

133 FERC ¶ 61,196
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Midwest ISO Transmission Owners and
Midwest Independent Transmission
System Operator, Inc.

Docket No. ER11-28-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued December 3, 2010)

1. In this order, we conditionally accept for filing Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) and Midwest ISO Transmission Owners'¹ (collectively, Filing Parties) October 5, 2010 filing (October 5 Filing) of proposed revisions to the generally-applicable Attachment GG of Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), as well as

¹ Midwest ISO 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 (ATCLLC); City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy (Great River); Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company (ITC); ITC Midwest LLC (ITC Midwest); Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, and Northern States Power Company, subsidiaries of XcelEnergy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company (Otter Tail); 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.

the company-specific Attachment GGs, to allow for the calculation of the Network Upgrade Charge (NUC) to include an allocation factor for general and common depreciation. We accept the filing to be effective December 5, 2010, as requested, subject to a compliance filing as discussed below.

I. Background

2. In *Midwest Independent Transmission System Operator, Inc.*,² the Commission generally accepted changes to Midwest ISO's Tariff implementing cost allocation and recovery provisions for new transmission facilities developed by Midwest ISO's Regional Expansion Criteria and Benefits (RECB) task force. The RECB cost allocation provisions establish and implement a methodology for allocating and recovering the costs of certain new regionally beneficial transmission projects, the costs of which are apportioned between local and regional customers. If a project qualifies for regional cost allocation pursuant to the RECB criteria, then the annual revenue requirement associated with the project is not included in the transmission owner's Attachment O revenue requirement. Instead, the revenue requirement is calculated pursuant to a formula set forth in Attachment GG of Midwest ISO's Tariff and recovered in charges calculated and assessed under Schedule 26 of Midwest ISO's Tariff.

3. By letter order issued on October 19, 2009, the Commission accepted the currently effective Attachment GG calculation of the NUC.³ The NUC methodology uses annual allocation factors in conjunction with other cost components included on Attachment O to Midwest ISO's Tariff to compute a revenue requirement for each project eligible for cost recovery Attachment GG. The four annual allocation factors currently included in the NUC are: (1) Operation and Maintenance Expense; (2) Taxes Other Than Income Taxes; (3) Income Taxes; and (4) Return.

4. On December 30, 2009 and January 5, 2010, the Commission issued orders concerning the company-specific Attachment GG templates for Otter Tail and Great River, respectively, where the Commission required that Notes A and B of page 2 of the Attachment GG formula rate template state that CWIP must be offset by removal of a

² 114 FERC ¶ 61,106, at P 15 (2006), *order on reh'g*, 117 FERC ¶ 61,241 (2006), *order on reh'g*, 118 FERC ¶ 61,208 (2007); *Pub. Serv. Comm'n of Wis. v. FERC*, 545 F.3d 1058 (D.C. Cir. 2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 (2007), *order on reh'g*, 120 FERC ¶ 61,080 (2007), *order on reh'g*, 122 FERC ¶ 61,127 (2008).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER09-1657-000 (Oct. 19, 2009) (delegated letter order).

corresponding amount of prefunded Allowance for Funds Used During Construction (AFUDC).⁴

5. Pursuant to Attachment FF of Midwest ISO's Tariff, Midwest ISO transmission owners may choose one of two options related to the assignment of costs of the Network Upgrades⁵ associated with an interconnection request. Under "Option 1," a Midwest ISO transmission owner may choose to repay 100 percent of the costs directly assigned to an Interconnection Customer⁶ for its Network Upgrades and then assess the Interconnection Customer a monthly charge to recover 90 percent of that transmission owner's monthly Attachment GG NUC for those Network Upgrades rated 345 kV or greater and 100 percent of that transmission owners' monthly Attachment GG NUC for those Network Upgrades rated below 345 kV.⁷ Under "Option 2," the Interconnection Customer is directly assigned the Network Upgrade costs and the Midwest ISO transmission owner must repay 10 percent of the Network Upgrade costs for Network Upgrades in a voltage

⁴ *Otter Tail Power Co.*, 129 FERC ¶ 61,287, at P 48 (2009); *Great River Energy*, 130 FERC ¶ 61,001, at P 45 (2010).

⁵ Under Attachment X of the Midwest ISO Tariff, Network Upgrades is defined as "the additions, modifications, and upgrades to the Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Generation Facility(ies) to the Transmission System. Network Upgrades does not include any HVDC Facility Upgrades." Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Third Revised Sheet No. 3060.

⁶ Under Attachment X of the Midwest ISO Tariff, Interconnection Customer is defined as "any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission System." Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3058.

⁷ See Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3463; Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 3464.

class of 345 kV or greater.⁸ Under Option 2, the Interconnection Customer is not responsible for any monthly charge related to its Network Upgrades.⁹

6. Subsequent to the Commission's acceptance of the NUC in Attachment GG of Midwest ISO's Tariff, Midwest ISO and certain of its transmission owners submitted tariff revisions to include a new category of transmission projects, Multi-Value Projects (MVP), in its Tariff.¹⁰ The MVP Filing includes a proposed new Attachment MM to its Tariff to calculate the MVP Usage Rate. In addition to the four annual allocation factors discussed above, Attachment MM, as proposed, includes a General and Common Depreciation Expense as a fifth annual allocation factor. Proposed Attachment MM also requires: (i) the same test period to be used for Attachment MM as used to prepare Attachment O; (ii) projects included in Attachment MM be in-service during this test period; and (iii) transmission owners provide Midwest ISO evidence of Commission approval to include construction work in progress (CWIP), if applicable. Consistent with Attachment MM, Midwest ISO and certain of its transmission owners also recently submitted revisions to the NUC methodology in Attachment CC to the Tariff to include the General and Common Depreciation Expense as an annual allocation factor as well as the requirements discussed above.¹¹ On October 18, 2010, the Commission accepted the Attachment CC Filing.¹²

⁸ See Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3466.

⁹ ATCLLC, ITC, ITC Midwest, and METC have separate reimbursement policies under Attachment FF whereby they repay 100 percent of the costs directly assigned to an Interconnection Customer, and the Interconnection Customer is not responsible for any monthly charge related to its Network Upgrades. See *American Transmission Company LLC*, 120 FERC ¶ 61,221 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008); *Int'l Transmission Co.*, 120 FERC ¶ 61,220 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008); *ITC Midwest, LLC*, 124 FERC ¶ 61,150 (2008).

¹⁰ See Midwest ISO, Proposed Revisions to Tariff, Docket No. ER10-1791-000 (filed July 15, 2010) (MVP Filing).

¹¹ See Midwest ISO, Proposed Revisions to Tariff, Docket No. ER10-2858-000 (filed Sept. 22, 2010) (Attachment CC Filing).

¹² *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER10-2858-000 (Oct. 18, 2010) (October 18 Delegated Letter Order).

II. Description of the October 5 Filing

7. Filing Parties state that the proposed revisions are being made to the generally-applicable Attachment GG and associated templates, as well as the company-specific Attachment GG for Great River (Attachment GG-Great River) and the company-specific Attachment GG for Otter Tail (Attachment GG-Otter Tail).¹³ Filing Parties propose to modify section 3 of Attachment GG by adding an annual allocation factor for General and Common Depreciation Expense (General and Common Depreciation Allocation Factor) to permit the recovery of this depreciation expense for Attachment GG projects. Filing Parties maintain that the Attachment GG NUC methodology, the Attachment CC NUC methodology, and the Attachment MM MVP Usage Rate were all intended to use substantially similar formulae. During the development of the Attachment CC NUC and the Attachment MM MVP Usage Rate, Filing Parties explain, it was discovered that the Attachment GG annual allocation factors did not address general and common depreciation. General and common depreciation is a depreciation expense that is not directly associated with a project. Rather, it is depreciation associated with facilities and equipment that are used by the transmission owner to provide transmission service generally, such as computers or its control center.¹⁴ Because general and common depreciation is incurred as long as an Attachment GG project is in-service and is not tied to the depreciated book value of the Attachment GG project, Filing Parties assert that the General and Common Depreciation Expense Allocation Factor is computed on a gross plant basis.¹⁵

8. Filing Parties also propose to add new subsection 2(c) to Attachment GG, which requires that each Midwest ISO transmission owner and/or independent transmission company use the same test period for Attachment GG as it used in the preparation of its Attachment O. Filing Parties assert that this requirement will bring greater clarity to Midwest ISO's Tariff. Similar to the provisions proposed in Attachments CC and MM, Filing Parties state that using the same test period in Attachment GG as used in Attachment O will ensure that the revenue requirements are computed consistently.¹⁶

¹³ Transmittal Letter at 2.

¹⁴ Depreciation expense directly associated with a project is already included in Project Depreciation Expense in Column 9 on page 2 of the Attachment GG formula rate template. *Id.* at 4 n.13.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 4-5.

9. In addition, Filing Parties propose to add a new section 2(d) to Attachment GG. They state that this section requires Attachment GG projects to be in-service prior to or during the test period. Under this requirement, Filing Parties state that Midwest ISO transmission owners and/or independent transmission companies must submit evidence of Commission approval prior to including CWIP for projects not in-service. Filing Parties maintain that this provision clarifies the responsibility of the Midwest ISO transmission owner and/or independent transmission company if it desires to recover CWIP for projects not in-service. Filing Parties also state that this provision requires that projects must be included in Appendix A of the Midwest ISO Transmission Expansion Plan (MTEP) for CWIP to be recovered for an Attachment GG project not in-service. Appendix A of the MTEP includes the cost allocations for Attachment GG projects and, as Filing Parties explain, such a cost allocation is necessary for recovery of Attachment GG costs.¹⁷

10. Filing Parties also propose to incorporate, in Notes A and B of the Attachment GG formula rate template, language clarifying that CWIP must be offset by removal of a corresponding amount of prefunded AFUDC. Filing Parties propose to address this issue in the general Attachment GG formula rate template by adding the words “less any prefunded AFUDC, if applicable” at the end of Notes A and B. Filing Parties maintain that these changes are consistent with the Commission’s orders concerning Attachment GG-Great River and Attachment GG-Otter Tail.¹⁸

11. Filing Parties also propose several “clean-up” revisions to correct missing words, incorrect references, incorrect calculations, or otherwise clarify language in Attachment GG.¹⁹ Finally, Filing Parties request an effective date of December 5, 2010.

III. Notice of Filing and Responsive Pleadings

12. Notice of the October 5 Filing was published in the *Federal Register*, 75 Fed. Reg. 63,452 (2010), with interventions and protests due on or before October 26, 2010.

13. American Municipal Power, Inc. and Consumers Energy Company filed timely motions to intervene. Wisconsin Electric Power Company and NextEra Energy Resources, LLC filed untimely motions to intervene. Southwestern Electric Cooperative, Inc. (Southwestern Coop) filed a timely motion to intervene and comments. enXco

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 8.

Development Corporation (enXco) filed a timely motion to intervene, comments and limited protest. Iberdrola Renewables, Inc. and Invenergy Wind Development LLC (collectively, Iberdrola-Invenergy) filed a joint motion to intervene out-of-time and limited protest. On November 10, 2010, Midwest ISO Transmission Owners filed an answer to Southwestern Coop's comments and enXco's and Iberdrola-Invenergy's limited protests. In addition, enXco filed an answer to Midwest ISO Transmission Owners' answer on November 15, 2010.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant the late-filed motions to intervene given the parties' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest and answer to an answer unless otherwise ordered by the decisional authority. We will accept Midwest ISO Transmission Owners' answer and enXco's answer to Midwest ISO Transmission Owners' answer because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

16. The Commission conditionally accepts for filing the Filing Parties' proposed revisions to the generally-applicable Attachment GG formula rate template and the company-specific Attachment GG formula rate templates for Great River and Otter Tail, subject to a compliance filing to be submitted within 30 days from the date of this order, as discussed below.

17. The Commission finds that Filing Parties' proposal to clarify Midwest ISO's Tariff by requiring each Midwest ISO transmission owner and/or independent transmission company to use the same test period for Attachment GG as it used in the preparation of its Attachment O, as modified below, is just and reasonable. The Commission also finds that the clarifying language in Notes A and B of the generally-applicable Attachment GG formula rate template, adding the words "less any prefunded AFUDC, if applicable," is just and reasonable. In addition, the language added to clarify that projects included in Attachment GG must be in-service prior to or during the test

period, and that the Midwest ISO transmission owner and/or independent transmission company must submit evidence of Commission approval prior to including CWIP for projects not in-service properly details the responsibilities of a Midwest ISO transmission owner and/or independent transmission company if it desires to recover CWIP for projects not in-service. Likewise, it is appropriate to include within this provision the requirement that projects must be included on Appendix A of the MTEP for CWIP to be recovered for an Attachment GG project not in-service, as inclusion in Appendix A is necessary for a project to be eligible for regional cost sharing. Finally, as discussed below, we find the proposed modifications to include an allocation factor for general and common depreciation to be just and reasonable. Accordingly, we conditionally accept the proposed revisions to become effective December 5, 2010, as requested, and order a compliance filing.

1. Protocols

a. Comments and Protests

18. Southwestern Coop asserts that Attachment GG lacks clear protocols allowing customers to investigate and challenge the costs that will flow through the Attachment GG formula rate. Because Attachment GG is a formula rate for computing transmission rates, Southwestern Coop argues that Attachment GG should have clear protocols to give customers the ability to understand and ultimately challenge inputs to the formula rate. Southwestern Coop states that the Commission has underscored the importance of transparency and customer safeguards in formula rate protocols.²⁰ Not only does Attachment GG lack the necessary protocols, Southwestern Coop states that the general plant costs at issue in this proceeding raise special concerns with respect to the ability of customers to ensure that the proper costs are being passed on to them because general plant costs cannot be attributed to a single project. Southwestern Coop argues that it is very important to assure that in the disguise of general and common plant and expenses, undue and unreasonable costs are not shifted from unregulated to regulated business. Therefore, Southwestern Coop requests that the Commission direct Midwest ISO to adopt customer challenge protocols relative to these costs in Attachment GG.²¹

²⁰ Southwestern Coop Comments at 5 (citing *Idaho Power Co.*, 115 FERC ¶ 61,281, at P 29 (2006); *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 48 (2008)).

²¹ *Id.* at 4-6.

b. Answer

19. In its response to Southwestern Coop's argument that Attachment GG should have clear customer challenge protocols, Midwest ISO Transmission Owners state that this is simply a collateral attack on the Commission's order accepting Attachment GG, which did not include the protocols that Southwestern Coop requests. As such, Midwest ISO Transmission Owners assert that the Commission should reject this request. Moreover, Midwest ISO Transmission Owners argue that the proposal merely adds an allocation factor for general and common depreciation and the Commission should not permit Southwestern Coop to use the addition of this allocation factor to bootstrap a requirement of protocols for an already-effective Attachment GG. If Southwestern Coop believes that a particular Midwest ISO transmission owner is shifting costs from unregulated to regulated business, Midwest ISO Transmission Owners state that Southwestern Coop should utilize the dispute resolution procedures available under Midwest ISO's Tariff or file a complaint with the Commission.²²

c. Commission Determination

20. The Commission agrees with Southwestern Coop that it is important to ensure that costs are not improperly shifted from unregulated to regulated businesses.²³ However, the Commission is not persuaded to require Filing Parties to revise the proposed Attachment GG to include additional protocols related to the general and common plant and other costs that are or will be collected under Schedule 26 of Midwest ISO's Tariff. As discussed below, the existing protocols and processes under Midwest ISO's Tariff are sufficient to afford customers an opportunity to determine the costs that they are being charged and to challenge them.

21. The generally-applicable, as well as the company-specific, Attachment O and Attachment GG of Midwest ISO's Tariff work together to calculate charges associated with projects approved through the MTEP. Attachment O includes a formula rate used to calculate a company's rates for charges under Schedules 7, 8, and 9 of Midwest ISO's Tariff for service over a company's facilities. Attachment O calculates total cost of transmission service less costs recovered under other schedules and rate formula attachments in Midwest ISO's Tariff.

22. Attachment GG is used to recover the costs of projects that qualify for regional cost sharing under Attachment FF of Midwest ISO's Tariff and is used to calculate a

²² Midwest ISO Transmission Owners Answer at 9.

²³ See *Panhandle Eastern Pipe Line Co., v. FPC*, 324 U.S. 635, 641 (1945).

company's transmission service charges under Schedule 26 of Midwest ISO's Tariff, which are in addition to any charges under Schedules 7, 8, and 9. Attachment GG also is used to calculate and recover costs from Interconnection Customers associated with Network Upgrades required to interconnect generation stations to the Transmission System. As modified, Attachment GG applies fixed charge rates, reflecting average company costs (e.g., return, income taxes, taxes other than income, general and common plant, and operating and maintenance expenses), to project plant investment and adds depreciation. Costs for projects recovered using Attachment GG are then treated as reductions to Attachment O to avoid double recovery. These fixed charge rates reflect plant and labor allocators that are widely used in Commission-approved rates to functionalize and allocate costs among various facilities, as discussed below, in order to ensure that customers pay their fair share of costs associated with the services they receive without subsidizing other services or customers.

23. As revised, Attachment GG uses inputs from the applicable company's Attachment O to determine the annual allocation factors for: (1) Operation and Maintenance Expense; (2) Taxes Other Than Income Taxes; (3) Income Taxes; (4) General and Common Depreciation Expense; and (5) Return.²⁴

24. Each Midwest ISO transmission owner annually submits its Attachment O inputs to Midwest ISO for review and approval. These inputs are based on publically available data (e.g., FERC Form No. 1, Rural Utilities Service Form No. 12, or Energy Information Administration Form No. 412).²⁵ Once Midwest ISO completes its review, Midwest ISO provides the information on its website. This process sufficiently allows Midwest ISO's customers to have access to the information used to calculate their rates. The Commission has previously found that the update protocols of Midwest ISO's Tariff for Attachment O are sufficient without the need for additional company-specific protocols

²⁴ For example, as modified, to determine the General and Common Depreciation Allocation Factor, page 1, line 5, column 2 of Attachment GG adds together the General and Common Depreciation expenses, located on page 3 lines 10 and 11 of Attachment O, respectively, and divides this Total General and Common Depreciation Expense by Gross Transmission Plant-Total, on page 1, line 1, column 3 of Attachment GG, which is pulled directly from page 2, line 2, column 5 of Attachment O. The annual allocation factors for Operating and Maintenance Expense and Taxes Other Than Income Taxes are calculated in a similar manner. These three allocation factors are then summed together, and used on page 2, column 4 of Attachment GG to assess a cost for each of these to a particular project.

²⁵ See Attachment O Formulaic Rates Description Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 2622.

for its Attachment O.²⁶ In addition, in previous filings made by Midwest ISO transmission owners; the Commission has found that formula rates using the Midwest ISO Attachment O formula template are just and reasonable.²⁷

25. Similarly, though the instant proceeding concerns a modification to Attachment GG, the inputs used in Attachment GG that determine the annual allocation factors are based upon the inputs contained in the applicable Midwest ISO transmission owner's Attachment O. We find that the protocols in Attachment O are sufficient to allow customers, such as Southwestern Coop, the ability to review and challenge the rate inputs submitted in Attachment GG. The only inputs into Attachment GG that are not from Attachment O are the costs of the individual projects, which Midwest ISO verifies, and whose accuracy Southwestern Coop has not questioned. In addition, as Midwest ISO Transmission Owners state, the current filing merely adds an allocation factor for general and common depreciation. As such, the addition of a new allocation factor to the currently effective Attachment GG does not warrant requiring additional protocols. If Southwestern Coop, or any other customers, desire additional information about the inputs being used in Attachment GG, the Commission encourages Midwest ISO and Midwest ISO transmission owners to work with such customers. To the extent Southwestern Coop is still unsatisfied, the Commission agrees with Midwest ISO Transmission Owners that Southwestern Coop can utilize the dispute resolution procedures available under Midwest ISO's Tariff or file a complaint with the Commission.

26. Therefore, no additional protocols are required for Attachment GG to ensure that just and reasonable rates are being charged to customers. In addition, for those Midwest ISO transmission owners for whom the Commission has accepted the use of forward-looking test periods, company-specific Annual True-Up Procedures for Attachment GG detail how the projected inputs are determined and shared with customers, and stipulate that the projected information used in Attachment GG is the same projected information used in Attachment O. These company-specific Annual True-Up Procedures provide customers with an ability to review these projected values, as well as any adjustments to the revenue requirement relating to the difference between a projected revenue requirement and the actual revenue requirement, as determined by historical data reported publically, and have already been found to be just and reasonable.

²⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,047, at P 32 (2009).

²⁷ *See, e.g., Int'l Transmission Co.*, 116 FERC ¶ 61,036 (2006).

2. Forward-Looking Test Period Clarification

a. Comments and Protests

27. Southwestern Coop argues that Filing Parties' proposed revisions may allow the use of forward-looking test years without prior approval by the Commission. Southwestern Coop maintains that the blanket language incorporating the depreciation component of the NUC²⁸ without qualification appears to permit a Midwest ISO transmission owner to use either actual booked values or projected values without regard to the fact that the Commission must approve the use of a forward-looking test period in connection with Midwest ISO's Tariff.²⁹ For this reason, Southwestern Coop requests that the Commission direct Midwest ISO to revise the language to clarify that a forward-looking test period is only available to those Midwest ISO transmission owners for which the Commission has granted use of a forward-looking test period.³⁰

b. Answer

28. With regard to Southwestern Coop's argument that the proposed language permits Midwest ISO transmission owners to use forward-looking test periods without Commission approval, Midwest ISO Transmission Owners respond that the revision simply acknowledges that some Midwest ISO transmission owners have received Commission authorization to use forward-looking test periods and does not by itself authorize the use of forward-looking test periods. Midwest ISO Transmission Owners add that Filing Parties included the same language in section 3(a)(x)(c) of the Attachment CC Filing and section 3(a)(x)(3) of Attachment MM in the MVP Filing,³¹ and the

²⁸ The depreciation component of the NUC is incorporated, as revised, by stating: "Depreciation Expense equals the actual value booked, or projected to be booked for forward-looking rate periods, for the project and included in Attachment O, Page 3, Line 12, column 5" (revisions underlined). See Midwest ISO, Electric Tariff, Attachment GG, § 3(a)(x)(c), 1.0.0.

²⁹ Southwestern Coop Comments at 6 (citing *e.g.*, *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 50-56 (2007)).

³⁰ *Id.*

³¹ Midwest ISO Transmission Owners Answer at 10 (citing Midwest ISO, FERC Electric Tariff, Attachment CC, § 3(a)(x)(c), 1.0.0; Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3783).

Commission recently accepted the Attachment CC revisions.³² Therefore, Midwest ISO Transmission Owners assert that this language needs no clarification.

c. Commission Determination

29. The Commission agrees with Southwestern Coop that Filing Parties' revision of section 3(a)(x)(c) of Attachment GG, proposed as part of the "clean-up" edits, lacks proper qualification. Filing Parties state that one purpose of this filing is to clarify that each Midwest ISO transmission owner and/or independent transmission company must use the same test period for Attachment GG purposes as it used for the preparation of its Attachment O.³³ Although Midwest ISO Transmission Owners clarify in their answer that this language simply acknowledges that some Midwest ISO transmission owners have received Commission authorization to use forward-looking test periods, this clarification needs to be in Midwest ISO's Tariff. Accordingly, we direct Filing Parties to revise section 3(a)(x)(c) of Attachment GG, clarifying that projected forward-looking rate period values can only be used to the extent that a Midwest ISO transmission owner and/or independent transmission company has received Commission approval to use a forward-looking test period to determine Attachment O rates, to be submitted in the compliance filing ordered below, within 30 days from the date of this order.

3. General and Common Depreciation Allocation Factor

a. Comments and Protests

30. enXco and Iberdrola-Invenenergy argue that it is unjust and unreasonable to require an Interconnection Customer to shoulder the burden of an expense that is not directly associated with a project as part of a NUC for Network Upgrades associated with an interconnection request.³⁴ enXco supports Filing Parties' goal of harmonizing the NUC

³² *Id.* (citing October 18 Delegated Letter Order).

³³ Transmittal Letter at 4.

³⁴ enXco Comments and Limited Protest at 3; Iberdrola-Invenenergy Limited Protest at 4. Iberdrola-Invenenergy also has recently questioned the justness and reasonableness of Midwest ISO giving the Transmission Owner the choice between Option 1 and Option 2. Choosing Option 1, Iberdrola-Invenenergy states, shifts from a lump-sum payment of costs to charging incremental costs over a long period to time, introducing significant cost uncertainty for an Interconnection Customer since the monthly rate is calculated only after the Network Upgrades go into service and can change annually. Iberdrola-

(continued...)

methodology for project costs to be spread by Midwest ISO and believes that the General and Common Depreciation Allocation Factor is an appropriate cost to be included in such charges. Furthermore, enXco states that inclusion of this charge appears to be just and reasonable as this charge is assessed by Midwest ISO transmission owners to other Midwest ISO transmission owners and such costs are eventually paid by all users of the Midwest ISO transmission system. However, enXco argues that Interconnection Customers should not be forced to bear the burden of a cost to provide transmission service generally.³⁵

31. enXco and Iberdrola-Invenenergy argue that, by Filing Parties' own admission, general and common depreciation expenses are not directly associated with a generator interconnection project; and that if general and common depreciation is not tied to such a project, it is not a cost incurred "but for" that project.³⁶ Because the General and Common Depreciation Factor patently fails the "but for" test, enXco asserts, it would be unjust and unreasonable for Midwest ISO to incorporate the General and Common Depreciation Factor into the NUC Charge under Option 1.³⁷ According to enXco, it is incongruous to directly assign to an Interconnection Customer certain costs that are incurred for the operation of the system as a whole if these costs were not incurred but for the generator interconnection.³⁸

Invenenergy Limited Protest at 4 (citing Invenenergy Wind Dev. LLC et al., Motion for Leave to Answer and Answer, Docket No. ER10-1791-000, at 3-7 (filed Nov. 2, 2010)).

³⁵ enXco Comments and Limited Protest at 7.

³⁶ enXco Comments and Limited Protest at 7; Iberdrola-Invenenergy Limited Protest at 4.

³⁷ enXco Comments and Limited Protest at 7-8 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 694 n.112 (2003) (Order No. 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)).

³⁸ *Id.* at 8 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 696. Though enXco takes no position on the other allocation factors, including Operation and Maintenance, and Taxes Other Than Income Taxes, it encourages the Commission to review the justness and reasonableness of the inclusion of these charges in the Attachment GG NUC methodology. *Id.* at 8, n.19.

32. In addition, enXco states that the computation of the General and Common Depreciation Factor on a gross plant basis does not accurately reflect the incremental cost of general and common depreciation due to any particular Network Upgrade.³⁹

According to enXco, calculating the General and Common Depreciation Factor on a gross plant basis only reflects the general and common depreciation as a factor of total gross plant, not general and common depreciation on the incremental additional system-wide costs incurred but for the Network Upgrade.⁴⁰

33. Moreover, enXco asserts that Filing Parties provide no explanation as to why the calculation of the General and Common Depreciation Factor on a gross plant basis properly identifies the “but for” costs incurred due to a generator interconnection project. enXco further claims that depreciation expenses directly associated with Network Upgrades are already included in the project depreciation expense portion of Attachment GG and it is not likely that there are additional incremental general and common depreciation expenses incurred on a dollar for dollar basis with the growth of gross plant.⁴¹ enXco states that if this were the case, there would be no economies of scale ever possible for the transmission system. enXco maintains that Filing Parties fail to justify the inclusion of the General and Common Depreciation Factor as a fixed charge in the Attachment GG formula, calculated on a gross plant basis, as just and reasonable when charged solely to an Interconnection Customer.⁴²

34. Additionally, even if the “but for” test is not applicable because the Commission considers the Option 1 NUC a rate for interconnection service, and not a direct assignment of costs, enXco states that the same argument still applies. enXco argues that calculation of the General and Common Depreciation Factor on a gross plant basis does not properly identify the proper incremental cost to be charged to the Interconnection Customer pursuant to Option 1 for the same reasons.⁴³ However, enXco states that it does not purport to know an appropriate method for calculating and allocating general and common depreciation expenses to Interconnection Customers. Instead, enXco maintains that the burden is on Filing Parties to develop such an allocation and support it

³⁹ *Id.* at 7.

⁴⁰ enXco Comments and Limited Protest at 7, 9.

⁴¹ *Id.* at 8.

⁴² *Id.* at 9.

⁴³ *Id.*

as a proposed Midwest ISO Tariff amendment. enXco states that the difficulty in determining such a method underlies the unjustness and unreasonableness of using the Attachment GG formula to charge a NUC to Interconnection Customers under Option 1.⁴⁴

35. enXco states that system-wide costs are properly allocated on a system-wide basis and, in fact, to the extent a transmission owner incurs costs pursuant to Option 2, those costs are allocated on a system-wide basis pursuant to Attachment GG. According to enXco, Option 1 and Option 2 do not provide a choice between incremental costs and embedded costs; they provide a choice between incremental costs and direct assignment of costs. enXco states that this generator interconnection cost allocation was not intended by the Commission in Order No. 2003, and is not just and reasonable under the independent entity standard.⁴⁵

b. Answers

36. Midwest ISO Transmission Owners maintain, in their answer, that incorporating the General and Common Depreciation Allocation Factor into Attachment GG is just and reasonable. Midwest ISO Transmission Owners state that the General and Common Depreciation Allocation Factor allocates a share of depreciation to Attachment GG projects for facilities and equipment used to provide transmission service generally. Midwest ISO Transmission Owners add that this depreciation includes the overhead for control centers, computers, and other equipment required to operate the transmission system, of which the generator interconnection facilities are a part. Midwest ISO Transmission Owners argue that the Commission has long recognized that general and common plant depreciation is appropriately included in rates.⁴⁶ Furthermore, Midwest ISO Transmission Owners assert that absolving interconnection customers from paying the depreciation associated with general and common plant needed to operate the transmission system would place an unfair burden on other transmission customers to pay

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Midwest ISO Transmission Owners Answer at 5 (citing *e.g.*, *Niagara Mohawk Power Corp.*, 92 FERC ¶ 61,168, at 61,575-576 (2000); *Utah Power & Light Co.*, 44 FERC ¶ 61,166, at 61,549 (1988); *Delmarva Power & Light Co.*, 17 FERC ¶ 63,044, at 65,034 (1982)).

for this depreciation. The proposal, Midwest ISO Transmission Owners state, equitably places the responsibility for general and common plant costs on all customer classes.⁴⁷

37. In addition, Midwest ISO Transmission Owners argue that enXco's and Iberdrola-Invenegy's protests regarding Midwest ISO transmission owners' choice between Option 1 and Option 2 is beyond the scope of this proceeding. The Commission previously accepted the right of Midwest ISO transmission owners to choose either Option 1 or Option 2 for the costs directly assigned to an Interconnection Customer for its Network Upgrades in Attachment FF of Midwest ISO's Tariff. Furthermore, Midwest ISO Transmission Owners state that Filing Parties did not propose any changes to Attachment FF in this proceeding.⁴⁸

38. Finally, Midwest ISO Transmission Owners assert that the Commission should reject enXco's argument that the other allocation factors calculated on a gross plant basis in Attachment GG also fail the "but for" test. Midwest ISO Transmission Owners state that this challenge is outside the scope of this proceeding, which enXco concedes in its protest, and constitutes a collateral attack on the Commission's order accepting these allocation factors in Attachment GG on a gross plant basis.⁴⁹

39. In its answer, enXco reiterates that adding general and common plant on a gross plant basis to the NUC fails the "but for" test. Even if general and common depreciation expenses should be allocated to Interconnection Customers as part of a charge associated with Network Upgrade, enXco states, Midwest ISO Transmission Owners have not shown that allocating such costs to Interconnection Customers on a gross plant basis is just and reasonable. enXco asserts that the amount of common and general depreciation that would be allocated to Interconnection Customers under Option 1, if allocated on a gross plant basis, is not equal to, but is instead greater than, the amount of general and common depreciation expenses incurred "but for" any Network Upgrades. Accordingly, enXco states that this is one reason why the proposal fails the "but for" test.⁵⁰ Furthermore, enXco states that allocating general and common depreciation on a gross plant basis to Interconnection Customers forces Interconnection Customers to bear a portion of the system-wide expenses that are likely greater than the expenses incurred but

⁴⁷ *Id.* at 6.

⁴⁸ *Id.* at 6-7.

⁴⁹ *Id.* at 7-8.

⁵⁰ enXco Answer at 2-3.

for any Network Upgrade. enXco states that the proposal, in essence, shifts an additional portion of system-wide costs from the Midwest ISO transmission owners' wholesale and retail customers to Interconnection Customers. According to enXco, this situation is ripe for discriminatory application, especially when the transmission owner makes the election under Attachment FF rather than Midwest ISO.⁵¹

40. In addition, enXco argues that its request that the Commission deny the inclusion of the general and common depreciation factor in charges to Interconnection Customers under Option 1 is not a collateral attack on the currently effective Attachment GG of Midwest ISO's Tariff that provides Midwest ISO transmission owners the ability to choose either Option 1 or Option 2 to assign the costs of Network Upgrades associated with an interconnection request. Rather, enXco points out that discussion of Option 1 and Option 2 and how they are unjust and unreasonable is necessary to make clear the unjustness and unreasonableness of adding general and common depreciation expenses to the NUC for Option 1. Also, enXco states that it is possible that the transmission owners' election under Attachment FF was not specifically addressed by the RECB orders given the breadth of the issues and revisions proposed in those proceedings. enXco asserts that the Commission is empowered to review the entire Option 1 and Option 2 construct if the Commission believes the construct is unjust and unreasonable. Accordingly, enXco asserts that its request falls within the scope of the instant proceeding.⁵²

c. Commission Determination

41. With regard to enXco's claim that the General and Common Depreciation Factor fails the "but for" test, the Commission found in Order No. 2003 that independent transmission providers, such as Midwest ISO, may adopt participant funding to recover from Interconnection Customers the cost of Network Upgrades associated with their interconnection service.⁵³ To determine the incremental Network Upgrades needed to interconnect generators, or a group of generators, the Commission employs a "but for" approach which limits the cost responsibility of an Interconnection Customer to the cost of upgrades that would not be necessary but for the interconnection of the customer.⁵⁴

⁵¹ *Id.* at 3.

⁵² *Id.* at 4-5.

⁵³ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 699.

⁵⁴ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,165, at P 20 (2010).

Once the incremental facilities needed to provide interconnection service are determined using the “but for” standard, charges for such facilities may reflect all of the transmission owner’s costs associated with the facilities, including operation and maintenance and overhead costs, as is typically the case with Commission-approved direct-assignment facilities charges.⁵⁵ As Midwest ISO Transmission Owners state in their answer, the General and Common Depreciation Allocation Factor allocates a share of general and common plant depreciation to Attachment GG projects for facilities and equipment used to provide transmission service generally. It is reasonable that all transmission customers share the cost of general and common depreciation of plant used to provide transmission services for each customer, including Interconnection Customers. As discussed in more detail below, because these costs cannot be directly assigned to any particular transmission facility or service, they, therefore, require a general allocator, such as gross plant ratios, to reasonably determine the amount attributable to each facility or service.

42. We disagree with enXco’s assertion that the proposed modifications to include the General and Common Depreciation Allocation Factor is an attempt by the Midwest ISO transmission owners to shift some additional portion of system-wide costs from their existing wholesale and retail customers to Interconnection Customers. As Midwest ISO Transmission Owners state, their proposal to require Interconnection Customers to pay the depreciation associated with general and common plant needed to operate the transmission system, including the relevant interconnection-related Network Upgrades, equitably places the responsibility for general and common plant costs on all customer classes.

43. In its protest and in its answer, enXco suggests that an allocation on a gross plant basis does not capture the incremental general and common depreciation expense associated with Network Upgrades because general and common depreciation expenses are not incurred on a dollar for dollar basis with gross plant. However, the proposed General and Common Depreciation Allocation Factor is not an attempt to capture the incremental general and common depreciation expense associated with Network Upgrades. Rather, as Midwest ISO Transmission Owners state in their answer, the purpose is to place responsibility for general and common plant cost on all customer classes. As general and common plant depreciation tends to remain relatively stable over

⁵⁵ For example, section 10.5 of the Commission’s *pro forma* Large Generator Interconnection Agreement provides that the Interconnection customer shall be responsible for all reasonable expenses, including overheads, associated with owning, operating, maintaining, repairing, and replacing interconnection facilities. Order No. 2003, FERC Stats. & Regs. ¶ 31,146, Appendix C at 30,649.

time, and is incurred as long as a Network Upgrade is in-service, we find that it is appropriate to use gross plant to develop the General and Common Depreciation Factor.

44. Finally, enXco argues that using the Attachment GG formula to charge a NUC to Interconnection Customers under Option 1 is unjust and unreasonable. Further, in enXco's answer, it argues that the proposal treats similarly situated Interconnection Customers in a discriminatory manner because system-wide costs are not allocated to those Interconnection Customers for whom Option 2 has been elected. We find that these issues are outside the scope of the instant proceeding. In accepting the currently effective Attachment FF, which includes Option 1 and Option 2, the Commission found Attachment FF to be just and reasonable, and we will not revisit that decision here.

4. Effective Date

a. Comments and Protests

45. Southwestern Coop states that the requested effective date for the proposed revisions requires clarification due to the fact that the transmission rates, including the NUC, are revised every year on June 1st. For this reason, Southwestern Coop requests that the Commission specify that the tariff provisions revising Attachment GG may be accepted on December 5, 2010, but will go into effect on June 1, 2011.⁵⁶

b. Answer

46. Midwest ISO Transmission Owners respond that Filing Parties properly calculated the effective date as 60 days after the date of filing, in accordance with the Commission's regulations. In addition, Midwest ISO Transmission Owners state that the requested effective date in no way changes Midwest ISO's Tariff procedure specifying that rates are recalculated on June 1 each year, and Southwestern Coop alleges no harm caused by the requested effective date. Moreover, Midwest ISO Transmission Owners state that Midwest ISO transmission owners with forward-looking test periods update their rates on January 1 each year. Accordingly, the requested effective date, Midwest ISO Transmission Owners argue, will place all stakeholders on notice of the changes at the earliest possible moment and allow Midwest ISO transmission owners to make the necessary adjustments to their revenue requirement calculations at their next rate update, which is either January 1 or June 1.⁵⁷

⁵⁶ *Id.* at 7.

⁵⁷ Midwest ISO Transmission Owners Answer at 10-11.

c. **Commission Determination**

47. The Commission is not persuaded by Southwestern Coop's comment that additional specification is required relating to the effective date of the revisions to Attachment GG. Southwestern Coop seems to suggest that transmission rates that include the NUC are only revised annually on June 1.⁵⁸ However, this overlooks the fact that generally, Attachment O and the corresponding rates are updated two times per year. Rates are updated and effective June 1 for Midwest ISO transmission owners using the standard Attachment O templates and January 1 for Midwest ISO transmission owners that have Commission approval to use a calendar year tariff structure. As Midwest ISO Transmission Owners highlight in their answer, all Midwest ISO transmission owners whose rates are updated January 1 utilize Commission-approved company-specific Attachment O templates, and have received Commission approval to use forward-looking test period. As stated above, Attachment O of Midwest ISO's Tariff is the template designated to capture information necessary to calculate transmission rates, in whole or in part, for Schedules 7, 8, and 9, and through Attachment GG, Schedule 26. As the requested effective date of December 5, 2010 is consistent with the Commission's notice requirement,⁵⁹ and will allow the same test period to be used for both Attachment O and Attachment GG for those Midwest ISO transmission owners that have Commission approval to use forward-looking test periods, the Commission conditionally accepts Filing Parties' modifications to Attachment GG, to be effective on December 5, 2010, as requested.

The Commission orders:

(A) Filing Parties' revisions to the generally applicable Attachment GG formula rate template of Midwest ISO's Tariff, as well as the company-specific Attachment GG formula rate templates for Great River and Otter Tail, are hereby conditionally accepted for filing, to be effective December 5, 2010, as requested, as discussed in the body of this order.

⁵⁸ Southwestern Coop Comments at 7.

⁵⁹ See 18 C.F.R. § 35.3 (2010).

(B) Filing Parties are hereby directed to make a compliance filing, due within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.