

149 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Midcontinent Independent System
Operator, Inc.

Docket Nos. ER13-2157-002
ER13-2157-003

ORDER ON REHEARING AND COMPLIANCE

(Issued October 31, 2014)

1. In this order we deny Hoopeston Wind, LLC's (Hoopeston) request for rehearing and grant clarification in part of the Commission's November 8, 2013 Order¹ and accept the Midcontinent Independent System Operator, Inc.'s (MISO)² compliance filing, subject to further compliance, as discussed below.

I. Background

2. In October 2009, the Commission accepted a proposal by MISO to revise Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to increase the cost responsibility of an interconnection customer to 100 percent of network upgrade costs, i.e., 100 percent participant funding, with a 10 percent reimbursement for projects that were 345 kV and above.³ At that time, MISO's Tariff provided three alternatives for funding the costs of network upgrades for generator interconnections. Attachment FF described two of these alternatives (Option 1 and Option 2), which were incorporated into MISO's *pro forma* Generator

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,111 (2013) (November 8 Order).

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

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

Interconnection Agreement (GIA) by reference, while Article 11.3 in MISO's *pro forma* GIA contemplated a third (the self-fund option).

3. 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. The network upgrade charge included: (1) return on rate base, including general and common plant; (2) operations and maintenance expense; (3) depreciation expense; (4) taxes other than income taxes; and (5) income taxes calculated under Attachment GG of the tariff. 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. Under the self-fund option, a transmission owner may finance the construction of the network upgrades itself.⁴

4. Ameren Services Company, as agent for Ameren Illinois Company (Ameren), Hoopeston, and MISO executed the original GIA on January 4, 2011. This GIA identified certain network upgrades whose costs were recovered under Option 1 of the MISO Tariff (Original Network Upgrades). Ameren, Hoopeston, and MISO executed a second GIA on May 17, 2011, that identified additional network upgrades (Incremental Network Upgrades) whose costs were also recovered under Option 1 of the Tariff.

5. On October 20, 2011, the Commission addressed a complaint in Docket No. EL11-30-000 by ordering the removal of Option 1 from Attachment FF, finding that, among other things, this option increased the costs directly assigned to the interconnection customer with no corresponding increase in service compared to other funding options.⁵ The Commission found that the fact that the Tariff gives the

⁴ The self-fund 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).

⁵ *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076, at P 34 (2011) (*E.ON*), *order on reh'g*, 142 FERC ¶ 61,048 (2013) (*E.ON Rehearing Order*).

transmission owner the sole discretion to choose between Option 1 and Option 2 creates 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.”⁶ In that same order, the Commission also established that March 22, 2011, the filing date of the complaint, would serve as the effective date for the removal of Option 1 from the MISO Tariff. On rehearing, the Commission clarified that its decision to remove Option 1 from MISO’s Tariff will not apply to agreements effective prior to March 22, 2011, which the Commission stated was a reasonable remedy that balances the interests of the parties, the need for regulatory certainty, and ease of administration.⁷

6. On August 14, 2013, as amended September 9, 2013, MISO submitted for filing an unexecuted amended and restated GIA (Restated Hoopeston GIA) among Hoopeston, Ameren, and MISO. MISO filed the interconnection agreement unexecuted at Hoopeston’s request because Hoopeston disputed Ameren’s proposed cost recovery. In the Restated Hoopeston GIA, Ameren elected to retain Option 1 to recover the costs for the Original Network Upgrades that were identified in the January 4, 2011 GIA and to self-fund the Incremental Network Upgrades that were identified in the May 17, 2011 GIA. On November 8, 2013, the Commission conditionally accepted the unexecuted Restated Hoopeston GIA subject to further modification, to become effective August 15, 2013, as requested.⁸

7. In its November 8, 2013 Order, the Commission found 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.⁹ The Commission accepted the proposed self-funding for the recovery of costs of Incremental Network Upgrades that were added in the May 17, 2011 GIA, which was executed after March 22, 2011. However, the Commission found it unduly discriminatory for a transmission owner to recover costs other than the return of and on the capital costs of the network upgrades from an interconnection customer under the self-funding option, because an interconnection customer charged under Option 2 would only be required to pay for the capital costs of the network upgrades. Therefore, the Commission directed MISO to

⁶ *E.ON*, 137 FERC ¶ 61,076 at P 38.

⁷ *E.ON* Rehearing Order, 142 FERC ¶ 61,048 at P 34.

⁸ November 8 Order, 145 FERC ¶ 61,111 at P 2.

⁹ *Id.* P 40.

revise the agreement so that the self-fund option does not include the recovery of costs other than the return of and on the capital costs of the network upgrades.¹⁰

II. Request for Rehearing and Clarification

8. Hoopeston seeks rehearing of the Commission's decision that Option 1 may be used for the Original Network Upgrades.¹¹ According to Hoopeston, it was unlawful, and a repudiation of contract rights, for the Commission to permit Option 1 pricing for Original Network Upgrades that were prescribed by the May 17, 2011 GIA, the only viable and enforceable contract among the parties. Hoopeston asserts that the January 4, 2011 GIA was superseded and agreed upon by the parties as of no further force and effect.¹² Hoopeston argues that the Commission's finding that no changes were made to the Original Network Upgrades contained in the January 4, 2011 GIA is not correct because it uses only a part of the definition of Original Network Upgrades and thus the Commission's decision is not supported by the facts. Hoopeston argues that the Commission's reasoning seems to just apply to the technical specifications of the Original Network Upgrades but does not consider other material requirements such as the milestones containing the schedule and terms addressing the Original Network Upgrade. Hoopeston argues that a change in a milestone is a change to the Original Network Upgrade.¹³

9. Hoopeston also maintains that: (1) the Commission selectively chose certain terms from a newer accepted GIA; (2) applying a retroactive date to those terms violates the Federal Power Act (FPA); and (3) the Commission does not have the authority to override the FPA.¹⁴ According to Hoopeston, the FPA requires the effective date for all terms contained in a GIA to be the date of the last accepted GIA.

¹⁰ *Id.* P 41.

¹¹ Hoopeston Wind, LLC, Request for Rehearing and Clarification, filed December 9, 2013 at 1.

¹² *Id.* at 9-10.

¹³ *Id.* at 10-13. Hoopeston notes that there were significant changes to all of the milestone dates for the Original Network Upgrades and that a three year change to the Commercial Operation Date resulted in direct changes to all of the Original Network Upgrades.

¹⁴ *Id.* at 14.

10. Hoopeston states that, in the November 8 Order, the Commission directed MISO to revise the Restated Hoopeston GIA pursuant to Attachment GG so that the self-fund option does not include the recovery of costs other than the return of and on the capital costs of the network upgrades. Hoopeston also states that the Commission found it unduly discriminatory for a transmission owner under self-funding to recover costs that were more than they would be allowed to recover under Option 2.¹⁵ Hoopeston requests that the Commission clarify that the return of and on capital for the network upgrades should only include depreciation of the network upgrades (the recovery of the capital costs) and some reasonable interest rate based on the time-value of money.¹⁶ Hoopeston notes that under Attachment GG, the Annual Allocation Factor for Return includes two elements – the Income Tax Annual Allocation Factor and the Return Annual Allocation Factor. As to the first element, Hoopeston argues that inclusion of the Income Tax Annual Allocation Factor as part of the calculation of return under Attachment GG is improper because this factor includes taxes attributed to Ameren’s other operations.¹⁷ As to the second element, Hoopeston asserts that the calculation of the Return Annual Allocation Factor includes various adjustments to rate base, working capital and land held for future use and that the net transmission plant in-service includes calculations for production, transmission, distribution, general and intangible, and common plant. Hoopeston states that the Return Annual Allocation Factor includes costs other than the return on capital costs of the network upgrades.¹⁸ Furthermore, Hoopeston requests that the Commission clarify that MISO should not include the elements of operation and maintenance expense, general and common depreciation expense, taxes other than income taxes. Should the Commission not grant the request for clarification or should the Commission determine that the recovery of costs should be determined otherwise, Hoopeston requests rehearing.

11. Ameren filed an answer to Hoopeston’s request for rehearing and clarification. Hoopeston filed an answer to Ameren’s answer. Ameren filed an answer to the Hoopeston answer.

¹⁵ *Id.* at 17.

¹⁶ *Id.*

¹⁷ *Id.* at 19.

¹⁸ *Id.* at 20.

III. Discussion

A. Procedural Matters

12. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2014), prohibits an answer to a request for rehearing. Accordingly, we will reject the answers filed.

B. Substantive Matters

13. We deny Hoopeston's request for rehearing and grant Hoopeston's request for clarification in part.

14. Hoopeston is correct that the May 17, 2011 GIA superseded the January 4, 2011 GIA, but the fact remains that the January 4, 2011 GIA was in effect from January 4, 2011, until it was superseded on May 17, 2011.

15. As the Commission explained in the November 8 Order, Article 30.4 of the MISO *pro forma* GIA should be interpreted in light of a GIA's effective date.¹⁹ 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.²⁰ From this date, 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, January 4, 2011, 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.

16. Hoopeston argues that the Commission's determination that no changes were made to the Original Network Upgrades in the May 17, 2011 GIA such that Option 1 should continue to apply to the Original Network Upgrades as provided in the January 4, 2011 GIA was in error. Specifically, Hoopeston suggests that a change to the schedule pertaining to the Original Network Upgrades suffices to change the definition of the Original Network Upgrades themselves. We disagree. The description of the network

¹⁹ November 8 Order, 145 FERC ¶ 61,111 at P 40.

²⁰ See 18 C.F.R. § 35.2(f) (2014) ("the effective date of a rate schedule, tariff, or service agreement shall mean the date on which a rate schedule filed and posted pursuant to the requirements of this part is permitted by the Commission to become effective as a filed rate schedule").

upgrades has not changed and we find that changes to milestones do not constitute a change to underlying network upgrades themselves. Further, as discussed above, the January 4, 2011 GIA was effective and in existence prior to the March 22, 2011 effective date of the removal of Option 1 from the Tariff. In the *E.ON Rehearing Order*, the Commission specified that the removal of Option 1 would not apply to agreements effective prior to March 22, 2011, of which the January 4, 2011 GIA was one.

17. As stated in *E.ON*, the Commission's decision to remove Option 1 from the MISO Tariff will not apply to agreements effective prior to March 22, 2011. Further as the Commission explained in the *E.ON Rehearing Order*, such remedy is reasonable in balancing the interests of the parties, the need for regulatory certainty, and ease of administration.²¹ Accordingly, in the November 8 Order, the Commission found that Option 1 was, and should remain, in effect with regard to the Original Network Upgrades that were included in the January 4, 2011 GIA, which was executed before March 22, 2011, the effective date under *E.ON* for the removal of Option 1 from the MISO Tariff. Based on this same reasoning, the Commission found that Option 1 should not be available for the Incremental Network Upgrades that were added in the May 17, 2011 GIA, which was executed after March 22, 2011.

18. Hoopeston's claim that it was unlawful, and a repudiation of its contract rights, for the Commission to permit Option 1 pricing to Original Network Upgrades that were prescribed by the May 17, 2011 GIA fails to recognize the distinction between previously executed interconnection agreements, to which the parties have agreed to be bound, and interconnection agreements that may be entered in the future, to which parties have not yet bound themselves. This distinction lies at the heart of the Commission's decision to deny the similar relief requested by Rail Splitter.²² As the Commission explained in *Rail Splitter*, even agreements subject to the just and reasonable standard where no public interest presumption is applicable are not to be lightly revised because a degree of stability and predictability is crucial to businesses and market and to attracting investment in the utility business.²³ Thus, "*E.ON* does not warrant abrogation of the pre-existing, executed [Facilities Service Agreement] or compel... the relief request by Rail Splitter."²⁴

²¹ *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34.

²² *Rail Splitter Wind Farm, LLC v. Ameren Servs. Co.*, 142 FERC ¶ 61,047 (2013) (*Rail Splitter*), order on reh'g, 146 FERC ¶ 61,017 (2014).

²³ *Rail Splitter*, 142 FERC ¶ 61,047 at P 31.

²⁴ *Id.* P 33.

19. Further, the Commission's decision in *Rail Splitter* is consistent with recent precedent in which the Commission has declined to modify interconnection agreements that predate revisions to the relevant Tariff provisions. In *Settlers Trail*, the Commission stated that consistent with the Commission's clarification in the *E.ON Rehearing Order* as to the effect of that order on previously executed agreements, the original GIAs at issue in that proceeding were not affected by the *E.ON Order's* rejection of Option 1.²⁵ Therefore, the Commission denied the interconnection customers' protest as to the use of the Option 1 cost recovery mechanism for the network upgrades identified in the original GIAs. In *Prairie State*, a proceeding that preceded *E.ON*, the Commission addressed the effect of revisions to the *pro forma* interconnection agreement under the Tariff. The parties entered into an interconnection agreement that reflected the cost allocation provisions of the then-effective Tariff.²⁶ Subsequently, MISO revised the pertinent Tariff provisions, and the interconnection customer submitted a request to increase the output of its facility. The Commission ultimately concluded that the Tariff provisions in effect at the time that the parties entered the original GIAs should apply to the initial interconnection request and the new provisions should apply only to the network upgrades necessary to accommodate the interconnection customers' request to increase the facility's output.²⁷

20. In the November 8 Order, the Commission found that it is just and reasonable and not unduly discriminatory for the transmission owner to recover the capital costs for the network upgrades through a network upgrade charge established using the formula in Attachment GG and consistent with MISO's participant funding allocation methodology. However, the Commission directed MISO to revise the Restated Hoopeston GIA so that the self-fund option does not include the recovery of costs other than the return of and on the capital costs of the network upgrades.²⁸ Return of capital is otherwise known as depreciation. Return on capital is the rate of return applied to the relevant rate base as developed in Attachment GG of the MISO Tariff. Hoopeston requests that the Commission clarify that the return of and on capital should include only depreciation on the network upgrades and a reasonable interest rate.²⁹ However, limiting Ameren's

²⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,050, at P 69 (2013) (*Settlers Trail*), *order on reh'g*, 148 FERC ¶ 61,047 (2014).

²⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210, at P 2 (2008) (*Prairie State*), *order on reh'g*, 128 ¶ FERC 61,170 (2009).

²⁷ *Prairie State*, 125 FERC ¶ 61,210 at PP 17-19.

²⁸ November 8 Order, 145 FERC ¶ 61,111 at P 41.

²⁹ Hoopeston Wind, LLC, Request for Rehearing and Clarification, filed December 9, 2013 at 17.

return of and on capital as requested by Hoopeston would impermissibly restrict Ameren's ability to recover the costs of debt and equity needed to finance the upgrades under the self-fund option. Such a limitation would also be inconsistent with the Tariff and the November 8 Order. The weighted cost of capital in Attachment GG is Ameren's Commission-approved rate of return for use in its transmission rate formulas and the income tax allowance in Attachment GG is part of the allowance for return on capital to provide Ameren with recovery of its cost of capital. Accordingly, we find it reasonable for Ameren to use the weighted cost of capital and income tax allowance in Attachment GG to recover the return on the capital costs of the network upgrades under the self-fund option. However, we clarify that the rate base to which the rate of return is applied (in the development of the Return and Income Tax Annual Allocation Factors) should include net transmission plant in service, adjusted for accumulated deferred income taxes and investment tax credits allocable to transmission plant, and should not include other elements such as construction work in progress, working capital, land held for future use or allocations of common, general, or intangible plant.³⁰

21. Hoopeston also requests that the Commission clarify that MISO should not include the elements of operation and maintenance expense, general and common depreciation expense, and taxes other than income taxes. We clarify that operations and maintenance expenses, general and common depreciation expenses, and taxes other than income taxes must be excluded from the development of the network upgrade charge applied to the Incremental Network Upgrades.

IV. MISO's Compliance Filing

22. In the November 8 Order, the Commission directed MISO to submit a compliance filing to revise the Restated Hoopeston GIA so that the self-fund option does not include the recovery of costs other than the return of and on the capital costs of the network upgrades.³¹ Specifically, MISO was directed to revise the provision of section 10.2 of the GIA currently providing that the Network Upgrade Charge for both the Original Network

³⁰ While Hoopeston references production and distribution plant, we note that these are used in the formula to establish allocation ratios for functionalizing certain costs to transmission, but are not included in the transmission rate base to which the rate of return is applied in the development of the Return and Income Tax Annual Allocation Factor.

³¹ November 8 Order, 145 FERC ¶ 61,111 at P 41.

Upgrades and the Incremental Network Upgrades is established pursuant to Attachment GG. On December 9, 2013, MISO made its compliance filing.³²

A. Notice and Responsive Pleadings

23. Notice of the compliance filing was published in the *Federal Register*, 78 Fed. Reg. 76,605 (2013), with comments due on December 30, 2013. Ameren filed comments and Hoopeston filed a protest. Ameren and MISO filed motions for leave to answer and answers to the protest. Hoopeston filed a motion for leave to answer and answer.

24. In its comments in support of MISO's compliance filing, Ameren states that the changes made to the Restated Hoopeston GIA on compliance are found entirely in Section 10.2 of Appendix A.³³ Ameren states that MISO has inserted language to make clear that the revenue requirement for the Incremental Network Upgrades is governed by the Commission's directive in the November 8 Order and should therefore include only the return on and of the capital costs of the Incremental Network Upgrades and that this language properly implements the Commission's order. Ameren notes that MISO has also added a sentence on compliance that states that the revenue requirement for the Incremental Network Upgrades shall be calculated using a fixed charge rate of 12.82 percent, properly implementing the Commission's directive for recovering the capital costs of network upgrades required to provide interconnection service to Hoopeston.

25. Hoopeston protests MISO's compliance filing, alleging that the filing does not comply with the Commission's November 8 Order, and reaffirms its objection to the use of Option 1 to fund the Original Network Upgrades.³⁴

26. According to Hoopeston, MISO has not modified the controlling provisions to its Tariff to comply with the November 8 Order.³⁵ Hoopeston states that MISO has merely included a statement in Attachment A of the Restated Hoopeston GIA purporting to comply and no revisions to Attachment GG, the controlling MISO Tariff Attachment, were made to remove any costs that are not for the recovery of the costs for the return of

³² Midcontinent Independent System Operator, Inc., December 9, 2013 Compliance Filing.

³³ Answer to Request for Rehearing and Clarification and Comments on Compliance Filing of Ameren Illinois Company, filed December 23, 2013.

³⁴ Protest of Hoopeston Wind, LLC, filed December 30, 2013, at 1-2.

³⁵ *Id.* at 16.

and on the capital costs of the Incremental Network Upgrades to be funded under the self-funding option.

27. Ameren says Hoopeston makes several factual and legal misstatements that must be corrected to ensure a complete and accurate record.³⁶ According to Ameren, Hoopeston misstates the return element of the fixed charge rate and Hoopeston takes issue with how MISO and Ameren calculated the return.

28. MISO asks the Commission to reject the Hoopeston protest because it is procedurally deficient as it requests that the Commission direct MISO to revise its Tariff in response to a compliance filing unrelated to any Tariff modification and substantively deficient as it is founded upon an incorrect reading of the November 8 Order.³⁷ According to MISO, Hoopeston is mistaken when it alleges that the November 8 Order requires MISO to revise Attachment GG to its Tariff.

29. Hoopeston filed a response, asking the Commission to reject MISO's answer because Hoopeston says the MISO answer makes incorrect legal assertions and raises new arguments.³⁸ According to Hoopeston, revisions to Attachment GG would not be disruptive and would not require extensive modifications. And, according to Hoopeston, the MISO answer is wrong in its assertion that the Hoopeston protest is procedurally and substantively deficient.

B. Commission Determination

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

31. We will accept MISO's compliance filing subject to further compliance to ensure that the self-fund option does not include the recovery of costs other than the return of and on the capital costs of the network upgrades, as discussed above. MISO proposes to amend section 10.2 of Appendix A of the Restated Hoopeston GIA to provide that "[t]he

³⁶ Motion for Leave to Answer and Answer of Ameren Illinois Company, filed January 14, 2014 at 2.

³⁷ Motion for Leave to Answer and Answer to Protest of the Midcontinent Independent System Operator, Inc., filed January 14, 2014 at 1.

³⁸ Motion for Leave to Answer and Answer of Hoopeston Wind, LLC, filed January 27, 2014 at 1-2.

Revenue Requirement for the Incremental Network Upgrades shall be calculated using a fixed charge rate of 12.82 percent,” but has not provided any support for the derivation of that rate to demonstrate that it includes only the return of and on the capital costs of the network upgrades. While workpapers that Ameren supplied to Hoopeston, and are attached to Hoopeston’s protest, appear to indicate that operations and maintenance expenses, general and common depreciation expenses, and taxes other than income taxes are excluded from the 12.82 percent fixed charge rate, there is no indication that Ameren made adjustments to the rate base to which the rate of return is applied to include only net transmission plant in service, adjusted for accumulated deferred income taxes and investment tax credits allocable to transmission plant, and exclude other elements such as construction work in progress, working capital, land held for future use or allocations of common, general, or intangible plant. Therefore, MISO must submit a further compliance to separately state the components of the network upgrade charge, along with sufficient support to demonstrate that it does not include costs other than the return of and on the capital costs of the network upgrades as discussed above, within 30 days of the date of this order.

32. With regard to Hoopeston reaffirming its objection to the use of Option 1 to fund the Original Network Upgrades, these concerns were addressed under section III.B where we deny Hoopeston’s request for rehearing and request for clarification.

33. With regard to Hoopeston’s allegation that MISO has not modified the controlling provisions to its Tariff to comply with the November 8 Order, the Commission did not require MISO to revise Attachment GG to its Tariff.

The Commission orders:

(A) Hoopeston’s request for rehearing is hereby denied and Hoopeston's request for clarification is granted in part, as discussed in the body of this order.

(B) MISO’s compliance filing is accepted, subject to further compliance as discussed in the body of this order.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.