129 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Midwest Independent Transmission System Operator, Inc. and The Midwest ISO Transmission Owners	Docket No. ER09-1431-000

ORDER CONDITIONALLY ACCEPTING TARIFF AMENDMENTS
AND DIRECTING COMPLIANCE FILING

(Issued October 23, 2009)

1. On July 9, 2009, as supplemented on September 17, 2009, and on September 18, 2009,[1] pursuant to section 205 of the Federal Power Act (FPA),[2] Midwest Independent Transmission System Operator, Inc. and the Midwest ISO Transmission Owners[3] (collectively, Filing Parties) filed proposed amendments to Midwest ISO's

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[1] The September 17 filing is a response to a deficiency letter. The September 18 filing is an errata to the September 17 response.

[2] 16 U.S.C. § 824d (2006).

[3] For the purpose of this filing, the Midwest ISO Transmission Owners are Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; 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.; Indianapolis Power & Light Company; Manitoba Hydro; 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

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Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)[4] to revise the method for allocating the cost of network upgrades for generation interconnection projects meeting Midwest ISO's regional expansion criteria and benefits (RECB) standards. As discussed below, we conditionally accept the proposed amendments to the Tariff and provide guidance to help inform the ongoing discussions related to Filing Parties' Phase II cost allocation evaluation. We direct Filing Parties to make a compliance filing (1) to fulfill their commitment to file superseding Tariff revisions regarding the Phase II cost allocation methodology on or before July 15, 2010; and (2) to reflect certain conforming changes to the Tariff. In addition, we accept Filing Parties' offer that they provide the Commission with reports on the status of the Phase II stakeholder process, but we require that these informational reports be submitted on November 20, 2009, February 26, 2010 and May 28, 2010 rather than thirty days after the end of each calendar quarter.

2. We recognize that cost allocation is one of the most difficult and contentious issues facing the Midwest ISO region at this time. Midwest ISO and other interested parties, including state regulators, load-serving entities, transmission owners, project developers, generators and other stakeholders have been working for months on issues concerning regional planning and cost allocation to address the issues raised by this filing and surrounding the integration of substantial amounts of new generation to meet the region's need for renewable power. We find that Filing Parties have proposed a reasonable interim approach to resolve the significant impacts resulting from the current cost allocation, as discussed further herein, and have developed a reasonable plan to implement a longer term solution.

I. <u>Background</u>

3. In Order No. 2003, the Commission established a *pro forma* tariff requirement under which interconnecting generators would initially fund 100 percent of the cost of interconnection-related network upgrades, and such costs would be reimbursed to the generator through credits against transmission service charges when the generator commenced commercial operation. However, the Commission recognized in Order No. 2003 that regional transmission organizations (RTOs) and independent system operators (ISOs) could propose alternative allocation methodologies for the costs of network upgrades associated with the generator interconnection,[5] and the Commission

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Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

[4] Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1.

[5] *Standardization of Generator Interconnection Agreements and Procedures,*

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encouraged Midwest ISO, when it acted on the Midwest ISO Order No. 2003 compliance filing,[6] to work with stakeholders to develop a network upgrade pricing policy honoring the principle that network upgrades should be paid for by the parties that cause and benefit from such upgrades.[7] As accepted by the Commission in 2006,[8] Midwest ISO incorporated language into its Tariff requiring the interconnection customer to pay the entire cost of network upgrades upfront. The Tariff provides that if, at the time the interconnection customer achieves commercial operation, the interconnection customer demonstrates that the generator has been designated as a network resource or committed by contract of at least one year to supply capacity or energy to a network customer, then 50 percent of the costs of the network upgrades for the generation interconnection project will be repaid to the interconnection customer.[9]

4. Under this methodology, the repayment to the interconnection customer is allocated based on voltage level and modeled flow impacts. For facilities rated 345 kV and above, 20 percent of the cost of the repayment to the interconnection customer is allocated to all Midwest ISO pricing zones on a system-wide basis and 80 percent is

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Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 26, 28, 34, 92, 147, 177, 822-824, 827 (2003) (establishing default methodology, but allowing parties – especially RTOs and ISOs – to propose different approaches), *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).

[6] *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027 (Order No. 2003 Compliance Order), *order on reh'g*, 109 FERC ¶ 61,085 (2004).

[7] Order No. 2003 Compliance Order, 108 FERC ¶ 61,027 at P 38.

[8] *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (RECB I Order), *order on reh'g*, 117 FERC ¶ 61,241 (2006) (RECB I Rehearing Order), *aff'd sub nom. PSC of Wis. v. FERC*, 543 F.3d 1058 (D.C. Cir. 2008).

[9] Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1 at Attachment FF, section III.A.2.d, Sheet Nos. 3461-3462. The Tariff explains that this cost sharing does not apply to: "(i) a Generation Interconnection Project that is also a Baseline Reliability Project, or to the extent it includes Network Upgrades that advance a Baseline Reliability Project; or (ii) a Generation Interconnection Project located on the Transmission Facilities owned by American Transmission Company, LLC, or International Transmission Company." Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Attachment FF, section III.A.2.d, Sheet No. 3461.

allocated among pricing zones using a Line Outage Distribution Factor (LODF) method.[10] For facilities rated less than 345 kV, the entire repayment to the interconnection customer is allocated among the pricing zones based on LODF.[11]

5. After the Commission accepted the 50-50 cost sharing methodology in the RECB proceeding, American Transmission Company, LLC (ATC); ITC Transmission (ITC) and Michigan Electric Transmission Company (METC); and ITC Midwest made subsequent filings to revise the generator interconnection cost allocation methodologies in their pricing zones. For ATC, the Commission accepted a cost sharing methodology where the interconnection customer would be reimbursed for 100 percent of its interconnection-related upgrade costs provided that the interconnection customer (1) has a contractual commitment to provide capacity or energy for the generation capacity covered by the interconnection agreement for a period of at least 10 years, or (2) has a generating facility that is designated as a network resource under Midwest ISO's Tariff.[12] For ITC/METC and ITC Midwest, the Commission accepted a cost sharing methodology where the interconnection customer would be reimbursed for 100 percent of its interconnection related upgrade costs provided that (1) the generating facility has been designated as a network resource under Midwest ISO's Tariff, or (2) the generating facility has a contractual commitment to provide capacity or energy for a period of one year or longer.[13]

6. In its August 2008 report on its experience with the RECB cost allocation methodology,[14] Midwest ISO reported to the Commission that many stakeholders were

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[10] Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Sheet No. 3467.

[11] *Id.* at Attachment FF, section III.A.2.c.i. The LODF method considers the flow effects of a given facility's outage on transmission facilities in each pricing zone, also taking into account the length of each affected transmission facility.

[12] *Am. Transmission Company LLC.*, 120 FERC ¶ 61,221 (2007) (ATC Order), *reh'g denied*, 123 FERC ¶ 61,065 (2008).

[13] *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).

[14] *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 (RECB II Order), *order on reh'g*, 120 FERC ¶ 61,080 (2007) (RECB II Rehearing Order). In the RECB II Rehearing Order (at P 9), the Commission directed Midwest ISO to make reports by August 2008 and August 2009 that analyze "the effectiveness of all the transmission expansion cost allocation methodologies."

dissatisfied with the current rules and had wide-ranging views on suggested further changes to those rules.[15] Midwest ISO added that some transmission owners were so concerned about the impact of the allocation rules that they might withdraw from the Midwest ISO. As a result, Midwest ISO recommended a continued review of unanticipated consequences of RECB, and consideration of a possible solution, through the RECB Task Force. Midwest ISO indicated that such discussions would be guided by the Commission's policy under Order No. 890 favoring cost allocation rules "generally supported by state authorities and participants across the region."[16]

II. The Filing

7. Filing Parties state that their filing is designed to provide an interim solution to the unanticipated and inequitable consequences of application of the currently effective cost allocation rules that tend to allocate a large share of generator interconnection-related network upgrade costs to the pricing zone where a new generator interconnects. According to Filing Parties, the flow effects measured by LODF result in the allocation of upgrade costs being highest in the zone where the upgrades are constructed and diminishing with distance from that zone.[17] As a result, Filing Parties state, the current LODF approach imposes disproportionate costs on loads in the pricing zones where new generation locates, when the pricing zone in question has high levels of new generation concentration relative to its load. Specifically, Filing Parties point to the current situation where there is 12.7 MW of interconnection requests for every 1 MW of load in Otter Tail Power Company's (Otter Tail) zone.[18] Similarly, Filing Parties report that the ratio is 4.7 to 1 in Montana-Dakota Utilities Company's (MDU) zone.[19] According to Filing Parties,

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[15] Informational Compliance Filing of the Midwest Independent Transmission System Operator, Inc., Docket No. ER06-18-000 (filed Aug. 29, 2008).

[16] *Id*. at 4 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559-560, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009)).

[17] Filing Parties July 9, 2009 Transmittal Letter at 5.

[18] Filing Parties August 26, 2009 Answer at 36. Filing Parties state that a "one-to-one ratio posits that a zone would replace its *entire generation fleet* [emphasis in the original] with generators then in the queue, which clearly would never happen."

[19] Laverty Testimony at 15. Filing Parties also argue that, without the requested effective date, Otter Tail, MDU and other transmission owners face tens of millions of dollars of inappropriate cost assignments from the Group 5 projects in the Midwest ISO

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this situation indicates that interconnection customers intend "to serve significant amounts of Load outside the host pricing zone."[20] Filing Parties explain that "the deleterious effects of the current generator interconnection project cost allocation rule" has prompted Otter Tail and MDU, two of the most immediately affected Transmission Owners, to announce their intent to withdraw from the Midwest ISO.[21]

8. Filing Parties' proposed revisions to correct for the "manifest inequity of the current rules" with respect to the LODF method for generation interconnection: (1) eliminate the LODF allocation of generator interconnection-related network upgrades to load in pricing zones; (2) assign, to interconnection customers, the share of costs now allocated to loads on an LODF basis; and (3) eliminate the current requirement that interconnection customers show designation as a Midwest ISO network resource or a one-year power purchase agreement with a network customer to be eligible for cost sharing.[22] In general, the proposed change would result in the interconnection customer bearing 100 percent of the costs of network upgrades rated below 345 kV and bearing 90 percent of the costs of network upgrades rated at 345 kV and above (with the remaining 10 percent being recovered on a system-wide basis).

9. Regarding consistency with Commission precedent, Filing Parties point to provisions in the PJM Interconnection, L.L.C. (PJM) tariff whereby an interconnection customer "shall be obligated to pay for 100 percent of the costs of the minimum amount of Local Upgrades and Network Upgrades necessary to accommodate its New Service Request and that would not have been incurred under the Regional Transmission Expansion Plan but for such New Service Request."[23] Filing Parties also state that the New York Independent System Operator, Inc. (NYISO) follows a similar approach. Filing Parties note that in PJM and NYISO, in exchange for participant funding, the interconnection customer has the opportunity to receive capacity rights.[24] Filing Parties

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queue that are now proceeding toward completed interconnection agreements.

[20] *Id*.

[21] Filing Parties July 9, 2009 Transmittal Letter at 3.

[22] As addressed below, Filing Parties do not seek to make changes to the cost allocation methodology for generator interconnection purposes in the pricing zones of ATC, ITC/METC, and ITC Midwest.

[23] Filing Parties July 9 Transmittal Letter at 19 (citing PJM Tariff, section 217.3(a)).

[24] *Id*. at 19.

note that in Midwest ISO's Tariff, to the extent that interconnection customers are not reimbursed, they are eligible to receive financial transmission rights (FTRs) and long term transmission rights based on any additional transmission capacity created by the upgrades.[25]

10. Filing Parties state that absent the Commission accepting their proposal, it is virtually certain that Otter Tail/MDU will file to withdraw from the Midwest ISO rather than exposing customers in their respective zones to dramatically increased costs.[26] In his testimony, witness Moeller states that the withdrawal of Otter Tail/MDU "will result in reduced benefits and/or higher costs to the remaining Transmission Owners, increasing the potential for a cascading effect where additional Transmission Owners withdraw, or at the very least reducing the overall benefits provided by the RTO."[27]

11. In explaining the problem as it has manifested itself in Otter Tail and MDU, Filing Parties witness Laverty states that the Midwest ISO interconnection queue currently has about 12,150 MW of requests in the Otter Tail and MDU pricing zones, yet these two pricing zones combined have less than 1,350 MW of load.[28] Witness Laverty states that the current allocation methodology impacts Otter Tail and MDU to an unreasonable and unintended extent. Witness Laverty further explains as follows:

> These consequences result from the dramatic and unexpected increase in the number of generation interconnection related projects involving Generation Resources located remotely from Load. These Generation Resources generally are not being used to serve Load located in the Zones most impacted by the allocation of the cost to construct the Network Upgrades necessary to interconnect the Generation Resources to the Midwest ISO's Transmission System. Rather, the output from these Generation Resources will serve remotely located Load. The effect of this trend is that the Tariff's current methodology allocates a disproportionately and inequitably large percentage of the cost of Network Upgrades required to accommodate the interconnection of these Generation Resources to Transmission Owners such as Otter Tail and MDU despite the fact that neither the Resources nor the upgrades benefit Otter Tail and MDU, and their respective Loads. Although Otter Tail

[25] Moeller Testimony at 19.

[26] Filing Parties July 9, 2009 Transmittal Letter at 2-3.

[27] Moeller Testimony at 11.

[28] Laverty Testimony at 7.

> and MDU are among the Transmission Owners most adversely affected at this time, other Transmission Owners in the Midwest ISO are also, or in the future could be, similarly affected in varying degrees. The issue is not unique to Otter Tail and MDU. Thus, the Midwest ISO is proposing revisions to its Tariff to address this issue, pending further efforts to develop an alternative cost allocation mechanism in Phase II of the RECB Task Force. . . . This interim approach will establish a more just and reasonable methodology for allocating the cost of generation interconnection-related network Upgrades.[[29]]

12. Filing Parties state that the Phase II stakeholder process will focus on the integration of location-constrained resources and will include a new category of cost sharing for transmission projects driven primarily by the need to integrate large quantities of remote generation resources. Filing Parties explain that "Phase II involves a comprehensive look at transmission upgrade cost allocation in light of possible major 'superhighway' transmission projects to facilitate regional or inter-regional movement of large quantities of power from remote areas."[30] In addition, Filing Parties indicate that Phase II includes a consideration of additional improvements to the Phase I revisions to the generator interconnection project cost allocation methodology. Furthermore, Filing Parties propose to provide the Commission with reports on the status of the Phase II stakeholder process thirty days after the end of each calendar quarter and state that the first report would be submitted on approximately October 30, 2009.[31]

13. In their filing, Filing Parties argue that concerns about changing the proposed cost allocation method are unfounded. Through the testimony of witness Thompson, Filing Parties contend that the proposal is only likely "to increase the typical wind farm's overall project cost by no more than 5 [percent]."[32] Furthermore, Filing Parties state that this increase is less than the standard built-in cost escalation contingency for a development project.[33]

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[29] Laverty Testimony at 3-4.

[30] Filing Parties July 9, 2009 Transmittal Letter at 7.

[31] *Id*. at 8.

[32] Thompson Testimony at 25.

[33] Filing Parties July 9, 2009 Transmittal Letter at 22.

14. Filing Parties request waiver of the 60-day prior notice requirement[34] to permit an effective date of July 10, 2009 for the proposed revisions.

15. In their September 17, 2009 response to a deficiency letter (September 17 Response), Filing Parties provide additional information, including: (1) a list of interconnection projects that will be affected by the instant proposal;[35] (2) why Filing Parties believe that the date an unexecuted interconnection agreement is filed with the Commission will determine which cost allocation methodology will apply; (3) the analysis underlying the Brewster affidavit;[36] and (4) why Filing Parties have eliminated the network resource designation and one-year power purchase agreement requirements.

16. In addition, Filing Parties' September 17 Response sets forth a detailed timeline, including proposed meeting dates, topics of discussion and deadlines for circulation of tariff language, as well as a general framework for the Phase II stakeholder process that will enable Filing Parties to meet their commitment to file a succeeding Tariff revision on or before July 15, 2010. Filing Parties state that the Phase II process will involve the RECB Task Force working together with the Cost Allocation Regional Planning (CARP) initiative of the Organization of MISO States (OMS), as various cost sharing alternatives are being reviewed by both stakeholders and regulators.[37]

III. <u>Notice of Filing and Responsive Pleadings</u>

17. Notice of the July 9, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 36,186 (2009), with interventions and protests due on or before July 30, 2009. In response to a request filed by American Wind Energy Association (AWEA) and Wind on the Wires (WOW), the Commission granted an extension of time for filing comments to August 13, 2009. Motions to intervene and requests for an extension of the comment period were also filed by Iberdrola Renewables, Inc. and Renewable Energy Systems Americas, Inc.

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[34] 18 C.F.R. § 35.3 (2009).

[35] In Filing Parties' September 17, 2009 Response at 2 and Tab A, Filing Parties describe the fuel and location of the various interconnection requests that they believe will be impacted by the interim allocation methodology.

[36] In Filing Parties' July 9, 2009 filing, its witness Brewster explains the estimated rate impacts of Midwest ISO's proposed Group 5 projects and the interconnection queue projects.

[37] Filing Parties September 17, 2009 Response at 7-8.

18. Timely motions to intervene were filed by: enXco, Inc.; RRI Energy, Inc.; Vestas Americas; MidAmerican Energy Holdings Company; MidAmerican Energy Company; Mesa Power Group, LLC; Acciona Wind Energy USA, LLC; Natural Resources Defense Council (NRDC); BP Wind Energy North America, Inc.; American Municipal Power Inc.; E.ON Climate and Renewables North America, Inc.; Gamesa Energy USA, LLC; Wisconsin Electric Power Company; Invenergy Wind Development, LLC and Invenergy Thermal Development, LLC; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; CPV Renewable Energy Company, LLC; Horizon Wind Energy, LLC; Alliant Energy Corporate Services, Inc.; Xcel Energy Services, Inc.; Great River Energy; Calpine Corporation; Electric Transmission America, LLC; and NextEra Energy Resources, LLC. On August 17, 2009, Coalition of Midwest Transmission Customers filed a motion to intervene out-of-time. On September 24, 2009, Michigan Public Power Agency filed a late motion to intervene.

19. Notices of intervention and comments were filed by: the Michigan Public Service Commission (Michigan Commission); the Illinois Commerce Commission (Illinois Commission); and the North Dakota Public Service Commission (North Dakota Commission). The Minnesota Public Utilities Commission (Minnesota Commission) filed timely comments. The Governor of Michigan filed timely comments supporting the Michigan Commission's comments.

20. Timely motions to intervene and comments were filed by: Alliant Energy Corporate Services, Inc. (Alliant); Detroit Edison Company (Detroit Edison); OMS; Madison Gas & Electric Company, Missouri River Energy Sources, and WPPI Energy (collectively, Madison Gas & Electric); American Transmission Company, LLC (ATC); Consumers Energy Company (Consumers Energy); Wisconsin Public Service Corporation, Upper Peninsula Power Company, and Integrys Energy Services, Inc. (collectively, Integrys); Public Service Electric & Gas Company, PSEG Power, LLC, and PSEG Energy Resources and Trade, LLC (collectively, PSEG); Montana-Dakota Utilities Company (MDU); Xcel Energy Services Inc. (Xcel); and Dairyland Power Cooperative (Dairyland).

21. Timely motions to intervene and protests were filed by: AWEA and WOW (collectively, AWEA and WOW); Electric Power Supply Association (EPSA); Exelon Corporation (Exelon); Gamesa Energy USA, LLC (Gamesa); Edison Mission Energy (Edison Mission); ITC Transmission, ITC Midwest, LLC, and Michigan Electric Transmission Company (collectively, ITC); Clipper Windpower Development Company (Clipper); Renewable Energy Systems Americas, Inc., Invenergy Wind Development, LLC, and Invenergy Thermal Development, LLC (collectively, Midwest Generators); NextEra Energy Resources, LLC, Iberdrola Renewables, Inc., Mesa Power Group, LLC, Horizon Wind Energy, LLC, Enxco, Inc., Acciona Wind Energy USA, LLC, GE Energy, Vestas Americas, and Natural Resources Defense Council (collectively, Joint Protestors);

CPV Renewable Energy Company, LLC (CPV); and Dynegy Power Marketing, Inc. (Dynegy). Project for Sustainable FERC Energy Policy filed a timely protest.

22. On August 26, 2009, Filing Parties filed an answer to protests. On August 28, 2009, ITC filed an answer to protests. On September 2, 2009, Edison Mission filed an answer to Filing Parties' answer.

23. On September 2, 2009, the Commission issued a deficiency letter requesting additional information on Filing Parties' filing. On September 17, 2009, Filing Parties filed their Response. On September 18, 2009, Filing Parties filed an errata to remove extraneous data from the September 17 Response. Notice of the September 17, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 49,371 (2009), with interventions and protests due on or before September 24, 2009. Integrys filed a timely protest. On September 25, 2009, NextEra Energy Resources, LLC (NextEra) filed a protest one day out of time.

IV. <u>Discussion</u>

A. <u>Procedural Matters</u>

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant the Coalition of Midwest Transmission Customers' and Michigan Public Power Agency's late-filed motions to intervene, and we will accept NextEra's late-filed protest, given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers of Filing Parties, ITC and Edison Mission, because they have provided information that assisted us in our decision-making process.

B. <u>Substantive Matters</u>

1. <u>Midwest ISO's Phase I Cost Allocation Methodology</u>

a. <u>Proposal and Comments</u>

27. Filing Parties argue that the Commission should accept their proposal because: (1) the current cost allocation rules produce unintended and inequitable effects; (2) the

proposal will ensure that the Midwest ISO's existing membership and configuration are preserved; (3) the proposal is consistent with Commission precedent;[38] (4) a majority of stakeholders opted for the proposal as opposed to other options; (5) the proposal will not impede the development of renewable energy; and (6) the proposal is only an interim measure.

28. Several commenters express support for Filing Parties' proposal.[39] For example, MDU[40] states that with the development of new wind resources in the northwestern part of the Midwest ISO and adoption of renewable portfolio standards in much of the Midwest ISO region, interconnection requests have dramatically increased in regions such as the MDU service territory for generators being built to serve load in more populous areas remote from the MDU transmission system. MDU asserts that this has rendered the current RECB methodology unjust and unreasonable for MDU customers, who will bear a disproportionate share of interconnection costs for renewable generators serving loads in other pricing zones under the LODF methodology if the Commission does not accept Filing Parties' proposal. According to MDU, the reforms in Filing Parties' proposal remedy this unjust and unreasonable impact and benefit all Midwest ISO customers by preserving the existing Midwest ISO footprint.[41]

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[38] Here, Filing Parties note that section 46 of the Tariff, concerning entitlement to FTRs, is unchanged. That is, an interconnection customer that funds or is charged network upgrade costs, that are not repaid, is entitled to FTRs, as well as long term transmission rights based on any additional transmission capacity created by the upgrades. Filing Parties July 9, 2009 Transmittal Letter at 16 (citing testimony of witness Moeller).

[39] *See* Dairyland July 29, 2009 Comments; North Dakota Commission July 30, 2009 Comments; Detroit Edison August 13, 2009 Comments; MDU August 13, 2009 Comments; Minnesota Commission August 13, 2009 Comments; PSEG August 13, 2009 Comments. *See also* OMS August 13, 2009 Comments (supports the proposal as a short-term fix); Madison Gas & Electric August 13, 2009 Comments (supports proposal as an interim measure).

[40] MDU is an applicant in this proceeding as one of the Midwest ISO Transmission Owners. It states that it files its comments separately to emphasize the potential harm to MDU from the current RECB cost allocation rules, and to stress the need for an immediate change in those rules.

[41] MDU August 13, 2009 Comments at 6.

29. With respect to cost causation principles, AWEA and WOW[42] claim that shifting 90-100 percent of the costs to interconnecting generators improperly places the entire burden on cost causers and is inconsistent with the Order No. 2003 principle that costs should be fairly apportioned between initial cost-causers and those that benefit from the upgrades.[43] Joint Protestors also refer to Order No. 2003 in arguing that Filing Parties' proposal fails to follow the Commission's cost causation principles.[44] AWEA and WOW discuss several broad-based benefits of new generator interconnection and the associated network upgrades. These include: reduced congestion on the grid permitting access to cheaper power supplies,[45] improved protection for consumers against fuel price volatility associated with electricity production,[46] improved competition in generation markets including protection against potential generation market power abuses,[47] reduced carbon dioxide emissions,[48] and potentially reduced prices for natural gas for all of its uses.[49] ITC makes similar arguments and notes that Filing Parties have failed to perform any empirical or other studies to "track the distribution of benefits associated with the construction of network upgrades relating to generator interconnections."[50] Edison Mission states that the benefits of renewable energy are broad, yet the proposed cost allocation ignores these benefits.[51] In addition, Dynegy and EPSA contend that the proposal's departure from cost causation principles is a reason that it should not be considered just and reasonable.[52]

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[42] Gamesa, CPV Renewables, Clipper and Project for Sustainable FERC Energy Policy filed comments in support of the protest filed by AWEA and WOW.

[43] AWEA and WOW August 13, 2009 Protest at 8-9.

[44] Joint Protestors August 13, 2009 Protest at 22.

[45] *See* AWEA and WOW August 13, 2009 Protest at 46.

[46] *Id*. at 46-47.

[47] *Id*. at 48-49.

[48] *Id*. at 49.

[49] *Id*. at 50.

[50] ITC August 13, 2009 Protest at 5.

[51] Edison Mission August 13, 2009 Protest at 10-11.

[52] Dynegy August 13, 2009 Protest at 10; EPSA August 13, 2009 Protest at 8; Integrys August 13, 2009 Protest at 12.

30. Edison Mission also points out that eleven of the thirteen states making up the Midwest ISO region have renewable portfolio standards and, as Filing Parties concede, meeting these standards will require thousands of megawatts of new renewable power projects. Accordingly, Edison Mission argues that the benefits of the network upgrades associated with renewable generation interconnection clearly extend to the entire Midwest ISO region.[53] Joint Protestors raise this issue as well.[54] In a similar vein, Exelon argues that developing renewable resources has become a national goal and the associated costs and benefits are national in scope.[55]

31. Xcel argues that the identification of regional benefits as part of cost allocation should be expansive and should consider, among other things, the impacts of the policy on congestion costs, wholesale and ancillary services market prices, and reliability.[56] In contrast, Detroit Edison argues that the “most direct beneficiaries” of network upgrades necessitated by a generator’s interconnection are the generator itself and the load it serves and any attempt to identify broader benefits, for example from lower locational marginal prices, lower production costs, or increased reliability, will be subjective and inaccurate because of the need to rely upon assumptions that will vary over time.[57] However, Joint Protestors provide testimony supporting the argument that transmission network investment yields broad-ranging benefits in the areas of reduced energy and renewable energy credit (REC) prices and emissions reductions. This testimony is mainly based on the results of studies performed in connection with two large extra-high voltage transmission projects designed to bring new wind power resources to major load centers. However, Joint Protestors believe these findings are broadly applicable.[58]

32. Some protestors argue that Filing Parties’ proposal is inconsistent with Commission precedent because it erroneously follows the cost allocation methodologies used in NYISO and PJM rather than the cost allocation methods used in the California Independent System Operator Corporation (CAISO) and Southwest Power Pool, Inc.

[53] Edison Mission August 13, 2009 Protest at 12.

[54] Joint Protestors August 13, 2009 Protest at 32-33.

[55] Exelon August 13, 2009 Comments at 6.

[56] Xcel August 12, 2009 Comments at 9-10.

[57] Detroit Edison August 13, 2009 Comments at 4-5.

[58] Joint Protestors August 13, 2009 Protest, Attachment A, Affidavit of Robert B. Stoddard at 3-7.

(SPP) regions.[59] Protestors contend that the latter cost allocation methods specifically consider the unique aspects of wind and assign the costs of interconnecting wind generators differently than the costs of interconnecting other types of resources.[60] AWEA and WOW state that the Commission's decision on SPP is "diametrically opposed" to Filing Parties' proposal, and that therefore the proposal falls outside the zone of reasonableness.[61] Several protestors argue that a cost allocation methodology that shifts the burden of paying for interconnection-related network upgrades to generators without taking generator type into consideration unduly discriminates against location-constrained resources.[62]

33. Additionally, protestors claim that the proposal would impede policies that support renewable resources,[63] and create barriers to entry for all generation, including renewable resources.[64] Protestors argue that Filing Parties' proposal would increase costs to developers of renewable resources and hamper wind development.[65] Further, protesters take issue with Filing Parties' reliance on FTRs being valuable to interconnection customers, and specifically suggest that these rights do not translate into streams of

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[59] *See* AWEA and WOW August 13, 2009 Protest at 18-20, Midwest Generators August 13, 2009 Protest at 13-16, Joint Protestors August 13, 2009 Protest at 8-11, Dynegy August 13, 2009 Protest at 11, and Integrys August 13, 2009 Protest at 13.

[60] The protestors cite *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,283 (2009) and *California Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061 (2007).

[61] AWEA and WOW August 13, 2009 Protest at 18.

[62] *See*, *e.g.*, AWEA and WOW August 13, 2009 Protest at 15-18; Edison Mission August 13, 2009 Protest at 13-16.

[63] AWEA and WOW August 13, 2009 Protest at 40-45 and Edison Mission August 13, 2009 Protest at 16-19.

[64] AWEA and WOW August 13, 2009 Protest at 20-21, Edison Mission August 13, 2009 Protest at 19-23, Dynegy August 13, 2009 Protest at 9, and Integrys August 13, 2009 Protest at 5-9. *See also* Integrys September 17, 2009 Protest at 4-5 (arguing that it is unlikely that a generator would willingly execute a generator interconnection agreement prior to July 15, 2010).

[65] AWEA and WOW August 13, 2009 Protest at 29-40, Edison Mission August 13, 2009 Protest at 23-26, Midwest Generators August 13, 2009 Protest at 17-21, Joint Protestors August 13, 2009 Protest at 28-30, Integrys August 13, 2009 Protest at 4, and ITC August 13, 2009 Protest at 8-10.

revenue that interconnection customers can use to seek financing.[66] Numerous protesters claim that Filing Parties' proposal unduly discriminates against location-constrained resources because it will increase the cost of capital for developers. Further, they argue that the proposal does not match the concepts of "cost causation" with "beneficiary pays" and, therefore, will inhibit wind development in the Midwest ISO. For example, Project for Sustainable FERC Energy Policy states that the proposal "is patently unreasonable because it is inconsistent with Commission precedent on cost allocation for location-constrained resources."[67] More specifically, it states that the reliance on early Commission cost allocation orders related to PJM and NYISO, rather than more recent orders related to location-constrained resources in SPP and CAISO, is misplaced and inconsistent with the Commission's policy of approving tailored solutions to address the needs of location-constrained resources.

34. Edison Mission argues that Filing Parties' proposal "fails to acknowledge the unique challenges faced by [location-constrained] projects which are often located in remote, sparsely populated areas that require lengthy, high-voltage transmission facilities to connect them to load centers."[68] Furthermore, Edison Mission argues that Filing Parties have significantly underestimated the unit cost of network upgrades faced by wind developers and the increase in installed project costs due to the proposal.[69] Regardless of the unit cost of network upgrades, Joint Protestors contend that such a large increase in the cost responsibility for network upgrades to developers will adversely impact the further development of location-constrained resources because "financial markets today treat network upgrade costs paid by a generation developer as an equity contribution and as non-financeable."[70]

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[66] For example, Joint Protestors state that Filing Parties "fail to understand that having such a right in no way benefits wind development when coupled with their Proposal requiring wind developers to pay 90% to 100% of network upgrade costs." Joint Protestors August 13, 2009 Protest at 23.

[67] Project for Sustainable FERC Energy Policy August 13, 2009 Protest at P 13.

[68] Edison Mission August 13, 2009 Protest at 2.

[69] *Id*. at 3.

[70] Joint Protestors August 13, 2009 Protest at 3. They argue that:

> [R]equiring wind developers to pay all network upgrade costs may well affect a decision on whether to go forward with a development project. Network upgrades cannot be financed in the capital markets today, but instead are paid for by equity contributions from the developer. Banks are

(continued)

35. Integrys states that while it is true that the cost escalation contingency is intended to address potential increases in project costs, the purpose of the contingency is not to pay an unjust assessment.[71] Moreover, Integrys argues that "paying such an assessment would increase the financial riskiness of a project and threaten its solvency since it would mean the contingency would not be available to cover project cost increases when and as they occur."[72]

36. While most parties agree that the current LODF methodology, as utilized for generator interconnection projects, is causing unintended and inequitable results in the Otter Tail and MDU zones, a number of protestors allege that Filing Parties' Phase I proposal is not just and reasonable.[73] Several protestors assert that the proposal is simply too broad and that the proposal should be tailored to the specific problem faced by Otter Tail/MDU until the permanent Phase II solution can be reached and implemented.[74]

> only willing to provide project debt financing on the cash flow of an asset that can be pledged as collateral, for which network upgrades provide none. As a result, network upgrade costs negatively affect the overall return of a project, and doubling those costs – as set forth in the Proposal – would lower returns making it likely that certain marginal projects would not be constructed.

Id. at 24.

[71] Integrys August 13, 2009 Protest at 8.

[72] *Id*.

[73] Several commenters agree that Otter Tail and MDU face disproportionate cost allocations. For example, Joint Protestors state that they "do not challenge the fact that Otter Tail and MDU may be allocated a disproportionate amount of network upgrade costs due to being located where the wind (the energy source) is of high quality." Joint Protestors August 13, 2009 Protest at 18. Similarly, Midwest Generators state that they "do not challenge [Filing Parties'] assertion that continued use of the current flow-based method to assign costs to load could result in a potentially inequitable allocation of Network Upgrade costs to remote, wind-rich zones like the [Otter Tail] and [MDU] service territories." Midwest Generators August 13, 2009 Protest at 2. The Michigan Commission states that it recognizes that the existing allocation methodology has created inequities in certain pricing zones that require extensive and expensive network upgrades to accommodate the new wind generation projects. Michigan Commission August 13, 2009 Comments at 4.

[74] AWEA and WOW August 13, 2009 Protest at 13-15 and Midwest Generators August 13, 2009 Protest at 9-13.

AWEA and WOW, Joint Protestors, Midwest Generators, Edison Mission, EPSA, NRDC, the Michigan Commission, and ITC argue that Filing Parties' proposal goes too far by proposing a new methodology to remedy a situation that currently is only adversely impacting Otter Tail/MDU. Conversely, Alliant and Consumers Energy argue that Filing Parties' proposal does not go far enough because it allows ATC, ITC/METC, and ITC Midwest to retain 100 percent crediting for interconnection customers in their respective pricing zones. Joint Protestors do not believe that the harm to Otter Tail/MDU and their threat to withdraw is a sufficient reason to accept an unjust and unreasonable proposal.[75] Dynegy, on the other hand, claims that the current method is not burdensome for Otter Tail /MDU.[76] Some protestors urge that Filing Parties' filing be rejected or suspended and the matter set for hearing and settlement.[77]

37. Additionally, numerous protesters have proposed alternatives to Midwest ISO's cost allocation methodology. For instance, AWEA and WOW argue that any one of the following methods would be superior to Filing Parties' proposal: (1) a Midwest ISO region-wide postage stamp rate; (2) a location-constrained resource zonal model such as Texas's Constrained Resource Energy Zone (CREZ) or California's Location-Constrained Resource Interconnection (LCRI) methods; or (3) an expansion of the ATC, ITC/METC, and ITC Midwest methods throughout Midwest ISO's region.[78] Midwest Generators suggest that instead of reallocating the refund costs to the interconnection customer, those costs should be reallocated to the sink zone.[79]

38. The Illinois Commission argues that the July 9, 2009 Filing does not explain why Filing Parties propose to eliminate the current requirement that interconnection customers be designated as a Midwest ISO network resource or have a power purchase agreement, with a network customer, for a period of at least one year to be eligible for cost sharing.[80] In their September 17 Response, Filing Parties explain that those requirements are unnecessary under the interim proposal.

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[75] Joint Protestors August 13, 2009 Protest at 14-19.

[76] Dynegy August 13, 2009 Protest at 7-9.

[77] AWEA and WOW August 13, 2009 Protest at 59-61; Midwest Generators August 13, 2009 Protest at 3; Edison Mission August 13, 2009 Protest at 29; Joint Protestors August 13, 2009 Protest at 34.

[78] *See* AWEA and WOW August 13, 2009 Protest at 52-55.

[79] Midwest Generators August 13, 2009 Protest at 4.

[80] Illinois Commission August 13, 2009 Comments at 19-20.

b. Answers

39. In their answer, Filing Parties counter that their proposal is in fact just and reasonable. They maintain that the decisions regarding cost allocation in SPP and CAISO do not mandate that Midwest ISO develop a similar methodology, and that the PJM cost allocation methodology is as legitimate as other methods.[81] That said, Filing Parties state that the SPP and CAISO approaches and other alternatives, including the approach used by ERCOT, will be carefully studied during the stakeholder discussion and development of a long-term solution.[82] Filing Parties also take issue with protestors' claims that wind development will be hampered or halted if the proposal is accepted, and further support their original calculations regarding the proposal's costs for wind projects.[83] Filing Parties reiterate their commitment to encouraging wind development and argue that their proposal is intended to support wind by preventing two zones containing rich wind resources, Otter Tail and MDU, from leaving the Midwest ISO.[84]

40. Filing Parties explain, however, that the proposal is not specifically tailored to the issues in the Otter Tail/MDU zones. Filing Parties point to other zones beginning to experience problems similar to those of Otter Tail/MDU.[85] In any case, Filing Parties state that they have committed to file the long-term Phase II solution by July 15, 2010.[86]

41. In their answer, Filing Parties respond that their proposal recognizes that the circumstances now confronting Otter Tail and MDU reveal that the current RECB rules are inherently flawed. In fact, the mismatch between costs and benefits is dramatic for Otter Tail and MDU but arises for many other zones. Referring to the Laverty Testimony, Filing Parties note that at this time there are six zones in which pending generator interconnections exceed the loads in the zone.[87] As noted by Filing Parties, the current cost allocation methodology has "the potential to severely misallocate transmission upgrade costs for generator interconnections wherever there is a significant

[81] Filing Parties August 26, 2009 Answer at 24.

[82] *Id*. at 26.

[83] *Id*. at 27-33.

[84] *Id*. at 34-35.

[85] *Id*. at 36-38.

[86] *Id*.

[87] *Id*. at 36 (citing Laverty's testimony).

volume of interconnections relative to load."[88] Therefore, rather than a solution that focuses only on the current manifestations of the problem, Filing Parties state that their proposal is a regional solution.[89]

42. In response to the calls from protestors for alternative cost allocation models including postage stamp rates, location-constrained zone models, CREZs or LCRIs, and an ATC/ITC zonal approach, Filing Parties state that the Commission should not pre-judge the outcome of the Phase II stakeholder process. More specifically, Filing Parties state that stakeholders will consider "all appropriate alternative allocation models, including those suggested or mentioned by parties in this proceeding."[90]

43. In addition, Filing Parties dispute claims that their proposal is unduly discriminatory against, and therefore will inhibit the future development of, location-constrained resources. With respect to their reliance on the 100 percent participant funding cost allocation methodologies approved for PJM and NYISO rather than the more recently approved SPP and CAISO methodologies, Filing Parties state that protesters should not be allowed to dismiss the relevance of the PJM and NYISO cost allocation policies so easily. Specifically, Filing Parties state that PJM and NYISO serve a substantial portion of the United States and face just as serious transmission expansion and cost challenges as Midwest ISO. Accordingly, Filing Parties assert that "the PJM, NYISO, SPP, and CAISO approaches all represent just and reasonable alternatives for allocating interconnection related upgrade costs."[91] Finally, Filing Parties state that the methods used by SPP and CAISO as well as other approaches will be examined during the Phase II stakeholder process.

44. Regarding the increase in network upgrade costs assigned to generators under the proposal, Filing Parties state that "interconnection costs are not likely to be so material in most cases as to determine whether or not a generation project proceeds."[92] In support of this assertion, Midwest ISO cites a Department of Energy/Berkeley Labs report finding that while transmission costs for wind "are not insignificant, [they] are also not overwhelming."[93] In any case, Filing Parties state that even if the unit costs of network

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[88] *Id.* at 5.

[89] *Id.* at 37.

[90] *Id.* at 39.

[91] *Id*. at 25.

[92] *Id*. at 28.

[93] *Id*. at 29 (citing Andrew Mills, Ryan Wiser, and Kevin Porter, *The Cost of*

(continued)

upgrades were higher than the $200/kW that Filing Parties used in their analysis, generation interconnection costs are still only a relatively small share of the wind project's capital costs and an even smaller share of a project's annual revenue requirement.[94]

45. In response to the assertion made by the Joint Protestors that even if Otter Tail and MDU were to withdraw from Midwest ISO, they would be required to retain depancaked rates, Filing Parties state that whether Otter Tail and MDU would be subject to any conditions for withdrawal, such as maintenance of depancaked rates, remains to be seen.[95] But, it further cautions that if a depancaking condition were imposed, "protestors would be wise to consider that the siting authority for the transmission facilities at issue lies with the states whose retail customers, under the current methodology, will be required to pay for facilities for which they may not be receiving any concomitant benefit."[96]

46. Edison Mission, in an answer to Filing Parties' answer, reiterates its position that the proposal is unjust and unreasonable. According to Edison Mission, even though the Phase I proposal is interim, it permanently affects any customers who execute or file an unexecuted generator interconnection agreement. Edison Mission further restates its arguments that the proposal will halt the development of renewable generation, is inconsistent with policies to encourage renewable generation, is inconsistent with the Commission's cost causation policies, and is unduly discriminatory.[97]

47. In its protest of Filing Parties' September 17 Response, Integrys argues that Filing Parties' response regarding the application of the cost allocation methodology implies that the interim network upgrade cost allocation rules must apply for the life of any project that is the subject of a generator interconnection agreement executed or filed within the interim period. Integrys argues that there is no reason that rules that are

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Transmission for Wind Energy: A Review of Transmission Planning Studies, Lawrence Berkeley National Laboratory, at 16 (Feb. 2009)).

[94] *Id*. at 32.

[95] *Id*. at 14 (citing *E.ON U.S. LLC*, 116 FERC ¶ 61,019 (2006) (*E.ON*)). In *E.ON*, the Commission stated that "existing customers [including grandfathered agreements] will receive service subject to the same prices, terms and conditions *that they would have received absent Applicants' withdrawal*." 116 FERC ¶ 61,109 at P 44.

[96] *Id*. at 14.

[97] Edison Mission September 2, 2009 Answer.

interim in nature must remain in effect for the life of a generator interconnection agreement that happens to be filed or executed with the interim period. Integrys argues that this is particularly so given that the interconnection agreement network upgrade cost allocation provisions are in a state of transition. Moreover, Integrys expresses concern that the September 17 Response (at 11) suggests that the rule against retroactivity would not apply if the cost allocation rules for an interim period interconnection agreement are prospectively changed as of July 15, 2010 provided "parties have been on notice" of a likelihood of a change in the cost allocation rules.[98]

c. Commission Determination

48. Filing Parties' proposal provides an interim approach to the unanticipated consequences resulting from the LODF methodology due to the concentration of generator interconnection projects in pricing zones with low load densities. In the various protests submitted in this proceeding, many aspects of Filing Parties' proposal have been challenged. For instance, protestors challenge the proposal to use participant funding[99] (consistent with the methodologies in PJM and NYISO) rather than cost sharing via variations on postage stamp rates (as currently allowed in SPP and CAISO). However, we find that the interim proposal is a reasonable implementation of the flexibility allowed by Order No. 2003 for "independent entities" if conditioned upon Filing Parties fulfilling their commitment to file superseding Tariff revisions regarding the Phase II cost allocation methodology on or before July 15, 2010. While the proposal did not receive unanimous support in the stakeholder process, it did receive approval by the stakeholder vote and the Midwest ISO Advisory Committee vote.[100] Also, Filing Parties' proposal is only an interim approach and we fully expect that all methodologies, including those used by SPP and CAISO, will be evaluated in the Phase II stakeholder process. Parties should not consider our actions in the instant proceeding as prejudging the outcome of the Phase II stakeholder process.

49. Given the significant cost allocations resulting from the application of the LODF methodology described above, we find that the proposal will reasonably address for the

[98] Integrys September 24, 2009 Protest at 6-7.

[99] In such proposal, the interconnection customer would bear 100 percent of the costs of network upgrades rated below 345 kV and bear 90 percent of the costs of network upgrades rated at 345 kV and above.

[100] Filing Parties July 9, 2009 Transmittal Letter at 8. The Interconnection Procedures Task Force approved the proposal with a vote of 32 in favor and 23 against. The Midwest ISO Advisory Committee approved the proposal with a vote of 12.5 in favor, 5.5 opposed and 1 abstention.

interim period the balance between costs and benefits in the Otter Tail and MDU zones and in other zones. Given the facts and circumstances of this proceeding and consistent with the flexibility afforded to "independent entities" in Order No. 2003, the Commission accepts the interim proposal conditioned upon the Filing Parties fulfilling their commitment to file superseding Tariff revisions regarding the Phase II cost allocation methodology on or before July 15, 2010 as just and reasonable and not unduly discriminatory or preferential. As we explained in Order No. 2003, independent system operators, like Midwest ISO, have significant discretion to propose an appropriate cost allocation methodology for interconnection-related network upgrades, including providing interconnection customers with capacity rights made feasible by such projects. In Order No. 2003, the Commission stated "[f]or a Transmission Provider that is an independent entity, such as an RTO or ISO, we allow flexibility as to the specifics of the interconnection pricing policy."[101] Because we find that Filing Parties' proposal is consistent with Order No. 2003, we deny the requests to set this matter for hearing and settlement judge proceedings.

50. In addition, the Commission stated in Order No. 2003 that an interconnection customer is allowed to receive well-defined capacity rights that are created by the upgrades.[102] Filing Parties state that an interconnection customer that funds or is charged network upgrade costs, which are not repaid, is entitled to FTRs, as well as long-term transmission rights, under section 46 of the Tariff based on any additional transmission capacity created by the upgrades.[103] While protestors take issue with the value of FTRs, we note that the Filing Parties' interim proposal does not alter the Tariff provision regarding an interconnection customer's entitlement to FTRs.[104]

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[101] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 28.

[102] *Id*. P 700 (noting that "PJM, which uses locational pricing, gives Firm Transmission Rights (FTRs) and Capacity Interconnection Rights (CIRs) to the Interconnection Customer in exchange for a 'but for' cost payment").

[103] Filing Parties July 9, 2009 Transmittal Letter at 16.

[104] Furthermore, in the RECB I Order, we rejected the same arguments raised here that FTRs lack value to interconnection customers and that eligibility of interconnection customers for FTRs is unclear, and the Commission directed that Attachment FF reference section 46 of the Tariff to reinforce that point. *See* RECB I Order, 114 FERC ¶ 61,106 at P 65-67. *See also* Moeller Testimony at 19 (to the extent they are not reimbursed, interconnection customers are eligible to receive FTRs and long-term transmission rights based on any additional transmission capacity created by the upgrades).

51. The Commission disagrees with those parties that argue that Filing Parties' proposal should apply only to Otter Tail/MDU because these are the only zones currently impacted by the problem. Filing Parties have explained that at this time there are six zones in which pending generator interconnections exceed the load in the zone. The issue addressed by the interim proposal may arise in other zones. Thus, we conditionally accept Filing Parties' proposal to apply the proposed cost allocation methodology across the entire Midwest ISO region (except for the ATC, ITC/METC, and ITC Midwest pricing zones, as proposed by Filing Parties), subject to Filing Parties fulfilling their commitment to file superseding Tariff revisions regarding the Phase II cost allocation methodology on or before July 15, 2010.

52. The Commission also finds that Filing Parties' proposal to eliminate the current requirement that the interconnection customer demonstrate that the generator has been designated as a network resource or committed by contract of at least one year to supply capacity or energy to a network customer to be eligible for cost sharing is just and reasonable. When we originally accepted these requirements in the RECB I Order, the Commission found that these provisions were necessary to "mitigate any incentive for generators to locate in the Midwest ISO solely to take advantage of the 50 percent - 50 percent cost sharing."[105] We agree with Filing Parties' statement in their September 17, Response to the deficiency letter that "[t]he allocation of the costs to the generator [under the interim proposal] renders it unnecessary for the Midwest ISO to ensure that the Resource provides some benefit to the Midwest ISO."[106] Therefore, we accept Filing Parties' proposal to eliminate the network resource or one-year power contract requirements.

53. Various protestors argue that the interim proposal does not properly allocate the costs of network upgrades for generator interconnections to beneficiaries as well as to cost causers. As the Commission noted in Order No. 2003-A,[107] the Commission has long held that the transmission system is a cohesive, integrated network that operates as a single piece of equipment, and that network facilities are not "sole use" facilities but facilities that benefit all transmission customers.[108] The Commission has reasoned that, even if a customer can be said to have caused the addition of a grid facility, the addition represents a system expansion used by and benefiting all users due to the integrated

[105] RECB I Order, 114 FERC ¶ 61,106 at P 63.

[106] Filing Parties September 17, 2009 Response at 6.

[107] Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 585.

[108] *See, e.g., Public Service Co. of Colorado,* 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013 (1993).

nature of the grid.[109] For this reason, the Commission has consistently priced the transmission service of a non-RTO/ISO transmission provider based on the cost of its grid as a whole, and has rejected proposals to directly assign the cost of network upgrades.[110]

54. Even where the Commission has permitted departures from this precedent in ISO and RTO systems, it has consistently found that cost allocation for generator interconnection-related network upgrades must strike an appropriate balance between the entity that "caused" the need for an upgrade (i.e., by deciding to interconnect a new generator) and the larger set of entities that will actually benefit from that upgrade.[111]

55. We agree with commenters' arguments that additional, broad-ranging benefits can be associated with both the interconnecting generator and the network upgrades that are triggered by its interconnection. Depending on the particular characteristics of the generator and network upgrades in question, these broad-ranging benefits could include those identified by commenters.

56. Accordingly, the Commission believes that cost allocation proposals for interconnection-related upgrades should pay attention to cost-causation principles and to identifying the full array of benefits to generators, load, and other entities in the region from enhanced transmission infrastructure.

57. As noted above, Filing Parties state that the Phase II stakeholder process will focus on the integration of location-constrained resources and will include a new category of cost sharing for transmission projects driven primarily by the need to integrate large quantities of remote generation resources.[112] Filing Parties explain that "Phase II involves a comprehensive look at transmission upgrade cost allocation in light of possible major 'superhighway' transmission projects to facilitate regional or inter-regional movement of large quantities of power from remote areas."[113]

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[109] *Public Service Co. of Colorado*, 62 FERC at 61,061.

[110] *Id*.

[111] *See, e.g.*, RECB I Order, 114 FERC ¶ 61,106 at P 68; *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,283 (2009) (*Southwest Power Pool*).

[112] *See supra* P 12.

[113] Filing Parties July 9, 2009 Transmittal Letter at 7.

58. The Commission has previously recognized that location-constrained resources present unique challenges that other resources do not present.[114] For example, in *CAISO*, the Commission concluded that the barriers to the development of interconnection infrastructure to location-constrained resources highlight the need for flexibility in applying the Commission's interconnection policy to accommodate these resources.[115] The Commission also has acknowledged that stakeholders may seek to plan for transmission projects on a region-wide basis to address region-wide concerns as opposed to planning merely for specific generators or load growth.[116]

59. In addition, the Commission continues to recognize the need for flexibility in developing appropriate cost allocation methodologies related to interconnection of resources as well as for transmission facilities in general. Thus, in Order No. 890, the Commission provided guidance on cost allocation mechanisms that allows for such flexibility.[117] The stakeholders' Phase II process should also take into account previous Commission findings in Order No. 890 regarding transmission planning and cost allocation.

60. Thus, pursuant to our prior precedent, stakeholders may take a comprehensive approach to evaluating transmission needs by considering what upgrades are needed in light of load growth forecasts, aggregate generator interconnection requests, reliability and economic needs and benefits, and state resource policies.[118]

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[114] *See, e.g.*, *California Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061, *reh'g denied*, 120 FERC ¶ 61,244 (2007) (*CAISO*). *See also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 543, 548-549.

[115] *CAISO*, 119 FERC ¶ 61,061 at P 66 & n.19. The Commission found that this approach was consistent with the Commission's findings in Order No. 2003-A, Order No. 661, and Order No. 890. *See id.* P 70 (citing aforementioned orders). The Commission recently reaffirmed this approach in *Southwest Power Pool,* 127 FERC ¶ 61,283.

[116] *See generally* Order No. 890, FERC Stats. & Regs. ¶ 31,241.

[117] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.

[118] We also note that the Commission is in the process of engaging in an ongoing evaluation of the implementation of the transmission planning and cost allocation processes accepted to date. Our examination of Phase II will be informed by the developments in our ongoing evaluation.

61. With respect to the various alternative cost allocations methodologies suggested by protestors, we find that those proposals are more appropriately considered at present in the Phase II stakeholder process. Having conditionally accepted Filing Parties' interim proposal, we will not address the merits of the alternative methodologies at this time. We highlight, however, that our acceptance of the interim proposal is conditioned upon Filing Parties fulfilling their commitment to file superseding Tariff revisions regarding the Phase II cost allocation methodology on or before July 15, 2010.

62. Finally, regarding the suggestion that the interim proposal should not apply permanently to an agreement that is executed, or filed unexecuted, during the interim period, this would be inconsistent with how the Commission treated earlier changes to the method for allocating the costs of network upgrades in the Midwest ISO.[119] Moreover, we find that this suggestion would lead to unnecessary uncertainty for all parties involved. As to the trigger date, we have previously found that the Tariff that should apply is the one that is effective and on file on the date that the interconnection agreement is executed or filed unexecuted.[120]

2. Arguments Regarding Establishing a Sunset Date for the Phase I Cost Allocation Methodology

a. Proposal and Comments

63. Filing Parties characterize their proposal as an interim solution. In their July 9 Filing, Filing Parties state that they intend to file a long-term Phase II proposal by July 15, 2010. In their Answer, Filing Parties reaffirm their commitment by stating that they have "committed to file succeeding Tariff changes by July 15, 2010."[121]

64. Several commenters express concern that Filing Parties' interim proposal does not include a sunset date. For example, Joint Protestors and ATC argue that the proposal is not interim in nature, but is a section 205 filing with no sunset date that may or may not

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[119] *See* RECB I Order, 114 FERC ¶ 61,106 at P 64.

[120] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,277, at P 10 (2008) (finding that because two generator interconnection agreements had been executed after the effective date of newly revised interconnection queue rules, the interconnection agreements must be revised to conform with the new rules). *See also*, RECB I Order, 114 FERC ¶ 61,106 at P 70 (finding that generator interconnection agreements filed before the effective date of a new cost allocation tariff provisions would be governed under the prior cost allocation rules).

[121] Filing Parties August 26, 2009 Answer at 3.

be superseded by other tariff provisions.[122] Several parties argue that if the Commission accepts the interim proposal, it should require that Midwest ISO make another cost allocation filing that will replace the interim proposal by July 15, 2010.[123] Xcel urges the Commission to conditionally accept the instant proposal and require Filing Parties to make another filing by April 1, 2010, to be effective on July 1, 2010, and to require that Filing Parties provide quarterly progress reports.[124] Further, to ensure that some form of a replacement cost allocation methodology is submitted for Commission consideration by mid-2010, Xcel urges that, if necessary, the Commission should authorize or require Filing Parties to file a non-majority or plurality replacement cost allocation methodology on April 1, 2010, if stakeholders are unable to reach a majority consensus resolution.[125]

65. ATC argues that, if the instant proposal is indeed interim in nature and if the Commission approves the proposed changes, it would be prudent to condition such acceptance on a firm date (i.e., July 31, 2010) for the proposal to be replaced with a permanent cost allocation methodology. ATC argues that this would remove unnecessary uncertainty from the Midwest ISO generator interconnection process, while also providing a clear directive for Midwest ISO stakeholders to work together to develop a solution.[126]

66. The Illinois Commission and OMS argue that the Commission should highlight the importance of the Phase II process that Filing Parties have committed to and should require a new filing by July 15, 2010 and the sunset of the interim proposal on July 16, 2010.[127] AWEA and WOW urge the Commission to convene a technical conference with the region's governors to facilitate a long-term cost allocation methodology.

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[122] Joint Protestors August 13, 2009 Protest at 34; ATC August 13, 2009 Comments at 6-7.

[123] *See, e.g.*, AWEA and WOW August 13, 2009 Protest at 59-60; Madison Gas & Electric August 13, 2009 Comments at 6-7.

[124] Xcel August 12, 2009 Comments at 8-10.

[125] *Id*. at 11-12.

[126] ATC August 13, 2009 Comments at 6-7.

[127] Illinois Commission August 13, 2009 Comments at 22. *See also* OMS August 13, 2009 Comments at 2; Dynegy August 13, 2009 Protest at 13 (the Commission should not let the interim rate become permanent); Integrys August 13, 2009 Protest at 18-19 (require Filing Parties to file a permanent solution as soon as it completes the stakeholder process and in no case later than June 2010); ITC August 13, 2009 Protest at 13-14

(continued)

67. In their answer, Filing Parties argue that a sunset date for the interim proposal is not needed because they have already committed to file the long-term Phase II solution by July 15, 2010. Moreover, they contend that a sunset date could unduly cut short both the stakeholder process tasked with developing Filing Parties' Phase II proposal as well as the time for the Commission to fully evaluate the Phase II proposal.[128]

b. Commission Determination

68. We deny the requests to establish a sunset date for Filing Parties' section 205 Phase I cost allocation methodology because Filing Parties have already committed "to file the long-term Phase II cost allocation methodology by July 15, 2010."[129] We will, however, condition the acceptance of the instant proposal on Filing Parties fulfilling their commitment to file tariff sheets reflecting the Phase II solution on or before July 15, 2010. Given the circumstances of this proceeding and the complexity involved in developing a long-term cost allocation methodology, this approach addresses the current unanticipated consequences of the existing cost allocation methodology while at the same time facilitating the development of a long-term solution in the Phase II stakeholder process. In addition to the on-going Midwest ISO stakeholder process, Filing Parties also state that Midwest ISO, state regulators, load-serving entities, transmission owners, project developers and other stakeholders are working on regional planning and cost allocation issues to address the integration of substantial amounts of new generation to meet the region's demand for renewable power. These initiatives include the Upper Midwest Transmission Development Initiative to identify wind resources necessary to meet renewable portfolio standards and to develop an equitable cost-sharing methodology, and the CARP initiative, established by OMS, to evaluate the appropriateness of RECB I and RECB II cost allocation approaches within the Midwest ISO.[130]

69. Moreover, while those protesting the proposed interim cost allocation methodology are clearly concerned with potential adverse consequences from its use, even some of the commenters who support acceptance of the proposed methodology on an interim basis express concern with the idea of any extended use of this interim cost

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(require a sunset date for the instant proposal and require that, if Filing Parties have not made a new filing by July 15, 2010, the cost allocation methodology will revert to the pre-existing cost allocation methodology).

[128] Filing Parties August 26, 2009 Answer at 39.

[129] *Id*.

[130] Filing Parties July 9 Transmittal Letter at 2-3.

allocation methodology.[131] Accordingly, many of the parties to this proceeding argue that the Commission should provide specific guidance to assist the parties in developing the Phase II methodology as quickly as possible.[132] We want to avoid prejudging the outcome of the Phase II stakeholder process. However, we note that the Commission believes that cost allocation proposals should pay attention to cost-causation principles and to identifying the full array of benefits to generators, load, and other entities in the region from enhanced transmission infrastructure.

70. In addition to the conditional acceptance of the interim proposal, subject to Filing Parties fulfilling their commitment to file superseding Tariff revisions regarding the Phase II cost allocation methodology on or before July 15, 2010, we require Filing Parties to provide reports on November 20, 2009, February 26, 2010 and May 28, 2010 regarding the status of the Phase II stakeholder process.[133] Given the complexity and the challenge of developing the Phase II cost allocation methodology, we strongly encourage Filing Parties and their stakeholders to dedicate themselves to use of the stakeholder process for evaluation of Phase II reforms to transmission planning and cost allocation to more efficiently plan transmission expansions to interconnect and integrate new generation resources.

3. <u>Other Issues</u>

a. <u>Effective Date</u>

71. Midwest Generators and Edison Mission oppose Filing Parties' request for waiver of the 60-day prior notice requirement to permit an effective date of July 10, 2009. Midwest Generators argue that Filing Parties must show good cause but have failed to even address, let alone meet, that standard. They request that the Commission deny waiver and not allow any revision to the current cost allocation to be implemented before

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[131] *See, e.g.*, Xcel August 12, 2009 Comments at 8-11, OMS August 13, 2009 Comments at 2.

[132] *See, e.g.*, Xcel August 12, 2009 Comments at 12-13, EPSA August 13, 2009 Protest at 14-15; Joint Protestors August 13, 2009 Protest at 35-36, ITC August 13, 2009 Protest at 2-3, AWEA and WOW August 13, 2009 Protest at 58, and Midwest Generators August 13, 2009 Protest at 25.

[133] Filing Parties offered to submit reports thirty days after the end of each calendar quarter with the first report to be submitted on approximately October 30, 2009. However, we find that linking the submittal of the informational reports to the Phase II stakeholder process timeline, with reports due November 20, 2009, February 26, 2010 and May 28, 2010, will provide more timely information.

the full 60-day notice period has expired, i.e., only after September 7, 2009.[134] Edison Mission argues that waiver of notice should be denied because the proposed change will result in excessive rates. Edison Mission also argues that, even if the current methodology has produced unintended and inequitable results, the Commission's established policy for flawed RTO rules that produce unintended consequences is to change such rules prospectively.[135] It requests that the Commission order that the proposal not be applied retroactively and should only apply prospectively and that it should not apply to interconnection customers that have completed the system impact study stage of the interconnection process.[136] Edison Mission also disputes Filing Parties' claim that the proposed Tariff changes are intended to be an interim solution. According to Edison Mission, the proposal would be permanent with respect to Group 5 projects, citing Filing Parties' statement that an interconnection customer is bound by the cost allocation methodology in effect on the date that the customer executes a generator interconnection agreement or the date that an unexecuted generator interconnection agreement is filed with the Commission.[137] Further, in response to Filing Parties' claim that the parties in the queue have been aware of the potential for a revised cost allocation methodology since at least the latter part of 2008, Edison Mission asserts that many of the Group 5 projects have been in the interconnection queue for many years.[138]

72. Filing Parties argue that they made a strong showing of good cause for waiver, citing the Laverty testimony regarding the adverse consequences for Otter Tail and MDU and other transmission owners absent acceptance of the interim proposal effective July 10, 2009. They argue that, absent approval of the requested July 10, 2009 effective date, Otter Tail, MDU and other transmission owners face tens of millions of dollars of

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[134] Midwest Generators August 13, 2009 Protest at 24.

[135] Edison Mission August 13, 2009 Protest at 32 & n.95 (citing *Maine Pub. Utils. Comm'n v. ISO New England*, 97 FERC ¶ 61,322 (2001), *reh'g denied*, 99 FERC ¶ 61,029 (2002); *Bangor Hydro-Electric Co. v. ISO New England, Inc.*, 97 FERC ¶ 61,339 at 62,590 (2001)).

[136] Edison Mission August 13, 2009 Protest at 34.

[137] Edison Mission September 2, 2009 Answer at 3 (citing Filing Parties August 26, 2009 Answer at 10).

[138] For example, Edison Mission states, that Community Wind North LLC's project entered the interconnection queue on December 30, 2005, the facility study for the project was completed on July 10, 2007, and it has waited for Midwest ISO's completion of the Group 5 interconnection studies for almost two years. Edison Mission September 2, 2009 Answer at 12.

inappropriate cost assignments from the Group 5 projects in the Midwest ISO queue that are now proceeding toward completed interconnection agreements. They argue that the Commission could adapt its current policy to these special circumstances, based on the ample notice provided developers and the other stakeholders through the July 9, 2009 Filing and the preceding stakeholder process. Filing Parties further argue that the earliest possible effective date is needed as the flaws in the current rules are virtually conceded.

73. We find that Filing Parties have made a sufficient showing of good cause for waiver of the 60-day prior notice requirement.[139] Absent waiver of notice, the unanticipated consequences of application of the LODF allocation methodology, described by Filing Parties, will be borne by the load in the Otter Tail and MDU zones.

b. ATC, ITC/METC, and ITC Midwest Tariff Provisions

i. Credit Provisions

74. As proposed, Filing Parties' filing does not change the cost allocation methodology for generation interconnection-related network upgrades constructed on ATC, ITC/METC, and ITC Midwest systems. Unlike all other pricing zones within the Midwest ISO footprint, ATC, ITC/METC, and ITC Midwest have 100 percent crediting for network upgrades constructed by interconnection customers within their pricing zones.

75. Both Consumers Energy and Alliant, although generally supportive of the proposal, disagree with the 100 percent crediting provided by ATC, ITC/METC, and ITC Midwest. Consumers Energy and Alliant object that the changes in the Tariff sheets filed by Filing Parties "are meant to leave the ITC [and ATC] cost methodology substantially as it is."[140] Both argue for the need to have a consistent policy across the Midwest ISO, and claim that the proposal only increases the disparity between ATC, ITC/METC, and ITC Midwest and other pricing zones. They contend that this disparity will lead to higher transmission charges for ATC, ITC/METC, and ITC Midwest's network customers.

76. ITC filed an answer to the protests of Consumers Energy and Alliant. ITC argues that ATC, ITC/METC, and ITC Midwest's 100 percent crediting methodology is beyond the scope of this proceeding, and that the arguments of Consumers Energy and Alliant should not be considered by the Commission.[141] Filing Parties also argue that the ATC,

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[139] *See Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338-39, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

[140] Consumers Energy August 13, 2009 Comments at 4.

[141] ITC August 28, 2009 Answer at 3-5.

ITC/METC, and ITC Midwest Tariff provisions are beyond the scope of this section 205 proceeding, and are not otherwise in question in any section 206 proceeding.[142]

77. We agree that changes to the ATC, ITC/METC, and ITC Midwest 100 percent crediting cost allocation methodology are beyond the scope of this proceeding.

ii. Eligibility for Crediting in ITC

78. Filing Parties state that while their proposal does not modify the separate cost allocation methodologies for ATC, ITC/METC, and ITC Midwest, certain conforming changes are needed to some of the Tariff provisions related to ITC/METC, and ITC Midwest due to changes related to other pricing zones. Accordingly, they propose revisions to the Midwest ISO Tariff to remove tariff language that only pertains to ITC/METC and ITC Midwest from the more general Tariff language applying to the remaining areas of Midwest ISO under the proposed interim cost allocation methodology.[143]

79. In its protest, Consumers Energy disputes Filing Parties' claim that the proposed changes to the Tariff related to cost allocation for ITC/METC and ITC Midwest are simply conforming changes. Specifically, Consumers Energy states that (1) certain provisions should include specific references to the ITC regions;[144] and (2) Filing Parties are inconsistent with regard to who will judge demonstrations of the designation as a network resource or whether a contractual arrangement for capacity to serve Midwest ISO load for a period of at least one year exists.

80. In their answer, Filing Parties state that the proposed Tariff revisions pertaining to ITC are merely meant to preserve ITC's currently effective cost allocation methodology by ensuring that the revisions establishing the interim proposed revisions do not modify ITC's allocation methodology.

81. As discussed earlier, arguments regarding the cost allocation for ATC, ITC/METC, and ITC Midwest are beyond the scope of this proceeding. However, with

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[142] Filing Parties August 26, 2009 Answer at 46.

[143] No similar change is required for ATC because ATC is governed by Attachment FF-ATC LLC.

[144] Consumers Energy August 13, 2009 Comments at 10. Specifically, Consumers Energy suggests the following change to the proposal (shown in redline): "Generating Facility has been designated as a Network Resource <u>[in the ITC Region]</u> in accordance with the Tariff" and "contractual commitment…entered into with a Network Customer <u>[in the ITC Region]</u> for capacity."

regard to Filing Parties' revisions intended only to conform to the existing Tariff rules for ITC/METC, and ITC Midwest, we direct Filing Parties to file, within 30 days of this order, amended Tariff sheets reflecting that Midwest ISO as the transmission provider will evaluate and determine, in all cases involving ITC/METC and ITC Midwest, whether an interconnection customer has adequately demonstrated that it has been designated a network resource or whether a contractual arrangement for capacity to serve Midwest ISO load for a period of at least one year exists. As to the request by Consumers Energy that the Commission direct Filing Parties to include "in the ITC Region" in the Tariff language governing ITC/METC and ITC Midwest, we find that such a change is beyond the scope of this proceeding.

c. **Stakeholder Process**

82. Several protestors take issue with the process used to develop Filing Parties' proposal. They claim that support by a majority of stakeholders does not equal a just and reasonable rate, as suggested by Filing Parties.[145] Specifically, they argue that the process was rushed and reflects an unfair bias towards transmission owners. They also express doubt that Filing Parties can meet the timeline set forth in the September 17 Response for their commitment to file a permanent proposal on or before July 15, 2010, suggest that the proposed stakeholder process could have the same problems as the stakeholder process that led to the instant filing, and question whether Midwest ISO will defer to OMS in the process rather than exercise independent leadership.[146] Filing Parties defend the stakeholder process that was used to develop the proposal, stating that the RECB Task Force spent six months working on it and that the proposal went through the complete stakeholder process before receiving approval.[147] In the RECB I Order, the Commission found "that the process adopted by the Midwest ISO, as described in the October 7 Filing, was an open, transparent, and collaborative stakeholder process."[148] While we note that the Phase I stakeholder process was conducted on an accelerated timeline due to the time-sensitive nature of the problem, there is no indication that such process was not open, transparent and collaborative.

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[145] AWEA and WOW August 13, 2009 Protest at 23-27, Joint Protestors August 13, 2009 Protest at 26-27, Midwest Generators August 13, 2009 Protest at 21, and Dynegy August 13, 2009 Protest at 12.

[146] Integrys September 24, 2009 Protest at 11; NextEra September 25, 2009 Protest at 3-4.

[147] Filing Parties August 26, 2009 Answer at 40-41.

[148] RECB I Order, 114 FERC ¶ 61,106 at 24.

<u>The Commission orders</u>:

(A) Filing Parties' proposed Tariff revisions are hereby conditionally accepted for filing, without suspension or hearing, to become effective on July 10, 2009, as discussed in the body of this order.

(B) Filing Parties are hereby directed to submit informational reports on November 20, 2009, February 26, 2010, and May 28, 2010 regarding the status of the Phase II stakeholder process.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.