148 FERC ¶ 61,047
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. ER11-3326-003 ER11-3326-004
Midwest Independent Transmission System Operator, Inc.	ER11-3327-003
Midwest Independent Transmission System Operator, Inc.	ER11-3330-003 ER11-3330-004
	(Not Consolidated)

ORDER ON REHEARING AND COMPLIANCE

(Issued July 17, 2014)

1. Settlers Trail Wind Farm, LLC (Settlers Trail) filed a request for rehearing, and Ameren Illinois Company (Ameren Illinois) filed a request for clarification, or in the alternative, rehearing, with respect to the Commission's April 18, 2013 order in the captioned proceedings.[1] In addition, Midwest Independent Transmission System

[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,050 (2013) (April 18 Order). Most of the April 18 Order was an order denying rehearing requests regarding an earlier order that considered the appropriate cost allocation for network upgrades attributable to a generator interconnection. The April 18 Order was a final order of the Commission on those issues, and they are the subject of a pending petition for judicial review. *Pioneer Trail Wind Farm, LLC and Settlers Trail Wind Farm, LLC v. FERC*, 7th Cir. Docket No. 13-2326.

Operator, Inc. (MISO)[2] made two compliance filings in response to the April 18 Order. In this order, we deny the requests for rehearing, address Ameren Illinois' request for clarification, and accept MISO's compliance filings.

I. Background

2. The detailed background of this case is set forth in the April 18 Order, and only the facts specifically applicable to the rehearing requests and compliance filings are briefly recited here.[3]

A. Original and Amended Generator Interconnection Agreements

3. On February 5, 2010, MISO executed a generator interconnection agreement (Original GIA) with Settlers Trail. The Original GIA conformed to the then-effective MISO *pro forma* GIA, and was not filed with the Commission but was reported in MISO's Electric Quarterly Report (EQR).

4. On April 29, 2010, MISO informed Settlers Trail of a modeling input error in the system impact study (SIS) that was performed to determine the transmission system upgrades required for the interconnection of Settlers Trail's proposed wind generation project. Specifically, the error occurred when the combined generating capacity of two higher-queued interconnection requests was incorrectly understated in the model.[4] That flawed SIS formed the basis for the estimated costs of necessary network upgrades identified in Settlers Trail's Original GIA.

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

[3] In addition to the issues specific to Settlers Trail, the April 18 Order also addressed two unconsolidated dockets presenting related interconnection issues between MISO as transmission provider and Pioneer Trail Wind Farm, LLC (Pioneer Trail) and California Ridge Wind Energy, LLC. Neither of these entities has joined in Settlers Trail's present rehearing request, although, as discussed herein, Pioneer Trail joined Settlers Trail in answering Ameren Illinois' request for clarification or rehearing.

[4] The two higher-queued interconnection requests were for the Benton County Wind Farm -- an original request based on output of 100 MW, and a separate interconnection request for an additional 30 MW. However, the model used in the SIS for the higher-queued projects was based only on the original 100 MW request and failed to include the additional 30 MW. *See* April 18 Order, 143 FERC ¶ 61,050 at n.4.

5. When the SIS was corrected to include the capacity that should have been attributed to the higher-queued interconnection requests, MISO determined that $10.26 million in network upgrades in addition to those estimated in the Original GIA (Additional Network Upgrades) would be Settlers Trail's cost responsibility. In addition, MISO identified the need for a Common Use Upgrade[5] totaling $1.485 million to interconnect Settlers Trail and two other interconnection customers.

6. MISO thereafter tendered to Settlers Trail an Amended and Restated Generator Interconnection Agreement (Amended GIA) and a Multi-Party Facility Construction Agreement (MPFCA) that included these Additional Network Upgrades and Common Use Upgrade related to the SIS error.[6] Settlers Trail objected to paying for the proposed Additional Network Upgrades in the Amended GIA and requested that MISO file an unexecuted Amended GIA, which MISO did on April 8, 2011 in Docket No. ER11-3326-000.[7] Settlers Trail protested the filing, arguing, among other things, that it cannot be held responsible for the cost of network upgrades that were not included in the original SIS, and there was no basis under the MISO Tariff to charge it for any network upgrades other than those identified in the original interconnection studies and Original GIA.

7. Also, with regard to Ameren Illinois' recovery of network upgrade costs that were participant funded by Settlers Trail, Settlers Trail objected to Ameren Illinois' choice of Option 1 then specified under MISO's Tariff.[8] Settlers Trail pointed to the fact that in

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[5] MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) generally defines Common Use Upgrade to mean a network upgrade that is needed for the interconnection of multiple interconnection customers' generating facilities and the costs of which are the shared responsibility of such interconnection customers.

[6] Under MISO's Tariff, an MPFCA provides the terms for sharing cost responsibility for Common Use Upgrades.

[7] Settlers Trail and two other projects also asked MISO to file an unexecuted MPFCA that governs cost sharing by the three projects for the additional Common Use Upgrade in Docket No. ER11-3330-000. Settlers Trail did not raise issues related to the MPFCA in its present request for rehearing.

[8] Option 1 provided that for network upgrade costs subject to participant funding: (1) the interconnection customer provided up-front funding for network upgrades; (2) the transmission owner provided a 100 percent refund of the cost of network upgrades to the interconnection customer after the completion of the network upgrades; and (3) the transmission owner assessed the interconnection customer a monthly network upgrade charge over time to recover the cost of the network upgrades, which was established

(continued…)

Docket No. EL11-30-000, a complaint had been filed alleging that Option 1 was unjust, unreasonable, and unduly discriminatory in violation of section 206 of the Federal Power Act (FPA)[9] and should be removed from the MISO Tariff.

B. The June 10 Order

8. In an order issued June 10, 2011,[10] the Commission conditionally accepted the Amended GIA with the Additional Network Upgrade costs assigned to Settlers Trail, and the MPFCA with the Common Use Upgrade, finding that the Amended GIA accurately reflected the network upgrades required to reliably interconnect Settlers Trail, and that Settlers Trail's cost responsibility is reasonable and consistent with Commission precedent. The Commission disagreed with Settlers Trail's assertion that the execution of the Original GIA precluded further amendment, and found that there were no parties that were more equitably assessed the costs of the error. The Commission held that since the error resulted in real costs for network upgrades that must be constructed before Settlers Trail can receive the requested full interconnection service consistent with reliability requirements, the most appropriate parties to pay these costs under these circumstances are the generators that will benefit from the upgrades.[11]

9. The Commission did, however, find aspects of the costs listed in MISO's GIA filings and MPFCA to be unsupported or not consistent with Commission policy, and required correction in a compliance filing.[12] Additionally, the Commission stated that

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through a separate service agreement. *See* Attachment FF to the Tariff, "Transmission Expansion Planning Protocol," at Section III.d.

[9] 16 U.S.C § 824e (2012).

[10] *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,222 (2011) (June 10 Order).

[11] *Id*. PP 31-32.

[12] *Id*. PP 45, 48, and 52. The Commission found that the inclusion of tax gross up payments and separate line items for contingencies in Ameren Illinois' cost estimates for certain of the Additional Network Upgrades and the Common Use Upgrade to be unsupported, and directed MISO to delete the tax gross up and contingency line items. The Commission also agreed with Settlers Trail and Pioneer Trail that there was no just and reasonable basis for Ameren Illinois to require these interconnection customers to pay for interest during construction or Allowance for Funds Used During Construction on the upgrade costs, and directed MISO to delete it.

because the issue of the justness and reasonableness of Option 1 was then pending in Docket No. EL11-30-000, Ameren Illinois' proposed use of Option 1 would be accepted for filing, but acceptance would be subject to the outcome of Docket No. EL11-30-000.[13]

C. <u>The April 18 Order</u>

10. Settlers Trail, and others, filed requests for rehearing of the June 10 Order. Settlers Trail argued, *inter alia*, that the June 10 Order shifted the cost responsibility of the transmission provider/owner's failure to perform a proper SIS to the interconnection customer; that the interconnection customer relied on the SIS and GIA to make financial investments in the project; that the June 10 Order departs from Commission precedent, which, it alleges, holds that an interconnection customer's cost responsibility is locked in once the SIS is completed and the GIA executed; that MISO and Ameren Illinois violated Good Utility Practice when they made the error; that the order absolves transmission providers/owners of responsibility and accountability in complying with reliability standards; that the result is inconsistent with the filed rate doctrine; and that the order inserts significant uncertainty into the generation interconnection process.

11. In the April 18 Order, the Commission denied the requests for rehearing concerning the assignment of the Additional Network Upgrade costs to Settlers Trail in the Amended GIA.[14]

12. With regard to Ameren Illinois' conditional use of Option 1 under MISO's Tariff to recover network upgrade costs, the Commission noted that on October 20, 2011, in the *E.ON Order* in Docket No. EL11-30-000,[15] the Commission found Option 1 to be unjust, unreasonable, and unduly discriminatory, and directed MISO to remove Option 1 from its Tariff effective as of the date of the complaint, March 22, 2011. Further, the Commission noted that, in the *E.ON Rehearing Order*, it had clarified that the removal of

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[13] *Id.* P 37.

[14] April 18 Order, 143 FERC ¶ 61,050 at PP 32-58.

[15] *Id.* P 67 (citing, *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*, 137 FERC ¶ 61,076 (2011) (*E.ON Order*), *order on reh'g, E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶ 61,048 (2013) (*E.ON Rehearing Order*)).

the Option 1 mechanism did not automatically modify any existing agreement and will not apply to agreements effective prior to March 22, 2011.[16]

13. The Commission noted that Settlers Trail executed the Original GIA in February 2010, and that the Original GIA contained Option 1. This Original GIA was reported in MISO's EQR as having a February 5, 2010 commencement date. MISO filed the unexecuted Amended GIA for Settlers Trail on April 8, 2011, requesting an effective date of April 9, 2011, which was granted in the June 10 Order. Therefore, the Original GIA was effective prior to the March 22, 2011 date determined by the Commission for grandfathering Option 1 agreements under the *E.ON Rehearing Order*, and the Amended GIA was effective after that date.

14. Accordingly, the Commission held in the April 18 Order that the Original GIA was not affected by the *E.ON Order*'s rejection of Option 1,[17] and denied Settlers Trail's arguments against the use of Option 1 for the network upgrades identified in the Original GIA. However, because Option 1 was removed from MISO's Tariff effective March 22, 2011, the Commission held that the costs of the Additional Network Upgrades in the Amended GIAs and MPFCA may not be governed by Option 1.

15. As a result, the Commission held that Ameren Illinois must use the Option 2 funding mechanism[18] with respect to the Additional Network Upgrade costs under the Settlers Trail Amended GIA, and the Common Use Upgrade costs under the MPFCA.[19] However, Ameren Illinois could use Option 1 for the upgrade facility costs identified in the Original GIA. MISO was directed to make compliance filings to reflect the use of Option 2, instead of Option 1, for the Additional Network Upgrades and Common Use

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[16] *Id.* (citing *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34).

[17] *Id.* P 69.

[18] Under Option 2, the Transmission Owner retains the interconnection customer's initial funding for the network upgrade costs that are subject to participant funding as a contribution in aid of construction, and the interconnection customer is assessed no further charges for such upgrades.

[19] *Id.* P 70. As a result of the Commission's directives in the June 10 Order to remove line items associated with tax gross up, contingencies and interest costs during construction, the costs of the Additional Network Upgrades required in the Amended GIAs were reduced from $10.26 million to $7.73 million, and the costs of the Common Use Upgrade required in the MPFCA were reduced from $1.485 million to $1.021 million.

Upgrade required by the Amended GIAs and MPFCA. MISO was also directed to reflect additional changes to certain cost items in its compliance filings.[20]

II. Requests for Rehearing

16. Because the April 18 Order was in part a rehearing order affirming the June 10 Order's conclusion that it is just and reasonable for Settlers Trail to bear the responsibility for funding the Additional Network Upgrades, no further rehearing requests on that issue are permitted, and none were filed. The only issues appropriate for rehearing of the April 18 Order are those determinations made for the first time in that order.[21]

A. Settlers Trail's Request for Rehearing

17. Settlers Trail agrees with the Commission's holding in the April 18 Order that Ameren Illinois could not use Option 1 funding for the Additional Network Upgrades because the Amended GIA has an effective date of April 9, 2011, which is after the March 22, 2011 effective date for the required removal of Option 1 from MISO's Tariff.[22]

18. However, Settlers Trail asks that the Commission grant rehearing and reverse its determination that Option 1 funding can be used for the Original Network Upgrades, arguing that the facts of this case demonstrate that Option 1 is precluded for the Original Network Upgrades. Settlers Trail asserts that when MISO and Ameren Illinois sought to amend the GIA to include the erroneously omitted upgrades, they insisted on a completely new amended and restated GIA, and that is what MISO tendered to Settlers Trail and Ameren Illinois for execution.[23]

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[20] *Id.* P 65.

[21] *See Town of Norwood, Massachusetts v. FERC*, 906 F.2d 772, 774-75 (D.C. Cir. 1990) (request for rehearing of an order on rehearing is permitted only when the later order modifies the results of the earlier order in a significant way); *Southwestern Public Service Company*, 65 FERC ¶ 61,088, at 61,533 (1993) (a party "is entitled to one opportunity to ask the Commission to reconsider a decision"). *See also* note 1, *supra*.

[22] Settlers Trail Rehearing at 8.

[23] *Id*. at 3.

19. According to Settlers Trail, the fact that Ameren Illinois selected Option 1 in the Original GIA is no longer of any legal consequence both from a contract law basis and under the FPA, because the Original GIA ceased to have any legal effect as of the April 9, 2011 date that the Amended GIA was made effective by the Commission. Settlers Trail argues that as of April 9, 2011, the Amended GIA—and the Amended GIA alone—governs the provision of interconnection service for the Settlers Trail project, relying on what it calls the "plain and unambiguous terms" of the Amended GIA that state that the Amended GIA "replaces the Original GIA."[24] Settlers Trail quotes Article 30.4 of the Amended GIA:

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

20. Although Settlers Trail acknowledges that the use of Option 1 for the Original Network Upgrades was part of the "subject matter" under the Original GIA, it asserts that the terms of the Original GIA have been "superseded" by the terms of the Amended GIA.[25] Settlers Trail states that the "legally non-effective status of the Original GIA" is demonstrated by the fact that MISO no longer lists the Original GIA in its EQRs, and that the Amended GIA is the only legally effective GIA under the FPA.[26]

21. Settlers Trail asserts that it is a basic tenet of contract law that a superseding agreement renders the original agreement inoperative.[27] Accordingly, Settlers Trail requests rehearing of the Commission's determination in the April 18 Order that "the

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[24] *Id*. at 9 (citing the Preamble to the Amended GIA).

[25] Settlers Trail apparently contends that the Original Network Upgrades, which were previously the "subject matter" of the Original GIA, are now the "subject matter" of the Amended GIA for purposes of Article 30.4 of the GIA.

[26] *Id.*

[27] *Id.* (citing Restatement (Second) of Contracts § 213 (1981)).

Original GIA was not affected by [the Commission's] rejection of Option 1."[28] Settlers Trail states that there is no legal basis to allow Option 1 funding for the Original Network Upgrades because the Original GIA is no longer an effective agreement.

22. Settlers Trail disputes the Commission's reliance in the April 18 Order on the *E.ON Rehearing Order* for the proposition that the required Tariff modification to remove Option 1 would not apply to agreements effective prior to March 22, 2011. Here, states Settlers Trail, there is no "agreement effective prior to March 22, 2011" under which Option 1 could be available. According to Settlers Trail, the only GIA in existence is the Amended GIA, and it has an effective date after March 22, 2011. Thus, it argues that the clarification in the *E.ON Rehearing Order* is inapplicable and cannot be a basis upon which to allow Option 1 funding for the Original Network Upgrades.[29] Settlers Trail argues that because MISO and Ameren Illinois insisted on and filed the Amended GIA, they replaced and superseded the Original GIA in its entirety, leaving no previous agreement that was subject to modification. Accordingly, states Settlers Trail, the Commission should treat the Amended GIA as any other new GIA filed after March 22, 2011 and reject any specification of Option 1.[30]

23. Settlers Trail further cites Commission precedent for the proposition that the tariff provisions that should apply are the ones effective and on file on the date that the GIA is executed or filed unexecuted. Based on this principle, Settlers Trail argues that the Amended GIA became effective on April 9, 2011 and is the only legally-effective agreement, and that the MISO Tariff no longer contained Option 1 as of April 9, 2011. Thus, Settlers Trail asserts, the April 18 Order is inconsistent with Commission precedent.[31]

24. Finally, Settlers Trail asserts that Ameren Illinois would not be harmed by not being allowed to use Option 1 for the Original Network Upgrades, but that Settlers Trail would be significantly harmed financially if Option 1 is used. It quotes the *E.ON Order* for the description of the burdens that Option 1 places on interconnection customers: "under Option 1, the interconnection customer must first obtain the financing necessary to fund the construction of network upgrades up-front (and bears the financing costs upfront), and then essentially pay for the transmission owner to refinance such costs and

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[28] *Id.* (citing April 18 Order, 143 FERC ¶ 61,050 at P 69).

[29] *Id.* at 11.

[30] *Id.* at 12.

[31] *Id.* at 14-16.

bear the transmission owner's capital costs and income tax allowance over a prescribed time period (e.g., 30 years)."[32]

25. Settlers Trail states that it has funded 100 percent of the cost of the Original Network Upgrades, Ameren Illinois has not repaid any of the funded amounts, and Settlers Trail is not looking for a refund of any of the funded amounts. Ameren Illinois and its customer base, states Settlers Trail, are held harmless, and will remain harmless if Option 1 pricing is precluded for the Original Network Upgrades. Citing evidence from the *E.ON Order* proceeding, Settlers Trail states that it would have to pay significantly more for the same network upgrades and the same level of interconnection service if Option 1 is allowed.[33]

B. Ameren Illinois' Request for Clarification or Rehearing

26. Ameren Illinois asks the Commission to clarify that the April 18 Order did not intend to foreclose use of the "third" funding option under MISO's Tariff, which it explains would apply where a transmission owner opts to provide the initial funding for network upgrades with no customer contribution.[34] Ameren Illinois notes that, in the April 18 Order, the Commission expressly directed Ameren Illinois to employ Option 2 for the Additional Network Upgrades and Common Use Upgrade at issue in these proceedings. Ameren Illinois states that, to the extent Ameren Illinois has already accepted these customers' funding for the construction of certain of the upgrades, Ameren Illinois agrees that Option 2 is the only remaining option because it must accept the advanced funding as full satisfaction of the customers' cost responsibility for the upgrades under the MISO Tariff.[35]

27. Ameren Illinois asserts, however, that it has not yet accepted any customer funding for the Common Use Upgrade under the MPFCA and, consistent with the *E.ON Order*, Ameren Illinois seeks clarification that the self-funding "third option" is still available for that agreement and future cases. Ameren Illinois states that because one might interpret the April 18 Order as requiring the use of Option 2 for all GIAs for which Option 1 is no longer available, Ameren Illinois seeks clarification.

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[32] *Id.* at 16.

[33] *Id*. at 16-17.

[34] Ameren Rehearing at 7.

[35] *Id.*

28. To the extent the Commission intended to limit the applicability of the "third option," or is otherwise not willing to grant its requested clarification, Ameren Illinois requests rehearing. Ameren Illinois argues that any limit on the third option was beyond the scope of the case before the Commission, was not supported by record evidence, and was inadequately explained.[36] Further, states Ameren Illinois, if the Commission intended to cut-off use of the third option *sua sponte*, it was required by FPA section 206 to find, based on record evidence, that the third option was not just and reasonable.

C. Answers

29. On June 10, 2013, Settlers Trail and Pioneer Trail (Movants) jointly filed a request for leave to answer and answer to Ameren Illinois's request for clarification or rehearing. On June 25, 2013, Ameren Illinois filed a motion for leave to answer Movants' answer. On July 17, 2013, Movants moved for leave to answer Ameren Illinois' answer.

III. Compliance Filings

A. MISO's Filings

30. On May 17, 2013, MISO filed an unexecuted Amended and Restated GIA (Second Amended GIA) in Docket No. ER11-3326-003 for the Settlers Trail project in compliance with the April 18 Order. MISO states that the Second Amended GIA refines the description of network upgrades and differentiates Original Network Upgrades from Incremental Network Upgrades[37] to account for different funding treatments applicable to them in accordance with the April 18 Order. Additionally, MISO states that other cost estimates and milestones were refined to reflect updated information. MISO requests an April 9, 2011 effective date for the Second Amended GIA consistent with the effective date accepted in the April 18 Order.[38]

31. MISO also filed on May 17, 2013 an amended Multi-Party Facilities Construction Agreement (Amended MPFCA) in Docket No. ER11-3330-003 in compliance with the April 18 Order, requesting an April 12, 2011 effective date.

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[36] *Id*. at 8.

[37] MISO uses the term "Incremental Network Upgrades" in the Second Amended GIA for the facilities that are not identified in the Original GIAs and that have been called herein "Additional Network Upgrades."

[38] Ameren Answer at 7.

B. Notice of Filings and Responsive Pleadings

32. Notices of MISO's compliance filings in Docket Nos. ER11-3326-003 and ER11-3330-003 were published in the *Federal Register*, 78 Fed. Reg. 32,244 (2013), with interventions and protests due on or before June 7, 2013.

33. Settlers Trail filed a timely protest to the Docket No. ER11-3326-003 compliance filing. Settlers Trail argues, citing to its rehearing request, that the Original Network Upgrades should be governed by the Option 2 funding mechanism, and not the Option 1 mechanism. It also challenges a change to the amount of a progress payment, i.e., from $1.040 million to $6.615 million, that is due, but only if its understanding of how Ameren Illinois plans to implement this milestone is incorrect. That is, Settlers Trail states that it understands from Ameren Illinois that "all of the $6.6 million may not be needed" as of the milestone date and that Ameren Illinois will provide "more specific detail about when incremental amounts might be needed from Settlers Trail." In light of this and the fact that Settlers Trail understands it is under no obligation to provide funds until invoiced, as has been past practice with MISO and Ameren Illinois, then Settlers Trail does not protest the milestone revision and sudden request for $6.6 million.[39]

IV. Discussion

A. Procedural Matters

34. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2013) prohibits answers to requests for rehearing . Accordingly, we will reject Movants' answer to Ameren Illinois' request for clarification or rehearing. In light of our rejection of Movants' answer to the rehearing request, we reject Ameren Illinois' and Movants' subsequent answers.

B. Settlers Trail's Request for Rehearing

35. We deny Settlers Trail's rehearing request challenging the use of the Option 1 funding mechanism for the Original Network Upgrades. In doing so, we rely on the same reasons articulated in the Commission's order in *Hoopeston*.[40] In *Hoopeston*, at issue was an original GIA specifying network upgrades to be funded pursuant to Option 1 that

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[39] Settlers Trail Protest at 4.

[40] *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,111 (2013) (*Hoopeston*), *reh'g pending*.

was executed on January 4, 2011, prior to the March 22, 2011 effectiveness of the removal of Option 1 from MISO's Tariff; and a second GIA that included additional network upgrades that was executed on May 17, 2011, after the effective date of removal of Option 1. Both the January 4, 2011 and May 17, 2011 executed GIAs specified that the same Option 1 funding treatment would apply to the network upgrades that were identified in the GIA executed on January 4, 2011. A subsequent unexecuted Restated GIA, filed after the *E.ON Rehearing Order* was issued, retained Option 1 for the original network upgrades, but provided for transmission owner self-funding for the additional network upgrades.[41]

36. The interconnection customer in that case, Hoopeston, challenged, among other things, any use of Option 1, citing Article 30.4 of its GIA for the proposition that the original GIA, including its Option 1 election, was completely superseded by the Restated GIA. Hoopeston's arguments were similar to those raised by Settlers Trail here with respect to the use of Option 1, and the Commission rejected them, stating:

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

[41] *Hoopeston*, 145 FERC ¶ 61,111 at PP 9-10.

> Commission's decision to remove Option 1 from the MISO Tariff will not apply to agreements effective prior to March 22, 2011. Accordingly, we find that Option 1 was, and should remain, in effect with regard to the Original Network Upgrades that were included in the January 4, 2011 GIA, which was executed before March 22, 2011, the effective date under *E.ON* for the removal of Option 1 from the MISO tariff.[42]

For the same reasons quoted above from *Hoopeston*, Settlers Trail's Original Network Upgrades that were specified by the Original GIA to be funded through Option 1 are subject to the Option 1 election.

37. Consistent with *Hoopeston*, we disagree with Settlers Trail that the language in Article 30.4 of the Amended GIA supersedes the choice made by Ameren Illinois to use Option 1 for the Original Network Upgrades in Settlers Trail's February 5, 2010 Original GIA. The Original GIA was effective and in existence prior to the March 22, 2011 effective date of the removal of Option 1 from the Tariff. The *E.ON Rehearing Order* specified that the removal of Option 1 would not apply to agreements effective prior to March 22, 2011, of which the Original GIA was one:

> [T]he Commission will clarify that its decision will not apply to agreements effective prior to March 22, 2011. [fn omitted] We believe that this is a reasonable remedy that balances the interests of the parties, the need for regulatory certainty, and ease of administration.[43]

In adopting this remedy, which balances several factors, the Commission relied upon its broad discretion to fashion equitable regulatory remedies.[44] This remedy would be undermined if the act of amending an original GIA to accommodate additional upgrades, which is not infrequent, was permitted to void the balance struck by the Commission in the *E.ON Rehearing Order* with respect to grandfathered Option 1 provisions.

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[42] *Id.* P 40 [footnotes omitted].

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

[44] *Id. (*citing *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (the breadth of Commission discretion is, if anything, at its zenith when fashioning remedies)).

38. Settlers Trail argues that general principles of contract interpretation provide that a superseding agreement renders the original agreement inoperative. However, the Commission's approach in the April 18 Order is consistent with the regulatory remedy the Commission has adopted with regard to these sorts of agreements, as applied in *Hoopeston* and as discussed below.

39. We do not agree that this result is inconsistent with our precedent, as argued by Settlers Trail.[45] The cases cited by Settlers Trail, where the Commission had to decide on regulatory results that should apply when interconnection policies had changed between the date of an original GIA and an amendment, do not dictate a different result here. In the first case cited by Settlers Trail, the Commission held that GIAs filed before the effective date of a MISO tariff change would be governed by the tariff provision in effect before the effective date of the change, and GIAs filed after the tariff change would be governed by the new provisions.[46] There is no inconsistency between that case and our holding here that Settlers Trail's Original GIA must be governed by the Tariff provisions in effect when that GIA was executed. In fact, our holding logically follows from the principle stated there. Likewise, the second and third cases cited by Settlers Trail stand for the proposition that the tariff that should apply is the one that is effective on the date that the GIA is executed or filed unexecuted.[47] Again, the MISO Tariff in effect when the Original GIA was executed allowed the use of Option 1.

40. In the fourth case cited by Settlers Trail,[48] the Commission did not allow the date of a "Temporary GIA" to "grandfather" the cost allocation method for use in the subsequent amended GIA. The Temporary GIA provided for the limited operation of the Generating Facility prior to the completion of related interconnection studies.[49] Following completion of the studies, the applicant asked for the GIA to be updated to include the results of the study. The present case does not involve a "temporary GIA"

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[45] Settlers Trail Rehearing at 13-16.

[46] *Midwest Indep. Transmission Sys. Operator*, 114 FERC ¶61,106, at P 70 (2006).

[47] *Midwest Indep. Transmission Sys. Operator*, 125 FERC ¶ 61,277, at P 10 (2008); *Midwest Indep. Transmission Sys. Operator*, 129 FERC ¶ 61,160, at P 62 (2009).

[48] *Midwest Indep. Transmission Sys. Operator*, 131 FERC ¶ 61,165, at P 32 (2010).

[49] *Id*. P 3.

that the parties did not intend would be permanent,[50] but an Original GIA that was intended at the time it was entered to govern the long-term relationship for the interconnection. Thus, this case does not support Settlers Trail's argument.

41. In the fifth case cited by Settlers Trail,[51] the Commission simply repeated the principle, discussed above, that the GIA is governed by the tariff effective and on file when the GIA was filed and proposed to take effect. Thus, none of the cases cited by Settlers Trail is inconsistent with the result in the present case. On the other hand, in the *E.ON Rehearing Order*, the Commission explicitly declared a principle applicable to all GIAs that were effective prior to March 22, 2011 in which Option 1 was specified. That principle preserves Option 1 in agreements prior to March 22, 2011. In addition, the result here is not only consistent with *Hoopeston*, but with other Commission precedent in similar situations.[52]

42. Finally, we do not find convincing Settlers Trail's argument that Option 1 should not be used for the original upgrades because Ameren Illinois and its customers would not be harmed by precluding its use. Settlers Trail states that it funded 100 percent of the cost of the Original Network Upgrades with no risk to Ameren Illinois, and that Settlers Trail is not looking for any refund of the funded amounts. Settlers Trail claims that it would bear additional costs if Option 1 is allowed. Even if this is true, Settlers Trail's argument is with the use of Option 1 in general, which had been an element of MISO's Tariff until the Commission found it to be unjust and unreasonable on a prospective basis. In other words, this argument is simply another way of arguing that the *E.ON Rehearing Order* remedy, which allows Option 1 for the Original GIA in this case, should not apply here. For the reasons discussed above, we deny this argument.

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[50] Section 11.5 of Attachment X (Generator Interconnection Procedures) to MISO's Tariff, provides that provisional interconnection agreements are for limited operation at the discretion of MISO, and that the Interconnection Customer assumes all risks and liabilities with respect to changes which may impact the agreement.

[51] *Midwest Indep. Transmission Sys. Operator*, 138 FERC ¶ 61,199, at P 42 (2012).

[52] *See Rail Splitter Wind Farm, LLC v. Ameren Servs. Co.*, 146 FERC ¶ 61,017, at P 25 (2014) (Commission refused to find that *E.ON* gave developer right to abrogate pre-*E.ON* Facilities Service Agreement that used the Option 1 reimbursement mechanism, citing the "Commission's historical hesitation to abrogate interconnection agreements following revision of the applicable tariff.").

C. Ameren Illinois' Request for Clarification or Rehearing

43. Ameren Illinois is correct that the Commission did not intend to dictate that Ameren Illinois must use the Option 2 funding reimbursement mechanism under all circumstances, nor did it intend to foreclose the use of the self-funding option under the Tariff.[53] The language in the April 18 Order that required Ameren Illinois to replace Option 1 with Option 2 for the Additional Network Upgrades was in response to the manner in which the arguments were framed by the parties for Commission decision. No party raised the availability of the self-funding option as an alternative to Option 2 when the dispute about Ameren Illinois' use of Option 1 was raised.

44. We cannot, however, based on the record in these dockets, determine that Ameren Illinois may at this point in the process elect to use the self-funding option for the Common Use Upgrade. The Amended MPFCA filed by MISO to comply with the April 18 Order specifies the use of Option 2 for the Common Use Upgrade.[54] Ameren Illinois did not protest that filing and we accept the Amended MPFCA for filing in this order. Accordingly, the use of Option 2 is now part of the existing filed rate. Further, there is an insufficient basis to make a factual determination on the record of these dockets as to how much funding, if any, the Movants may have already provided for the construction of the Common Use Upgrade.

45. Because we have granted Ameren Illinois' request for clarification with respect to the general availability of the self-funding option, its alternative rehearing request is moot.

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[53] The Commission has characterized the self-funding option as a third option established by Order No. 2003, and is also provided for in Article 11.3 of MISO's *pro forma* GIA. *Hoopeston*, 145 FERC ¶ 61,111 at PP 6, 42. *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).

[54] *See* Amended MPFCA, Appendix A, Section 1.2.5.3.

D. Compliance Filings

46. We accept MISO's May 17, 2013 compliance filing of the Second Amended GIA in Docket No. ER11-3326-003, effective April 9, 2011, as we find that MISO has complied with the directives of the April 18 Order. Settlers Trail's protest arguing that the compliance filing should show that the Original Network Upgrades are subject to Option 2 pricing is denied for the reasons stated herein with respect to Settlers Trail's rehearing request. We also deny Settlers Trail's protest about the timing of a milestone payment, because the Commission did not direct a change and the compliance filing did not change the timing of milestone payments. Thus, this subject is outside the scope of the compliance filing.

47. We accept MISO's May 17, 2013 compliance filing of the Amended MPFCA in Docket No. ER11-3330-003, effective April 12, 2011, as we find that MISO has complied with the directives of the April 18 Order.

The Commission orders:

(A) Settlers Trail's request for rehearing of the April 18 Order is denied, and Ameren Illinois' request for clarification is granted in part, as discussed in the body of this order.

(B) MISO's compliance filing of the Second Amended GIA is accepted, effective April 9, 2011, as discussed in the body of this order.

(C) MISO's compliance filing of the Amended MPFCA is accepted, effective April 12, 2011, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.