146 FERC ¶ 61,013
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER12-1928-001 ER12-1928-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued January 10, 2014)

1. On November 26, 2012, the Midwest Independent Transmission System Operator, Inc. (MISO)[1] filed a compliance filing[2] to comply with an October 26, 2012 order conditionally accepting an unexecuted Amended and Restated Generator Interconnection Agreement (Amended GIA) among Wisconsin Public Service Corporation (WPSC) as Interconnection Customer, Southern Minnesota Municipal Power Agency as Transmission Owner, and MISO as Transmission Provider.[3] On the same day, WPSC requested rehearing and clarification of the October 26 Order. In this order, we deny WPSC's request for rehearing and clarification, and we accept MISO's compliance filing.

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[1] Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

[2] Midcontinent Independent System Operator, Inc., FERC FPA Electric Tariff, Midwest ISO Agreements, SA 2052, Southern Minnesota-WPSC GIA, 1.0.0.

[3] *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,068 (2012) (October 26 Order).

I. Background

A. MISO's Filing

2. On June 1, 2012, MISO filed the Amended GIA, which revised the then-existing generator interconnection agreement (Original GIA) among the parties to incorporate the results of MISO's restudy of Group 5, a collection of interconnection customers (of which WPSC is a member) in southwest Minnesota, northwest Iowa, and eastern South Dakota that, pursuant to MISO's generator interconnection procedures (GIP), was studied as a group for the purpose of conducting interconnection studies. In particular, MISO proposed to amend the Appendices to the Original GIA to (1) reflect the withdrawal from the interconnection queue of numerous interconnection customers previously listed in the Appendices, including certain higher-queued interconnection customers; (2) include references to new system upgrades that are needed for WPSC's Crane Creek Wind Farm (Crane Creek Project) to obtain unconditional interconnection service; (3) allocate to the Crane Creek Project partial cost responsibility for certain of these newly-identified network upgrades; and (4) add as contingent facilities in the Amended GIA three Multi Value Projects (Contingent MVPs) for which MISO did not propose to assign the Crane Creek Project any cost responsibility.[4]

B. Protest to the Filing, Answers, and Supplemental MISO Filing

3. WPSC requested that the Commission reject MISO's proposed amendments to the Original GIA as impermissible unilateral amendments to the Original GIA. WPSC argued that the Original GIA was a "permanent" generator interconnection agreement (GIA) that was protected from MISO's unilateral amendments by the *Mobile-Sierra*[5] rule, the filed rate doctrine, and the rule against retroactive ratemaking. WPSC asserted that MISO was prohibited from imposing conditions and cost liabilities on the Crane Creek Project that were not identified in the Original GIA's appendices or in the so-called "ITC Facilities Study,"[6] and that the new upgrades and Contingent MVPs included by

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[4] *Id.* P 7. The Contingent MVPs are (1) the Brookings County – Twin Cities project (Brookings Line); (2) the North Lacrosse-Cardinal project (LaCrosse-Cardinal Line); and (3) the Pleasant Prairie to Zion Energy Center project (Pleasant Prairie Line).

[5] *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co*., 350 U.S. 348 (1956) (*Mobile-Sierra*).

[6] The ITC Facilities Study determined the cost and scheduling estimates associated with interconnecting the Crane Creek Project to Southern Minnesota Municipal Power Agency's transmission system. *Id.* P 12 n.17.

MISO in the Amended GIA were therefore barred from being included in Appendix A.[7] WPSC also argued that MISO had improperly rejected the results of the original Group 5 studies, which were reflected in the Original GIA, and proposed instead to incorporate the results of the Group 5 restudy. WPSC asserted that MISO had not satisfied the requirements for triggering a restudy described in article 11.3 of the Original GIA and lacked authority to unilaterally amend the Original GIA, and that the new facilities being added to the Original GIA based on the Group 5 restudy were, with one exception, not identified in the original Group 5 studies.[8] WPSC also argued that MISO's proposed amendments were inconsistent with *Neptune Regional Transmission System LLC v. PJM Interconnection, L.L.C.*,[9] which WPSC argued prohibited restudies like those performed by MISO,[10] and WPSC objected to proposed amendments to the Original GIA that impose conditions on WPSC's interconnection service and potentially open the Crane Creek Project to additional future restudies.[11]

4. In response, MISO argued that its Group 5 restudy was justified and necessitated by the withdrawal of several projects from the interconnection queue, including Project No. G392, which is listed as a contingent facility in the Original GIA, and that MISO retains unilateral authority under the Original GIA to propose necessary revisions to that agreement. MISO rejected WPSC's argument that the permanent nature of the Original GIA barred MISO's proposed amendments, arguing that WPSC overstated the significance of that designation.[12] MISO asserted that the Crane Creek Project continues to have conditional interconnection service until all identified upgrades needed for its interconnection have been constructed.[13]

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[7] *Id.* PP 11-12.

[8] *Id.* PP 14-15, 21.

[9] 110 FERC ¶ 61,098 (*Neptune*), *order on reh'g*, 111 FERC ¶ 61,455 (2005) (*Neptune Rehearing*), *aff'd by Pub. Serv. Elec. & Gas. Co. v. FERC*, 485 F.3d 1164, 1167 (D.C. Cir. 2007) (*Neptune Appeal*).

[10] October 26 Order, 141 FERC ¶ 61,068 at P 16.

[11] *Id.* PP 17, 20.

[12] MISO stated that conditional service is separate and distinct from whether a GIA is provisional (i.e., temporary) or non-provisional (i.e., permanent) under section 11.5 of the GIP. *Id.* P 25 n.59.

[13] *Id.* PP 22-26.

5. WPSC challenged MISO's reliance on the withdrawal of Project No. G392, arguing that MISO failed to make an article 11.3 finding that restudy was required due to that project's withdrawal. WPSC disputed MISO's claim that the Crane Creek Project continued to have conditional interconnection service and therefore that its cost responsibility could be revised pursuant to the Group 5 restudy.[14]

6. In response to a Commission deficiency letter, MISO submitted additional information regarding its Group 5 restudy. MISO explained that the Group 5 restudy was necessary (1) to assess the cumulative impact of the withdrawal of six projects from the interconnection queue (five from Group 5, plus Project No. G392, which MISO explained was responsible for significant transmission upgrades assumed to be in place for the interconnection of Group 5) and the removal of the Brookings Line as a Baseline Reliability Project, and (2) to respond to the Commission's directives in the *Community Wind* proceeding.[15] MISO also explained how it determines when a restudy is necessary, stating that it determines whether the cost allocation impacts of changes to the base set of assumptions are available; if not, MISO performs a restudy, as it did for Group 5. MISO stated that, in performing the Group 5 restudy, it anticipated that additional projects might withdraw and performed the restudy in a manner that enabled it to continue to use the restudy results without further restudy following withdrawal of additional projects from the queue. With respect to the Contingent MVPs, MISO explained that those facilities are necessary for the reliable interconnection of the Crane Creek Project and Group 5 more generally and therefore, in the absence of MISO's Multi-Value Project (MVP) regional cost allocation method through which the Contingent MVPs are funded, the Group 5 projects would be responsible for the costs of upgrades to address those reliability issues. MISO also provided updated financial estimates for the Crane Creek Project's cost responsibility and summarized the changed system conditions and assumptions that it used in the Group 5 restudy.[16]

7. WPSC also protested MISO's Supplemental Filing and argued that the only facilities upon which the Crane Creek Project's interconnection could be contingent were those facilities listed in Exhibit A10 of the Original GIA; accordingly, WPSC argued that MISO could not add any new contingent facilities to its Original GIA. WPSC also argued that the Brookings Line, although it was referenced in the Original GIA, could not

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[14] *Id.* PP 27-32.

[15] *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2009) (*Community Wind I*), *order on reh'g*, 131 FERC ¶ 61,165, *order on reh'g*, 133 FERC ¶ 61,011 (2010) (*Community Wind II*) (collectively, *Community Wind*).

[16] October 26 Order, 141 FERC ¶ 61,068 at PP 33-40.

constitute grounds for a restudy because Exhibit A10 potentially authorizes such a restudy only if the contingent facility will not be constructed, and the Brookings Line was still scheduled to be constructed.[17]

C. The October 26 Order

8. The Commission conditionally accepted the Amended GIA, subject to MISO's making a compliance filing that further revised the Amended GIA to address certain deficiencies.[18] The Commission held that MISO properly invoked its authority under article 11.3.1 of the Original GIA to restudy the Crane Creek Project, noting that a restudy of Group 5 was necessary due to the withdrawal of several projects from the interconnection queue, including Projects G392 and G438, which were higher-queued than the Crane Creek Project (G551) and were listed as contingent facilities in Exhibit A10 of the Original GIA.[19] The Commission also noted that, as the Commission held in Order No. 2003-A, and section 4.1 of MISO's GIP and Appendix A of the Original GIA acknowledge, the determination of cost responsibility for common facilities needed to reliably interconnect a group of interconnection customers may depend on factors other than queue position. The Commission therefore affirmed that the Crane Creek Project has a responsibility to fund its share of common facilities required for the reliable interconnection of the group, even though those common facilities have changed as the composition of the group has changed and are now different from the facilities listed in the Original GIA.[20]

9. The Commission rejected WPSC's arguments that the permanent nature of its Original GIA and the Commission's *Neptune* precedent prevent MISO from proposing, and the Commission from accepting, the changes in the Amended GIA. The Commission found that, although the Original GIA had transitioned from temporary to permanent status, the permanent nature of the Original GIA did not relieve WPSC of *all* risks and liabilities for changes to its future cost responsibility, and that WPSC's cost responsibility may still be changed where, as here, restudy is properly triggered under article 11.3.1 of the GIA. With respect to the *Neptune* precedent, the Commission found that the facts of this case are distinguishable from *Neptune* because, unlike in *Neptune*, MISO's restudy authority is expressly provided for in the Original GIA and is not, as WPSC alleged,

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[17] *Id.* P 41.

[18] MISO's compliance filing is addressed below in section III.

[19] October 26 Order, 141 FERC ¶ 61,068 at P 46.

[20] *Id.* P 47.

based upon "changed system conditions." The Commission confirmed, however, that MISO's proposed revisions to Appendix A did not grant MISO the authority to conduct future restudies based on "changed system conditions" and that, should MISO wish to add "changed system conditions" as a restudy trigger, it must propose and justify an amendment to article 11.3.1.[21]

10. The Commission also affirmed MISO's decision to use updated system conditions and assumptions for the Group 5 restudy, finding that it was appropriate for MISO to do so when faced with a restudy of a large group of projects, across a large geographic area, being performed years after the original studies were performed. The Commission concluded that relying on outdated model assumptions to perform the Group 5 restudy could result in the construction of unneeded facilities.[22] Furthermore, the Commission found that MISO's filing of the Amended GIA was permissible under articles 11.3.2 and 30.10 of the Original GIA, which, when read together, authorize MISO to file amendments to the GIA to reflect the results of a restudy where restudy is properly invoked under the terms of the GIA. The Commission therefore rejected WPSC's argument that MISO's proposed amendments were barred by the *Mobile-Sierra* doctrine because the amendment was expressly authorized by the terms of the Original GIA.[23] The Commission also rejected WPSC's remaining arguments, finding that (1) WPSC's arguments about cost assessments under the "but for" scenario[24] were premature because MISO did not propose to assign the Crane Creek Project any costs for the Contingent MVPs,[25] and (2) MISO's proposed amendments were not barred by the filed rate doctrine

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[21] *Id.* PP 48-49.

[22] *Id.* P 50.

[23] *Id.* P 52.

[24] The "but for" scenario was an alternative scenario studied by MISO in the Group 5 restudy to determine the Group 5 members' respective cost responsibilities if the Contingent MVPs were assigned to Group 5, rather than paid for using MISO's MVP cost methodology. *Id.* P 38. The MVP cost methodology was recently upheld by the U.S. Court of Appeals for the Seventh Circuit, which alleviates concerns that WPSC could be assessed costs under the "but for" scenario. *Illinois Commerce Comm'n v. FERC*, 721 F.3d 764 (7th Cir. 2013).

[25] October 26 Order, 141 FERC ¶ 61,068 at P 51.

or rule against retroactive ratemaking because MISO properly sought to prospectively change the rate on file.[26]

11. The Commission directed MISO to submit, within 30 days of the October 26 Order, a revised GIA that (1) removes references to the Arrowhead Capacitor Bank, which MISO explained in its Supplemental Filing was no longer needed following the withdrawal of additional Group 5 members following the Group 5 restudy, (2) revises the cost allocation percentages for the Hazelton-Mitchell County 345 kV rating update (Hazelton 345 kV Project) based on those withdrawals, (3) updates the cost responsibility for the Crane Creek Project, and (4) lists the Contingent MVPs as contingent facilities in Exhibit A10. In addition, the Commission directed MISO to either explain why it omitted or removed from the list of remaining Group 5 members in Exhibit A10 several additional members of Group 5 that appear to remain part of the group, or revise Exhibit A10 to add those projects.[27]

II. WPSC's Requesting for Rehearing and Clarification

A. Commission's *Neptune* Precedent

1. Request for Rehearing

12. WPSC alleges that the Commission, in conditionally accepting MISO's proposed changes to the Original GIA, wrongly allowed MISO to abandon the 2007 system impact study upon which the Original GIA was predicated and assess against the Crane Creek Project cost liabilities and conditionality based on facilities and system conditions that fall outside that 2007 system impact study. WPSC argues that MISO's 2011 system impact study abandons the 2007 system impact study, employs fundamentally different assumptions than used in that earlier study, and ultimately results in a completely different set of system upgrades for which the Crane Creek Project might be responsible. In particular, WPSC asserts that the 2011 system impact study assigns costs and conditionality to the Crane Creek Project for facilities – the Hazelton 345 kV Project and Lacrosse-Cardinal and Pleasant Prairie Lines – that were not part of that earlier study or the MISO Transmission Expansion Plan when the Original GIA was executed or when the Crane Creek Project entered service. In so doing, according to WPSC, the Commission impermissibly deviated from its *Neptune* precedent, which WPSC asserts

[26] *Id.* P 53.

[27] *Id.* P 54.

"generally precludes restudies based on most events post-dating an interconnector's establishment of its place in the queue."[28]

13. WPSC disputes the Commission's conclusion that differences in the MISO and PJM tariffs justify different treatment for the Crane Creek and Neptune projects. WPSC alleges that, while article 11.3 of the Original GIA and Exhibit A10 to that GIA do provide for restudy, restudy is only permitted if a facility assumed in the 2007 system impact study is not constructed and if the failure to construct the facility is deemed to have a material impact on the Crane Creek Project's interconnection service. WPSC asserts that MISO lacks the authority to make that materiality determination based on system conditions that are not reflected in the 2007 system impact study or, assuming the materiality determination is appropriately made, that would permit MISO to determine that the Crane Creek Project should be assessed costs and conditionality for facilities that are not reflected in the 2007 system impact study. WPSC further alleges that the relevant provision of PJM's tariff in the *Neptune* cases was ambiguous as to timing and could easily have been interpreted as permitting consideration of updated system impact studies, such as its 2011 system impact study. According to WPSC, the Commission could have applied the PJM tariff in a manner to avoid reliance on "outdated" studies and instead permitted restudies based on changed system conditions, but the Commission decided to apply the PJM tariff in a manner that provided "workability, certainty, and predictability" and that permitted "reasoned business decisions."[29] WPSC alleges that the October 26 Order, when read together with the *Neptune* precedent, establishes an arbitrary and unreasonable policy under which a potential interconnection customer without an executed GIA, such as the Neptune project, is afforded a stronger entitlement to cost finality than an operating generator with a GIA, such as Crane Creek. WPSC claims that the Commission's October 26 Order will create havoc, unworkability, uncertainty, and unpredictability for the Crane Creek Project.[30]

14. WPSC argues that the October 26 Order fails to justify a deviation from the Commission's *Neptune* precedent and does not justify abandonment of the 2007 system impact study. WPSC states that the October 26 Order's reference to "limited circumstances" and to a "unique situation" is an *a priori* conclusion and not a substitute for reasoned analysis warranting rejection of the *Neptune* policy. WPSC further asserts that the October 26 Order's conclusion that failure to restudy based on updated

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[28] WPSC Rehearing Request at 7-9 (quoting *Neptune Appeal*, 485 F.3d 1164 at 1167).

[29] *Id.* at 10 (quoting *Neptune*, 110 FERC ¶ 61,098 at P 23).

[30] *Id.* at 9-11.

conditions could result in construction of unneeded facilities lacks any basis and is not supported by substantial evidence. WPSC argues that the Commission, in its *Neptune* precedent, did not express concern that the prohibition against updated system impact studies would cause unneeded construction and the October 26 Order provides no evidence that the *Neptune* policy has caused unneeded construction either in PJM or elsewhere. Furthermore, according to WPSC, the transmission construction process and interconnection process are separate functions, and updated system conditions are accounted for and analyzed as part of MISO's Transmission Expansion Plan process.[31]

15. WPSC states that, as an example, the ITC Capacitor Banks were designated for potential construction by the 2007 system impact study and the Arrowhead 345 kV Capacitor Bank was designated for construction by the 2011 system impact study. In each instance, according to WPSC, a determination was subsequently made that the facility was not needed and therefore neither facility was constructed. Accordingly, WPSC states, the Commission's "unneeded construction rationale is not supported by *Neptune*, post-*Neptune* experience, any evidence in the record, or the MISO Tariff, and there is absolutely no risk that continued reliance on the 2007 [system impact study] would cause construction of any unneeded facilities."[32]

16. WPSC also argues that the Commission's observation that MISO is dealing with "20 projects over a large geographic area" that are "being restudied together years after the original studies were performed" does not support the Commission's conclusion because the geographic area remains the same as the 2007 system impact study, the 20 projects were included in that study, and that study determined the required transmission upgrades for the group of projects at the time the Crane Creek Project's queue position was established and the Original GIA was negotiated and executed. WPSC further asserts that the Commission's description of the 2007 system impact study as "outdated" reflects a misunderstanding of the role of the system impact study in the interconnection process, as that study provides a snapshot of system conditions "***as existing and as forecast*** at the time the queue position is established and the interconnection agreement is negotiated in order to determine at that time what facilities are required to interconnect a generator to the system."[33] WPSC argues that, while system conditions may subsequently change, those changed conditions do not justify a revised cost allocation because, under Commission policy, interconnection applicants without queue positions have open-ended liabilities for new system costs based on new

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

[32] *Id.* at 12-13.

[33] *Id.* at 13 (emphasis in original).

system conditions, but those liabilities for future system costs and conditions become inapplicable once the interconnection applicant has a queue position. WPSC argues that, accordingly, the 2007 system impact study is not and cannot be "outdated" because it portrays system conditions as known and forecast during the Crane Creek Project's interconnection study process, constitutes the definitive determination of the facilities needed to reliably interconnect the Crane Creek Project to the grid, and is intended to provide the basis on which WPSC may rely in deciding to pursue the project.[34]

2. Commission Determination

17. We deny WPSC's rehearing request and affirm the October 26 Order's finding that MISO (1) reasonably determined that a restudy of Group 5, including the Crane Creek Project, was necessary due to the withdrawal of numerous interconnection customers from the MISO queue, and (2) reasonably updated the system conditions used in performing that restudy to reflect conditions as of the time of the restudy, rather than as of the time of the original Group 5 studies.

18. We disagree with WPSC that the 2011 Group 5 restudy is contrary to Commission precedent, particularly the Commission's decisions in the *Neptune* proceeding. As explained in the October 26 Order,[35] the relevant tariff and GIA language in this case are fundamentally different from the PJM tariff language that the Commission addressed in the *Neptune* proceeding. In *Neptune*, the Commission addressed ambiguous language in the PJM tariff regarding PJM's authority to conduct recurring restudies prior to the execution of a GIA. Specifically, the Commission interpreted that ambiguous language in a manner that limited PJM's authority to repeatedly "restudy" the Neptune project based solely on retirements by existing generators that occurred subsequent to Neptune's submission of its interconnection request and *where such events did not expressly trigger restudy under the PJM tariff*.[36] In this proceeding, however, MISO's authority to restudy interconnection requests following the withdrawal of higher-queued customers is *expressly provided* in article 11.3.1 of the Original GIA, and the Commission found that

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[34] *Id.* at 13-15.

[35] October 26 Order, 141 FERC ¶ 61,068 at P 49.

[36] *Neptune*, 110 FERC ¶ 61,098 at P 29. As noted in the October 26 Order, on rehearing in the *Neptune* proceeding, the Commission contrasted the explicit restudy provisions in the MISO Tariff with the PJM tariff's lack of clarity regarding the circumstances under which restudy was authorized. *Neptune Rehearing*, 111 FERC ¶ 61,455 at P 21.

MISO properly invoked that authority to restudy Group 5.[37] Accordingly, we reject WPSC's effort to expand the Commission's *Neptune* precedent to preclude restudies *even where they are expressly authorized* simply because a restudy might produce unanticipated costs for an interconnection customer.

19. We also affirm that MISO satisfied its evidentiary burden to justify the Group 5 restudy. MISO explained that the guideline it used to determine whether a restudy was necessary was the availability of the cost allocation impacts of the changes to the base set of assumptions used for the original Group 5 studies.[38] As MISO further explained, MISO had to assess the cumulative impacts of several events that occurred after completion of the original Group 5 studies and resulted in changes to the base set of assumptions used in those studies: (1) the withdrawal of five projects (Project Nos. G438, G584, G589, G613, and G630) from Group 5, (2) the withdrawal of Project No. G392, a higher-queued project that was responsible for significant transmission upgrades assumed to be in place for the interconnection of the Group 5 projects, and (3) the removal of the Brookings Line as a Baseline Reliability Project.[39] Because MISO concluded that the cumulative impacts of these changes could not be determined from the original Group 5 studies, MISO concluded that a restudy was necessary, and invoked its authority under the Original GIA to conduct the restudy. We find that MISO's process for determining whether a restudy was necessary in this instance was supported by its Tariff and was just and reasonable, and that MISO satisfied its evidentiary burden to justify the need to restudy Group 5.

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[37] WPSC argues that the D.C. Circuit concluded, in its order addressing an appeal of the Commission's *Neptune* orders, that the Commission "generally preclude[s] restudies based on most events post-dating an interconnector's establishment of its place in the queue." WPSC Rehearing Request at 9 (quoting *Neptune Appeal*, 485 F.3d 1164 at 1167). First, we note that this statement, which is simply a summary of the Commission's holding in *Neptune*, was made in the context of interpreting the *PJM* tariff. Furthermore, even when it directed PJM to adopt, and perform a facilities study based on, the results of a specific system impact study, the Commission ordered PJM to perform that facilities study "based on Neptune's queue position *and any changes that occurred with respect to projects ahead of Neptune [in] the queue*." *Neptune*, 110 FERC ¶ 61,098 at P 29 (emphasis added). In any event, WPSC's point is moot because the Commission found in the October 26 Order that restudy was reasonable based on the withdrawal of higher-queued generators, notwithstanding that their withdrawal post-dated WPSC's establishment of its queue position.

[38] October 26 Order, 141 FERC ¶ 61,068 at P 34.

[39] *Id.* P 33.

20. In response to WPSC's argument that MISO impermissibly used "changed system conditions" as the basis for determining that a restudy was necessary – and therefore that it was not the cumulative impact of the events described above that necessitated the restudy – we find no credible basis in the record to support that conclusion. MISO satisfactorily explained the basis upon which it determined a restudy was necessary, and it was not until MISO actually performed the restudy that MISO updated the study assumptions to incorporate the changed system assumptions to which WPSC objects. Furthermore, following completion of the 2011 restudy and MISO's implementation of its latest queue reforms, additional interconnection customers withdrew from the queue, and MISO was faced with a situation similar to that which necessitated the 2011 restudy: a change in the composition of Group 5. In that instance, however, MISO was able to determine the cost allocation impacts of these changes to the base set of assumptions used for the Group 5 restudy, and a further restudy was not necessary.[40] This determination supports MISO's argument, and discredits WPSC's argument to the contrary, that MISO's decision regarding whether a restudy is necessary is based upon MISO's review of whether existing studies provide the information necessary to account for queue withdrawals, rather than upon MISO's desire to perform restudies to capture "changed system conditions" unrelated to queue withdrawals.

21. We also affirm our determination that MISO's decision to update the system assumptions used for the Group 5 restudy was reasonable. While WPSC is correct that the remaining members of Group 5 were part of the original study, and that the geographic area for the restudy is similar to that of the original Group 5 studies, that is precisely why the Commission concluded that updating system assumptions used in the restudy was reasonable. Group 5, both as originally and currently constituted, is a large group of interconnection customers in number and geographic scope. It extends across multiple states, in areas that historically had little transmission infrastructure for the interconnection of wind resources.[41] With the trigger for restudy having been satisfied, MISO remained responsible for ensuring the reliable interconnection of the Group 5 projects, which in turn led MISO to assess whether the original Group 5 studies provided

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[40] *Id.* P 34.

[41] Indeed, this lack of transmission infrastructure was one of the driving forces behind MISO's development of its MVP regional cost allocation method. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at P 3 (2010) ("The proposed MVP methodology is an important step in facilitating investment in new transmission facilities to integrate large amounts of location-constrained resources, including renewable generation resources, to further support document energy policy mandates or laws, reduce congestion, and accommodate new or growing loads.").

the information necessary to determine the cost allocation impact of the events detailed above. MISO concluded, after reviewing the original Group 5 studies, that was not the case and updated the Group 5 restudy to better reflect the system conditions and the assumptions it used for transmission planning at the time of the restudy. We affirm our finding in the October 26 Order that MISO's decision was reasonable based on the facts before us.

22. Finally, WPSC misunderstands our determination that failure to update the system conditions used in the 2011 restudy could lead to the construction of unneeded facilities. While WPSC is correct that MISO may determine (and in the case of the ITC Capacitor Banks, did determine) that certain network upgrades identified in interconnection studies are no longer needed for reliability and cancel their construction, our concern was that, in this instance, failure to update the system conditions and assumptions in the restudy could lead to the identification of the *wrong* network upgrades that do not address the system's actual reliability needs driven by Group 5. As we noted in the October 26 Order, the facilities with which the Commission is concerned are not simply those needed for the reliable interconnection of the Crane Creek Project, but those required for the reliable interconnection of *all* of Group 5.[42] While performing interconnection studies necessarily requires making assumptions regarding, for example, future system dispatch patterns, we do not believe that MISO, when performing the restudy, was bound to use study assumptions that were several years old and had otherwise been superseded in MISO's transmission and generator interconnection study processes, particularly where, as here, those assumptions might fail to accurately identify the actual reliability issues caused by the number and geographic scope of the remaining Group 5 projects.

B. Article 11.3 Restudy

1. Request for Rehearing

23. WPSC argues that the October 26 Order, in accepting MISO's proposed revisions to the Original GIA based upon the Group 5 restudy, fails to properly enforce the requirements of article 11.3 and Exhibit A10. WPSC argues that the withdrawal of a higher-queued project in and of itself does not justify a restudy, and that MISO may undertake a restudy only if it demonstrates compliance with article 11.3 and Exhibit A10, which WPSC alleges MISO failed to do. WPSC argues that the Original GIA required WPSC to pay for certain network upgrades and that, depending upon the results of the ITC Facilities Study, WPSC might also be liable for a share of the cost of the ITC Capacitor Banks. However, according to WPSC, because MISO concluded that the ITC Capacitor Banks were not needed, and the Original GIA achieved "permanent status,"

[42] October 26 Order, 141 FERC ¶ 61,068 at P 45.

thereby rendering section 11.5 of the GIP and Part II of Appendix A of the Original GIA inoperative, once the Crane Creek Project entered service, all of the network transmission facilities needed to reliably interconnect the project were already in place or planned to be in service.[43]

24. WPSC acknowledges that the Crane Creek Project could be responsible for future network upgrade costs, noting that article 11.3.1 authorizes a restudy if any of seven events occurs, including the withdrawal from the queue of a higher-queued generator, provided the event requires modification of the network upgrades required to accommodate the Crane Creek Project. WPSC asserts that Exhibit A10, which it claims

> implements Article 11.3.1 and dispenses with the requirement of a higher queue dropout, incorporates the results of the 2007 [Group 5 system impact study] by identifying the planned or contingent facilities which are referred to in Article 11.3.1 and which the 2007 [Group 5 system impact study] assumes to be in service, thereby drawing a ring-fence around those facilities which if not constructed could possibly have an effect on the Crane Creek [Project's] interconnection service.[44]

WPSC explains that Exhibit A10 in the Original GIA stated that "[n]o conclusions were made as to whether the modeling assumptions listed in Exhibit A10 have a material impact on the interconnection and deliverability of" the Crane Creek Project, and that it further provided that if a planned facility is not constructed, then MISO will "perform a restudy to determine 'what impact, ***if any***' the failure to construct the facility has on the" Crane Creek Project.[45] WPSC argues that, in negotiating the Original GIA, the parties had the 2007 Group 5 system impact study results available, knew which facilities were in service, knew which contingent facilities the study assumed would be in service, and listed those facilities in Exhibit A10, but did not know which, if any, of the Exhibit A10 facilities were material to the Crane Creek Project's service. According to WPSC, if all of the contingent facilities were constructed, WPSC could not be held liable for any additional network upgrade costs; and, if a contingent facility was not constructed, WPSC could only be held liable for additional network upgrade costs upon a determination that the failure to construct the facility had a material effect on the Crane Creek Project's

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[43] WPSC Rehearing Request at 19-20.

[44] *Id.* at 20.

[45] *Id.* at 20-21 (quoting Original GIA, Exhibit A10 (emphasis added by WPSC)).

interconnection service. WPSC argues that MISO never made the required finding under Exhibit A10 that the failure to construct a contingent facility had a material effect on the Crane Creek Project's interconnection service, and therefore there is no evidence that the Crane Creek Project's interconnection service cannot be reliably provided by the facilities identified in the 2007 Group 5 system impact study.[46]

25. WPSC also argues that the October 26 Order deprives the "permanent" status of the Original GIA of any meaning. WPSC restates the history of the Original GIA's transition from "temporary" to "permanent" status, arguing that upon completion of that transition, WPSC no longer assumed "all risks and liabilities with respect to changes that may impact [the Original GIA], including changes in output limits and responsibilities for future Network Upgrade cost responsibilities as set forth in Section 11.5 that have not yet been identified."[47] Accordingly, WPSC argues that the Commission erred by allegedly giving no weight to the Original GIA's transition to permanent status, ignoring the immunity conferred upon the Crane Creek Project for "all risks and liabilities" for future unidentified network upgrades, and assigning the Crane Creek Project costs and conditionality based on future facilities and conditions that post-date and are beyond the scope of the 2007 Group 5 system impact study.[48]

26. WPSC asserts that the October 26 Order is arbitrary and capricious because it fails to recognize material differences between the Original GIA and other Group 5 GIAs, specifically, the GIA for the Community Wind project. WPSC argues that, unlike the Original GIA, the Community Wind GIA explicitly holds Community Wind liable for costs of the Brookings Line and other upgrades, without the predicate finding that the failure to construct a facility impaired the ability to provide the Community Wind project's interconnection service. WPSC also notes that the Community Wind GIA lacks the permanent status provisions of the Original GIA, including the protections against open-ended cost liability in Appendix A and Exhibit A10. Ultimately, WPSC argues that a comparison of the two GIAs demonstrates that the Original GIA restricts MISO's ability to restudy the Crane Creek Project and apply additional costs to it in the manner MISO proposed, and the Commission accepted.[49]

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[46] *Id.* at 20-22.

[47] *Id.* at 23 (quoting Original GIA, Appx. A Part II).

[48] *Id.* at 22-24.

[49] *Id.* at 24-26.

27. WPSC states that, although the October 26 Order relies on the withdrawal of the G392 and G438 projects as grounds for restudy, a project withdrawal does not necessarily justify a restudy, a reallocation of costs, or the assignment of additional conditionality to a project that is not affected by the withdrawal. In addition, according to WPSC, the withdrawal of G392 and G438 is indistinguishable from the later withdrawal of G608 and G618, and the Commission provides no explanation of the underlying factors that require a restudy in one instance but not the other. WPSC argues that the Commission rightly did not accept MISO's justification based on MISO's "engineering judgment," a standard that is not in the MISO Tariff and is not a substitute for the requirements of the Original GIA. WPSC also argues that the Crane Creek Project's membership in Group 5 does not establish cost sharing among all Group 5 members as a valid purpose of group interconnection studies. In addition, according to WPSC, the 2007 system impact study was a group study that fully analyzed the interconnection needs of all Group 5 customers and did so without allocating each member a share of all Group 5 costs. WPSC asserts that section 4.1 of the GIP, regarding group studies, does not modify the restudy requirements of the Original GIA.[50]

28. WPSC also argues that MISO's professed inability to forecast "all of the permutations of required facilities that might result as projects withdraw from the group" is not part of the MISO Tariff and does not excuse non-compliance with the requirement that MISO demonstrate that the cancellation of a project materially affects the Crane Creek Project. WPSC asserts that MISO failed to show that the cancellation of any Exhibit A10 facility materially affected the interconnection service to the remaining 20 Group 5 projects. WPSC also claims that the October 26 Order fails to explain why, in light of the current outcome, new common upgrades are needed and why the 2007 system impact study was in error, given that that study determined that reliable interconnection service could be provided without the newly-identified upgrades. WPSC claims that MISO failed to provide any evidence demonstrating its compliance with the Original GIA's restudy requirements, and notes that MISO relied on the withdrawal of G392 without showing that the upgrades associated with that project had any effect on the Crane Creek Project or any other Group 5 member. WPSC also notes that G392 had been inactive since November 2, 2009 and was never the subject of a MISO notice to Group 5 that this change in status created a need for restudy. In fact, according to WPSC, MISO and WPSC executed the second and third iterations of the Original GIA on December 3, 2009 and September 2, 2010, respectively, without any indication from MISO that the withdrawal of G392 had any impact on the Crane Creek Project's interconnection service or the service of other Group 5 customers. WPSC asserts that

[50] *Id.* at 26-27.

MISO simply referenced the Commission's *Community Wind* orders when justifying its restudy to WPSC in 2012.[51]

29. WPSC argues that the evidence in the record supports a finding that the Crane Creek Project could be reliably served by the upgrades identified in the 2007 system impact study without the additional upgrades identified in the 2011 system impact study. With respect to the Brookings Line, WPSC argues that the line is north and west of the Crane Creek Project and west of the load centers to which the Crane Creek Project's power is delivered. Under the 2011 system impact study, the Crane Creek Project impacts the Brookings Line due to a circular power flow that results from the network upgrades, system conditions, and assumed sinks that are modeled as part of that study, but which were not part of the 2007 system impact study. According to WPSC, this flow did not exist in the 2007 system impact study and thus the Crane Creek Project did not impact the Brookings Line. WPSC asserts that the MW impact of a generator on a transmission line is dependent on only three factors: the MW output of the generator, the system topology, and the sink, with the MW impact entirely independent of other generation and the generation to load factor being constant unless the system topology or the sink changes. WPSC argues that, because the MW output of the Crane Creek Project did not change, the system topology and Group 5 sink changes made by MISO in its restudy resulted in the finding that the Crane Creek Project impacted the Brookings Line. However, according to WPSC, MISO made no showing that the system topology and sink changes incorporated in the 2011 system impact study were consistent with the Original GIA. Furthermore, WPSC notes that the Crane Creek Project was not one of the Group 5 projects to which MISO attempted to assign cost responsibility for the Brookings Line in the *Community Wind* proceeding, and WPSC argues that it would be counterintuitive to believe that reduced power flows resulting from the cancellation of several Group 5 generators would trigger additional upgrade responsibility for the Crane Creek Project. To the contrary, according to WPSC, the combination of reduced power flows and the absence of any impact on the Brookings Line by the Crane Creek Project virtually guarantee that the cancellations had no effect on the Crane Creek Project's interconnection service. In addition, WPSC argues that MISO's analyses that were conducted when the 2007 system impact study was under preparation showed that the Crane Creek Project could be reliably connected to the grid without the ATC Capacitor Banks (which were not constructed) and that it was the construction of the Brookings Line and the increased west-to-east power flows from the Brookings Line that created the need for the ATC Capacitor Banks.[52]

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[51] *Id.* at 27-28.

[52] *Id.* at 28-30.

30. Finally, WPSC argues that (1) the Commission should have construed any disputed material facts against MISO or set the disputed facts for hearing and (2) the October 26 Order violates the *Mobile-Sierra* rule, the filed rate doctrine, and the rule against retroactive ratemaking. WPSC asserts that the Original GIA is a contract that reflects the terms under which WPSC agreed to interconnect the Crane Creek Project to the grid, is protected by the *Mobile-Sierra* rule, and therefore may not be amended except in accordance with its terms. In addition, because the Original GIA was the filed rate, WPSC argues that MISO's proposed assignment of additional cost liability violates the filed rate doctrine and the rule against retroactive ratemaking, and that the Commission's holding that MISO seeks only to amend the Original GIA prospectively deprives the filed rate doctrine and rule against retroactive ratemaking of any meaning. WPSC also argues that MISO has deprived it of notice of its cost responsibility by seeking to revise the Original GIA in order to impose additional cost responsibility and conditionality on the Crane Creek Project.[53]

2. Commission Determination

31. We deny WPSC's rehearing requests and affirm the October 26 Order.

32. First, we disagree with WPSC that the Commission failed to properly enforce the requirements of article 11.3.1 or Exhibit A10 of the Original GIA. While it is true that the withdrawal of a higher-queued project might not always necessitate a restudy, MISO reasonably determined in this case that a restudy was necessary due to the withdrawal of higher-queued projects specifically listed in the Original GIA as contingent facilities for the Crane Creek Project. This determination is sufficient to authorize a restudy under article 11.3.1 of the Original GIA. WPSC continues to overstate the significance of the Original GIA's having achieved "permanent" status, which, by the Original GIA's plain terms, relieved WPSC only of its obligations under section 11.5 of MISO's GIP[54] and Part II of Appendix A.[55] The Original GIA's transition from "temporary" to "permanent"

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[53] *Id.* at 30-32.

[54] Section 11.5 of MISO's GIP details how an interconnection customer may obtain a provisional GIA that allows the interconnection customer to commence limited operation of its proposed generating facility. It also authorizes MISO to impose quarterly operating limits on the generating facility, based on the results of available studies that calculate available flowgate capability under Attachment C of MISO's Tariff. MISO Tariff, Attachment X § 11.5.

[55] Part II of Appendix A describes MISO's authority to impose quarterly operating limits on the Crane Creek Project while its GIA remained in "temporary status." Part II also provides that WSPC:

(continued…)

status did not relieve WPSC of its restudy obligations under article 11.3 or Exhibit A10 of the Original GIA, which the Commission concluded in the October 26 Order authorized MISO to conduct the Group 5 restudy. We reaffirm that finding here. We similarly disagree with WPSC's assertion that Exhibit A10 "implements [a]rticle 11.3.1 and dispenses with the requirement of a higher queue dropout," as the language in article 11.3.1 that authorizes a restudy if a higher-queued project withdraws from the queue remained part of the Original GIA.[56]

33. Furthermore, we disagree with WPSC that the introductory language in Exhibit A10 of the Original GIA,[57] when read in conjunction with article 11.3.1, requires

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> assumes all risks and liabilities with respect to changes that may impact this GIA including, but not limited to, change in output limits and responsibilities for future Network Upgrade cost responsibilities as set forth in Section 11.5 that have not yet been identified on the direct connect transmission system, as well as all affected Transmission Systems, Distribution Systems or generation system(s), including Transmission Systems, that are not under the operational control of [MISO].

Amended GIA, Appx. A Part II.

[56] Furthermore, to the extent there is a conflict between article 11.3.1 and Exhibit A10, the language in article 11.3.1, which authorizes MISO to conduct a restudy where a higher-queued project withdraws from the queue, would control. Original GIA, art. 30.2 ("In the event of a conflict between the body of this GIA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this GIA shall prevail and be deemed the final intent of the Parties.").

[57] The introductory paragraph of Exhibit A10 of the Original GIA states:

> In performing the System Impact Study for G551, several modeling assumptions were made when determining the facilities needed to provide interconnection service. No conclusions were made as to whether the modeling assumptions listed in Exhibit A10 have a material impact on the interconnection and deliverability of G551. If any of the facilities listed in this Exhibit are not completed, or are no longer planned projects Midwest ISO shall apply the provisions of Section 11.3 of this GIA to determine what impact, if any, the facilities in this Exhibit have on the interconnection service, network upgrades, and cost

(continued…)

that MISO first determine whether the withdrawal of a higher-queued project had a "material effect" on the Crane Creek Project's interconnection service before it may conduct a restudy under article 11.3.1. Notwithstanding WPSC's assertions to the contrary, neither MISO's GIP nor the Original GIA require a separate, intervening "materiality" determination before MISO may decide to proceed with a restudy following a permissible trigger under the GIA. Rather, the language referenced by WPSC requires that MISO "apply the provisions of [article] 11.3 of this GIA to determine what impact, if any, the facilities in this Exhibit have on the interconnection service, network upgrades, and cost responsibility" of the Crane Creek Project. As the Commission found in the October 26 Order,[58] MISO properly implemented the restudy provisions of article 11.3, thus satisfying this requirement.

34. We also disagree with WPSC that the October 26 Order is arbitrary and capricious because it failed to recognize allegedly "material" differences between the Original GIA and other Group 5 GIAs. First, we note that WPSC did not enter any of these GIAs into the record; if WPSC believed them to be relevant to the issues presented in this proceeding, it should have included them with its protest of the Amended GIA or its Rehearing Request. It is also unclear how the language cited by WPSC from *Community Wind II*[59] supports WPSC's argument, given that (1) in the *Community Wind*

> responsibility of G551. Interconnection Customer will not be responsible for upgrading any of the equipment listed prior to Table 2 (G551 Constraints) in this Exhibit without a restudy or review from all parties involved.

Original GIA, Ex. A10.

[58] October 26 Order, 141 FERC ¶ 61,068 at P 46.

[59] WPSC quotes the following language:

> [A] subsequent multi-party facilities construction agreement will govern the obligation of Community Wind and the Group 5 projects to secure and fund the Shared Ownership Common Use Upgrades, including the Brookings Line. . . . Therefore the Group 5 projects' obligations to secure and fund the Brookings Line will be governed under a future multi-party facility construction agreement and such responsibility will depend on the Tariff allocation methodology that applies to that agreement.

(continued…)

proceedings, the Commission held that MISO improperly performed the original Group 5 studies that purported to assign cost responsibility to the Community Wind project for the Brookings Line,[60] and (2) in this proceeding MISO does not propose to assign any cost responsibility for the Brookings Line to WPSC.

35. We reject WPSC's contention that the October 26 Order was not clear regarding when the withdrawal of a higher-queued project may trigger a restudy. As explained above in paragraph 19, the Commission accepted MISO's explanation that a restudy was required because the cumulative impacts of the events discussed in that paragraph, including the withdrawal of projects G392 and G438, could not be determined from the original Group 5 studies; by comparison, because MISO was able to determine the cumulative impacts of the withdrawal of additional Group 5 members following completion of the 2011 system impact restudy, MISO determined that a formal restudy was not required in the latter instance.[61] Accordingly, the October 26 Order recognized that the two situations are distinguishable, contrary to WPSC's claims.

36. With respect to the Commission's statement regarding the Crane Creek Project's responsibility, as a member of Group 5, to "fund its share of common facilities required for the reliable interconnection of the group,"[62] and its reference to the provision of the Original GIP recognizing "that the determination of cost responsibilities may be based on factors other than queue position in accordance with Section 4.1 of the GIP,"[63] we affirm our findings in the October 26 Order. We agree with WPSC that the MISO Tariff does not "establish[] cost sharing among all Group members as a valid purpose of Group interconnection studies,"[64] but at no point in the October 26 Order did we state, as WPSC suggests, that MISO was authorized to conduct a restudy simply to apportion cost responsibility among the Group 5 members. Rather, we stated that the Crane Creek Project, as a member of Group 5, is not an island, and is responsible for funding its share of network upgrades required to interconnect the group, as determined by MISO in the

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WPSC Rehearing Request at 24-25 (quoting *Community Wind II*, 131 FERC ¶ 61,165 at P 32 (citation omitted)).

[60] *Community Wind I*, 129 FERC ¶ 61,019 at P 24, *order on reh'g*, *Community Wind II*, 131 FERC ¶ 61,165 at P 22.

[61] October 26 Order, 141 FERC ¶ 61,068 at P 34.

[62] *Id.* P 47.

[63] *Id.*

[64] WPSC Rehearing Request at 26.

Group 5 restudy. As stated above, this shared responsibility is provided for under the MISO Tariff, and WPSC may not disclaim its responsibility simply because it objects to the results of the restudy.

37. We reject WPSC's remaining arguments regarding paragraph 47 of the October 26 Order. WPSC mischaracterizes as a "forecasting criterion" the Commission's observation that MISO, in the group study context, cannot reasonably foresee "all of the permutations of required facilities that might result as projects withdraw from the group,"[65] and argues that this "criterion and the other Paragraph 47 criteria are not part of the Tariff and do not excuse non-compliance with the Article II.3/Exhibit A10 requirement that MISO demonstrate that the cancellation of a project materially affect the Crane Creek interconnection service."[66] It is unclear what "criteria" WPSC references in paragraph 47, as the Commission simply acknowledged a reality of group studies. In any event, as discussed in the October 26 Order and herein, we affirm that MISO did comply with the Original GIA in performing the Group 5 restudy, and we reject WPSC's argument that MISO must, prior to initiating a restudy, determine whether a higher-queued project's cancellation "materially impacts" the Crane Creek Project.

38. We also reject WPSC's assertion that the Commission failed to adequately define the current "outcome" or to explain why, in light of that outcome, new common upgrades are needed and the original Group 5 studies are in error. As the Commission explained in the October 26 Order,[67] and affirms in this order, MISO reasonably concluded that a restudy of Group 5 was necessary due to the events described above in paragraph 19, and following completion of that restudy, determined the facilities, including new common use upgrades, that are necessary to reliably interconnect the remaining members of Group 5, including the Crane Creek Project. Thus, the "outcome" referenced by the Commission is the one addressed in the October 26 Order: the revisions to Group 5 members' cost responsibility as a result of the Group 5 restudy. Similarly, as explained above, we disagree with WPSC that MISO failed to carry its evidentiary burden, particularly with respect to MISO's reliance on the withdrawal of project G392 as one of several events that triggered the need for restudy. MISO did not argue that the withdrawal of project G392, in and of itself, triggered the need for restudy, but rather stated that the withdrawal was one of several events that, in the aggregate, prevented MISO from being able to use the original Group 5 studies to determine the cost impacts of those events. Simply because MISO did not provide notice to Group 5 members that

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[65] *Id.* at 27 (citing October 26 Order, 141 FERC ¶ 61,068 at P 47).

[66] *Id.*

[67] October 26 Order, 141 FERC ¶ 61,068 at P 46.

project G392's withdrawal, on its own, required a restudy does not undermine MISO's argument that project G392 was one of several events that necessitated the Group 5 restudy.

39. We disagree with WPSC that the evidence in the record supports a finding that the Crane Creek Project could be reliably served based solely on the facilities included in the Original GIA. WPSC asserts that, with respect to the findings in the Group 5 restudy that the Crane Creek Project impacts the Brookings Line, those impacts are due to a circular power flow that results from the network upgrades, system conditions, and assumed sinks that were included in the Group 5 restudy but which were outside the purview of the original Group 5 studies.[68] First, we note that WPSC does not specify which network upgrades, system conditions, and assumed sinks supposedly create the circular power flow at issue. In any event, we find that MISO's decision to update the system conditions and assumptions for the Group 5 restudy was reasonable. Notwithstanding WPSC's argument that it would be "counter-intuitive" for the withdrawal of the Group 5 projects to result in the Crane Creek Project's impacting the Brookings Line in the Group 5 restudy, despite the findings in the original Group 5 studies that the Crane Creek Project did not impact the Brookings Line, the question posed by WPSC is an engineering question, not simply a logical one. MISO's Group 5 restudy found that the Crane Creek Project impacts the Brookings Line based on the reconfigured Group 5 membership, and we accept that result.

40. We reject WPSC's arguments that the Commission should have construed any disputed material facts against MISO or set the disputed facts for hearing, and should view the evidence in the record in the light most favorable to WPSC. The Commission need only hold an evidentiary hearing when a genuine issue of material fact exists and that issue cannot be adequately resolved on the written record.[69] Accordingly, the Commission's issuing a merits order without ordering a hearing is not tantamount to the Commission's granting summary judgment. In the October 26 Order, the Commission concluded that any genuine issues of material fact could be resolved on the papers, and therefore no hearing was necessary. WPSC has provided no arguments or evidence on rehearing to justify reconsidering that conclusion.

41. We also affirm our findings with respect to WPSC's arguments that the Commission violated the *Mobile-Sierra* rule, filed rate doctrine, and rule against retroactive ratemaking. As the Commission held in the October 26 Order, the plain terms of the Original GIA contemplate and permit the amendment of the GIA to reflect the

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[68] WPSC Rehearing Request at 28-29.

[69] *See, e.g.*, *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

results of a permissible restudy.[70] As a result, WPSC's argument that the amendments are prohibited by the *Mobile-Sierra* rule is moot. Furthermore, the Commission's conditional acceptance of the Amended GIA did not contravene the filed rate doctrine because MISO properly sought to amend the filed rate (i.e., the Original GIA) on a prospective basis before revising the Crane Creek Project's cost responsibility. It is WPSC, not the Commission, that effectively seeks to deprive the filed rate doctrine of its meaning by prohibiting MISO from prospectively changing the rate on file, which is expressly permitted by the filed rate doctrine. Finally, WPSC misinterprets the rule against retroactive ratemaking. The rule against retroactive ratemaking prevents entities from collecting revenues to compensate for a prior over- or under-recovery of revenues.[71] Here, MISO is not seeking to recover any previously-incurred costs, but rather proposes to revise the Original GIA to include costs associated with new facilities that are necessary for the reliable interconnection of the Crane Creek Project, and to provide reliable service to the Crane Creek Project in the future. Accordingly, the October 26 Order, by accepting MISO's proposed assessment of prospective costs, did not violate the rule against retroactive ratemaking.

C. Commission's *Community Wind* Precedent

1. Request for Rehearing

42. WPSC argues that the October 26 Order violates the Commission's decision in *Community Wind II* and is not supported by substantial evidence. WPSC argues that the Commission impermissibly allowed MISO to assess the Crane Creek Project costs that were based on changed system conditions, not changes in the Crane Creek Project or the withdrawal of higher-queued customers. WPSC asserts that the Commission erred by assigning to the Crane Creek Project costs and conditionality associated with three projects (the Lacrosse-Cardinal Line, the Pleasant Prairie Line, and the Hazelton 345 kV Project) that were not included in the 2007 Group 5 system impact study or the approved MISO transmission expansion plan at the time the Original GIA was executed or the Crane Creek Project went into service. WPSC asserts that the Commission

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[70] October 26 Order, 141 FERC ¶ 61,068 at P 52 (citing and discussing the relationship between articles 11.3.2 and 30.10 of the Original GIA).

[71] *See, e.g.*, *Virginia Elec. and Power Co.*, 128 FERC ¶ 61,026, at P 41 (2009) ("The rule against retroactive ratemaking prevents a utility from recovering in current rates costs incurred in providing service in prior periods."); *Duke Energy Hinds, LLC v. Entergy Operating Servs., Inc.*, 117 FERC ¶ 61,210, at P 32 (2006) ("The rule against retroactive ratemaking forbids us to order reparations; we cannot order a utility to give back to a customer money the utility has already collected.").

impermissibly allowed the Brookings Line to be included in Exhibit A10, even though the Brookings Line was not found to be needed for the Crane Creek Project in the 2007 Group 5 system impact study. WPSC argues that no evidence supports a finding that these projects comply with the *Community Wind II* requirement that only the minimum additional costs can be assigned to a generator when higher-queued projects drop out of the queue and their associated transmission facilities are not constructed. WPSC asserts that MISO could have established such evidence by rerunning the 2007 Group 5 system impact study without the higher-queued Group 5 projects that withdrew, but that MISO failed to perform this analysis. Therefore, WPSC argues that the cost responsibility and conditionality assigned to the Crane Creek Project for these projects is properly attributed to changed system conditions, rather than the withdrawal of higher-queued projects.[72]

2. Commission Determination

43. We deny WPSC's rehearing request and affirm the findings of the October 26 Order. Contrary to WPSC's assertions, the Commission did not hold in the *Community Wind* proceeding that costs should not be allocated to an interconnection customer based on a change in system conditions; in fact, the Commission's *Community Wind I* and *Community Wind II* orders did not even address that issue. Rather, the Commission affirmed that an interconnection customer may only be allocated the cost of network upgrades that would not have been constructed but for the interconnection of the generator.[73] The results of the Group 5 restudy satisfy this "but for" standard, and, as a result, the Commission accepted MISO's proposed revisions to the Original GIA.[74]

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[72] WPSC Rehearing Request at 16-18.

[73] *Community Wind I*, 129 FERC ¶ 61,019 at P 23, *order on reh'g*, *Community Wind II*, 131 FERC ¶ 61,165 at P 41.

[74] In the October 26 Order, the Commission affirmed that it did not expressly direct MISO to conduct a restudy in *Community Wind I* or *Community Wind II*, but it reserved judgment on whether a restudy might have been necessary to comply with the Commission's directives in that proceeding. October 26 Order, 141 FERC ¶ 61,068 at P 46 n.100. On rehearing, WPSC continues to argue that the Group 5 restudy was not justified by the Commission's orders in the *Community Wind* proceeding. WPSC Rehearing Request at 15-16. We find that WPSC's argument is moot because the issue had no bearing on the Commission's determination in the October 26 Order that MISO properly determined that a Group 5 restudy was necessary based upon the withdrawal of higher-queued customers.

44. Furthermore, we reject WPSC's argument that, simply because a restudy includes updated system conditions, it does not reflect a "but for" analysis of the network upgrades necessary to interconnect a generating facility to the transmission system. A "but for" analysis necessarily includes assumptions regarding system conditions, and altering those assumptions does not, in and of itself, change the analysis into something other than a "but for" review. As the Commission held in the October 26 Order, and affirms here in paragraph 21, we find that MISO reasonably updated system conditions for the Group 5 restudy following its determination that the withdrawal of numerous Group 5 interconnection customers, as well as another, higher-queued interconnection customer, triggered the need to perform a restudy. That the Group 5 restudy identified additional network upgrades for which the remaining Group 5 members, including WPSC, are responsible under the "but for" analysis performed by MISO does not mean that those additional network upgrades are not appropriately "but for" costs.

D. Exhibit A10 Contingent Facilities Provision

1. Request for Rehearing

45. WPSC argues that the Commission erred by not directing MISO to delete MISO's proposed revisions to the contingent facilities provision in Exhibit A10. WPSC is concerned that Exhibit A10, as reflected in the Amended GIA, could be construed as justifying the 2011 system impact study and additional system impact studies that MISO might perform in the future as additional Group 5 withdrawals occur and system conditions continue to change. WPSC argues that, although the Commission found MISO's Exhibit A10 amendment to be "not appropriate," the Commission failed to direct MISO to remove this language from the Amended GIA as part of MISO's compliance filing. WPSC requests that the Commission either direct MISO to revert to the Exhibit A10 language in the Original GIA or reconsider its decision to accept the revisions to Exhibit A10.[75]

2. Commission Determination

46. We deny WPSC's rehearing request. As discussed below in paragraph 56, in response to WPSC's protest of MISO's compliance filing, we did not direct MISO to remove or alter the contingent facilities provision in Exhibit A10 of the Amended GIA, and WPSC misunderstands the Commission's holding in paragraph 49 of the October 26 Order. The Commission intended only to hold that MISO may not trigger future restudies based on "changed system conditions" without proposing and justifying a revision to article 11.3.1 of the GIA; the Commission did not, as WPSC apparently

[75] WPSC Rehearing Request at 32-34.

believes, reject MISO's proposed revisions to Exhibit A10. Whether future restudies might be required if additional Group 5 withdrawals occur is not before us at this time. However, the revised list of Exhibit A10 contingent facilities accepted in the October 26 Order, and the additional revisions accepted in this order, may constitute grounds for future restudy if the requirements of article 11.3.1 are met. As explained in the October 26 Order and affirmed above, MISO has demonstrated that the 2011 system impact study results are properly included in the Crane Creek GIA.

E. Effect of the October 26 Order

1. Request for Rehearing

47. Citing paragraph 45 of the October 26 Order, WPSC argues that the October 26 Order could be construed as consistent with WPSC's proposal to avoid litigation regarding the Amended GIA by executing a revised GIA that identified additional network upgrades from the 2011 system impact study, provided that MISO would not be able to impose any costs for those upgrades on WPSC without a section 205 filing, and that WPSC's execution of a revised GIA would not preclude WPSC from challenging that future section 205 filing. WPSC states that it would not be injured if the October 26 Order did, in fact, agree with WPSC's proposal. However, if the October 26 Order was intended to have *res judicata* or other preclusion effects that would prevent WPSC from arguing in a future proceeding that MISO had not made the requisite findings to justify a restudy, then WPSC requests that the Commission grant rehearing and adopt WPSC's proposal.[76]

48. WPSC also asserts that, even if the October 26 Order does not have *res judicata* or issue preclusion effects, it would harm WPSC if MISO was allowed to assign conditionality to the Crane Creek Project, i.e., if MISO was allowed to impose forward-looking, quarterly operating restrictions that limit WPSC's ability to offer the Crane Creek Project's full output capability into the market. WPSC argues that MISO has failed to submit any evidence other than changed system conditions to demonstrate that the Crane Creek Project should be subject to conditional service pending completion of the Contingent MVPs. Accordingly, WPSC asks that, based on the lack of evidence, the Commission could require MISO to allow capacity credits for the Crane Creek Project and refrain from imposing operating limitations on the Crane Creek Project until MISO makes a filing under section 205 of the FPA demonstrating that the Crane Creek Project should not receive capacity credits and should be subject to operating limitations.[77]

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

[77] *Id.* at 36-37.

2. Commission Determination

49. We deny WPSC's request that we clarify that the October 26 Order is not intended to have *res judicata* or issue preclusion effects, that the October 26 Order is not intended to impose conditionality of operation on the Crane Creek Project, and that MISO cannot impose conditionality of operation on the Crane Creek Plant without making a filing under FPA section 205. The October 26 Order, in conditionally accepting MISO's proposed amendments to the Original GIA, addressed the rights and responsibilities of the parties to that agreement, and the Amended GIA, as further modified herein, is legally binding on the parties pursuant to its terms. The Crane Creek GIA and MISO's Tariff determine whether a result of the October 26 Order is the imposition of conditional interconnection service on the Crane Creek Project, and we will not require MISO to make a separate filing under section 205 of the FPA to implement conditional service for the Crane Creek Project if the Crane Creek GIA and MISO's Tariff provide for such conditional service.[78]

III. MISO's Compliance Filing

50. In its November 26, 2012 compliance filing, MISO proposed certain amendments to the Amended GIA. MISO states that, as directed in the October 26 Order, it has proposed revisions to Exhibit A10 of the Amended GIA to (1) remove references to the Arrowhead Capacitor Bank; (2) add references to the Contingent MVPs; and (3) address the Commission's directive that MISO either explain whether the omission of certain Group 5 generators from Exhibit A10 of the Amended GIA was intentional and justified, or amend the Amended GIA to add those projects. MISO also proposes additional updates to Appendix A of the Amended GIA to reflect the most recent data available for associated Group 5 projects as of the time of its compliance filing.[79]

51. MISO proposes additional changes to the Amended GIA and Appendix A: (1) revised language in the Recitals to the Amended GIA to acknowledge that the agreement has been amended pursuant to the October 26 Order; and (2) revisions to Part I and Section 7 of Appendix A to reflect changes related to the implementation of reforms to MISO's interconnection procedures approved by the Commission in August 2012.[80]

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[78] *See, e.g.*, MISO FERC Electric Tariff, Attachment X (13.0.0) § 3.2.1.1; Amended GIA § 4.1.1.1, app. A.

[79] MISO Compliance Filing at 1-2.

[80] *Id.* at 3.

52. MISO explains that it has not revised the cost allocation percentages for the Hazelton 345 kV Project update or updated the Crane Creek Project's cost responsibility, as directed in the October 26 Order, because those percentages, which are dependent on whether other projects agree to fund their share of the Hazelton 345 kV Project, are reflected in Appendix A, Table 1 of the Multi-Party Facilities Construction Agreement (MPFCA) for the Hazel-Mitchell County upgrade that was filed at the Commission in Docket No. ER13-416. MISO states its belief that reflecting the cost allocation percentages in the MPFCA is consistent with the Commission's intent in the October 26 Order and will prevent confusion and the need to further amend the Amended GIA if the MPFCA is later amended to reflect revised cost allocations.[81]

A. Notice and Responsive Pleadings

53. Notice of MISO's compliance filing was published in the *Federal Register*, 77 Fed. Reg. 71,790, with interventions, comments, and protests due on December 17, 2012. WPSC filed a protest on December 17, 2012. On January 2, 2013, MISO filed a motion for leave to answer and answer to WPSC's protest. On January 14, 2013, WPSC filed a request for rejection of MISO's motion.

54. WPSC protests the Exhibit A10 contingent facilities provision that precedes the Exhibit A10 list of contingent facilities. WPSC asserts that the Commission, in its October 26 Order, rejected MISO's proposed revised contingent facilities provision and that MISO impermissibly failed to remove it from the revised Crane Creek GIA submitted on compliance.[82] Accordingly, WPSC requests that the Commission reject the

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[81] *Id.* at 2-4.

[82] That provision states:

> Contingent facilities are defined as facilities deemed necessary for the interconnection of a higher queued generator. The list below includes all facilities assumed to be available as part of the Interconnection Study work but does not necessarily mean that these facilities would be contingent facilities for the Interconnection Customer's Generating Facilities. Should a higher queued generator be removed from the Queue, then the lower queued generator may be expected to finance the necessary upgrades. The extent of the financial obligation of this Generating Facility if one or more of the assumed facilities does not get built as planned will be determined by MISO Tariff rules which includes an

(continued…)

Compliance Filing and direct MISO to resubmit an amended Exhibit A10 that contains the contingent facilities provision contained in the Original GIA.[83]

B. Commission Determination

55. 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 an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept MISO's answer and, therefore, reject it.

56. We find that MISO has complied with our directives, and we accept MISO's Compliance Filing. We disagree with WPSC that the October 26 Order directed MISO to remove from Exhibit A10 MISO's proposed revision to the contingent facilities provision. In that order, and in response to WPSC's assertion that MISO proposed to grant itself the authority to conduct future restudies based on "changed system conditions" rather than defined triggers in the GIA, the Commission held that:

> We do, however, agree with Crane Creek that, to the extent MISO intends that the revisions to Appendix A, and specifically Exhibit A10, would grant MISO the authority to conduct future restudies based on "changed system conditions," such authority is not appropriate to include in Appendix A. If MISO wishes to add new categories for triggers for restudy, it must, as it has in the past, propose and justify an amendment to article 11.3.1.[84]

In so holding, the Commission did not determine that the cited language in Exhibit A10 *would*, if accepted, grant MISO the authority to conduct restudies based on "changed system conditions;" rather, the Commission simply held that, *to the extent MISO intended* to grant itself such authority, MISO cannot rely on this language for that authority and must instead propose amendments to article 11.3.1 of the Crane Creek GIA. Notably, at no point in these proceedings has MISO claimed that the disputed language grants it the

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> evaluation of the Generating Facilities flows on the affected facilities per MISO Business Practice.

Amended GIA, Ex. A10.

[83] WPSC Protest at 3-4.

[84] October 26 Order, 141 FERC ¶ 61,068 at P 49.

authority to conduct restudies based on "changed system conditions," and the Commission's holding in the October 26 Order would prevent MISO from asserting such authority in the future based on this language. However, that holding did not require that MISO remove the disputed language from the Crane Creek GIA, as WPSC now alleges. We therefore deny WPSC's protest.

The Commission orders:

(A) WPSC's Rehearing Request is hereby denied, as discussed in the body of this order.

(B) MISO's Compliance Filing is hereby accepted effective June 2, 2012, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.