145 FERC ¶ 61,111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. Docket Nos. ER13-2157-000
ER13-2157-001

ORDER CONDITIONALLY ACCEPTING GENERATOR INTERCONNECTION AGREEMENT

(Issued November 8, 2013)

1. On August 14, 2013, as amended September 9, 2013,[1] Midcontinent Independent System Operator (MISO), pursuant to section 205 of the Federal Power Act (FPA),[2] submitted for filing an unexecuted amended and restated Generator Interconnection Agreement (GIA) (Restated Hoopeston GIA) among Hoopeston Wind, LLC (Hoopeston) as the Interconnection Customer, Ameren Services Company as agent for Ameren Illinois Company (Ameren) as Transmission Owner, and MISO as the Transmission Provider. MISO is filing the interconnection agreement unexecuted at Hoopeston's request because Hoopeston disputes Ameren's proposed cost allocation revisions.[3] MISO requests waiver of the Commission's 60-day prior notice requirement[4] for an effective date of August 15, 2013 for the Restated Hoopeston GIA.[5]

2. In this order we conditionally accept the unexecuted Restated Hoopeston GIA subject to further modification, to become effective August 15, 2013, as requested.

---

[1] MISO submitted an amendment to correct an error in Appendix B of the Interconnection Agreement as well as an inaccurate statement in the transmittal letter.

[2] 16 U.S.C. § 824d (2012).

[3] August 14, 2013 Transmittal Letter at 2.

[4] 18 C.F.R. § 35.3(a) (2013).

[5] August 14, 2003 Transmittal Letter at 8.

I. Background

3. In October 2009, the Commission accepted MISO's existing proposal for participant funding policy, which revised Attachment FF to increase the cost responsibility of an interconnection customer to 100 percent of Network Upgrade costs, with a possible 10 percent reimbursement for projects that were 345 kV and above.[6] At that time, MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) provided three alternatives for funding the costs of network upgrades for generator interconnections. Attachment FF described two of these alternatives (Option 1 and Option 2), which were incorporated into MISO's *pro forma* GIA by reference, while Article 11.3 in MISO's *pro forma* GIA[7] contemplated a third.

4. Under Option 1: (1) the interconnection customer provides up-front funding for network upgrades; (2) the transmission owner provides a 100 percent refund of the cost of network upgrades to the interconnection customer upon completion of the network upgrades; and (3) the transmission owner assesses the interconnection customer a monthly network upgrade charge to recover the cost of the non-reimbursable (i.e., the participant-funded) portion of the network upgrade costs over time and based on a formula contained in Attachment GG[8] of the MISO Tariff, which was established through a separate facilities service agreement (FSA).[9]

5. Under Option 2: (1) the interconnection customer provides up-front funding for network upgrades and (2) the transmission owner refunds the reimbursable portion of the payment to the interconnection customer in the form of a credit to reduce the transmission service charges incurred by the transmission customer with no further financial obligations on the interconnection customer for the cost of upgrades.[10]

6. Under the third alternative set forth in Article 11.3 of MISO's *pro forma* GIA (the self-fund option), the transmission owner can elect to provide the up-front funding for the

---

[6] *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 8 (2009).

[7] Article 11.3 is found in the *pro forma* GIA, which is located in Attachment X of the MISO Tariff.

[8] The network upgrade charge included a return on capital investment, income taxes, depreciation expense, operating and maintenance expense, administrative and general expense, and other direct and indirect costs.

[9] August 14, 2013 Transmittal Letter at 2-3.

[10] *Id.* at 3.

capital cost of the network upgrades.[11] However, the MISO Tariff does not address how MISO's participant funding methodology would be implemented under this alternative.[12]

7. On October 20, 2011, the Commission responded to a complaint filed in March 2011 by ordering the removal of Option 1 from Attachment FF, finding that this option increased the costs directly assigned to the interconnection customer with no corresponding increase in service compared to other funding options.[13] The Commission found that it was unjust and unreasonable to require an interconnection customer to provide up-front funding for network upgrades and then permit the transmission owner to repay the amount and charge the interconnection customer for the transmission owner's capital costs and income tax allowance.[14] The Commission also found that leaving the election of Option 1 to the sole discretion of a transmission owner "creates unacceptable opportunities for undue discrimination by affording a transmission owner the discretion to increase the costs of interconnection service by assigning both increased capital costs,

---

[11] *Id.* This option was originally identified in Order No. 2003. *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 720 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at PP 618 and 658, *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), *cert. denied*, 552 U.S. 1230 (2008).

[12] MISO Tariff, Attachment X, *pro forma* GIA, section 11.3:

> Network Upgrades, System Protection Facilities and Distribution Upgrades. Transmission Owner shall design, procure, construct, install, and own the Network Upgrades, Transmission Owners' System Protection Facilities and Distribution Upgrades described in Appendix A. Interconnection Customer shall be responsible for all costs related to Distribution Upgrades and/or Generator Upgrades. Transmission Owner shall provide Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 if Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owners' System Protection Facilities; otherwise, such facilities, if any, shall be solely funded by Interconnection Customer.

[13] *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076, at P 34 (2011) (*E.ON*), *order on reh'g*, 142 FERC ¶ 61,048, at P 34 (2013) (*E.ON* Rehearing Order).

[14] *Id.* P 37.

as well as non-capital costs . . . to particular interconnecting generators, but not others."[15] The Commission noted that the third option—the transmission owner self-fund option—was still available under MISO's *pro forma* GIA as an alternative to Option 2.[16]

8. In the same order, the Commission also established that March 22, 2011, the filing date of the complaint, would serve as the effective date for the removal of Option 1 from the MISO tariff. On rehearing, the Commission stated that *E.ON* "did not automatically modify any existing agreements" and that its decision to remove Option 1 "will not apply to agreements effective prior to March 22, 2011."[17]

9. Ameren, Hoopeston, and MISO executed their original GIA on January 4, 2011 (January 4, 2011 GIA) which identified certain network upgrades whose costs are recovered under Option 1 of the MISO Tariff (Original Network Upgrades), as memorialized in section 10.2.1 of the GIA.[18] Ameren, Hoopeston, and MISO executed a second agreement on May 17, 2011 (May 17, 2011 GIA) that identified additional network upgrades (Incremental Network Upgrades) whose costs are recovered under Option 1 of the Tariff, which was also memorialized in section 10.2.1 of Appendix A of the GIA.[19]

II. <u>The Restated Hoopeston GIA</u>

10. On August 14, 2013, as amended on September 9, 2013, MISO submitted the Restated Hoopeston GIA unexecuted at Hoopeston's request because Hoopeston disputes Ameren's cost allocation revisions.[20] In the Restated Hoopeston GIA, Ameren has

---

[15] *Id.* P 38.

[16] *Id.* P 37.

[17] *E.ON* Rehearing Order, 142 FERC ¶ 61,048 at P 34.

[18] The following are the Original Network Upgrades and their prices as stated in the Restated Hoopeston GIA: "H094 Switching Station" - $3,496,000, "Split and Tap the 138 kV Hoopeston West to Vermillion Transmission Line" - $320,000, "Replace Relays at Hoopeston West on Line to H094 Interconnection Switching Station" - $190,000.

[19] The following are the Incremental Network Upgrades and their prices as stated in the Restated Hoopeston GIA: "Re-Tap current transformers and replace line relays at Paxton East Substation" - $37,000, "Rebuild Paxton East – Rantoul Junction 138 kV line" - $3,930,000. The Restated Hoopeston GIA states that the $3,930,000 cost for the Paxton East – Rantoul Junction Upgrade includes "the responsibility of other interconnection customers."

[20] August 14, 2013 Transmittal Letter at 2.

elected to retain Option 1 to recover the costs for the Original Network Upgrades that were identified in the January 4, 2011 GIA and to self-fund the Incremental Network Upgrades that were identified in the May 17, 2011 GIA. MISO notes that the Tariff does not address how the self-fund option is implemented in the context of MISO's approved participant funding for interconnection customer network upgrades. Thus, MISO notes that, as proposed here, Ameren will fund the Incremental Network Upgrades up-front and recover those costs through a network upgrade charge established using the formula in Attachment GG consistent with MISO's participant funding allocation methodology. MISO states that Hoopeston will remain responsible for providing security for both the Original Network Upgrades as well as the Incremental Network Upgrades.[21] Thus, under the Restated Hoopeston GIA, Hoopeston will provide initial security and make progress payments for Original Network Upgrades to be funded under Option 1 and provide initial security for the Incremental Network Upgrades to be funded under the self-fund option.[22]

III. Notice and Responsive Filings

11. Notice of MISO's August 14, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 52171 (2013) with protests and interventions due on or before September 4, 2013. Notice of MISO's September 9, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 57146 (2013) with protests and interventions due on or before September 30, 2013.

12. On September 3, 2013, Hoopeston filed a motion to intervene and protest (Hoopeston Protest). On September 4, 2013, Ameren filed comments in support of the filing and a conditional protest (Ameren Comment).[23] On September 18, 2013, Ameren filed a motion for leave to answer and answer (Ameren Answer). On September 27,

---

[21] Restated Hoopeston GIA at Appendix A at Sec. 3 (adding designations of "Original Network Upgrades" and "Incremental Network Upgrades"); *see id*. at Secs. 10.1 and 10.2.

[22] In the August 14, 2013 Transmittal Letter, MISO states that the Restated Hoopeston GIA provides for progress payments to be made for both the Original Network Upgrades and the Incremental Network Upgrades. August 14, 2013 Transmittal Letter at 4 (citing Restated Hoopeston GIA at Appendix A at Sec. 10.2.1 and Appendix B, Interconnection Customer Milestones 4, 6, 14-16, 18, 20, 21, 29). However, the language in Appendix B of the Restated Hoopeston GIA only provides for progress payments related to Interconnection Facilities and *Original Network Upgrades*.

[23] Ameren's conditional protest concerned a typographical error contained in MISO's filing in Appendix A to the Restated Hoopeston GIA. Ameren states it believes it was MISO's intention to correct this error in an errata filing. MISO subsequently amended its filing which fully addressed Ameren's conditional protest.

2013, E.ON Climate & Renewables North America, LLC, Pioneer Trail Wind Farm, LLC and Settlers Trail Wind Farm, LLC (collectively, E.ON Intervenors) filed a motion to intervene or in the alternative, a motion to intervene out of time and comments. On September 27, 2013, Hoopeston filed a motion for leave to answer and answer.

13. In its comments, Ameren states that there are two sets of network upgrades at issue under the unexecuted GIA and both are necessary to interconnect the Hoopeston wind project to the Ameren system.[24] Ameren affirms that the Original Network Upgrades are those that were identified and memorialized in the January 4, 2011 GIA, and that the Incremental Network Upgrades are those additional network upgrades that were identified in the May 17, 2011 GIA. Ameren notes that the May 17, 2011 GIA was executed after the March 22, 2011 effective date of the Commission's removal of Option 1 from the MISO Tariff. Ameren states that under the January 4, 2011 GIA, the cost of the Original Network Upgrades totals $4.4 million and that under the May 17, 2011 GIA the cost of the Incremental Network Upgrades totals $3.7 million.

14. Ameren states that it is not in dispute that the Original Network Upgrades were included in the January 4, 2011 GIA. According to Ameren, the crux of the dispute between Ameren and Hoopeston is Ameren's election to self-fund the Incremental Network Upgrades.[25] As proposed, Ameren will initially fund the Incremental Network Upgrades. Once the construction is complete and costs have been trued-up, Ameren proposes to establish a direct assignment charge to Hoopeston in the form of a Monthly Revenue Requirement that will be memorialized in an FSA to be filed with the Commission. Ameren contends that having Hoopeston pay for the Incremental Network Upgrades over time through a Monthly Revenue Requirement is necessary to give effect to the policy embodied in the MISO Tariff that interconnection customers are responsible for either 90 or 100 percent of the costs of the network upgrades required to provide them service.[26] Ameren states that the policy of placing the cost responsibility for network upgrades on the interconnection customer (Hoopeston) is the basis for Ameren's position that the monthly facilities charge approach is the only just and reasonable way to comply with cost allocation principles and implement the self-funding option, which are found in the MISO Tariff.

15. Hoopeston maintains that the fully executed January 4, 2011 GIA was replaced and canceled by the fully executed May 17, 2011 GIA, and that Option 1 should be

---

[24] Ameren Comment at 2.

[25] *Id.* at 5.

[26] Under the MISO Tariff, interconnection customers are eligible for a 10 percent reimbursement of network upgrade costs for facilities that are rated 345 kV and above under certain conditions.

equally unavailable for Ameren's use with regard to both the Original Network Upgrades and the Incremental Network Upgrades under the Restated Hoopeston GIA.[27] Hoopeston argues that the language "replaces the GIA that was executed on January 4, 2011…" in the recitals of the May 17, 2011 GIA is evidence that the January 4, 2011 GIA was canceled. Moreover, Hoopeston notes that Article 30.4 of the May 17, 2011 GIA states that:

> This GIA, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this GIA. There are no other agreements, representations, warranties, or covenants, which constitute any part of the consideration for or any condition to, any Party's compliance with its obligations under this GIA.

Thus, Hoopeston states that the May 17, 2011 GIA is the only effective agreement between the parties and the only Commission-accepted GIA.

16. Hoopeston refers to the *Settlers Trail* Rehearing Order for the proposition that the Commission has addressed and clarified its position on the network upgrade funding mechanism.[28] In that order, the Commission addressed the applicability of the Commission's findings in *E.ON* to GIAs executed under the MISO Tariff prior to and after the March 22, 2011 effective date of *E.ON*. Hoopeston distinguishes the instant filing from the *Settlers Trail* Rehearing Order, where there were two GIAs: one that became effective February 5, 2010 and another that became effective April 9, 2011. Hoopeston argues that in the Restated Hoopeston GIA, there is no GIA effective before the March 22, 2011 effective date of *E.ON* because there is only the May 17, 2011 GIA, which was effective after March 22, 2011, and the Restated Hoopeston GIA.

17. According to Hoopeston, in the *Settlers Trail* Rehearing Order, the Commission held consistent with its determination in the *E.ON* Rehearing Order that a GIA that was executed prior to March 22, 2011 could include the Option 1 reimbursement mechanism but that a GIA that was executed after March 22, 2011 could not use Option 1 and must use Option 2.[29] Moreover, Hoopeston states that, in Ameren's request for rehearing of *Settlers Trail*, Ameren admitted that:

---

[27] Hoopeston Protest at 10.

[28] *Id.* at 11 (citing *Midwest Indep. Transmission Sys. Operator Inc.*, 143 FERC ¶ 61,050 (2013) (*Settlers Trail* Rehearing Order)).

[29] *Id.* at 12.

> To the extent that Ameren Illinois has already accepted these customers' funding for the construction of certain of these incremental upgrades, Ameren Illinois agrees that Option 2 is the only remaining option (i.e. Ameren Illinois must accept the advanced funding as full satisfaction of these customers' cost responsibility for the incremental upgrades under the MISO tariff).[30]

18. Hoopeston argues that the May 17, 2011 GIA has been executed and performance of the agreement is well underway, so Ameren should not be allowed to invoke self-funding for the Incremental Network Upgrades over two years later. Specifically, Hoopeston states that it has submitted $645,000 for network upgrades, which serves as both a first progress payment and as initial security, as required by milestone 4 and milestone 6 of Appendix B of the Restated Hoopeston GIA. Hoopeston states that, since Ameren has accepted these monies, and since Ameren has admitted that it must use Option 2 where performance has begun and the interconnection customer has made payments under an existing GIA, Ameren must be required to use Option 2 to fund Hoopeston's Original Network Upgrades and Incremental Network Upgrades.[31]

19. In addition, Hoopeston claims that it did not receive prior written notice from Ameren indicating its election to self-fund under the May 17, 2011 GIA and that this should also prevent Ameren from using the self-fund option. Hoopeston states that the opportunity for Ameren to elect the self-fund option was prior to executing the May 17, 2011 GIA and since Ameren did not do so, the self-fund option is not available to Ameren. Hoopeston notes that MISO's claim that two options are available to Ameren is incorrect, as the self-fund option is only available for use if it was elected at "the start of GIA negotiations."[32]

20. Hoopeston argues that Ameren, a non-independent transmission owner, has set forth its own pricing policy in selecting and developing a schema for recovering its revenue requirement under Article 11.3 that is not set forth in the MISO Tariff, which is

---

[30] *Id.* at 13 (citing Request for Clarification, or in the Alternative, Rehearing of Ameren Illinois Company (Ameren Rehearing Request) in Docket Nos. ER11-3326-001 *et al*., May 20, 2013, requesting clarification or rehearing of *E.ON*).

[31] *Id.* at 13.

[32] *Id.* at 16 (citing Article 11.3 of the GIA: "Transmission Owner shall provide the Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 if the Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities…"); Article 15 of the GIA states: "Either Party may change the notice information in this GIA by giving 5 (five) Business Days written notice prior to the effective date of the change."

contrary to Order Nos. 2003 and 2003-A.[33] Hoopeston also argues that, in Order Nos. 2003 and 2003-A, the Commission ruled that it would afford an independent transmission provider flexibility to choose interconnecting pricing policy but the Commission did not grant such flexibility to non-independent providers.

21. Hoopeston argues that Ameren's schema to self-fund violates *E.ON* because there the Commission held that it was unjust, unreasonable, unduly discriminatory, and contrary to Order No. 2003 for a transmission owner to have the discretion to unreasonably increase the interconnection customer's costs.[34] Hoopeston notes that the Commission found that the transmission owner cannot increase the costs that are directly assigned to the interconnection customer when there is no difference in the interconnection service provided.[35] Hoopeston also notes that the Commission further found that it was unjust and unreasonable to subject an interconnection customer to a monthly network upgrade charge that unreasonably increases the interconnection customer's costs over time – solely at the discretion of the transmission owner.[36]

22. Hoopeston states that Ameren's schema to self-fund the Incremental Network Upgrades proposes to establish a 30-year service agreement under which Hoopeston will pay Ameren's monthly revenue requirements for Incremental and Original Network Upgrades, which will increase costs significantly for Hoopeston.[37]

23. Hoopeston adds that, should the Commission find it relevant and appropriate to issue guidance as to the Article 11.3 self-funding mechanism in this docket, the self-funding option should provide for the recovery of the capital for network upgrades, but that Article 11.3 does not state that the transmission owner may additionally recover its revenue requirements.[38] Hoopeston argues that if Ameren wants to recover its revenue requirements in addition to its capital expenditures for self-funded network upgrades it should roll these costs into its transmission rate base in lieu of requiring Hoopeston to make such payments.

---

[33] *Id.* at 17.

[34] *Id* at 19 (citing *E.ON*, 137 FERC ¶ 61,076 at P 37).

[35] *Id.*

[36] *Id.*

[37] *Id.* at 20.

[38] *Id.* at 22.

24. In its answer, Ameren argues that amending Hoopeston's GIA did not render Option 1 unavailable as to the Original Network Upgrades.[39] Ameren notes that Hoopeston's argument rests on the notion that its contract was amended after the March 22, 2011 date when Option 1 was removed from the MISO Tariff. Ameren argues that the word "replaces" in the recitals and the above referenced language in Article 30.4 of the May 17, 2011 GIA, respectively, is commonplace contract language for amended versions of MISO GIAs and that it is precisely the same language used in the disputed amended agreements in *Settlers Trail*. Therefore, Ameren states that Hoopeston's theory that there were two separable GIAs in *Settlers Trail* (such that the Commission was justified there in bifurcating the original and incremental network upgrades), but only one GIA in this case, is simply wrong and has no basis in fact. In both cases, the agreements were treated precisely the same way. The original GIAs were modified, with changes memorialized in amended and restated versions of the GIA, which contained the language stating that the restated agreement "replaces" the first.

25. Ameren also argues that by employing the self-fund option, it did not create its own pricing structure[40] because each component of the self-fund option found in the Restated Hoopeston GIA is grounded entirely in the MISO Tariff and Commission precedent. Ameren states that: (1) the "election to fund" is a creature of the Commission's Order No. 2003 *pro forma* large generator interconnection agreement and exists today in the MISO Tariff; (2) even when the transmission owner elects to provide the initial funding, ultimate cost responsibility for network upgrades remains with the interconnection customer pursuant to cost allocation policy under the MISO Tariff; and (3) having the interconnection customer fulfill its ultimate cost responsibility through a charge over time under an FSA is also a function of the MISO Tariff.[41]

26. According to Ameren, Hoopeston's other objections to self-funding lack merit.[42] Ameren claims that the Commission should also reject Hoopeston's argument that the self-funding election is not available because Ameren did not select this option from the start in the May 17, 2011 GIA. Ameren maintains that this argument is false because Ameren maintained its selection of Option 1 in that agreement, long before the Commission decided *E.ON*.[43] According to Ameren, Hoopeston executed the January 4, 2011 GIA, which contained the Option 1 election and the FSA mechanism for repayment

---

[39] Ameren Answer at 2.

[40] *Id*. at 6.

[41] *Id.* at 6-7.

[42] *Id.* at 7.

[43] *Id.* at 8.

and that therefore the charges were going to be higher than if Ameren had elected Option 2.[44] Thus, the Commission should reject Hoopeston's new-found objection to a pricing mechanism, i.e., self-funding, similar to the one to which it had previously agreed. Furthermore, Ameren points to *Rail Splitter*, where the Commission rejected the argument that a network upgrade charge would be unjust and unreasonable because the cumulative costs of FSA payments are higher than the payment that would result from a lump-sum approach under Option 2.[45]

27. Ameren continues that Hoopeston is also mistaken when it implies that Ameren's use of the self-fund option in the Restated Hoopeston GIA is unjust and unreasonable because it reflects the ability of the transmission owner to choose between the self-fund option and Option 2.[46] Ameren maintains that the choice of funding mechanisms has been, and remains, vested in the transmission owner under the Tariff. Ameren states that before March 22, 2011, a transmission owner had a choice between Option 1, Option 2, and the self-fund option and after March 22, 2011 has the ability to choose between Option 2 and the self-fund option. Ameren states that if Hoopeston objects to the remaining choice in the tariff, it must submit a filing under section 206 of the FPA.

28. Ameren distinguishes the Restated Hoopeston GIA from the *Settlers Trail* GIA because, in the *Settlers Trail* Rehearing Order, the interconnection customers had already provided the up-front funding for incremental network upgrades that were agreed to after March 22, 2011, rendering the self-fund option unavailable.[47] Ameren maintains that that is not the case with Hoopeston, i.e. Hoopeston has not commenced paying for the Incremental Network Upgrades, which is why the self-fund option is now available to Ameren.

29. With respect to Hoopeston's argument that it tendered to Ameren a security payment in compliance with the milestones in the unexecuted GIA and that this amounts to a concession by Ameren that neither Option 1 nor the self-funding option is available,

---

[44] *Id*. at 9.

[45] *Id.* (citing *Rail Splitter Wind Farm, LLC*, 142 FERC ¶ 61,047, at P 32 (2013): "Thus, even if we assume that Ameren's election of Option 1 required Rail Splitter to pay significantly more for the network upgrades in question than it could have paid under Option 2, the obligation to pay according to Option 1 under the contract was insufficient to dissuade Rail Splitter from executing the FSA without protest or objection, and is insufficient now to persuade us to relieve Rail Splitter from its obligation to pay the Monthly [Network Upgrade] Charge.").

[46] *Id.*

[47] *Id.*

Ameren says this argument is misleading and incorrect.[48] According to Ameren, the milestones are part of, and therefore implement, the Restated Hoopeston GIA, and they do not contradict or undermine it. Furthermore, Ameren states that Hoopeston misleads when it says it provided $645,000 for the first progress payment and initial security because the progress payment was made for the Original Network Upgrades and not the Incremental Network Upgrades.

30. In its answer, Hoopeston maintains that Ameren is wrong in its contention that amending the May 17, 2011 GIA did not render Option 1 unavailable as to the Original Network Upgrades.[49] Hoopeston reiterates that the May 17, 2011 GIA canceled and completely replaced the January 4, 2011 GIA.

31. According to Hoopeston, Ameren is trying to cloud the issue by stating that the GIA at issue in *Settlers Trail* included the word "replaces" in the recitals.[50] Hoopeston notes that the Commission had originally accepted and suspended the amended GIA at issue in *Settlers Trail*, subject to modifications based on the outcome of its decision as to the justness of Option 1 in its proceedings in *E.ON* and maintains that the Commission's suspension of the GIA in that case kept in place the original GIA.

32. Furthermore, Hoopeston states that the May 17, 2011 GIA has an integration clause in Article 30.4, which completely replaces the January 4, 2011 GIA.[51] Hoopeston also argues that the MISO Tariff does not contain a mechanism for how self-funding is to be implemented under Article 11.3 so Ameren cannot invent one.[52] Hoopeston maintains that Ameren cannot pick and choose elements of the MISO Tariff to suit its desires.[53]

33. Hoopeston also argues that Ameren is wrong in its contention that Hoopeston's other objections to self-funding lack merit.[54] According to Hoopeston, Ameren is mistaken in likening the Restated Hoopeston GIA to the *Rail Splitter* GIA because while the parties in *Rail Splitter* signed an FSA, the FSA that would establish the network upgrade charge pursuant to the Restated Hoopeston GIA has not been signed. Therefore,

---

[48] *Id.* at 9-10.

[49] Hoopeston Answer at 3.

[50] *Id.* at 5.

[51] *Id.* at 6.

[52] *Id*. at 7-8.

[53] *Id.* at 8.

[54] *Id*. at 9.

the Commission's determination in *Rail Splitter* should have no relevance to the Restated Hoopeston GIA. Moreover, Hoopeston argues, the Commission based its decision in *Rail Splitter* on the fact that Rail Splitter did not contest the FSA before it signed the FSA.

34. Hoopeston further argues that acceptance of payment from Hoopeston commits Ameren to use Option 2, whether the payment was solely for the Original Network Upgrades or for both the Original Network Upgrades and the Incremental Network Upgrades since both upgrades are integral to the Hoopeston Wind integration.[55] Hoopeston reiterates that, as noted above, in Ameren's request for rehearing of *Settlers Trail*, Ameren admitted that it must use Option 2 where customer funding has been provided for incremental network upgrades that were included in a GIA executed after March 22, 2011. Hoopeston states that Ameren's acceptance of payment for *any* network upgrades is clear evidence that performance has commenced under the GIA and therefore Ameren should be bound to using Option 2 to fund all network upgrades included in the Restated Hoopeston GIA.

35. The E.ON Intervenors argue that the overarching issue is what rate the interconnection customers should pay for interconnection service: up to 100 percent of the actual cost of the network upgrades (when the transmission owner directs the interconnection customer to provide up-front funding for the network upgrades) or 338 percent over time of the actual cost of the network updates, for example (when the transmission owner chooses instead to up-front fund those same network upgrades and decides to charge an Option 1-type pricing).[56] The E.ON Intervenors maintain that this is a policy issue of first impression that must be resolved by the Commission.

36. The E.ON Intervenors maintain that the issues raised in this docket include: (1) whether Option 1 pricing may lawfully be selected and applied to any network upgrades in a GIA that supersedes a GIA in effect prior to March 22, 2011; (2) whether the Commission's language in *E.ON* establishes a right to charge Option 1 pricing for any network upgrades in a superseding GIA that has an effective date after March 22, 2011; (3) whether Commission precedent allows Option 1 pricing in a superseding GIA that has an effective date after March 22, 2011; (4) whether a transmission owner has the right to self-fund the network upgrades at issue where the transmission owner did not make this election from the start; (5) whether the MISO Tariff addresses how costs are to be recovered when a transmission owner elects to self-fund network upgrades; (6) whether the cost of network upgrades should be rolled into a transmission owner's rate base when the transmission owner elects to self-fund and whether it is appropriate for that issue to be addressed in isolated interconnection dockets; and (7) whether the much higher Option

---

[55] *Id.* at 11.

[56] E.ON Intervenors Motion at 4-5.

1 pricing and Option 1-type pricing for interconnection service is just and reasonable and not unduly discriminatory.[57]

IV. Discussion

A. Procedural Matters

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Ameren's and Hoopeston's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

39. We conditionally accept the Restated Hoopeston GIA subject to further modification, as discussed below.

40. We disagree with Hoopeston that the language in the recitals and in Article 30.4 of the May 17, 2011 GIA should cancel the choice of Option 1 as a network upgrade reimbursement policy for the Original Network Upgrades included in the January 4, 2011 GIA. Hoopeston alleges that as a consequence of the recitals and of Article 30.4, there is no agreement in effect prior to March 22, 2011.[58] We find that Article 30.4 of the MISO *pro forma* GIA should be interpreted in light of a GIA's effective date. The Original Network Upgrades needed to interconnect Hoopeston's facilities were included in the January 4, 2011 GIA, as executed by Ameren, Hoopeston, and MISO.[59] From this time, the GIA provided Option 1 as the funding mechanism for the costs associated with those Original Network Upgrades. The January 4, 2011 GIA governed from its effective date until and including May 16, 2011, at which time the Incremental Network Upgrades were added, but no changes were made to the Original Network Upgrades. Therefore, while the May 17, 2011 GIA is the only GIA that governs as of May 17, 2011, the funding mechanism for the Original Network Upgrades has been Option 1 since the effective date

---

[57] *Id.* at 5-17.

[58] Hoopeston Protest at 11 and 13.

[59] *See* 18 C.F.R. § 35.2(f) (2013): "the effective date of a rate schedule, tariff, or service agreement shall mean the date on which a rate schedule filed and posted pursuant to the requirements of this part is permitted by the Commission to become effective as a filed rate schedule."

of the January 4, 2011 GIA. As stated in *E.ON*, the Commission's decision to remove Option 1 from the MISO Tariff will not apply to agreements effective prior to March 22, 2011.[60] Accordingly, we find that Option 1 was, and should remain, in effect with regard to the Original Network Upgrades that were included in the January 4, 2011 GIA, which was executed before March 22, 2011, the effective date under *E.ON* for the removal of Option 1 from the MISO tariff. Based on this same reasoning, we find that Option 1 should not be available for the Incremental Network Upgrades that were added in the May 17, 2011 GIA, which was executed after March 22, 2011.

41. We find it is just and reasonable and not unduly discriminatory for the transmission owner to recover capital costs for network upgrades through a network upgrade charge established using the formula in Attachment GG and consistent with MISO's participant funding allocation methodology. However, we agree with Hoopeston that it would be unduly discriminatory to give a transmission owner the discretion to unreasonably increase an interconnection customer's costs by choosing the self-fund option as opposed to Option 2. Specifically, we find it unduly discriminatory for a transmission owner to recover costs other than the return of and on the capital costs of the network upgrades from an interconnection customer under the self-funding option, because an interconnection customer charged under Option 2 would only be required to pay for the capital costs of the network upgrades. Therefore, we direct MISO to revise the agreement so that the self-fund option does not include the recovery of costs other than the return of and on the capital costs of the network upgrades. Specifically, MISO must revise the provision of section 10.2 of Appendix A of the GIA currently providing that the Network Upgrade Charge for both the Original Network Upgrades and the Incremental Network Upgrades is established pursuant to Attachment GG, as per our directives in this order.

42. We disagree with Hoopeston's argument that Ameren may only choose the self-fund option if the costs of the network upgrade are rolled into its zonal transmission rate.[61] Ameren's proposal, as revised above, is a reasonable implementation of the self-fund option in the context of MISO's Tariff with its participant funding methodology. In Order Nos. 2003 and 2003-A, the Commission established that a non-independent transmission owner could elect to self-fund.[62] Therefore, Ameren as a transmission owner may select self-funding under Article 11.3 of the *pro forma* GIA. We further find that, in the context of MISO's tariff with its participant funding methodology, once MISO has revised the Restated Hoopeston GIA to remove the recovery of costs other than the return of and on the capital costs of network upgrades, the self-fund option will

---

[60] *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34.

[61] Hoopeston Protest at 23-24.

[62] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 720.

be implemented in a way that is comparable to and not unduly discriminatory vis-à-vis Option 2. Similarly, we find that the removal of costs other than the capital costs of the network upgrades from the cost recovery mechanism in the self-fund option addresses Hoopeston's remaining arguments about the just and reasonableness of the self-fund option.

43. As to Hoopeston's assertion that it has already begun payment under the May 17, 2011 GIA for Incremental Network Upgrades and that Ameren is therefore precluded from applying self-funding now, these assertions are contradictory to the milestone descriptions in Appendix B of the Restated Hoopeston GIA. Specifically, milestone 4 requires that Hoopeston "provide a guarantee, letter of credit, or other form of initial security to [Ameren] in the amount of $645,000 for the facilities to be constructed under this GIA," which will "be reduced by the amount of subsequent progress payments for [Ameren's] *Interconnection Facilities and Original Network Upgrades*…" on July 15, 2013, nearly a month before the Restated Hoopeston GIA was filed. Additionally, milestone 6 requires that Hoopeston "provide to [Ameren] the first progress payment for [Ameren's] Interconnection Facilities and *Original Network Upgrades* in the amount of $50,000," also on July 15, 2013.[63] Nowhere in any of the milestones are progress payments for the Incremental Network Upgrades memorialized.[64]

44. Further, we disagree with Hoopeston's argument that the Commission should not allow Ameren to choose the self-fund option because Ameren did not provide proper notice before the May 17, 2011 GIA. Article 11.3 of MISO's *pro forma* GIA requires that a "Transmission Owner shall provide the Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 if the Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities…," and Article 15 provides that that written notice should occur "five Business Days prior to the effective date of the change." Therefore, Ameren only need have provided notice that it intends to self-fund the Incremental Upgrades at least five Business Days prior to the effective date of the change to the self-fund option.

45. We grant MISO's request for waiver of the 60-day prior notice requirement. As MISO notes, the parties have indicated their intention for and support of an effective date of August 15, 2013.[65]

---

[63] Restated Hoopeston GIA, Appendix B (emphasis added).

[64] We note that Hoopeston's first progress payment of $50,000 was made under the unexecuted Restated Hoopeston GIA before the Commission now, and not the May 17, 2011 GIA.

[65] August 14, 2013 Transmittal Letter at 8.

The Commission orders:

(A) The Restated Hoopeston GIA is hereby conditionally accepted, as discussed in the body of this order.

(B) MISO is 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.