

147 FERC ¶ 61,106  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER14-1470-000

ORDER CONDITIONALLY ACCEPTING FACILITIES SERVICE AGREEMENT

(Issued May 9, 2014)

1. On March 12, 2014, Midcontinent Independent System Operator, Inc. (MISO), pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> submitted for filing an unexecuted Facilities Service Agreement (FSA) between Ameren Services Company, as agent for Ameren Illinois Company (Ameren), as Owner, and White Oak Energy LLC (White Oak), as Customer.<sup>2</sup> The FSA was filed unexecuted because the parties disagree about whether Option 1 pricing, as described below, is the proper method for White Oak to fund its required network upgrades to the Ameren transmission system. In this order we conditionally accept the FSA to become effective May 11, 2014, as requested, subject to further compliance.

**I. Background**

2. In October 2009, the Commission accepted MISO's existing proposal for participant funding policy, which revised Attachment FF of the MISO Tariff 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 are 345 kV and above.<sup>3</sup> At that time, MISO's Tariff provided three options for recovery of costs of network upgrades required for generator interconnections. Attachment FF described two of these

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> MISO is the applicant in this proceeding as the administrator under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), under which the FSA has been filed, but MISO is not a party to the FSA.

<sup>3</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 8 (2009).

options (Option 1 and Option 2, respectively), which were incorporated by reference into MISO's *pro forma* Large Generator Interconnection Agreement (GIA), while Article 11.3 of MISO's *pro forma* GIA contemplated a third option (the self-fund option).<sup>4</sup>

3. Option 1 provided that for network upgrade costs subject to participant funding: (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<sup>5</sup> to recover the cost of the non-reimbursable (i.e., the participant-funded) portion of the network upgrade costs based on a formula contained in Attachment GG of the MISO Tariff. If this option is elected, a service agreement establishing the facilities charge is to be filed with the Commission.

4. Option 2 provided that for network upgrade costs subject to participant funding: (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.

5. Under the self-fund option set forth in Article 11.3 of MISO's *pro forma* GIA, the transmission owner can elect to provide the up-front funding for the capital cost of the network upgrades.<sup>6</sup>

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<sup>4</sup> Article 11.3 is found in the *pro forma* GIA, which is located in Attachment X of the MISO Tariff.

<sup>5</sup> As provided for in Attachment GG of the MISO Tariff, the network upgrade charge includes a return on capital investment, income taxes, depreciation expense, operating and maintenance expense, administrative and general expense, and other direct and indirect costs.

<sup>6</sup> 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).

6. On October 20, 2011, in an order on a complaint filed against MISO by E.ON Climate & Renewables North America, LLC, the Commission ordered the removal of Option 1 from Attachment FF of MISO's Tariff.<sup>7</sup> The Commission found that Option 1 increased the costs directly assigned to the interconnection customer with no corresponding increase in service compared to other funding options. The Commission further 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.<sup>8</sup> 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, as well as non-capital costs . . . to particular interconnecting generators, but not others."<sup>9</sup> 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.<sup>10</sup>

7. In *E.ON*, the Commission established March 22, 2011, the filing date of the complaint, as the effective date for the removal of Option 1 from the MISO Tariff. In the *E.ON Rehearing Order*, the Commission stated that *E.ON* "did not automatically modify any existing agreements" and that the Commission's decision ordering MISO to remove Option 1 "will not apply to agreements effective prior to March 22, 2011."<sup>11</sup>

8. On August 28, 2007, Ameren and White Oak executed a large generator interconnection agreement for White Oak's wind generation project near Carlock, Illinois (designated as MISO Project No. IP04) (2007 White Oak LGIA). It was subsequently amended on March 19, 2009 (2009 White Oak Amended and Restated LGIA) and September 27, 2011 (2011 White Oak Amended and Restated LGIA) (together with the 2007 White Oak LGIA, White Oak LGIAs) to reflect the suspension and removal of Project No. IP08 from the MISO queue. As of December 2009, White Oak had fully

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<sup>7</sup> *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076, at P 34 (2011) (*E.ON*), *reh'g denied*, 142 FERC ¶ 61,048, at P 34 (2013) (*E.ON Rehearing Order*).

<sup>8</sup> *Id.* P 37.

<sup>9</sup> *Id.* P 38.

<sup>10</sup> *Id.* P 37.

<sup>11</sup> *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34.

funded the required stand-alone network upgrades.<sup>12</sup> In February 2011, Ameren completed construction of the required stand-alone network upgrades and the White Oak project entered commercial operation on June 20, 2011.

## II. Filing

9. Ameren states that on September 1, 2011, following construction of the network upgrades, it communicated its intent to White Oak to refund the up-front funding that White Oak had provided for its required network upgrades and established an FSA-based Option 1 monthly network upgrade charge. Ameren further states that on October 3, 2011, White Oak acknowledged receipt of Ameren's communication of its election of Option 1 pricing and associated draft FSA and communicated its refusal to sign the FSA. On October 16, 2012, Ameren states that it again forwarded a draft FSA to White Oak and that, on November 12, 2012, White Oak again provided notice of its refusal to sign.

10. According to Ameren, between November 2012 and the filing of the FSA, the Commission has issued a number of orders that support Ameren's ability to implement Option 1 pricing for the stand-alone network upgrades identified in the White Oak LGIAs.<sup>13</sup> Ameren states that it had hoped that these cases would have provided a "clear path" forward for the application of Option 1 but that it has become necessary to file the FSA unexecuted because the parties continue to disagree on whether the FSA is the proper method for White Oak to fund its network upgrades.<sup>14</sup>

11. Ameren also asserts that, in other RTOs, the Commission has found that the governing tariff is the tariff on file when an interconnection customer enters the interconnection queue.<sup>15</sup> Ameren notes that in West Deptford, which concerned a

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<sup>12</sup> Ameren states that White Oak provided \$2,399,128 of up-front funding for the estimated cost of the required network upgrades between November 2008 and December 2009. Ameren Filing at 9.

<sup>13</sup> *Id.* at 3-5 (citing *E.ON Rehearing Order*, 142 FERC ¶ 61,048; *Rail Splitter Wind Farm LLC v. Ameren Services Co.*, 142 FERC ¶ 61,047 (2013) (*Rail Splitter*); *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,050, at PP 66-70 (2013) (*Settlers Trail*); *Midcontinent Indep. Transmission Sys. Operator, Inc.*, 145 FERC ¶ 61,111, at P 40 (2013) (*Hoopeston*); *Rail Splitter Wind Farm LLC v. Ameren Services Co.*, 146 FERC ¶ 61,017 (2014) (*Rail Splitter Rehearing Order*)).

<sup>14</sup> *Id.* at 3-4.

<sup>15</sup> *Id.* at 5 (citing *PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,195 (2011) (*West Deptford*), *reh'g denied*, 139 FERC ¶ 61,184 (2012)).

revision to the PJM Tariff that occurred after the customer had entered the interconnection queue but before it signed its interconnection agreement, the governing tariff provisions were those in effect when the customer entered the interconnection queue because financial responsibility was established at that time. Ameren adds that this precedent supports its use of Option 1 pricing in the FSA not only based on when the parties executed the 2007 White Oak LGIA but also when White Oak entered the MISO interconnection queue.

12. Ameren argues that the MISO Tariff in effect at the time the 2007 White Oak LGIA was executed gave White Oak notice that Ameren had the right to establish an Option 1-based Network Upgrade Charge, as proposed in the FSA. Conversely, Ameren states that it was not given notice at that time that, if it accepted White Oak's upfront funding, it would be denied the ability to elect Option 1 pricing pursuant to subsequent revisions to the MISO Tariff.<sup>16</sup>

13. Ameren maintains that the MISO Tariff in effect when the 2007 White Oak LGIA was executed did not require the transmission owner to memorialize its election of Option 1 or Option 2 in the LGIA and that the requirement to identify such an election came at a later date.<sup>17</sup>

14. Ameren argues that the FSA is an appropriate means to implement Option 1 pricing. Ameren states that, by filing the FSA, it is completing the process of invoicing White Oak for the interconnection service to which it agreed when it executed the 2007 White Oak LGIA. Ameren argues that enforcing the rate on file at the time of the execution of the White Oak LGIA is critical because Ameren can no longer elect the self-fund option under the MISO Tariff (as stated previously, the self-fund option requires the transmission owner to provide the up-front funding of the capital costs of network upgrades).<sup>18</sup> Therefore, Ameren continues, if *E.ON* is interpreted to disallow the use of Option 1 in the FSA, Ameren would instead be compelled to elect Option 2.<sup>19</sup>

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<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.* at 6. Ameren states that on May 17, 2011, MISO made a compliance filing in Docket No. ER11-3583-000 that, among other things, amended Appendix A to the MISO *pro forma* GIA to require the transmission owner to memorialize its funding option in the GIA. *Id.* n.21 (citing *Midwest Indep. Transmission System Operator, Inc.*, Docket No. ER11-3583-000, Letter Order (June 29, 2011) (accepting compliance filing)).

<sup>18</sup> *Id.* at 7-8.

<sup>19</sup> *Id.* at 8.

15. The unexecuted FSA establishes a monthly Network Upgrade Charge in the amount of \$34,567 to be paid over a 20-year term. Ameren states that, upon the Commission's acceptance of the FSA, it will refund \$3,197,342 to White Oak, which represents White Oak's up-front funding, plus interest, for the applicable stand-alone network upgrades. Of this amount, Ameren explains that \$2,399,128 is the basis for the network upgrade charge. Ameren states that it populated the Attachment GG Network Upgrade Charge formula with data from its formula rate in Attachment O of the MISO Tariff available at the time the network upgrades identified in the White Oak LGIAs went into service, which yielded a 17.29 percent fixed charge rate that would be used as the Network Upgrade Charge.<sup>20</sup> Ameren explains that the fixed charge rate consists of: (1) an "Annual Allocation Factor for Expense," which includes the allocation factors for Operations and Maintenance, General and Common Depreciation, and taxes Other than Income Taxes"; and (2) a 13.75 percent "Annual Allocation Factor for Return," which includes a 9.47 percent Annual Allocation Factor of Return on Rate Base and a 4.27 percent Annual Allocation Factor for Income Taxes.<sup>21</sup>

### **III. Notice, Intervention and Responsive Pleadings**

16. Notice of MISO's March 12, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 15,328 (2014) with protests and interventions due on or before April 2, 2014.

17. Ameren filed a timely motion to intervene on March 28, 2014. On April 2, 2014, NextEra Energy (NextEra), on behalf of its affiliate White Oak, filed a motion to intervene and protest. On April 17, 2014, Ameren filed an answer to NextEra's protest. On April 29, 2014, NextEra filed an answer to Ameren's answer.

### **IV. NextEra's Protest**

#### **A. Applicability of Option 1 Pricing**

18. NextEra states that Option 1 pricing adds nearly \$6 million in interconnection costs. NextEra states that, instead of paying nearly \$2.4 million, White Oak would pay nearly \$8.3 million through payments of \$414,000 per year, over 20 years.<sup>22</sup>

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<sup>20</sup> *Id.* at 8-10, n.27.

<sup>21</sup> *Id.* at 9-10, n.29.

<sup>22</sup> NextEra Protest at 4-5.

19. NextEra argues that, because Ameren did not affirmatively elect Option 1 pricing in any of the White Oak LGIAs, Ameren cannot use Option 1 pricing in the FSA. NextEra states that the Commission's allowance of Option 1 pricing for preexisting LGIAs was limited to circumstances in which Option 1 pricing was affirmatively and timely elected in the LGIA, or in which the customer did not protest the subsequently filed FSA. According to NextEra, neither of those circumstances is present here.<sup>23</sup>

20. NextEra argues that MISO's Tariff expressly provided for different funding mechanisms via Option 1 and Option 2 but never allowed for the transmission owner to elect Option 1 at any time, as Ameren now attempts to do, via filing of an unexecuted FSA. NextEra maintains that the 2007 White Oak LGIA provided for the reimbursement and funding election consistent with the schedules and other terms of Attachment X of the MISO Tariff. According to NextEra, section 11.3 of Attachment X requires that Ameren provide written notice of its election to self-fund the capital for network upgrades; otherwise, such facilities would be solely funded by the interconnection customer.<sup>24</sup> According to NextEra, Option 1 pricing was rendered unavailable to Ameren when Ameren did not provide the required notice under section 11.3 of Attachment X that it would self-fund. Therefore, NextEra argues, the only option available to Ameren that complied with the MISO Tariff was for White Oak to solely fund the network upgrades under Option 2.<sup>25</sup>

21. NextEra continues that Option 1 was a "specialized variation from the standard reimbursement policy of Order No. 2003,"<sup>26</sup> noting that, in *E.ON*, the Commission explained that Option 2 generally follows the approach provided in Order No. 2003.<sup>27</sup>

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<sup>23</sup> *Id.* at 9-10, 17.

<sup>24</sup> *Id.* at 11. Section 11.3 of Attachment X of the MISO Tariff provides:

The Interconnection Customer shall be responsible for all costs related to...Generator Upgrades. Transmission Owner shall provide the Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 [of MISO's *pro forma* LGIA] if the Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities; otherwise, such facilities, if any, shall be solely funded by the Interconnection Customer.

<sup>25</sup> *Id.* at 11-13, 19.

<sup>26</sup> *Id.* at 11.

<sup>27</sup> *Id.* at 13.

Therefore, NextEra argues that, absent any affirmative deviation elected by a transmission owner for Option 1 pricing, Option 2 pricing applies.<sup>28</sup> NextEra continues that section 30.4 of the 2007 White Oak LGIA provided that its rates, terms, and conditions “constitute the entire agreement between the Parties with reference to the subject matter hereof,” which includes the cost of the network upgrades to interconnect to Ameren’s transmission system; because Ameren’s election of Option 1 was not included in section 11.4 of the 2007 White Oak LGIA, the default Option 2 pricing under MISO’s Tariff would apply. NextEra continues that, contrary to Option 1 or the self-fund option, neither Order No. 2003 nor the MISO *pro forma* LGIA requires an affirmative election for Option 2 to apply. NextEra argues that the Commission affirmed this policy in *E.ON*, when it found that “Option 2 [pricing] generally follows the approach that was provided by the Commission in Order No. 2003”<sup>29</sup> and in the *E.ON Rehearing Order*, when it stated that an “agreement in which Option 1 was selected that became effective prior to March 22, 2011” might be eligible for Option 1 pricing.<sup>30</sup>

22. NextEra notes that in 2008, Ameren entered into two LGIAs with other interconnection customers in which it expressly elected Option 1 pricing.<sup>31</sup> Similarly, NextEra notes that Ameren entered into five LGIAs in 2010 and 2011 in which it expressly elected Option 1 pricing.<sup>32</sup> However, NextEra states, Ameren did not make such an election in any of the White Oak LGIAs. NextEra argues that Ameren’s “course of dealing” demonstrates that Ameren was well aware of its obligation to affirmatively elect Option 1 pricing in its LGIAs and that Ameren’s failure to elect Option 1 in the 2009 White Oak Amended and Restated LGIA or in the 2011 White Oak Amended and Restated LGIA undermines Ameren’s claim that it understood that it had the right to elect Option 1 pricing at a later date via an unexecuted FSA.

23. According to NextEra, on July 15, 2010, MISO and the MISO Transmission Owners, including Ameren, submitted a proposal to revise MISO’s Tariff to require that a transmission owner make its Option 1 election “within fifteen (15) Calendar Days after

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (citing *E.ON*, 137 FERC ¶ 61,076 at P 40).

<sup>30</sup> *Id.* (citing *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 13).

<sup>31</sup> *Id.* at 13-14.

<sup>32</sup> *Id.* at 15.

the tender of the final Generator Interconnection Agreement appendices.”<sup>33</sup> NextEra argues that, notwithstanding sponsorship of this provision, Ameren did not revise the 2011 White Oak Amended and Restated LGIA, nor did it revise the 2011 White Oak Amended and Restated LGIA within 15 calendar days of the final appendices being tendered to White Oak.<sup>34</sup>

24. NextEra continues that Ameren’s conduct of: (i) participating in filing revisions to the Tariff identifying a specific date by which Option 1 must be elected; and (ii) affirmatively electing Option 1 pricing in numerous agreements with other customers, including amended and restated LGIAs, before it entered into the 2011 White Oak Amended and Restated LGIA, demonstrates that Ameren fully understood that a transmission owner had no such Option 1 pricing right unless affirmatively and timely elected in the LGIA. For these reasons, according to NextEra, Ameren’s claim that it had no notice that “it would be denied the ability” to charge Option 1 pricing (and thus might have pursued self-funding from the start) and that it is merely completing the final steps of an election of Option 1 pricing lacks merit.<sup>35</sup>

25. NextEra argues that, in *E.ON*, the Commission disallowed the use of Option 1 in an LGIA prospectively, and only allowed for the use of Option 1 pricing in LGIAs that were executed prior to March 22, 2011 *if* Option 1 had been selected. NextEra continues that, in the *E.ON Rehearing Order*, the Commission clarified that its decision in *E.ON* did not “affect or abrogate any Facilities Service Agreements (FSAs) or other agreements in which a Transmission Owner has elected Option 1.”<sup>36</sup> NextEra states that the Commission also stated that “the MISO Transmission Owners also ask the Commission to clarify that amending a GIA, a Facilities Construction Agreement, or other agreement in which Option 1 was selected that became effective prior to March 22, 2011 will not affect the selection of Option 1.”<sup>37</sup> Therefore, NextEra concludes that, in the *E.ON Rehearing Order*, the Commission only preserved the opportunity for Ameren to use Option 1 pricing if it had elected Option 1 pricing in an LGIA executed prior to

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<sup>33</sup>*Id.* at 16 (citing Midwest Indep. Transmission Sys. Operator, Inc. and the Midwest ISO Transmission Owners, Docket No. ER10-1791-000, Transmittal Letter at 33 and proposed tariff sheet 3093, July 15, 2010; *Midwest Indep. Trans. Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (MVP Order)).

<sup>34</sup> *Id.* at 16-17.

<sup>35</sup> *Id.* at 17.

<sup>36</sup> *Id.* at 18 (citing *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 13 (emphasis added by NextEra)).

<sup>37</sup> *Id.* (citing *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 13).

March 22, 2011.<sup>38</sup> According to NextEra, the Commission would not have granted its clarification in the *E.ON Rehearing Order* if it intended to allow all transmission owners to select Option 1 pricing in pre-March 22, 2011 LGIAs, regardless of whether they had made this selection before that date.<sup>39</sup> Therefore, NextEra states that no provision of the White Oak LGIAs will be abrogated by retaining Option 2 pricing because Ameren did not select Option 1 pricing by March 22, 2011, as the Commission required for the preservation of this right.

26. NextEra contends that Ameren's discussion of West Deptford and reference to the filed rate doctrine does not support its use of Option 1 pricing in the FSA. NextEra states that these precedents are not controlling in this matter because, absent an affirmative election of Option 1 in any of the White Oak LGIAs, White Oak was always on notice that its cost for interconnection service was based on Option 2 pricing. NextEra states that the West Deptford ruling pertained to the PJM tariff, and admits that the Commission has made similar rulings in MISO, but to the extent that the Commission has allowed the version of the MISO Tariff in effect at the time an LGIA was executed to determine whether Option 1 pricing may be available, the Commission has only allowed the grandfathering of Option 1 pricing with the condition that the transmission owner had to have selected it in the LGIA executed before March 22, 2011. NextEra adds that consistent with the bedrock customer notice feature of the filed rate doctrine, it would be unjust and unreasonable under these facts to allow Ameren to switch to Option 1 pricing and "foist an additional and unexpected \$6 million cost on White Oak."<sup>40</sup>

27. NextEra maintains that any decision denying Option 1 in this case will not undermine a transmission owner's ability to elect the self-fund option or Option 2 pricing under the MISO Tariff. NextEra argues that Ameren failed to elect Option 1 pricing or the self-fund option when it executed the 2007 White Oak LGIA and again failed to elect Option 1 pricing when it executed the 2009 White Oak Amended and Restated LGIA or the 2011 White Oak Amended and Restated LGIA. Therefore, NextEra states, Ameren's ability to elect Option 1 was at no time impeded. NextEra states that Ameren is a sophisticated utility that actively participated in the Commission proceeding in 2005 and 2006 when Option 1 pricing was first discussed, which, according to NextEra, demonstrates Ameren's awareness of its options and obligations under Attachment FF of the MISO Tariff when the 2007 White Oak LGIA was executed. Further, NextEra states that the Commission's denial of Option 1 pricing here will not undermine a transmission owner's right to choose the funding method for network upgrades in the future.<sup>41</sup>

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<sup>38</sup> *Id.* at 18-19.

<sup>39</sup> *Id.* at 19.

<sup>40</sup> *Id.* at 21-22.

<sup>41</sup> *Id.* at 22.

Similarly, NextEra states that any past and proper Option 1 elections under LGIAs for other interconnection customers will not be disturbed by a finding that Option 1 is not available under the instant facts and circumstances.<sup>42</sup>

28. NextEra argues that, in *E.ON*, the Commission found that it is unjust and unreasonable to require an interconnection customer to bear the risk of funding the construction of network upgrades up-front and then permit the transmission owner to elect to repay this amount and charge the interconnection customer for the transmission owner's capital costs and income tax allowance. NextEra states that by complying with Ameren's election not to elect the self-fund option, White Oak bore the risks and costs of providing financing up-front. NextEra states that a switch to Option 1 pricing at this time would allow Ameren to avoid many of the risks and costs associated with financing a new construction project, while retaining those benefits.<sup>43</sup> Finally, NextEra states the use of Option 1 pricing diminishes the value of an associated Power Purchase Agreement containing rates that were based on Option 2 pricing.<sup>44</sup>

### **B. Rates, Terms and Conditions of the FSA**

29. NextEra objects to certain of the rates, terms and conditions in the FSA and requests their modification in the event that the Commission does not reject the FSA outright.

30. NextEra states that Ameren's network upgrade charge should not be based on the full components of Attachment GG but should be limited to a return on the amounts invested. NextEra notes that the Commission previously rejected a network upgrade charge based on the full components of Attachment GG under the self-fund option.<sup>45</sup> NextEra maintains that Option 1 pricing and the self-fund option are identical in that they both involve the funding of network upgrades for interconnection service by the transmission owner, and the unduly discriminatory rate principle is the same.

31. NextEra argues that Ameren's proposed 9.47 percent rate of return is unsupported and that Ameren's mere reference to its current carrying costs does not provide adequate support for the rate.<sup>46</sup>

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<sup>42</sup> *Id.* at 22-23.

<sup>43</sup> *Id.* at 24.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 25-26 (citing Hoopston, 145 FERC ¶ 61,111 at P 41).

<sup>46</sup> *Id.* at 27.

32. NextEra contends that Ameren should not be permitted to recover its monthly charge over a 20-year term because two and 2/3 years of interconnection service and network upgrade depreciation have already transpired. Consequently, NextEra argues that any monthly network upgrade charge should be limited to the remaining 17 and 1/3-year period.<sup>47</sup>

33. NextEra argues that White Oak should not be required to post security under the FSA, noting that this requirement is not present in other FSAs. NextEra explains that security is often required to guard against the risk of non-payment but that any risk that results from switching to Option 1 pricing in the FSA, where the upgrades are already in operation, is of Ameren's own choosing.<sup>48</sup> If the Commission requires White Oak to post security, NextEra requests that the Commission direct Ameren to: (1) define the level of Network Upgrade Costs requiring the security; (2) clarify how long Ameren proposes to hold the security, noting that a three-year period appears sufficient before the security can be released; (3) clarify how much Ameren is permitted to draw on the security in the event of missed payments; (4) clarify how security will be posted and maintained in the event that White Oak misses three payments; and (5) clarify that any other future security should be limited to a single annual total payment of \$414,0000 or, at most, the remaining outstanding amount of the \$2.399 million refunded by Ameren.<sup>49</sup>

34. NextEra argues that the default provisions in the FSA are unjust and unreasonable and should be deleted. First, NextEra maintains that the failure to maintain security should not be an event of default because security should not be required in any event. Second, NextEra argues that it should not be penalized if it terminates the project because none of the underlying White Oak LGIAs had subjected White Oak to any such monetary penalties. NextEra argues that, at most, if White Oak terminates the operation of its project before the term of the FSA expires, its liability should be limited to any amounts remaining on the initial \$2.399 million to construct the network upgrades that were refunded by Ameren.<sup>50</sup>

35. NextEra objects to a provision in the FSA that states "Customer or its agent *shall obtain* transmission service subject to the rates, terms and conditions of the Tariff under a separate agreement."<sup>51</sup> NextEra argues that this provision should be deleted because it

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 28.

<sup>49</sup> *Id.* at 29-30.

<sup>50</sup> *Id.* at 32-33.

<sup>51</sup> *Id.* at 33 (emphasis added by NextEra).

would compel White Oak to take transmission service from some entity, regardless of whether it is needed or not.

36. NextEra objects to a number of other provisions in the FSA, including: (1) a *force majeure* provision that White Oak contends is unbalanced; (2) a liability provision that White Oak contends is beyond the subject matter of the FSA; (3) a provision allowing for modifications only through mutual agreement, which White Oak contends impermissibly restricts its FPA section 206 rights; and (4) a dispute resolution provision based upon Module A of the MISO Tariff rather than on the parties' respective rights under the FPA.<sup>52</sup>

## V. Ameren's Answer

### A. Applicability of Option 1 Pricing

37. Ameren maintains that, at the time White Oak agreed to take interconnection service, there was no requirement in MISO's Tariff that Ameren make its Option 1 election at the time the LGIA was signed or memorialize that choice in the LGIA.<sup>53</sup> Ameren adds that this is not to suggest that it ever purposefully withheld its intention to elect Option 1 pricing from White Oak. To the contrary, Ameren states that it tendered the FSA with its election of Option 1 pricing shortly after its true-up of network upgrade construction costs.

38. Ameren states that it has employed Option 1 on a non-discriminatory basis since MISO amended Attachment FF to include that choice. Ameren notes that White Oak never requested that Ameren commit to an option and suggests that, if White Oak knew that Ameren had employed Option 1 pricing for other interconnection customers, it should have assumed that Ameren would select Option 1 for the White Oak LGIA.<sup>54</sup> Finally, Ameren states that, contrary to NextEra's argument, it did not memorialize its Option 1 election in two of the 2008 LGIAs that NextEra cited in its protest.<sup>55</sup>

39. Ameren argues that NextEra cites no Tariff language or Commission order that supports NextEra's claim that Option 2 pricing is the default network upgrade funding methodology in the absence of a transmission owner's affirmative election of Option 1

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<sup>52</sup> *Id.* at 33-34.

<sup>53</sup> Ameren Answer at 5.

<sup>54</sup> *Id.* at 6.

<sup>55</sup> *Id.*

pricing.<sup>56</sup> Ameren asserts that Option 2 has never been the default network upgrade funding methodology under the MISO Tariff. Ameren states that when the Tariff contained both Option 1 and Option 2, both options were on “equal footing.”<sup>57</sup> Ameren notes that both Option 1 and Option 2 under Attachment FF required the Interconnection Customer to be ultimately responsible for (either all or most of) the costs of network upgrades; therefore, the Commission approved Attachment FF in its entirety (including Options 1 and 2) as a departure from Order No. 2003.<sup>58</sup> Furthermore, Ameren maintains that Option 2 is still not the default network upgrade funding methodology, as transmission owners may choose between Option 2 pricing and the self-fund option under Section 11.3 of the LGIA.<sup>59</sup> In that regard, Ameren adds that White Oak confuses Option 1 pricing with the self-fund option. Ameren argues that it is the self-fund option, and not the Option 1 election, that must be made up front.<sup>60</sup>

40. Ameren argues that White Oak misrepresents the Commission’s holding in the *E.ON Rehearing Order* by relying on the Commission’s description of the MISO Transmission Owners’ request for clarification in the background section of the order. Ameren asserts that the Commission did not qualify its operative holding, i.e., that the removal of Option 1 from the MISO Tariff is effectuated on a prospective basis, on the explicit election of Option 1 pricing.<sup>61</sup>

41. Ameren contends that White Oak misconstrues Article 11.3 of the White Oak LGIAs as an election of Option 2 pricing. According to Ameren, Article 11.3 simply identifies which party will be responsible for funding network upgrades and System Protection Facilities as an initial matter and does not address ultimate cost recovery by the transmission owner.<sup>62</sup>

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<sup>56</sup> *Id.* at 8-9.

<sup>57</sup> *Id.* at 8.

<sup>58</sup> *Id.* at 10 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, *order on reh’g*, 117 FERC ¶ 61,241 (2006), *aff’d sub nom. Pub. Serv. Comm’n. of Wis. v. FERC*, 545 F.3d 1058 (D.C. Cir. 2008)).

<sup>59</sup> *Id.* at 9.

<sup>60</sup> *Id.* at 13.

<sup>61</sup> *Id.* at 10-11.

<sup>62</sup> *Id.* at 11-12.

42. Ameren argues that the notice provision in MISO's Tariff, which was made effective in the MVP Order, did not require retroactive application to the 2007 White Oak LGIA and the 2009 White Oak Amended and Restated LGIA. With regard to the 2011 White Oak Amended and Restated LGIA, Ameren states that it had made its election of Option 1 pricing and tendered the draft FSA to White Oak nearly a month prior to executing that agreement.<sup>63</sup>

43. Ameren argues that White Oak has not provided any factual support for its claim that its Power Purchase Agreement is actually based on Option 2 transmission pricing. Further, Ameren suggests that NextEra's purchase price for the White Oak project may have considered the likelihood of Ameren's election of Option 1 pricing, since the purchase occurred on June 10, 2011, during which time Ameren's election of Option 1 pricing was in dispute.<sup>64</sup>

**B. Rates, Terms and Conditions of the FSA**

44. With respect to the proposed rates under the FSA, Ameren maintains that Option 1 pricing has always used the Attachment GG formula to derive the Network Upgrade Charge and that the Commission's decision in Hoopston is distinguishable because it involved the self-funding option.<sup>65</sup> Ameren asserts that it offered a precise calculation of the Annual Allocation Factor for Return in its initial filing, which followed the Attachment GG formula, which is a filed rate and deemed just and reasonable. According to Ameren, White Oak provided no basis to depart from this formula and adopt a rate of return other than that provided in MISO's Tariff.<sup>66</sup>

45. If the FSA is accepted, Ameren states that it would be willing to accommodate White Oak's request to re-calculate the Network Upgrade Charge by allocating the total costs of Network Upgrades over a 17-year period.<sup>67</sup>

46. Ameren does not believe that the provision in the FSA addressing transmission service requires White Oak to purchase transmission service but is instead consistent with the Commission's policy that interconnection service and transmission service are separate projects. Nevertheless, Ameren states that it would be willing to add a qualifier

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<sup>63</sup> *Id.* at 12-13.

<sup>64</sup> *Id.* at 15.

<sup>65</sup> *Id.* at 16.

<sup>66</sup> *Id.* at 17.

<sup>67</sup> *Id.*

“In accordance with Section 4 of the LGIA. . .” to the beginning of the sentence to clarify this point.<sup>68</sup>

47. Ameren maintains that the provision of financial security in the FSA is just and reasonable and does not amount to a monetary penalty.<sup>69</sup> Ameren argues that NextEra misses the mark when it suggests that it should not have to provide financial security when Ameren is choosing to refund White Oak’s money and establish the FSA charge.<sup>70</sup> Ameren states that while it could mitigate the risk associated with the future of the White Oak project by electing Option 2 and keeping White Oak’s up front capital funding, transmission owners are not compelled to accept Option 2, either under the Tariff that governed the execution of White Oak’s LGIA (where Option 1 was available or under today’s Tariff (where the self-funding option is available)).<sup>71</sup> Ameren states that it has consistently applied Option 1 because it believes that Option 2 is insufficiently compensatory.<sup>72</sup> Ameren argues that, without security for the payment of the monthly Network Upgrade Charge established by its election of Option 1 pricing in the FSA, Ameren would be paying a premium (by forgoing the contribution to costs and return provided by the FSA) to eliminate the risk of White Oak’s potential termination. Ameren avers that it should not have to assume White Oak’s commercial risk in order to collect a just and reasonable rate.<sup>73</sup>

48. With regard to White Oak’s argument that the FSA’s proposed *force majeure* provision is unbalanced, Ameren states that it would not object to mirrored *force majeure* protection for both parties, nor would it object to a revision of the liability provision removing items that do not apply to the FSA or that would otherwise duplicate liability protection provided under the White Oak LGIAs.<sup>74</sup>

49. With respect to the FSA’s default provision, Ameren argues that permitting White Oak to refund only the capital costs of network upgrades upon a default would be the equivalent of Option 2 pricing, and would foist on other transmission customers

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<sup>68</sup> *Id.* at 17-18.

<sup>69</sup> *Id.* at 18.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 18-19.

<sup>72</sup> *Id.* at 19.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

White Oak's responsibility for a contribution to return, taxes, O&M and other elements included in the Attachment GG Network Upgrade Charge.<sup>75</sup> Ameren disagrees that the FSA limits White Oak's section 206 rights but would not object to clarifying that White Oak should have the same section 206 rights as it has under the White Oak LGIAs.<sup>76</sup> Ameren also states that it would not object to adopting a dispute resolution clause that mirrors that in the White Oak LGIAs.<sup>77</sup>

## **VI. NextEra's Answer**

50. NextEra argues that the Commission's E.ON Rehearing Order provided the exact clarification sought by Ameren and the other transmission owners; i.e., that Option 1 pricing could still apply to agreements executed prior to March 22, 2011 so long as the transmission owner made an affirmative Option 1 selection in an agreement effective prior to March 22, 2011.<sup>78</sup> NextEra continues that there is no holding in the *E.ON Rehearing Order* where the Commission said that Option 1 could be available in any agreement effective prior to March 22, 2011, as Ameren states, if the transmission owner had not made an affirmative Option 1 selection or deferral in that agreement.<sup>79</sup>

51. NextEra states that White Oak was not on notice before the 2011 Amended and Restated LGIA was executed that Option 1 pricing applied to its project because Ameren's actions consistently communicated to White Oak that Option 2 pricing applied to its project.<sup>80</sup> According to NextEra, Ameren's claim that White Oak was on notice that Option 1 pricing applied to the project as of September 1, 2011 is undermined by Ameren's action of letting the matter drop for years between tendering the 2011 draft FSA and filing the unexecuted FSA in 2014.<sup>81</sup>

52. NextEra disputes Ameren's claim that White Oak "surmised" or "should have assumed" that Option 1 pricing applied to the White Oak LGIA, noting that it is not the interconnection customer's responsibility to surmise and assume what charge applies for

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<sup>75</sup> *Id.* at 20.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 21.

<sup>78</sup> *Id.* at 2-3.

<sup>79</sup> *Id.* at 4-5.

<sup>80</sup> *Id.* at 6.

<sup>81</sup> *Id.* at 6-7.

interconnection service.<sup>82</sup> NextEra adds that Ameren's affirmative election of Option 1 in some other LGIAs did not provide any basis for White Oak to "surmise" that Ameren intended for Option 1 pricing to apply to the White Oak project.<sup>83</sup>

53. With respect to the two LGIAs presented in NextEra's protest that Ameren claimed did not address Option 1, NextEra states that Ameren ensured that the interconnection customers in those agreements were on notice that Ameren had not yet decided on whether it would elect Option 1 pricing and that the decision to elect Option 1 or Option 2 was deferred until a later date.<sup>84</sup>

54. NextEra maintains that the Commission's automatic customer reimbursement policy in Order No. 2003 is the default and that the Commission's acceptance of Option 1 and Option 2 did not change this.<sup>85</sup> NextEra argues that Option 2 merely reduced the amount of the reimbursement down to 50 percent and then eventually to zero but that the automatic Order No. 2003 default reimbursement policy continued to apply.<sup>86</sup> Therefore, NextEra disputes Ameren's claim that "Order No. 2003 did not contain a funding mechanism that looked like Option 2."<sup>87</sup>

55. NextEra reiterates its argument that the Commission's decision to limit Ameren's recovery of network upgrade costs to a return of and on capital in Hoopeston should apply here as well, noting that this FSA is the first time the Commission is considering an FSA with Option 1 pricing after its decision in Hoopeston. Moreover, NextEra argues that the Commission has previously acted to disallow the recovery of these same types of costs directly and solely from the interconnection customer.<sup>88</sup>

56. NextEra also reiterates its request that Ameren be required to provide further support for its 9.47 percent Annual Allocation Factor for Return on Rate Base because simply using Attachment GG for its calculation is insufficient. NextEra states that Ameren should be required to demonstrate that its cost of capital in this instance is commensurate with its risk of re-financing these specific network upgrades (that have

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<sup>82</sup> *Id.* at 8.

<sup>83</sup> *Id.* at 9.

<sup>84</sup> *Id.* at 10.

<sup>85</sup> *Id.* at 11.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 12.

<sup>88</sup> *Id.* at 13-15.

reached commercial operation and been integrated into Ameren's system) and does not include any rate of return components such as RTO incentive basis point adders which should not be applicable in this instance.<sup>89</sup>

57. NextEra states that Ameren provides no support for its reasoning that the FSA should include a security requirement because of the "trend of wind projects changing hands."<sup>90</sup>

58. NextEra disagrees with Ameren's assertion that NextEra's request - that the default provision should only make White Oak liable for any remaining portion of the \$2.399 million to construct the network upgrades that Ameren refunds to White Oak - will foist on other transmission customers White Oak's cost responsibility. NextEra again argues that the costs of O&M on network upgrades must be borne by the transmission owner's transmission customers and not the interconnection customer.<sup>91</sup>

59. NextEra argues that the default provision should not be permitted to remain, unrevised, in the FSA only because it is essentially what was permitted in two other FSAs. NextEra states that the instant filing is the first time an interconnection customer has protested the terms and conditions of an FSA and requested that the Commission address the default provision.<sup>92</sup>

## **VII. Discussion**

### **A. Procedural Matters**

60. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>93</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

61. Rule 213 of the Commission's Rules of Practice and Procedure<sup>94</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept

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<sup>89</sup> *Id.* at 16.

<sup>90</sup> *Id.* 16-17 (citing Ameren Answer at n. 33).

<sup>91</sup> *Id.* at 17.

<sup>92</sup> *Id.* at 18.

<sup>93</sup> 18 C.F.R. § 385.214 (2013).

<sup>94</sup> 18 C.F.R. § 385.213(a)(2) (2013).

Ameren's answer and NextEra's answer because they have provided information that has assisted us in our decision-making process.

## **B. Substantive Matters**

62. We will conditionally accept the unexecuted FSA for filing, effective May 11, 2014 as requested, subject to a compliance filing, as discussed below.

### **1. Applicability of Option 1 Pricing**

63. We find that the use of Option 1 pricing in the FSA to fund the network upgrades identified in the White Oak LGIAs is within Ameren's right under the tariff in effect at the time that the 2007 White Oak LGIA was executed. The Commission has consistently held that its decision in *E.ON* to remove Option 1 pricing from Attachment FF of the MISO Tariff does not apply to agreements effective prior to March 22, 2011.<sup>95</sup> The Commission has also consistently held that the governing Tariff provisions are those in effect at the time an LGIA is executed or filed unexecuted.<sup>96</sup> Since, in this case, the FSA is filed pursuant to the terms and conditions of a pre-March 22, 2011 LGIA, Option 1 pricing is permitted to recover network upgrade costs identified in the LGIA. In light of this determination, we need not address whether our decision in West Deptford, as earlier discussed by Ameren and NextEra, governs the availability of Option 1 pricing here.

64. We reject NextEra's argument that Ameren's failure to memorialize its Option 1 election in the White Oak LGIAs precludes its later election of Option 1 in an unexecuted FSA. Section 11.2 of Attachment X of the MISO Tariff did not require the memorialization of a transmission owner's network upgrade funding methodology in an LGIA but rather that the Transmission Owner "shall *notify* the Transmission Provider and the Interconnection Customer of which Network Upgrade repayment option it has elected under Attachment FF within fifteen (15) Calendar Days after tender of the final GIA appendices. . ." (emphasis added).<sup>97</sup> NextEra has not cited to any other provision in the MISO Tariff requiring memorialization of the Option 1 election in the LGIA.

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<sup>95</sup> See *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34; *Rail Splitter*, 142 FERC ¶ 61,047 at P 33; *Settlers Trail*, 143 FERC ¶ 61,050 at PP 66-70; *Hoopeston*, 145 FERC ¶ 61,111 at P 40.

<sup>96</sup> *Rail Splitter Rehearing Order*, 146 FERC ¶ 61,017 at P 21 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 at P 62)).

<sup>97</sup> The Commission accepted MISO's proposal to remove the abovementioned Tariff provision from Attachment X along with the removal of Option 1 from Attachment FF. See *E.ON Rehearing Order* 142 FERC ¶ 61,048.

Furthermore, the notice provisions in section 11.2 of Attachment X of MISO's Tariff did not take effect until the Commission issued the MVP Order in 2010. Until that point, the MISO Tariff did not contain a time limit on the election of Option 1 pricing or Option 2 pricing. Therefore, we find that MISO's revision to its Tariff in the MVP Order undermines NextEra's argument that memorialization of the Option 1 election was required in any of the White Oak LGIAs. Had such a requirement existed, MISO would not have revised its Tariff to require notice of a transmission owner's election of Option 1 or Option 2.

65. We also find that the election notice procedures that took effect as a result of the MVP Order were inapplicable to the 2007 White Oak LGIA and 2009 White Oak Amended and Restated LGIA but were satisfied with respect to the 2011 White Oak Amended and Restated LGIA. Because the 2007 White Oak LGIA and the 2009 White Oak Amended and Restated LGIA both pre-dated the MVP Order, the revised notice provisions were not applicable to those agreements.<sup>98</sup> The 2011 White Oak Amended and Restated LGIA was executed on September 27, 2011, by which time Ameren had provided White Oak with notice of its election of Option 1 pricing through its September 1, 2011 communication. Furthermore, no party has alleged that the September 1, 2011 communication occurred more than 15 days after the tendering of the 2011 White Oak Amended and Restated LGIA. Instead, NextEra merely notes its disagreement that the September 1 communication put White Oak on notice that Option 1 pricing applied to its project.<sup>99</sup> Therefore, we have no reason to believe that Ameren did not abide by the requirements in the existing Tariff.

66. We reject NextEra's argument that Article 11.3 of MISO's *pro forma* LGIA required written notice of Ameren's election of Option 1 pricing at the time the 2007 White Oak LGIA was executed. Article 11.3 of MISO's *pro forma* LGIA 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; otherwise, such facilities, if any, shall be solely funded by Interconnection Customer..." and Article 15 provides that such written notice should occur "five Business Days prior to the effective date of the change." The notice procedures in MISO's *pro forma* LGIA do not refer to Option 1 pricing but to the self-fund option under the MISO Tariff, whereby a transmission owner may provide the up-front funding for the capital cost of the network upgrades. Consequently, Ameren's failure to provide

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<sup>98</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210; *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 at P 62 ("The Tariff that should apply is the one that is effective and on file on the date that the interconnection agreement is executed or filed unexecuted").

<sup>99</sup> NextEra Answer at 6.

the required notice to elect the self-fund option as required by Article 11.3 of MISO's *pro forma* LGIA does not prevent its election of Option 1 pricing in the FSA.

67. We also disagree that Ameren's express election of Option 1 pricing in other LGIAs demonstrates a requirement under MISO's Tariff to memorialize its election of Option 1 pricing in all its LGIAs. While many of the FSAs that use Option 1 pricing are pursuant to LGIAs that have memorialized the election of Option 1 pricing, this is not universally the case. For example, in *Rail Splitter*, the parties executed an FSA implementing Option 1 pricing even though no affirmative election of Option 1 pricing was included in the underlying LGIA. NextEra argues that *Rail Splitter* is distinguishable because the FSA implementing Option 1 pricing was filed executed. We disagree that this distinction is of any consequence. As mentioned above, we find that Option 1 pricing is available for use in an FSA that recovers network upgrade costs identified in an underlying LGIA that was executed prior to March 22, 2011. Since the White Oak network upgrades were identified in the 2007 White Oak LGIA, which was executed prior to March 22, 2011 like those in the *Rail Splitter* LGIA, we find Ameren's election of Option 1 pricing in the FSA is permitted.<sup>100</sup>

68. We also disagree with NextEra's argument that absent Ameren's affirmative election of Option 1, Option 2 pricing is the default and required funding methodology for the network upgrades identified in the White Oak LGIAs. We disagree with NextEra's assertion that, in *E.ON*, the Commission affirmed that Option 2 was the "default" network upgrade funding methodology when it stated that "Option 2 generally follows the approach that was provided by the Commission in Order No. 2003." Option 2 in fact differs from Order No. 2003 pricing by providing for recovery of network upgrade costs that are subject to participant funding. Moreover, even upon the removal of Option 1 pricing, MISO's Tariff provides for the self-fund option as an alternative to Option 2 pricing. The Commission's language in *E.ON*, referenced by NextEra, was intended to illustrate the justness and reasonableness of Option 2 pricing. Therefore, NextEra's interpretation of the Commission's finding is incorrect, and Ameren's silence in the 2007 White Oak LGIA about its chosen network upgrade funding methodology does not indicate an Option 2 election.

69. Finally, we are unpersuaded by NextEra's assertion that the *E.ON Rehearing Order* requires an affirmative Option 1 election in order for Option 1 to apply to LGIAs executed prior to the March 22, 2011. We dismiss as misleading NextEra's interpretation of the *E.ON Rehearing Order* because NextEra relies on the Commission's description of the MISO Transmission Owners' request for clarification in the background section of the order. The *E.ON Rehearing Order* simply states that the removal of Option 1 pricing

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<sup>100</sup> As noted previously, the Tariff permitted that the selection of Option 1, Option 2 or the self-fund option lay with the Transmission Owner.

“would not apply to agreements effective prior to March 22, 2011.”<sup>101</sup> The Commission did not restrict this clarification to agreements that contained an explicit Option 1 election or to agreements in which the transmission owner elected Option 1 pricing during a particular time window.

## 2. Rates, Terms and Conditions of the FSA

70. We find that Ameren properly derived the network upgrade charge in accordance with the formula contained in Attachment GG of the MISO Tariff. Option 1 pricing specifically allows for the recovery of network upgrade costs, including operation and maintenance costs and allocated overhead costs, based on the formula contained in Attachment GG of the MISO Tariff. In contrast, the self-funding option at issue in Hoopeston did not expressly allow for the recovery of costs based on the full components of Attachment GG. Therefore, the rationale underlying disallowance of the allocation of O&M costs in Hoopeston is not applicable here. Because we find that Ameren was within its right to apply Option 1 pricing in the FSA pursuant to the White Oak LGIAs, Ameren is similarly within its right to collect a network upgrade charge based on the full components of Attachment GG and is not limited to the recovery of its return on the amounts invested.

71. We disagree with NextEra that further support is required to justify Ameren’s 9.47 percent Annual Allocation Factor for Return on Rate Base. We find that Ameren provided adequate support for this calculation in Attachment B of its filing. As shown in Attachment B, Ameren made this calculation using Attachment GG the MISO Tariff, which requires the use of inputs from Attachment O of the MISO Tariff. Both Attachment GG and Attachment O are on file with the Commission and have been deemed just and reasonable. Therefore, we accept Ameren’s proposed rate of return.

72. We note Ameren’s willingness to alter the term of the FSA in order to address NextEra’s request that the term of the FSA be shortened to 17 and 1/3 years and will direct that the FSA be revised to incorporate this change consistent with Ameren’s Answer. However, we also find that Ameren has not given adequate support for its use of the full, i.e., undepreciated, costs of the network upgrades as the basis for its Network Upgrade Charge. The formula outlined in Attachment GG of the MISO Tariff uses the value of Project Net Plant (which is the total costs of the network upgrades minus the Accumulated Depreciation) to establish the Annual Revenue Requirement that serves as the basis for the Network Upgrade Charge. As NextEra notes in its protest, the network upgrades here have been depreciated for 2 and 2/3 years since going into service. Therefore, we direct Ameren to revise its calculation of the monthly Network Upgrade Charge to use a Project Net Plant value that reflects the Accumulated Depreciation of the

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<sup>101</sup> *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34.

network upgrades since they went into service as the basis for the Network Upgrade Charge over a 17 and 1/3 year term.

73. We will accept Ameren's proposed security requirement in the FSA consistent with our finding that Ameren's use of Option 1 pricing in the FSA to fund the network upgrades identified in the White Oak LGIAs is permitted and consistent with the *pro forma* LGIA that provides for a security to cover the costs of design, procurement, installation or construction.<sup>102</sup> These costs were initially incurred by White Oak; but White Oak has been fully reimbursed given Ameren's election of Option 1. Therefore, Ameren now requires security to address the risk that this interconnection customer does not pay for the costs associated with the network upgrades, and that in such case, Ameren's native load is at risk of bearing these costs.

74. We disagree with NextEra that, upon default, White Oak's liability should be limited to the initial capital costs of the network upgrades because Ameren is entitled to protection against the risk of the project's termination through the proposed default clause in the FSA. Therefore, we will also accept Ameren's proposed default provision in the FSA consistent with our finding that Ameren's use of Option 1 pricing in the FSA to fund the network upgrades identified in the White Oak LGIAs is permitted and consistent with the *pro forma* LGIA.

75. Finally, we will direct Ameren to submit as part of its compliance filing, revisions requested by NextEra to certain terms and conditions of the FSA to which Ameren has not objected. In its compliance filing, Ameren should: (1) revise the transmission service provision of the FSA to clarify that the purchase of transmission service is not required under the agreement; (2) revise the *force majeure* provision to include equivalent protection for both parties; (3) revise the liability provision to remove items that are beyond the scope of the FSA; (4) revise the FSA to clarify that White Oak preserves its FPA section 206 rights under the FSA; and (5) revise the dispute resolution clause in the FSA to mirror the language in the White Oak LGIA.

The Commission orders:

(A) Ameren's filing is hereby conditionally accepted, effective May 11, 2014, as discussed in the body of this order.

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<sup>102</sup> See 2007 White Oak LGIA at section 11.5; 2009 White Oak Amended and Restated LGIA at section 11.5; 2011 White Oak Amended and Restated LGIA at section 11.5.

(B) Ameren 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.