the sale of electric energy or capacity from the Generating Facility, or a statement signed by an officer or authorized agent of the Interconnection Customer attesting that the Generating Facility is included in an applicable state resource adequacy plan or other information that the Transmission Provider deems to be reasonable evidence that the Generating Facility will qualify as a designated network resource, (iii) demonstration that generation turbines have been ordered for the Generating Facility.

**b. Comments**

67. Alliant, ATCLLC, and Competitive Power support these new milestones because the milestones indicate which projects are ready to proceed.<sup>53</sup>

68. Some parties take issue with specific milestones. For example, EPSA states that while milestones are needed, the proposed financial and non-financial milestones threaten new investment in generation and transmission.<sup>54</sup> Similarly, Acciona, certain members of OMS, and LS Power argue that the proposed milestones may hamper independent developers.

69. Because it is a public agency, AMP-Ohio states that certain milestones should not apply to it. For instance, the milestone to have approval of an independent board of directors should be satisfied in the case of a municipal joint action agency if the board of directors consists of members of the member public utilities. AMP-Ohio also states that Midwest ISO should clarify that a Commission preliminary permit for a hydroelectric project satisfies the permit requirement. Finally, with respect to the milestone of state regulatory approval, AMP-Ohio says that section 8.2 should include the phrase “or a documented statement with appropriate legal references that such approval is not necessary.”<sup>55</sup> LS Power asks how Midwest ISO’s proposed milestones apply if a customer does not have a board of directors or if the project does not require the approval of a state regulatory agency.<sup>56</sup> More broadly, Dominion states that not all milestones should apply in all cases, and that the Commission should direct Midwest ISO to provide alternatives.<sup>57</sup>

70. Integrys objects to the requirement to demonstrate site control.<sup>58</sup> It states that Wisconsin interconnection customers rarely place significant capital at risk to obtain property before obtaining state regulatory approval. Additionally, it states that the site control requirement is at odds with the Wisconsin Public Service Commission requirement for obtaining a Certificate of Public Convenience and Necessity, and unreasonably places a financial burden on Wisconsin customers. FPL states that

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<sup>53</sup> Alliant comments at 4; Competitive Power comments at 5.

<sup>54</sup> EPSA comments at 7.

<sup>55</sup> AMP-Ohio protest at 5.

<sup>56</sup> LS Power protest at 22-23.

<sup>57</sup> Dominion comments at 5.

<sup>58</sup> Integrys comments at 7.

Midwest ISO should adopt progressive, predictable financial milestones if site control cannot be demonstrated.<sup>59</sup> Increasing the deposit amount and making it non-refundable would better reduce speculative projects. Finally, RES Americas states that the \$100,000 deposit as an alternative to demonstrating site control is inadequate to prevent speculative projects from entering the queue. It proposes that an interconnection customer be required to pay a significant penalty for not being able to initially demonstrate at least 50 percent site control prior to entering the queue and total site control within one year of entering the queue.<sup>60</sup>

71. A number of parties take issue with Midwest ISO's proposed M3 milestone, which requires that the developer have a power "off-take" agreement (a power purchase agreement). Iberdrola states that a power off-take agreement is not a realistic indicator of a project's commercial viability.<sup>61</sup> Wind Energy claims that this milestone unfairly disadvantages merchant generators that have no long-term power sales contracts.<sup>62</sup> LS Power notes that merchant generators typically do not execute power off-take agreements until they know all of their costs, including those determined in the Facilities Study.<sup>63</sup> LS Power and E.ON also state that merchant generators do not have the same opportunities that affiliated generators have to execute power off-take agreements with affiliated LSEs or to demonstrate that their facilities will be designated as network resources.<sup>64</sup>

72. Iberdrola, E.ON, Wind Energy, and RES Americas argue that wind generators should be given the opportunity to make changes in their turbine type at any stage in the interconnection process, as long as this does not create problems, so that they may use the most up-to-date technology. Also, they argue that changes should be made to section 4.4 so that a wind generator can decrease the project's planned output in order to avoid the cost of network upgrades that would otherwise be necessary.

73. Wind Energy also suggests that the M3 milestone requirement (demonstrating that turbines have been ordered) could be used as an alternative for meeting the M2

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<sup>59</sup> FPL protest at 14-15.

<sup>60</sup> RES Americas comments at page 9.

<sup>61</sup> Iberdrola protest at 13.

<sup>62</sup> Wind Energy comments at 6.

<sup>63</sup> LS Power protest at 23-24.

<sup>64</sup> *Id.* at 24; E.ON comments at 7.

milestones.<sup>65</sup> Wind Energy also expresses concern that the M2 milestone that requires the customer to provide security equal to the cost of one month of drive-out service<sup>66</sup> depends on a variable rate, and therefore creates uncertainty and added risk for developers. It suggests a fixed rate be set in the Tariff, which could be changed when needed.<sup>67</sup> Finally, Wind Energy states that the option to skip one Definitive Planning Phase should also be available to those who are able to bypass the System Planning and Analysis Phase.<sup>68</sup>

**c. Midwest ISO Answer**

74. Midwest ISO agrees that not all milestones are relevant to all applicants. It proposed multiple alternative milestones in order to address the needs of all parties and various business models. Midwest ISO states that it believes all of its proposed milestones provide evidence of readiness and should be included as options for interconnection customers. However, Midwest ISO supports adding the milestone “evidence of turbines on order” to the list of M2 milestones.<sup>69</sup> Finally, with respect to AMP-Ohio’s comment about other types of federal permits, Midwest ISO states that it would not object to removing the word “nuclear” or adding the word “hydro-electric” to the milestones required to enter the Definitive Planning Phase.

75. Regarding E.ON’s suggestion for flexibility via a one-time reduction in energy output, Midwest ISO answers that this is more restrictive than the present proposal. Proposed section 6.3 allows the developer to reduce to *any* lesser amount of energy output to proceed from the Feasibility Study directly to the Definitive Planning Phase. The current Tariff does not limit an interconnection customer to only two reductions in output; rather, it gives two instances where the reduction is given an automatic exemption from the material modification test. Any other reduction is permissible so long as it is not deemed material. That concept is retained in the present filing. The proposed

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<sup>65</sup> Wind Energy comments at 6.

<sup>66</sup> Drive-out service is transmission service that delivers energy produced by a generator in Midwest ISO’s footprint to a zone outside of Midwest ISO’s footprint. When this occurs, Midwest ISO’s transmission rate is calculated on an aggregate basis so that the transmission rate represents the average transmission cost a customer would pay if the energy were being delivered to an average Midwest ISO zone.

<sup>67</sup> Wind Energy comments at 7.

<sup>68</sup> *Id.* at 10.

<sup>69</sup> Midwest ISO answer at 31-32 (footnote omitted).

revision concerns the requirement for the developer to demonstrate the immaterial nature of the change when requesting the modification.<sup>70</sup>

76. Regarding the request for an interconnection customer to be able to change the type of turbine used, Midwest ISO reiterates that if the change can be shown to be immaterial, Midwest ISO will allow it. Demonstration by the interconnection customer that the change is actually beneficial will weigh towards a determination that the modification is not material. Midwest ISO states that the suggested revisions are already incorporated in the proposed filing.<sup>71</sup>

**d. Commission Determination**

77. We conditionally approve the proposed milestones under the independent entity variation standard. We find that the milestones Midwest ISO proposes generally appear to strike a reasonable balance between discouraging speculative projects from entering or remaining in the queue and ensuring that those projects that are ready to proceed can do so. However, as discussed below, we require Midwest ISO to continue to evaluate whether a reasonable balance is being struck and to file reports on the effectiveness of the queue reforms adopted herein. Based on these reports, the Commission will consider whether changes are needed.

78. We disagree that Midwest ISO's proposed milestones may handicap independent developers or not allow enough customer flexibility. Alternative methods for meeting milestones are available to an individual interconnection customer and appear to have been designed without regard to corporate/ownership structure. Queue reform should not result in undue discrimination between types of developers.

79. We note nevertheless that Midwest ISO's current interconnection queue is highly problematic. It does not meet the needs of Midwest ISO, its stakeholders, its other participants, or customers. Many of these problems are caused by interconnection customers not being ready to proceed through the interconnection process. Therefore, Midwest ISO needs to have milestones that will require interconnection customers to demonstrate that their projects are increasingly prepared to move forward. The milestones do provide some flexibility, but there must be a balance between flexibility to demonstrate readiness and having a functioning queue process.

80. Not every milestone should apply to every interconnection customer in every instance. For instance, LS Power states that they do not have a board of directors and

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<sup>70</sup> *Id.* at 34 (footnotes omitted).

<sup>71</sup> *Id.* at 35.

therefore can never meet the M2 milestone, which requires board approval of a proposed project. We agree with protesting parties that the tariff language should be sufficiently broad to address a variety of organizational structures among its customers. We direct Midwest ISO to work with its stakeholders to address this and to make a compliance filing in this regard within 30 days of the date of this order. As to other suggestions that the milestones be revised or expanded, we direct Midwest ISO to continue to work with its stakeholders to identify impediments to fulfilling milestones and if necessary, to submit revised tariff language or seek tariff waivers on a case-by-case basis where appropriate.<sup>72</sup>

81. Integrys challenges the milestone of site control. It argues that it, and other Wisconsin-based independent developers, do not generally risk capital in order to gain site control before receiving state regulatory approval to proceed. It also states that the Wisconsin Public Service Commission will not issue a Certificate of Public Convenience and Necessity until studies have identified the transmission requirements associated with the project. We believe that the risk of financial loss caused by having to demonstrate site control before receiving regulatory approval is smaller than the harm that occurs to the interconnection queue and to other generators in the queue when a project suspends because it does not have site control. When there is a regulatory obstacle to demonstrating site control, the customer may petition Midwest ISO to seek waiver of that milestone and propose an alternate milestone in lieu of a demonstration of site control. Therefore, we will not require Midwest ISO to eliminate this milestone.

82. With regard to the requests of FPL and RES Americas regarding alternate deposits and timelines for demonstrating site control, we believe that it would be premature to require such changes now. Midwest ISO is proposing a new regime in this proceeding that meets the independent entity standard, and that will go a long way to making the interconnection procedures more efficient. We will give Midwest ISO time to collect data, evaluate that data, and report the results to the Commission regarding how effective this particular milestone is. We will then consider if changes are necessary.

83. After Midwest ISO completes its System Planning and Analysis Review, the interconnection customer is required to do *one* of the following: (1) provide security reasonably acceptable to the Transmission Provider for the cost of network upgrades; (2) execute a power off-take agreement or be designated a network resources; or (3) demonstrate that generation turbines have been ordered. Wind Energy, Iberdrola, E.ON and LS Power object to the milestone that the interconnection customer must execute a power take-off agreement or be designated a network resource in order to receive an interconnection agreement. However, having a power off-take agreement and being

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<sup>72</sup> We further direct Midwest ISO to add evidence of generation turbines on order to the M2 milestones.

designated as a network resource are not the only ways that the customer can meet this milestone. In the alternative, interconnection customers can provide security for network upgrades or prove that they have ordered generation turbines.

**6. Transition Period**

**a. Proposal**

84. Midwest ISO originally proposed a transition period similar to the one used to implement Order No. 2003. The proposed transition period would give projects in the queue 60 days to meet the milestones and deposit requirements of the new process. Midwest ISO wants to move projects as rapidly as possible to the new process in order to achieve the desired goals and realize the expected benefits. It recognizes the need to provide sufficient “cure periods” so that current customers can meet the new milestones and deposit requirements.<sup>73</sup> In addition, projects that have started a Facilities Study will only be required to meet the revised suspension procedures.

**b. Comments**

85. Alliant says that 60 days is a reasonable transition period.<sup>74</sup>

86. Various intervenors state that the proposed transition period will put projects now in the queue at a disadvantage. They propose that such projects be exempt from the new queue process. Iberdrola requests that the Commission “grandfather” the “Group 5”<sup>75</sup> and earlier projects from the revised milestones. It states that the proposed revisions will unfairly penalize projects that have been in the queue for a significant period of time.<sup>76</sup> However, Iberdrola supports applying the increased deposit amounts to all interconnection customers, regardless of whether the projects are grandfathered from the revised milestone requirements.<sup>77</sup>

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<sup>73</sup> Transmittal letter at 28.

<sup>74</sup> Alliant comments at 4.

<sup>75</sup> See the CS5 Final SIS Report at <http://www.midwestiso.org>. Midwest ISO has performed the System Impact Study for interconnecting 2857.9 MW of new generation, collectively known as the Group 5 projects, to the Midwest ISO transmission system. The proposed generation is located in Southwest Minnesota, Northwest Iowa, and Eastern South Dakota.

<sup>76</sup> Iberdrola protest at 11.

<sup>77</sup> *Id.*

87. Similarly, Wind Energy believes that the proposed tariff changes may unreasonably disadvantage projects that have been in the queue for a significant time. Wind Energy requests that the Commission require Midwest ISO to exempt such groups from the requirement to meet the milestone requirements in Midwest ISO proposal. However, Wind Energy also believes that it would be appropriate to require existing customers to meet the increased deposit amounts proposed by Midwest ISO.<sup>78</sup>

88. LS Power states that Midwest ISO's proposed transition provisions should be rejected as unduly discriminatory because it does not comply with the Conference Order's suggestion to distinguish between early and late stage interconnection requests.<sup>79</sup>

**c. Midwest ISO Answer**

89. In its response, Midwest ISO states "while specific carve-outs are not delineated, a project's position in the interconnection process under the new [Generation Interconnection Procedures] is determined by where that project is at the point in time of the Commission order making the June 26 Filing effective."<sup>80</sup> Projects that have not started a Facilities Study will be subject to all provisions of the new interconnection procedures (i.e., deposit amounts and timing, suspension, etc.) within 60 days. Projects that have started a Facilities Study will only be subject to the new suspension rules.

**d. Commission Determination**

90. We recognize that the proposed transition period may cause some difficulties to those in the queue now. However, the transition period is necessary in order to implement the new process and resolve the backlogs as soon as possible. The 60-day transition period is a reasonable time period in which existing projects can meet the specified milestones and deposits. If there are individual situations in which it would be unfair to require full compliance, Midwest ISO can seek a waiver of the requirements. Finally, as to LS Power's concern (expressed before Midwest ISO filed its answer) that the proposal does not comply with the Conference Order's suggestion to distinguish between early and late stage interconnection requests, we find that having started a Facilities Study is a reasonable distinction between early and late stage interconnection requests. We clarify that, if an interconnection customer has executed a Facility Study Agreement in accordance with the provisions of section 3.5.2 of Midwest ISO's existing

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<sup>78</sup> Wind Energy comments at 11.

<sup>79</sup> LS Power protest at 37.

<sup>80</sup> Midwest ISO answer at 46.

LGIA, that interconnection project will be deemed to have started its Facilities Study and will only be subject to the new rules governing suspension.

**7. Suspension**

**a. Proposal**

91. Under Midwest ISO's currently effective LGIA, an interconnection customer can suspend for almost any reason for a total period of three years once it executes an interconnection agreement. Here, Midwest ISO proposes that only under Force Majeure conditions should a project be allowed to suspend; that is, interconnection customers will not be able to suspend for economic reasons.<sup>81</sup> However, Midwest ISO also proposes to allow an interconnection customer up to six months from Midwest ISO's completion of the System Planning and Analysis Review and start of the Facilities Study to meet the M3 milestones, and then another three months after Midwest ISO completes the Facilities Study to execute the interconnection agreement so that the interconnection customer can market its capacity.<sup>82</sup> Finally, Midwest ISO also proposes that a suspending interconnection customer must provide security for the cost of the network upgrades associated with its request in order to prevent lower-queued projects from being harmed by the suspension.

**b. Comments**

92. A number of intervenors favor Midwest ISO's proposed revisions. OMS states that the addition of a Force Majeure requirement will eliminate the delays caused by the

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<sup>81</sup> Customers may suspend more than once; however the cumulative time for which a project can be suspended is no more than three years.

<sup>82</sup> The interconnection customer's time frame for meeting the M3 milestone, which includes proof of power off-take agreements, contracts for construction, permit applications, or other commercial milestones, is extended to six months rather than the current 15 days. The six-month grace period is then added to the existing three-month period between the completion of the Facilities Study and the signing of the Interconnection Agreement. Thus, an interconnection customer will have up to nine months plus the actual time needed to conduct the Facilities Study between completion of the System Planning and Analysis Review and the time when it must file the interconnection agreement. Midwest ISO believes that this amount of time suffices to eliminate the need for economic suspension.

present suspension provisions. ATCLLC states that the proposed revisions will reduce uncertainty in the queue once an Interconnection Agreement is executed.<sup>83</sup>

93. Xcel supports Midwest ISO's proposed Force Majeure requirement. It states that the new provision will enable projects that are able to achieve commercial operation to proceed more rapidly through the queue.<sup>84</sup>

94. A number of intervenors, such as Wind Energy, propose that Midwest ISO retain its current suspension provision, which allows suspension for any reason, but propose that the Commission require Midwest ISO to reduce the time from three years to one year.<sup>85</sup>

95. E.ON and Iberdrola claim that a Force Majeure condition is not the only valid reason for a suspension. E.ON suggests that there be a requirement that the interconnection customer submit a report every six months during the suspension to report on its progress toward completion of its obligations.<sup>86</sup>

96. Wisconsin Electric requests that the Commission "require Midwest ISO to modify its proposal to permit suspension in very limited circumstances, after the third milestone, where regulatory approvals are pending and the developer can show that it has made timely application and pursued the matter in good faith."<sup>87</sup>

97. EPSA claims that the proposed suspension provision will be a significant deterrent to investment. It states that the strict suspension provision might deter smaller renewables from developing.<sup>88</sup>

98. LS Power states that Midwest ISO's suspension proposal is not consistent with Order No. 2003 and that it unduly discriminates against independent generators.<sup>89</sup> It states that the right to suspend is the only way a generation developer can manage the fact

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<sup>83</sup> ATCLLC comments at 5.

<sup>84</sup> Xcel comments at 10.

<sup>85</sup> Wind Energy comments at 8.

<sup>86</sup> E.ON comments at 9 (footnote omitted) and Iberdrola protest at 8.

<sup>87</sup> Wisconsin Electric comments at 5.

<sup>88</sup> EPSA comments at 12.

<sup>89</sup> LS Power protest at 32.

that many conditions must be satisfied before proceeding with a significant capital investment, including obtaining financing, receiving various permits and approvals, and executing long-term off-take agreements and construction contracts.<sup>90</sup>

99. Dominion objects to the additional security required for suspension. It argues that if a developer suspends due to an event that is by definition beyond its control, it should not be required to post security while it attempts to resolve the problem.<sup>91</sup>

100. Acciona recommends that Midwest ISO adopt an enhanced credit requirement, such as an increased deposit, upon suspension.<sup>92</sup> This will force parties to evaluate the value of their queue position.

101. FPL claims that Midwest ISO's proposal nevertheless includes several provisions that will enable customers to suspend – or “defer”- their projects at different stages.<sup>93</sup>

**c. Midwest ISO Answer**

102. Midwest ISO states that the “changes are intended to address foreseeable delays by setting milestones appropriately in the Interconnection Agreement, rather than encouraging an Interconnection Customer to rely on suspension.”<sup>94</sup> Midwest ISO also states that “by design, the milestone negotiations in the GIA contain few limits on timing in order to accommodate projects with long lead times.”<sup>95</sup>

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<sup>90</sup> *Id.* at 31.

<sup>91</sup> Dominion comments at 7.

<sup>92</sup> Acciona protest at 6.

<sup>93</sup> FPL protest at 24. FPL points to proposed section 8.2, under which the interconnection customer who has gone through the System Planning and Analysis Phase may opt to defer its start by one scheduled Definitive Planning Phase without having to go through the Feasibility Study again. FPL argues that it is inconsistent to eliminate economic suspension at the end of the interconnection process while permitting entities additional time in the middle of the study process to market their capacity by skipping study cycles.

<sup>94</sup> Midwest ISO answer at 7.

<sup>95</sup> *Id.* at 8. Section 3.3.1. of the existing LGIP and the proposed Generator Interconnection Procedures (GIP) provide in part: “the In-Service Date may succeed the date the Interconnection Request is received by the Transmission Provider by a period up

(continued)

103. In response to concerns regarding suspension due to lack of regulatory approval, Midwest ISO states that the definition of Force Majeure refers to the “regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control.”<sup>96</sup> However, Midwest ISO also states that, if regulatory permitting is expected to take an extraordinary length of time, the interconnection customer should negotiate its milestones accordingly.

104. In response to Dominion’s concern that limiting suspension to a Force Majeure event should remove the need to post security, Midwest ISO reiterates that the security requirement provides for more certainty that the upgrades for higher-queued projects will be built in the face of the uncertainty caused by the suspension.<sup>97</sup>

**d. Commission Determination**

105. For the reasons discussed below, we find that the proposed suspension provision meets the independent entity variation standard.

106. Order No. 2003 provides that a generator can suspend its project for up to three years. It does so in order to provide generators with maximum reasonable flexibility to adjust to various business and other problems, thus encouraging new generation.<sup>98</sup> However, in the Midwest ISO region, as discussed above, there are serious problems with the queue, problems that do not benefit customers or generators whose projects are likely to come to fruition. Therefore, we will approve Midwest ISO’s proposed, stricter suspension provisions under the independent entity variation standard. The balance Midwest ISO has struck is reasonable under the present circumstances.

107. In fact, according to Mr. Lavery’s testimony, as of January 2008, there were 26 suspended projects in Midwest ISO queue. This causes uncertainty and delays for lower-queued generators. The current suspension provision allows speculative projects to enter the queue and then suspend with no meaningful penalties, financial or otherwise.

108. We believe that this aspect of the proposal will help reduce the backlog in the Midwest ISO queue – a total of 3.6 GW of generation capacity with executed interconnection agreements has been suspended, including 2.3 GW of wind generation

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to ten years, or longer where the Interconnection Customer and Transmission Provider agree, such agreement not to be unreasonably withheld.”

<sup>96</sup> *Id.* at 9.

<sup>97</sup> *Id.* at 10.

<sup>98</sup> Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 177.

(there is a total of 65 GW of wind in the queue). We note that according to Mr. Lavery, the effects on lower-queued customers from such suspensions can be dramatic. As of January 2008, there were 26 suspended projects in the Midwest ISO queue. A preliminary study of the first 192 active projects in the queue revealed that, on average, each of the suspended projects had an effect (shared constraint) on 116 lower-queued projects. In total, 155 unique projects were impacted by the suspended projects, or more than 80 percent of the 192 projects tested for impact. This high level of effects from suspension causes uncertainty and delays for later-queued generators.<sup>99</sup>

109. We do not agree with intervenors who argue that the reduction of the maximum period during which an interconnection customer can further develop its project without having to pay for network upgrades from three years to only nine months is disproportionately burdensome on independent developers. As we stated previously, queue reform should not result in undue discrimination between types of developers. Under the current interconnection procedures, when a customer suspends its project, it does not have to make payments for network upgrades. This means that those network upgrades do not get built even though lower-queued projects may be depending on them. Under the proposed procedures, the interconnection customer will have up to nine months plus the actual time necessary for completion of the Facilities Study during which to make commercial and economic arrangements (i.e., to market its energy) and to file the interconnection agreement. The new interconnection procedures are designed so that once a customer executes an interconnection agreement, the network upgrades will be built. In this manner, lower-queued projects of all varieties (i.e., affiliated generators, independent developers, wind, non-wind, etc.) are assured that the network upgrades that they are relying on to be built do in fact get built. If an interconnection customer needs additional time to make commercial and economic arrangements, it may build long lead times into the Appendix B timetable for construction of network upgrades in its interconnection agreement. However, the new interconnection procedures will not allow it to avoid paying for network upgrades.

110. Some intervenors state that suspension only for Force Majeure is unreasonable because this is an industry with much uncertainty.<sup>100</sup> We find that the proposed additional six-month grace period before the third milestone, combined with the existing three-month period permitted from the time the Facility Study is completed to signing the interconnection agreement, should generally suffice for interconnection customers to make necessary business arrangements and negotiate and file an interconnection agreement. However, as previously stated, interconnection customers may build in long lead times into their timetables for construction if necessary.

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<sup>99</sup> See Lavery Testimony at 52.

<sup>100</sup> Wind Energy comments at 8.

111. Again, we must balance the need for developers to have some flexibility with the need to have a functioning queue and interconnection process. We find that the proposed security requirement meets the standard for independent entity variations. Collecting security for the cost of network upgrades will allow transmission to continue to be built and create an incentive to complete generation projects in a timely manner, and reduce uncertainty for lower-queued projects due to such suspension.

## **8. Cluster Studies**

### **a. Proposal**

112. In the Conference Order, the Commission noted that clustering studies is a way to efficiently prioritize interconnection requests while still providing protection from discrimination. Here, Midwest ISO is proposing that System Impact Studies and Facilities Studies be performed in a group study format.<sup>101</sup> If a project exits from the queue during the group study, Midwest ISO proposes to identify the next highest-queued project and integrate it into the study.<sup>102</sup> Midwest ISO states that this “backfilling” of group studies should reduce restudy time and increase cost certainty for all members of the group.<sup>103</sup>

### **b. Comments**

113. LS Power states that Midwest ISO should make greater use of group studies.<sup>104</sup> FPL argues that Midwest ISO does not justify why it needs more time to complete a single System Impact Study than is provided in Order No. 2003.<sup>105</sup>

### **c. Commission Determination**

114. We accept Midwest ISO’s proposal to use group studies as a means to help alleviate the queue backlog. In the Conference Order, the Commission stated that we

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<sup>101</sup> See section 4.2 of the proposed GIP. Grouping shall be implemented on the basis of a combination of queue position and electrical proximity with such proximity being determined in the Interconnection Feasibility Study. Interconnection requests that are determined to be electrically remote will be studied individually.

<sup>102</sup> Transmittal letter at 23.

<sup>103</sup> *Id.*

<sup>104</sup> LS Power protest at 45.

<sup>105</sup> FPL protest at 21.

were open to considering methods of clustering.<sup>106</sup> Group studies will allow Midwest ISO to focus on the needs of both the customers and the overall system. In response to FPL's argument that Midwest ISO does not justify why it needs more time than the timelines in Order No. 2003, we note that Order No. 2003 did not contemplate the volume of interconnection requests that would be filed or the phenomenon of queue churn that causes Midwest ISO to have to redo so much of its work. Additionally, because group studies are more complex than individual studies, we believe that it is appropriate to allow Midwest ISO to have additional time to complete these studies. According to Midwest ISO, the timelines in Midwest ISO's current interconnection procedures permit 554 days to process an interconnection request. However, due to wait time<sup>107</sup> and restudies, the average processing time is estimated to be 884 days. Midwest ISO's proposal estimates that a project could take as little as 459 days (for a project that fast tracks to the Definitive Planning Phase) to as long as 824 days (for a project that uses every possible day available to it).<sup>108</sup> While we would like to see Midwest ISO produce studies more quickly, we note that the timing problem is not entirely Midwest ISO's fault. Moreover, as the queue becomes less clogged and there is less need for restudies, Midwest ISO should be able to perform studies more quickly.<sup>109</sup>

## 9. Energy Resource Interconnection Service

### a. Proposal

115. Currently, ERIS allows an interconnection customer to "be eligible to deliver the Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an 'as available' basis."<sup>110</sup> Under ERIS, the interconnection customer will be eligible to "inject power from the Generating Facility into and deliver power across the Transmission System on an 'as available' basis up to the amount of

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<sup>106</sup> Conference Order, 122 FERC ¶ 61,252 at P 18.

<sup>107</sup> See Lavery Testimony at n 9. Midwest ISO defines wait time as the time that a request has to wait in the queue, or pause in the study process, because there is an earlier queued request in the same transmission area whose study must be completed before the later queued request can go forward.

<sup>108</sup> See *id.* at 30-31.

<sup>109</sup> Although protestors complain that Midwest ISO should increase staff and internal resources devoted to processing interconnection requests, we note that Midwest ISO has already increased its staff (See Lavery Testimony at 17).

<sup>110</sup> See article 4.1.1.1 of Midwest ISO's LGIA.

MW identified in the applicable stability and steady state studies to the extent the upgrades initially required to qualify for ER Interconnection Service have been constructed.”<sup>111</sup>

116. Midwest ISO proposes to revise its ERIS to require a generator taking this service, before interconnecting, to either: (1) resolve any constraints by funding network upgrades, (2) reach an alternative dispatch arrangement with the local control area, or (3) have a cap placed on its output. Midwest ISO states that presently, an Energy Resource<sup>112</sup> has an advantage over a Network Resource<sup>113</sup> because an Energy Resource does not have to account for the cost of the network upgrades necessary for service when it bids its resource into the energy market. Thus, the interconnection study process needs to ensure that Network Resources are not constrained in real time by the operation of an Energy Resource.

**b. Comments**

117. Acciona and Iberdrola argue that Midwest ISO does not address the potentially discriminatory aspects of its proposal. An affiliated generator would be in a position to “firm up” its Energy Resource into a local Network Resource by submitting a Network

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<sup>111</sup> See article 4.1.1.2 of Midwest ISO’s LGIA.

<sup>112</sup> See section 3.2.1.1 of the GIP. “ER Interconnection Service allows the Interconnection Customer to connect the Generating Facility to the Transmission System ... and be eligible to deliver the Generating Facility’s output using the existing firm or non-firm capacity of the Transmission System on an ‘as available’ basis and may be granted on a conditional basis. ER Interconnection Service does not in and of itself convey any right to deliver electricity to any specific customer or Point of Delivery.” Energy Resource is not defined in the LGIP, the LGIA or the TEMT but will be used to mean a generator taking ERIS.

<sup>113</sup> See section 3.2.2.1 of the GIP “Network Resource Interconnection Service. The Product.” This service “allows the Generating Facility to be designated as a Network Resource, up to the Generating Facility’s full output on the same basis as existing Network Resources that are interconnected to the Transmission or Distribution System as applicable, and to be studied as a Network Resource on the assumption that such a designation will occur.” See also section 3.2.2.2 of the GIP “Network Resource Interconnection Service; The Study.” This service “does not convey any right to deliver electricity to any specific customer or Point of Delivery.” A Network Resource is a generator whose output is under contract to a network customer and that is designated under Network Integration Transmission Service provisions of Module B (Transmission Service) of the Tariff. See Midwest ISO Tariff, Definitions, at sections 1.217

Service Request to its load. A merchant generator would not have this option because it does not have affiliated load.<sup>114</sup>

118. Wind Energy argues that Midwest ISO's proposed change ignores distinctions that the Commission made between Energy Resources and Network Resources, that the proposal in effect requires Energy Resources to have firm delivery. This effectively eliminates the competition between Energy Resources and Network Resources.<sup>115</sup> Similarly, LS Power argues that Midwest ISO should uncouple deliverability from the interconnection process.<sup>116</sup>

119. FPL avers that Midwest ISO's proposal is tantamount to conferring physical dispatch priority to Network Resources.<sup>117</sup> Additionally, the requirement that an Energy Resource arrange alternative dispatch is infeasible because Midwest ISO, not local control areas, is responsible for dispatching generating resources. Finally, FPL submits that Midwest ISO's proposal is not justified on either legal or economic grounds because it will: (1) raise costs to consumers; (2) create an unjust windfall for Network Resources through the gold-plating of the transmission system; and (3) provide preferential treatment of higher-cost Network Resources, thereby limiting the effectiveness of security constrained economic dispatch<sup>118</sup> by creating a barrier to entry.

**c. Midwest ISO Answer**

120. Midwest ISO states that the interveners misinterpret the proposed changes to ERIS. The interconnection process is only concerned with ensuring that sufficient transmission capacity is installed in order to reliably dispatch the transmission system. According to Midwest ISO, allowing a generator to be installed, with few or no network

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<sup>114</sup> Iberdrola protest at 6.

<sup>115</sup> Wind Energy comments at 8.

<sup>116</sup> LS Power protest at 42-43.

<sup>117</sup> FPL protest at 30.

<sup>118</sup> *Id.* at 34-35. Security Constrained Economic Dispatch is an algorithm performed by a computer program that simultaneously clears bids and offers for supplying and purchasing energy in the Day-Ahead Energy Market and for determining dispatch instructions for the Real-Time Energy Market. *See* Midwest ISO Tariff, Definitions, section 1.280.

upgrades, on the assumption that it will be dispatched before an existing generator, would endanger reliability and would be unduly discriminatory against existing generators.<sup>119</sup>

121. In response to protestors' claims that the proposed changes to ERIS will create a barrier to entry, Midwest ISO asserts that they are being disingenuous. They claim they are being driven from the market while, at the same time, they want free use of transmission capacity that was paid for by a Network Resource.

122. Midwest ISO states that its proposal to have Energy Resources be dispatched concurrently with Network Resources is the same as how it evaluated non-firm transmission service evaluation before it started its energy market. Midwest ISO claims that its proposed change does not ignore the distinction between ERIS and NRIS, but rather clarifies the distinction.<sup>120</sup>

**d. Commission Determination**

123. Midwest ISO has failed to provide sufficient justification for its proposed changes to ERIS. Contrary to Midwest ISO's suggestion, Order No. 2003 expressly contemplated both ERIS and NRIS in organized energy markets.<sup>121</sup> We find that Midwest ISO has not adequately explained how ERIS customers gain an unfair advantage over NRIS customers. It fails to take into account the congestion hedges that NRIS customers receive for funding network upgrades, nor does it consider the congestion hedge that network load receives when it designates an NRIS resource without the need for additional network upgrades because the upgrades were already planned and built to provide NRIS. That said, the Commission did not intend that ERIS customers would gain an unfair advantage over NRIS customers in organized energy markets. Thus, we will reject without prejudice Midwest ISO's proposed changes to ERIS. We direct Midwest ISO to submit revised tariff sheets that restore the relevant sections of the tariff concerning ERIS to their condition before filing this Application.

**10. Temporary Interconnection Agreement**

**a. Proposal**

124. Midwest ISO proposes to add section 11.5 to its LGIP, which would permit projects that are ready to proceed to use available transmission capacity (i.e., before the

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<sup>119</sup> Midwest ISO answer at 24-25.

<sup>120</sup> *Id.* at 25-26.

<sup>121</sup> *See* Order No. 2003, FERC Stats. & Regs. ¶ 61,146 at P 753-754.

network upgrades required for reliable operation at a future time are completed).<sup>122</sup> Pursuant to section 11.5, upon the request of an interconnection customer, and based on the results of *available* studies, Midwest ISO may provide a temporary Generator Interconnection Agreement (GIA) for limited operations. Midwest ISO states that it will impose an operational limit in the temporary GIA that will be updated on an annual basis. Interconnection customers will assume all risks and liabilities with respect to changes, that may affect the GIA including, but not limited to, change in output limits and future network upgrade cost responsibilities. Midwest ISO notes that, as with conditional ERIS and NRIS, the proposed revision permits an interconnection customer to receive a higher level of interconnection service (i.e., a temporary agreement), if studies support granting such an agreement on a conditional basis. Also, Midwest ISO asserts that, as with conditional ERIS and NRIS service,<sup>123</sup> interconnection customers seeking temporary interconnection service must still pay for required studies.

### **b. Comments**

125. Although FPL supports Midwest ISO's proposal, it expresses two concerns. First, FPL is concerned about the proposed language that provides that the operational limit in the temporary GIA will be updated on an annual basis. According to FPL, it is unclear whether Midwest ISO proposes to use a single value applicable over a year or a seasonal value as the operational limit. FPL states that doing so would make optimum use of the transmission system and would ignore the characteristics of variable, resource-dependent generators, such as wind power plants. FPL argues that an ISO continuously monitors changes in available transmission capacity and knows the levels of available capacity. According to FPL, this means there are no grounds for a single, restrictive operating limit

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<sup>122</sup> Application as clarified by Midwest ISO's answer at 19. A temporary Generator Interconnection Agreement allows a customer to take the equivalent of Conditional NRIS or Conditional ERIS before it executes a final interconnection agreement. Up to this time, Conditional NRIS and Conditional ERIS have only been available to generators that had already executed an interconnection agreement.

<sup>123</sup> Conditional NRIS and Conditional ERIS allow interconnection customers to use all available energy/network resource capacity until such time as a higher-queued project goes into service and uses the available capacity. The premise is that the lower-queued customer has an earlier in-service date than a higher-queued customer. In order to qualify for Conditional ERIS or NRIS, a lower-queued interconnection customer must fund the needed studies and associated network upgrades in accordance with construction schedules required to support the interconnection customer's interconnection request at the expected commercial operation date of the applicable higher-queued project. *See* Docket No. ER06-1315-000, Midwest ISO's July 31, 2006 transmittal letter at 5.

applied over a year or a season that is based on extreme conditions that occur for very short durations. FPL argues that applying such a single limit would deny a generator access to available capacity for the bulk of the operating period – a concern that is significant for a generator using a variable resource such as wind. The operational limit should reflect the day-ahead or real-time available transmission capacity as determined by the Transmission Provider in a manner that allows the generator to operate consistent with the actual conditions of the transmission system.

126. Second, FPL states that it is unclear whether Midwest ISO sufficiently distinguished between Network and Energy Resources as they relate to the temporary GIA. Midwest ISO should not impose on Energy Resource applicants operational constraints that are appropriate for Network Resources. FPL sponsors an affidavit by Ricardo Austria, who states that Midwest ISO previously used the “deliverability test” to determine “hard cap” operational limits for wind plants that applied for conditional ERIS. Mr. Austria asserts that the deliverability test is a component of the NRIS application process and starts from the assumption that all generators with NRIS are at full capacity. Mr. Austria explains that the assumptions used in the deliverability test are different than those experienced by Energy Resources in that “hard caps” from worst-case conditions do not reflect an Energy Resource’s actual operating window. According to Mr. Austria, the deliverability test assumes that all Network Resources are in use, and that energy resources use available capacity when Network Resources are out-of-service, as well as other dispatch scenarios not covered by the deliverability test. Mr. Austria asserts that Midwest ISO assumes that wind plants, specified to be modeled at 20 percent, are dispatched at a nearly 100 percent capacity. Mr. Austria maintains that this is inconsistent with wind plant characteristics, since available wind tends to be lower during the peak conditions simulated in the test. Mr. Austria recommends that the operational study be based on security-constrained dispatch rather than the worst-case scenarios used in deliverability testing.<sup>124</sup>

**c. Midwest ISO Answer**

127. In response to FPL’s assertion that operational limits should reflect the day-ahead or real-time available transmission capacity, Midwest ISO explains that the purpose of section 11.5 is to allow generators that are willing to accept the risk to interconnect and operate before the network upgrades required for reliable operation at a future time are completed. Midwest ISO explains that it sought to assign the risk involved in such an interconnection to the interconnecting generator, not existing generators, by computing a seasonal value within which the generator can safely operate. This methodology is similar to granting non-firm transmission service as it existed in Midwest ISO prior to the start of its energy market.

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<sup>124</sup> FPL protest, attachment 2, affidavit of Ricardo B. Austria.

128. According to Midwest ISO, it is willing to explore other means of setting the operational limit, but because of the volume of Interconnection Requests, it will not consider setting manual operating limits on a real-time basis. Midwest ISO asserts that it cannot provide this service to all entities that seek it because the manual calculation of operating limits will become increasingly impractical as the number of temporary interconnections increases. Instead, Midwest ISO states that a hard limit must be set for each temporary interconnection and then used as a maximum output in market operations.

**d. Commission Determination**

129. FPL raises some valid concerns with Midwest ISO's annual update provision. However, as Midwest ISO states in its answer, it did not intend to set a single annual limit for temporary interconnections. Midwest ISO is willing to modify its proposal to provide seasonal updates to the operating limits consistent with Good Utility Practice. We direct Midwest ISO to so modify its proposal in the compliance filing due within 30 days of the date of this order.

130. We agree with FPL that the operational limit should not be based only on the worst case scenario. Setting operational limits on the basis of worst case scenarios may set an artificially low value for the operational limits on interconnection customers. Therefore, we direct Midwest ISO to further clarify the methodology used to set the operational limit, addressing the concerns raised here by FPL in the compliance filing due within 30 days of the date of this order. Finally, to the extent that the study and impact assumptions that Midwest ISO would use for the temporary interconnections rely on the rationale that ERIS customers should be limited in order to accommodate NRIS customers, Midwest ISO must make associated revisions to such study and impact assumptions in the compliance filing due within 30 days of the date of this order.

131. In response to FPL's assertion that Midwest ISO should set operational limits based on day-ahead or real-time conditions, we find that it would be overly burdensome to so require for the type of service being considered here (temporary interconnection service for non-firm transmission service). We agree with Midwest ISO that as the number of temporary interconnections increases, it would become impractical to calculate operating limits based on real-time conditions.

## 11. Miscellaneous Queue Issues

### a. Queue-Jumping and Regional Coordination

#### i. Comments

132. RES Americas argues<sup>125</sup> that the Commission should sanction transmission owners who are not members of Midwest ISO and who allow generators to “jump over” the Midwest ISO queue “through the use of a non-FERC-jurisdictional transmission provider.” It says that transmission planning coordination between Midwest ISO and the Mid-Continent Area Power Pool (MAPP) is not clearly defined, and that this allows non-Midwest ISO transmission owners to circumvent the Midwest ISO queue and let some generators interconnect more quickly. These generators then can sell power into Midwest ISO. RES Americas also complains that the MAPP transmission expansion process is not transparent. The result is unfair to a generator that waits its turn in the Midwest ISO queue. Similarly, Wind Energy argues<sup>126</sup> that a generator should not be able to bypass the Midwest ISO queue by interconnecting with a transmission owner whose transmission planning process is not coordinated with that of Midwest ISO. It asks the Commission to require Midwest ISO to define a coordination process with its member utilities and with MAPP utilities.

#### ii. Midwest ISO Answer

133. Midwest ISO responds<sup>127</sup> that it cannot prevent a generator from interconnecting to a MAPP utility. It says that it is focusing on coordinating with MAPP and other neighboring utilities, as its tariff requires.

#### iii. Commission Determination

134. We agree with Midwest ISO that it cannot prevent a generator from interconnecting to a neighboring transmission owner and selling power into Midwest ISO. Thus, we will not sanction transmission owners who allow generators to interconnect to them. The purpose of Order No. 2003 is to encourage interconnection of generators, not to discourage it. While some generators may, for logistical reasons, be able to interconnect to a neighbor of Midwest ISO, and while other generators may find it impractical to do so, different generators are in different situations, and some will have

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<sup>125</sup> RES Americas comments at 5-9.

<sup>126</sup> Wind Energy comments at 12.

<sup>127</sup> Midwest ISO answer at 52.

advantages that others will not be able to use. Finally, we note that we are addressing coordination of transmission planning in the Order No. 890 compliance proceedings.

**b. Reassignment of Interconnection Rights**

**i. Comments**

135. Wind Energy argues<sup>128</sup> that while Midwest ISO would continue to allow assignment of an interconnection agreement, it does not propose to allow partial assignment. Wind Energy explains that wind farms are often developed in phases, with one phase going into commercial operation before another. To get financing, the phases often must be owned by separate, but affiliated, Special Purpose Entities. One Special Purpose Entity may hold the interconnection rights for the entire wind farm, and it needs to be able to assign part of that interest in the interconnection agreement to the affiliated Special Purpose Entity that will own the second phase.

**ii. Midwest ISO Answer**

136. In its answer,<sup>129</sup> Midwest ISO says that the issue of partial assignment has arisen under the existing provisions. It says that partial assignment is a problem for several reasons. First, for “practical” reasons, Midwest ISO and many Transmission Owners prefer to have just one interconnection agreement with one customer for a point of interconnection. This avoids ambiguity about who is responsible for performance. Additional partial assignment can lead to further multiplication of parties.

137. Second, under the existing provision, which Midwest ISO does not propose to significantly modify, assignment does not relieve the original customer of its obligations under the interconnection agreement.

138. Third, when the generating facility is planned in several phases, this creates ambiguities about the timing and size of upgrades needed to the network. Midwest ISO argues that phasing increases the likelihood of unneeded upgrades being constructed or that unused interconnection capacity will be withheld from the market.

**iii. Commission Determination**

139. At this point, we will not require Midwest ISO to allow partial assignment of an interconnection agreement. While we understand the economic constraints under which merchant developers, such as Wind Energy, operate, the current, clogged nature of the

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<sup>128</sup> Wind Energy comments at 10-11.

<sup>129</sup> Midwest ISO answer at 49-51.

interconnection queue harms every generator in the queue. In light of Midwest ISO's arguments about partial assignment creating too much complexity regarding responsibilities under interconnection agreements, we will not now require a measure that may lengthen the amount of time projects spend in the queue waiting to advance. However, the issue of partial assignment of generator interconnection agreements is one that we will ask Midwest ISO to address in the informational filing that we require to be filed within one year of this order. Once the queue is less clogged, we would be willing to reconsider this answer.

**c. Separate Generator Interconnection Queues**

**i. Comments**

140. LS Power argues that wind and non-wind queues face distinct problems, and that solutions should address the particular needs of each type of generator.<sup>130</sup> It requests a short-term, bifurcated queue for wind generation to expedite the processing of the backlog of interconnection requests by wind generators.

141. LS Power also supports the use of an open season process to solve Midwest ISO's wind interconnection problems through the clustering of studies of wind resources, similar to what the Bonneville Power Administration (BPA) has done.<sup>131</sup> The open season process would allow wind generators to solve the "chicken and egg" problem faced by independent developers. LS Power states that the precedent agreements between BPA and the generation projects guarantee interconnection and transmission service and may be a sufficient basis on which independent developers can obtain financing and enter into off-take agreements.

**ii. Midwest ISO Answer**

142. In its answer, Midwest ISO states that it is increasing its use of clustering studies for interconnection requests. Further, Midwest ISO affirms that it is currently exploring open season concepts and that the next step in the process is the development of a subscription methodology for interconnection customers to use.<sup>132</sup>

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<sup>130</sup> LS Power protest at 41.

<sup>131</sup> *Id.* at 42.

<sup>132</sup> Midwest ISO answer at 48.

**iii. Commission Determination**

143. We reject LS Power's request for two interconnection queues, one for wind and one for non-wind. Having two separate queues would produce unnecessary competition for the same transmission capacity on the system. Further, this approach would be unduly discriminatory, specifically against other types of generation. It also would not be an effective way to resolve the problems in the queue. We encourage Midwest ISO to continue to work on clustering studies. Clustering studies offer considerable benefits, as the transmission upgrades required for a generator to interconnect to the system may be large enough to accommodate more than one interconnection request.

**12. Other Miscellaneous Issues**

**a. Clarity and Transparency**

**i. Comments**

144. Acciona requests that the Commission direct Midwest ISO to include not only in the Business Practices Manuals, but also in the Tariff, details regarding the implementation of the interconnection process.<sup>133</sup> Acciona also requests that the Commission direct Midwest ISO to provide quantitative measures of "significant transmission constraints" and an objective process to define "clusters" for interconnection studies. Finally, Acciona requests that the Commission direct Midwest ISO to explain or provide guidance regarding those interconnection solutions that it believes are "simple."<sup>134</sup>

**ii. Commission Determination**

145. We will not require that the details regarding the implementation of the interconnection process be in the Tariff. Under the existing "rule of reason" policy, only those practices that affect rates and services significantly need be included in a tariff.<sup>135</sup> An RTO or ISO appropriately places in its Business Practice Manuals the implementation details that inform stakeholders how the organization conducts business under its tariff.<sup>136</sup> Here, Midwest ISO should have the flexibility to change such details concerning the

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<sup>133</sup> Acciona protest at 6.

<sup>134</sup> *Id.* at 8-9.

<sup>135</sup> See *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

<sup>136</sup> See *California Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271 at P 16 & nn.21-23 (2008).

interconnection process as the existing problems within the queue are addressed. For example, the definition of “cluster” may need to evolve as the interconnection queue reduces in size. Finally, regarding what interconnection solutions are “simple,” Midwest ISO has already indicated that the threshold concern is that the transmission system can accommodate the interconnection request.

**b. Indemnification**

**i. Comments**

146. AMP-Ohio points out that Ohio law prohibits political subdivisions from indemnifying private entities and that the Application contains instances where such indemnification might be required.<sup>137</sup> It suggests that Midwest ISO use the phrase “to the extent permitted by law” as a preamble to indemnification provisions.

**ii. Midwest ISO Answer**

147. Midwest ISO responds by recognizing that AMP-Ohio and other entities may have unique circumstances that may require modifications to interconnection documents. Midwest ISO suggests that these entities address their issues with individual interconnection agreements at the appropriate time. However, Midwest ISO does not object to revising the Application as suggested by AMP-Ohio and also at section 18.2 of the proposed GIA so as to state: “To the extent permitted by law, an Indemnifying Party shall at all times indemnify, defend and hold the other Parties harmless from Loss.” Midwest ISO adds that section 18.2 of the existing LGIA, which is not amended in the Application, does not contain this limitation, and that it considers the limitation unnecessary there.

**iii. Commission Determination**

148. We see no objection to adopting the limitation requested by AMP-Ohio and agreed to by Midwest ISO. We find that this variation from the *pro forma* LGIA meets the independent entity variation standard, which allows independent Transmission Providers flexibility in designing their interconnection procedures to accommodate regional needs.<sup>138</sup>

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<sup>137</sup> AMP-Ohio cites, as examples: section 10.0 on Original Sheet No. 1714Z.27; section 5.0 on Original Sheet No. 1714Z.27e; section 6.0 on Original Sheet No. 1714Z.34; and section 7.0 on Original Sheet No. 1714Z.74.

<sup>138</sup> See Conference Order, 122 FERC ¶ 61,252 at P 13 & n.10.

c. **Tariff Revisions and Non-Disclosure Agreements**

i. **Tariff Revisions**

(a) **Proposal**

149. Midwest ISO proposes to revise the definition of “Applicable Reliability Standards” in both the proposed GIP and proposed GIA to mean “the requirements and guidelines of NERC, the Applicable Reliability Council, and the Local Balancing Authority of the Transmission System to which the Generating Facility is directly interconnected.”

(b) **Comments**

150. Both Consumers Energy and FPL suggest language changes to specific sections of the proposed GIP, in addition to proposed changes to clarify terms, to correct typographical errors and inconsistencies in wording.

151. FPL Energy states that Midwest ISO’s proposal to revise the definition of “Applicable Reliability Standards” by substituting the term “Local Balancing Authority” for “Control Area” should be rejected because it is inconsistent with section 215 of the FPA.<sup>139</sup> FPL contends that generators are legally required to comply only with those standards that the Commission has determined are mandatory and enforceable. FPL argues that by referring to “Local Balancing Authority” in the term “Applicable Reliability Standards,” Midwest ISO effectively is providing for an alternative means of enforcement outside of the Reliability Standards approved by the Commission under section 215 of the FPA.<sup>140</sup>

152. FPL requests that Midwest ISO adopt the following definition of Applicable Reliability Standards:

Applicable Reliability Standards shall mean the ~~requirements and guidelines~~ FERC-approved Reliability Standards of NERC; or the Applicable ~~Reliability~~ Regional Entity ~~council, and the Local Balancing Authority of the Transmission System to which~~ where the Generating Facility is direct[ly] interconnected.”

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<sup>139</sup> 18 U.S.C. § 8240 (2006).

<sup>140</sup> FPL protest at 35.

(c) **Midwest ISO Answer**

153. Midwest ISO states that it will adopt FPL's revision to the definition of Applicable Reliability Standards and will correct the ministerial changes as proposed by Consumers and FPL.<sup>141</sup>

(d) **Commission Determination**

154. To ensure that the definition of Applicable Reliability Standards is clear, specific and correct, we require Midwest ISO to revise the definition, in a compliance filing to be submitted within 30 days of the date of this order, as follows:

**Applicable Reliability Standards:** Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under section 215 of the Federal Power Act relating to operation of the Transmission Provider in carrying out its Reliability Coordinator, Balancing Authority, Market Operator, Transmission Service Provider, and Planning Coordinator functions. In addition to FERC approved standards any regional reliability criteria and/or standards relating to operation of the Transmission Provider in carrying out the functions listed above.

155. Additionally, we direct Midwest ISO to fix the minor ministerial errors identified on the Attachment to this order to which it has already agreed or that are otherwise necessary. We also direct Midwest ISO to revise section 8.2 of the proposed GIP so that a customer reaching the Definitive Planning Phase via the fast track may also exercise the right to defer entering this phase for one cycle.

ii. **Non-Disclosure Agreements**

(a) **Comments**

156. Consumers Energy argues that the Application apparently requires each interconnection request to include a non-disclosure agreement that lists employees who are authorized to receive confidential information from Midwest ISO. This could result in inconsistency of terms and ambiguity as to who is authorized to receive the confidential information. The same interconnecting entity may have different terms and different lists of employees at different times. Consumers Energy points out that this is not a new problem, and that Midwest ISO's solution was to establish a single universal non-disclosure agreement form. This universal form establishes a single set of non-disclosure agreement terms for entities receiving confidential information and, for each

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<sup>141</sup> Midwest ISO answer at 63, 65-79.

entity, a single list of individuals who are entitled to receive the confidential information. Consumers Energy recommends that entities that already have executed universal non-disclosure agreements not be required to provide newly-executed non-disclosure agreements with their interconnection requests.<sup>142</sup>

(b) **Midwest ISO Answer**

157. Midwest ISO agrees and proposes to add to section 18.0 of the Appendix 1 Non-Disclosure Agreement, the sentence "To the extent that a Company has a Universal Non-Disclosure Agreement in place with Midwest ISO, the Company will not be required to execute the Non-Disclosure and Confidentiality Agreement in Attachment C to Appendix 1 of the GIP."<sup>143</sup>

(c) **Commission Determination**

158. We find that this addition to the proposed tariff language improves the safety of confidential information and can simplify the interconnection process for interconnecting entities. We will require Midwest ISO to include this change in a compliance filing within 30 days from the date of this order.

**13. Process Issues**

**a. Requests for Technical Conference**

**i. Comments**

159. Several parties, such as EPSA, Iberdrola, and ITC, call on the Commission to establish a technical conference to further discuss Midwest ISO's proposal.

160. EPSA claims that Midwest ISO's proposal does not strike the proper balance between ensuring a level playing field among projects and ensuring that only viable projects occupy queue positions. Its comments on specific issues are noted above. EPSA claims that Midwest ISO's proposal favors affiliated generators at the expense of independent developers.

**ii. Commission Determination**

161. We see no need for a technical conference now. Midwest ISO has demonstrated that, with certain revisions, its proposal meets the standard for independent entity

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<sup>142</sup> Consumers Energy protest at 5-6.

<sup>143</sup> Midwest ISO answer at 39-40.

variations from the Commission's *pro forma* provisions. As noted above, we will be willing to reconsider these issues in the future if actual experience demonstrates that the new queue procedures are ineffective or cause problems. It is important to start operating under the new procedures as soon as possible so that generating facilities can be interconnected promptly and safely. Getting new generators on line will improve markets and bring benefits to customers and should not be further delayed.

**b. Comments Concerning Stakeholder Process or Requesting Annual Reporting**

**i. Comments**

162. Midwest ISO TOs request that “the Commission also allow for continued refinement of the interconnection queuing process based on a robust stakeholder process.”<sup>144</sup> Iberdrola expresses concern about Midwest ISO's proposed changes to ERIS not being fully vetted in the stakeholder process.

163. The parties generally recognize the need for Midwest ISO to keep the Commission informed of how its new interconnection queue practices are working. For example, OMS recommends that the Commission impose an annual reporting requirement.<sup>145</sup> OMS provides a list of issues that it believes should be included in the reporting requirement.<sup>146</sup>

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<sup>144</sup> Midwest ISO TOs comments at 5.

<sup>145</sup> OMS comments at 5.

<sup>146</sup> OMS asks that the Commission require that the report include the following: (1) the number of interconnection requests withdrawn after the Application Review Phase and before the Feasibility Study begins; (2) the number of projects that moved ahead of requests entered earlier in the interconnection queue; (3) for projects that moved ahead in the interconnection queue, the average number of interconnection requests these projects superseded; (4) the number of times the cost of network upgrades or the \$5 million suspension fee is imposed; (5) the number of interconnection requests moving from the Feasibility Study to the System Planning stage; (6) the number of interconnection requests that move from the Feasibility Study directly to the Definitive Planning stage; (7) the number of cases in which a developer makes multiple interconnection requests for the same project; (8) the number of interconnection requests withdrawn during the Definitive Planning Phase; (9) the number of interconnection requests paying the \$100,000 fee in the Application Review Phase in lieu of demonstrating site control; (10) the number of interconnection requests delayed and the average length of delay for requests failing to attain milestone requirements needed to enter into the Application

(continued)

**ii. Commission Determination**

164. Continuing the stakeholder process and developing metrics to assess the effectiveness of the revised procedures will be very helpful. We direct Midwest ISO to work with its stakeholders to develop appropriate metrics to evaluate the effectiveness of the new queue procedures. The metrics suggested by OMS are a good starting point. We direct Midwest ISO to file a list of these metrics in a compliance filing within 30 days of the date of this order.<sup>147</sup> Additionally, we direct Midwest ISO to make three annual informational filings, in August 2009, August 2010, and August 2011, detailing the results of its findings and suggesting any tariff revisions it deems necessary to remedy deficiencies or unintended consequences. This report will promote transparency and consistency in processing the current backlog of interconnection requests and future requests.

**c. Conference Order**

**i. Comments**

165. LS Power states that the Application does not comply with the Commission's Conference Order. First, LS Power states that Midwest ISO did not consider measures it could take without revising its Tariff. Second, Midwest ISO does not allow generators or third-party consultants to perform interconnection studies. LS Power urges the

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Review Process; (11) the number of interconnection requests delayed and average length of delay for requests failing to attain milestone requirements needed to proceed to the Facilities Study portion of the Definitive Planning Stage; (12) the number of interconnection requests delayed and the average length of the delay for requests failing to attain milestone requirements needed to enter into the Definitive Planning Stage; (13) the number of interconnection requests that complete the Definitive Planning Stage and the average length of time in the queue for such requests; (14) the average length of time in the queue for those interconnection requests at (a) less than 6 MW, (b) greater or equal to 6 MW and less than or equal to 20 MW, (c) greater than 20 MW and less than or equal to 50 MW, (d) greater than 50 MW and less than or equal to 500, (e) greater than 500 MW and less than or equal to 1000 MW, and (f) greater than 1000 MW that complete the Definitive Planning Stage; (15) the number of interconnection requests at (a) less than 6 MW, (b) greater than or equal to 6 MW and less than or equal to 20 MW, (c) greater than 20 MW and less than or equal to 50 MW, (d) greater than 50 MW and less than or equal to 500 MW, (e) greater than 500 MW and less than or equal to 1000 MW, and (f) greater than 1000 MW that entered the queue. OMS comments at 5-6.

<sup>147</sup> Midwest ISO should provide this data for different project types, such as for independent and affiliated project developers.

Commission to require Midwest ISO to post up-to-date data and models so that third parties can conduct Feasibility Studies and System Impact Studies.<sup>148</sup>

**ii. Commission Determination**

166. Midwest ISO went through an extensive stakeholder process in order to reform its generation interconnection procedures. This process included a search for changes that could be made without revising its Tariff. When it became clear that this was not possible, Midwest ISO, along with its stakeholders, developed the tariff changes being considered in this proceeding. While the Conference Order states a preference for changes that could be made without revising the tariff, this in no way limits Midwest ISO from proposing tariff changes here. The Commission is more concerned with an interconnection queue that functions efficiently than it is about whether parts of the Midwest ISO Tariff have to be rewritten.

167. LS Power argues that section 13.4 of the Midwest ISO LGIP allows an Interconnection Customer to require the Transmission Provider to use a consultant to perform an Interconnection Study if the Transmission Provider cannot meet its timelines.<sup>149</sup> While this statement is true, we note that this is not an absolute right. Section 13.4 also states:

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<sup>148</sup> LS Power protest at 35, 36, 45.

<sup>149</sup> Section 13.4 of the Midwest ISO LGIP reads, in part:

If (i) at the time of the signing of an Interconnection Study Agreement there is disagreement as to the estimated time to complete an Interconnection Study, (ii) the Interconnection Customer receives notice pursuant to sections 6.3, 7.4 or 8.3 that the Transmission Provider will not complete an Interconnection Study with the applicable timeframe for such Interconnection Study, or (iii) the Interconnection Customer receives neither the Interconnection Study nor a notice under sections 6.3, 7.4 or 8.3 within the applicable timeframe for such Interconnection Study, then the Interconnection Customer may require the Transmission Provider or its agent to utilize a consultant reasonably acceptable to Interconnection Customer and Transmission Provider to perform such Interconnection Study under the direction of the Transmission Provider.

In all cases, use of a consultant shall be . . . limited to situations where the Transmission Provider determines that doing so will help maintain or accelerate the study process for the Interconnection Customer's pending Interconnection Request and not interfere with the Transmission Provider's progress on Interconnection Studies for other pending Interconnection Requests.

Midwest ISO states that studies provided by customers generally contain assumptions that do not consider Midwest ISO's shared transmission facilities such that when Midwest ISO reviews these studies, significant modification to the underlying assumptions must be made and, therefore, there is no savings in time.<sup>150</sup>

168. We support the concept of customer commissioned interconnection studies when an RTO is not meeting its study timelines. However, the present state of Midwest ISO's interconnection queue does not afford that opportunity. We believe that the new interconnection procedures will bring a measure of stability to the queue that will allow Midwest ISO to significantly reduce the study backlog. We direct Midwest ISO to include in its annual informational filings the steps it is taking to both clear the backlog and make it more feasible for customers to conduct their own studies.<sup>151</sup>

#### **14. Cost Responsibility and New Transmission**

##### **a. Comments**

169. Integrys, Iberdrola and ITC assert that in order to resolve problems with the interconnection queue, Midwest ISO must also address its cost allocation policies for network upgrades associated with generation interconnections.<sup>152</sup> These parties ask that

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<sup>150</sup> Midwest ISO answer at 56-57.

<sup>151</sup> Order No. 890 contemplates the sharing of information among Midwest ISO and all of its customers. However, the sharing of strategic planning information is different from the sharing of the granular model information a customer would require to conduct its own study.

<sup>152</sup> Integrys comments at 4-6; Iberdrola protest at 4-5; ITC comments at 4-6; Xcel comments at 11-12.

Midwest ISO's existing 50-50 cost sharing policy be replaced with a full reimbursement policy.<sup>153</sup>

170. Integrys contends that Midwest ISO's proposal fails to address a "free rider" problem created by the cost allocation, that is, the existing policy results in higher-queued interconnection requests taking advantage of "headroom" in the system and obtaining a generator interconnection agreement without burdensome costs. However, once a network transmission constraint is encountered, a lower-queued interconnection customer is saddled with 50 percent of the cost to upgrade the system. Integrys alleges that many interconnection requests are simply withdrawn and re-queued in an attempt to avoid the 50 percent cost allocation or, alternatively, customers make multiple requests in the hope of avoiding these costs. These "churn" behaviors result in study delays and inaccurate study results.

171. Iberdrola asserts that the cost burden under the existing policy contributes to the queue backlog and impedes the development of generation resources, especially in remote areas, such as those areas in which many Midwest wind projects are located.

172. ITC points to testimony in which Midwest ISO's Mr. Lavery states that "many developers exit the queue when study results show significant network upgrade costs."<sup>154</sup> ITC submits that changing the 50-50 cost allocation policy would capture reliability and competitive benefits of a stronger transmission infrastructure by removing a significant obstacle to the development of new generation and by encouraging the development of a robust transmission system. ITC asserts that full reimbursement encourages the construction of new electric generation and, in particular, renewable generation.

173. E.ON and Wind Energy say that the most significant and immediate needs are for transmission lines to be built, and that the cost allocation issues must be resolved in order for that to happen. OMS notes that there is a need for new transmission and states that transmission export constraints are hindering generation interconnection in many areas.

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<sup>153</sup> As relevant here, the Commission approved a 50-50 cost allocation policy for new network upgrades for generators seeking interconnection in the Midwest ISO region in its order on Regional Expansion Criteria and Benefits (RECB) Task Force. Specifically, the interconnection customer must pay the entire cost of the network upgrades initially, but is allowed to get back up to 50 percent of that money if the interconnection customer meets certain criteria. The remaining amount is borne by the affected pricing zones, as required under Attachment FF of Midwest ISO's Tariff. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, *order on reh'g*, 117 FERC ¶ 61,241 (2006).

<sup>154</sup> ITC comments at 5, *citing* Lavery Testimony at 11.

This problem cannot be resolved in areas that need additional transmission. RES Americas says that inadequate transmission planning resources and inadequate and uncoordinated transmission planning processes are also part of the problem.<sup>155</sup>

174. Xcel recommends that Midwest ISO continue to work with its stakeholders to develop both short-term and long-term transmission expansion plans to accommodate the interconnection requests that will not be aided by the current proposed revisions. Xcel specifically supports the development of alternative cost allocation procedures: (1) allocating the costs of identified network upgrades more equitably among all new generation projects whose interconnection is enabled by such upgrade; or (2) allocating the costs of network upgrades directly to the loads to be served by the incremental generation.<sup>156</sup>

**b. Midwest ISO Answer**

175. Midwest ISO agrees that cost allocation for transmission upgrades should be considered further and is pursuing improvements to its current cost allocation methodology in a separate docket.<sup>157</sup> However, Midwest ISO also states that the comments proposing revisions to its cost allocation policy are collateral attacks on its current cost allocation policy and that any concerns regarding its approved cost allocation policies should be raised through stakeholder proceedings.

176. Midwest ISO supports the comments of parties who suggest that further work is needed to address the underlying transmission constraints that affect much of the queue. It is working with stakeholders to address the underlying issues caused by lack of transmission capacity.

177. Midwest ISO will pursue other revisions in separate filings. Midwest ISO submits that the need for additional future work should not delay approval of the revisions proposed in this proceeding. The Midwest ISO Transmission Expansion Plan Regional Generation Outlet Study seeks to identify transmission needed to meet the demands of interconnection customers in the western portion of Midwest ISO. In September, the stakeholder group, the Interconnection Process Task Force,<sup>158</sup> will resume discussions of

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<sup>155</sup> E.ON comments at 9; OMS comments at 4; Wind Energy comments at 9; RES Americas comments at 4.

<sup>156</sup> Xcel comments at 11.

<sup>157</sup> Midwest ISO cost allocation methodology is under consideration in Docket No. ER06-18-000, *et al*, the on-going RECB proceedings.

<sup>158</sup> *See* P 28, *supra*.

concepts related to the previously released “Open Season” concept. This discussion will focus on preplanning transmission and allowing queued requests to obtain access to this transmission in the most highly constrained – and thus most backlogged – areas. A filing on the additional Tariff modifications to support this concept is expected in late 2008 or early 2009.<sup>159</sup>

**c. Commission Determination**

178. We decline to require a change to Midwest ISO’s cost allocation policy for generator interconnection in this proceeding. This issue is outside the scope of this proceeding, which focuses on the interconnection queue process.

179. We agree that one of the most significant hurdles to interconnection of new generation is insufficient transmission capacity. We believe that, over the long term, the improved transmission planning required under Order No. 890 will help to address this problem. In particular, the planning reforms adopted by Order No. 890 should increase the transparency of planning information to all customers, increase coordination among transmission owners in each region, and otherwise result in a more robust transmission system. These improvements, in turn, should enable developers to make fewer, more tailored interconnection requests and make it easier to interconnect with the transmission system.<sup>160</sup>

180. Moreover, a functioning queue process, along with a more robust transmission system, will address the special problems faced by location-constrained resources. Midwest ISO states that it is presently pursuing Regionally Planned Generator Interconnection Projects (RPGIP) and that “[t]he grouping process can address a portion of the problem, by identifying shared projects whose costs can be allocated across multiple participants.<sup>161</sup> Midwest ISO also states that “the identification of the first set of projects which could be considered RPGIPs will occur as part of the Regional Generation Outlet Study ongoing as part of the Midwest ISO Transmission Expansion Plan.”<sup>162</sup> We encourage Midwest ISO in this work. We are also encouraged by Midwest ISO’s commitment to resume work on an updated view of the previously released “Open

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<sup>159</sup> Midwest ISO answer at 43.

<sup>160</sup> Conference Order, 122 FERC ¶ 61,252 at P 6.

<sup>161</sup> See Lavery Testimony at 20.

<sup>162</sup> *Id.* at 21.

Season” concept<sup>163</sup> and to file additional associated tariff modifications to support this concept by early 2009.

The Commission orders:

(A) Midwest ISO’s tariff sheets are hereby conditionally accepted, effective August 25, 2008, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to make a compliance filing within 30 days of the date of issuance of this order modifying its proposed tariff revisions as discussed in the body of this order. Furthermore, Midwest ISO is directed to include a list of metrics that will be used to evaluate the effectiveness of the revised interconnection procedures in its compliance filing as discussed in the body of this order.

(C) Midwest ISO is directed to file in August 2009, August 2010, and August 2011, informational reports on its experience under its reformed generator interconnection queue procedures, whether it believes further reform will be required based on this experience, and if it believes further reform is required, what steps Midwest ISO and its stakeholders are taking and when Midwest ISO anticipates making any future filings in this regard.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>163</sup> See “Midwest ISO’s [Draft] Open Season Proposal,” an attachment to Detroit Edison Company’s July 31, 2007 protest in Docket No. ER07-1141-000. In this previously released draft paper, Midwest ISO indicates, at page 4, that a network upgrade which resolves reliability issues related to multiple generators operating in a location-constrained area would be initially funded by an Interconnection Sponsor (Load Serving Entity, the Transmission Owner, or some other willing entity), with 50 percent of costs recovered from pricing zones through the RECB cost sharing mechanism and the remaining 50 percent of the cost recovered pro rata from initial generator(s) and later from new generators as they come on line.

**TABLE: Minor Tariff Revisions**

This table lists minor tariff revisions, including clarifying changes and corrections to typographical errors. We direct Midwest ISO to make the edits listed in this table.

<b>Tariff Section/Sheet Number</b>	<b>Description</b>	<b>Correction Needed</b>
section 3.6	Withdrawal of Interconnection Customer:	Replace “and” with “or” before romanette (ii).
section 4.1	“General”	Add or between circumstance (i) and circumstance (ii).
section 4.2	GIP	Delete “L” from LGIP in the last line of the first paragraph.
section 5.3	No redlined copy of proposed changes on Sheet No. 1714Z.66	Provide redlined copy of changes made to section 5.3.
section 6.2	Too many or too few parenthesis.	Third paragraph after “Generator Upgrades )” Midwest ISO is directed to appropriately modify this section.
section 6.3	“Interconnection Feasibility Study Procedures”	Text needs to refer to Interconnection Feasibility Study Procedures, not an Interconnection System Impact Study.
section 8.2	Add language	In the ninth line of the first paragraph the word “Interconnection” should be inserted before the words “Feasibility Study”
section 8.2	Use of term “System Planning and Analysis Review”	First line of last paragraph, the words “System Planning Analysis and Review” should be rewritten to read “System Planning and Analysis Review.”
section 8.3	Use of term “reasonable efforts.”	Capitalize terms "Reasonable Efforts" since term is defined in GIA.

section 8.3	Use of term “Interconnection Request”	In the fifth line of the first paragraph, the word “request” should be replaced with “Interconnection Request”
section 8.4	Contains incomplete sentence.	The second paragraph in section 8.4 ends in mid-sentence. The Midwest ISO must appropriately modify this section.
section 8.5	Replace word	In the second line of the first paragraph, “interconnection Customer” should be replaced with “Interconnection Request”
section 8.7	Add language	In the second line, the word “Phase” should be added after “Definitive Planning.”
section 8.7	Delete language	Delete “Within five (5) Business Days of Transmission Provider’s receipt of Interconnection Customer’s affirmative response to proceed, Transmission Provider shall provide the Interconnection Customer an Interconnection Facilities Restudy Agreement.”
	Add language	Add “Transmission Provider will provide” before “an invoice for any portion...”
section 11.1	Contains incomplete sentence.	Add "responsible" at end of sentence to read “Interconnection Customer is responsible.”
	Add language	The Midwest ISO is directed to add language which specifies when the Interconnection Customer and Transmission Owner will receive the draft GIA.
section 11.3	Correct punctuation	Replace “,” with “:” after the word Provider in the second line of the first paragraph.
section 12.2.4	Use of “Interconnection Facilities Study”	In the title of the section as well as in the second line the word “Interconnection” must be added before “Facilities Study.”
Sheet No. 1697 (GIP) & 1714Z.43 (GIA)	Definition of “Distribution System” not the same in the	In GIP definition: Distribution shall mean the Transmission Owner’s facilities, or the Distribution System of another party that is interconnected with

GIP and the GIA.

Transmission Owner's Transmission System, and equipment, if any...

In GIA definition: Distribution shall mean the Transmission Owner's facilities and equipment, or the Distribution System of another party that is interconnected with Transmission Owner's Transmission System, if any...

In order for these two definitions to be identical the Midwest ISO will have to add "and equipment" right after Transmission Owner's facilities in the GIP definition and delete "and equipment" right after Transmission Owner's Transmission System...

Appendix A

The listed parties have filed motions to intervene in Docket No. ER08-1169-000. A short-name reference to a party, shown in parentheses after the full name, indicates that the party also filed comments or a protest or is otherwise mentioned in the order.

Acciona Wind Energy USA LLC (Acciona)  
Alliant Energy Corporate Services, Inc. (Alliant)  
Ameren Services Company  
American Municipal Power – Ohio, Inc. (AMP-Ohio)  
American Transmission Company, LLC (ATCLLC)

Babcock & Brown Renewable Holdings Inc.

Coalition of Midwest Transmission Customers  
Competitive Power Ventures, Inc. (Competitive Power)  
Constellation Energy Commodities Group, Inc. and Constellation New Energy  
Consumers Energy Company (Consumers Energy)

Detroit Edison Company (Detroit Edison)  
Dominion Retail, Inc., Dominion Energy Kewaunee, Inc., and Dominion Energy  
Marketing, Inc. (Dominion)  
Dynegy Power Marketing, Inc.

E.ON Climate & Renewables North America (E.ON)  
Electric Power Supply Association (EPSA)  
Exelon Corporation

FPL Energy, LLC (FPL)

Great River Energy (Great River)

Iberdrola Renewables, Inc. (Iberdrola)  
Integrus Energy Group, Inc. (Integrus)  
International Transmission Company (ITC)

LS Power Associates, L.P. and Tenaska, Inc. (LS Power)

Madison Gas and Electric Company  
Midwest ISO Transmission Owners (Midwest ISO TOs)\*

National Rural Electric Cooperative Association  
Northern Indiana Public Service Company (NIPSCO)

Organization of MISO States, Inc. (OMS) \*\*

Renewable Energy Systems Americas Inc. (RES Americas)

Renewable Power Markets Access, Inc. (Renewable Power)

Wind on the Wires and the American Wind Energy Association (Wind Energy)

Wisconsin Electric Power Company (Wisconsin Electric)

Xcel Energy Services, Inc. (Xcel)

\* Transmission Owners, for this filing, consist of: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Business Services. LLC for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

\*\* OMS states that those of its members who generally support the filed comments are: Iowa Utilities Board; Kentucky Public Service Commission; Michigan Public Service Commission; Minnesota Public Utilities Commission; Montana Public Service Commission; North Dakota Public Service Commission; and Public Utilities Commission of Ohio.