

153 FERC ¶ 61,352
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Otter Tail Power Company

Docket Nos. EL15-36-001

v.

Midcontinent Independent System Operator, Inc.

Midcontinent Independent System Operator, Inc.

EL15-68-000

EL15-68-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION, AND
DIRECTING COMPLIANCE FILING

(Issued December 29, 2015)

1. On June 18, 2015, the Commission issued an order granting in part and denying in part a complaint filed by Otter Tail Power Company (Otter Tail) pursuant to sections 206 and 306 of the Federal Power Act (FPA),¹ finding that Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) is unjust and unreasonable to the extent that the *pro forma* Facilities Construction Agreement (FCA) and Multi-Party Facilities Construction Agreement (MPFCA) contained therein did not permit an affected system operator the same right to elect to provide the initial funding for network upgrades that is given to directly-connected transmission owners under MISO's *pro forma* Generator Interconnection Agreement (GIA).² The Commission also found that MISO's *pro forma*

¹ 16 U.S.C. §§ 824e, 825e (2012).

² *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,220, at PP 47, 53 (2015) (June 18 Order).

GIA may be unjust, unreasonable, unduly discriminatory or preferential in light of the opportunities for undue discrimination and for increasing costs to interconnection customers where there is no increase in service, given that interconnection customers within MISO are held responsible for network upgrade costs and do not receive credits that reimburse them for those costs.³ On July 20, 2015, the Certain MISO Transmission Owners⁴ filed a request for rehearing of the June 18 Order. In this order, we deny the request for rehearing but grant clarification.

2. In the June 18 Order, the Commission instituted a proceeding to examine MISO's *pro forma* FCA, GIA, and MPFCA pursuant to section 206 of the FPA, requiring MISO to make a filing either to (1) report whether it will propose Tariff changes discussed by the Commission, providing that the transmission owner or affected system operator may only elect to provide the initial funding for network upgrades if the interconnection customer agrees to such election, or (2) explain why such changes are not necessary to address the potential that MISO transmission owners may exercise their discretion to increase the network upgrade costs that are directly assigned to interconnection customers.⁵ On August 17, 2015, MISO made an informational filing regarding the Commission's initial funding option. In this order, we direct MISO to make a compliance filing, due within 10 days of the date of this order, proposing Tariff changes, to be effective on June 24, 2015.

³ *Id.* PP 48, 53.

⁴ For the purposes of this filing the Certain MISO Transmission Owners include: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois (Ameren); Central Minnesota Municipal Power Agency; Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Northern Indiana Public Service Company; Northwestern Wisconsin Electric Company; Otter Tail; and Wabash Valley Power Association, Inc.

⁵ June 18 Order, 151 FERC ¶ 61,220 at P 54.

I. Background

3. MISO's *pro forma* GIA governs the network upgrades constructed for the interconnection customer by the transmission owner with which it directly interconnects. In October 2009, the Commission accepted MISO's proposal for cost responsibility for network upgrades as set forth in revised Attachment FF of its Tariff.⁶ As such, under the existing Tariff, an interconnection customer is responsible for 100 percent of network upgrade costs, with a possible 10 percent reimbursement for projects that are 345 kV and above.⁷ This is referred to herein as MISO's Interconnection Customer Funding Policy. At that time, MISO's Tariff provided three alternatives for funding the costs of network upgrades for generator interconnections. Attachment FF of the Tariff described two of these alternatives (Option 1 and Option 2), which were incorporated into MISO's *pro forma* GIA by reference, while Article 11.3 in MISO's *pro forma* GIA⁸ contemplated a third.

4. Under Option 1: (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 upon completion of the network upgrades; and (3) the transmission owner assessed the interconnection customer a monthly network upgrade charge to recover the cost of the non-reimbursable portion of the network upgrade costs over time based on a formula contained in Attachment GG⁹ of

⁶ Attachment FF (Transmission Planning Expansion Protocol) of the MISO Tariff describes the process to be used by MISO to develop the MISO Transmission Expansion Plan, which facilitates the expansion of and/or modification to MISO's transmission system.

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 8 (2009). The Commission allows flexibility as to the specifics of interconnection pricing policies for transmission providers that are independent entities, and MISO's proposal was accepted by the Commission as an independent entity variation from the Commission-approved *pro forma* Large Generator Interconnection Agreement (LGIA). *Id.* P 50.

⁸ MISO's *pro forma* GIA is located in Appendix 6 to Attachment X of the MISO Tariff (Generator Interconnection Procedures).

⁹ Attachment GG (Network Upgrade Charge) of the MISO Tariff includes in the calculation of the network upgrade charge a return on capital investment, income taxes, depreciation expense, operating and maintenance expense (O&M), administrative and general expense, and other direct and indirect costs.

the MISO Tariff. The charge was established through a separate facilities service agreement.

5. Under Option 2: (1) the interconnection customer provides up-front funding for network upgrades and (2) the transmission owner refunds the reimbursable portion of the payment, as applicable, 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.

6. Under a third alternative set forth in Article 11.3 of MISO's *pro forma* GIA, the transmission owner can unilaterally elect to provide the up-front funding for the capital cost of the network upgrades.¹⁰ MISO's existing *pro forma* GIA at Article 11.3 reads as follows:

Transmission Owner shall provide Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 if Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities; otherwise, such facilities, if any, shall be solely funded by Interconnection Customer.

The transmission owner could unilaterally elect any of the three options to fund the costs of network upgrades for generator interconnections.

7. On October 20, 2011, the Commission responded to a complaint filed in March 2011 by ordering the removal of Option 1 from MISO's Attachment FF, finding

¹⁰ 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, 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). The option in the *pro forma* LGIA established by Order No. 2003 differs from the option in MISO's Tariff. Specifically, under Article 11.3 of the Order No. 2003 *pro forma* LGIA, a transmission owner electing to initially fund network upgrades would provide the up-front funding for the capital cost of the network upgrades, and then recover the costs of the network upgrades through its transmission rates charged to *all* transmission customers. In contrast, in MISO, a transmission owner electing to initially fund network upgrades would assign the non-reimbursable portion of the costs of the network upgrades directly to the interconnection customer through a network upgrade charge.

that this option increased the costs directly assigned to the interconnection customer with no corresponding increase in service compared to other funding options.¹¹ The Commission found that it was unjust and unreasonable to require an interconnection customer to provide up-front funding for network upgrades and then permit the transmission owner to repay the amount and charge the interconnection customer for the transmission owner's capital costs and income tax allowance.¹² 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."¹³ The Commission noted that a third option (described below) was still available under MISO's *pro forma* GIA as an alternative to Option 2.¹⁴

8. In 2013, the Commission was presented for the first time with MISO's implementation of the transmission owner's election under Article 11.3 of MISO's *pro forma* GIA to initially fund network upgrades whose costs are directly assigned to the interconnecting customer under MISO's Interconnection Customer Funding Policy.¹⁵ In *Hoopeston*, the Commission found that it is just and reasonable and not unduly discriminatory for the transmission owner electing to initially fund network upgrades under MISO's *pro forma* GIA to recover the capital costs for network upgrades through a network upgrade charge assessed to the interconnection customer, established using the formula in Attachment GG and consistent with MISO's Interconnection Customer Funding Policy.¹⁶ However, consistent with its findings in *E.ON*, the Commission found that it is unduly discriminatory for a transmission owner to recover costs other than the return of and on the capital costs of the network upgrades (such as O&M, taxes other than income taxes, and general and common plant costs) from an interconnection customer

¹¹ *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076, at P 37 (2011) (*E.ON*), *order on reh'g*, 142 FERC ¶ 61,048, at P 21 (2013) (*E.ON Rehearing Order*).

¹² *E.ON*, 137 FERC ¶ 61,076 at P 37.

¹³ *Id.* P 38.

¹⁴ *Id.* P 37.

¹⁵ *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,111 (2013) (*Hoopeston*), *aff'd on reh'g*, 149 FERC ¶ 61,099 (2014) (*Hoopeston Rehearing*).

¹⁶ *Hoopeston*, 145 FERC ¶ 61,111 at P 41.

under this 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 revise the GIA at issue in that case so that the network upgrade charge does not include the recovery of costs other than the return of and on the capital costs of the network upgrades.¹⁷

9. In addition to MISO's *pro forma* GIA, the Commission has also accepted MISO's *pro forma* FCA and *pro forma* MPFCA.¹⁸ The *pro forma* FCA is an agreement for network upgrades on affected systems, or network upgrades constructed for an interconnection customer by a transmission owner other than the transmission owner with which it directly interconnects. This indirectly-connected transmission owner is known as the affected system operator under the FCA. The *pro forma* MPFCA is used when multiple interconnection requests cause the need for construction of common network upgrades (upgrades that are constructed by a transmission owner for more than one interconnection customer) on a directly-connected transmission system or the transmission system of an affected system operator. The *pro forma* FCA and *pro forma* MPFCA are appendices to MISO's generator interconnection procedures and, as with the *pro forma* GIA, these agreements reference MISO's Interconnection Customer Funding Policy and the network upgrade cost recovery provisions in Attachment FF of MISO's Tariff. However, the *pro forma* FCA and the *pro forma* MPFCA do not include the unilateral initial funding option contained in Article 11.3 of MISO's *pro forma* GIA.

10. On July 18, 2014, as amended on October 14, 2014, MISO submitted for filing an unexecuted non-conforming FCA among Border Winds Energy, LLC (Border Winds) as interconnection customer, Otter Tail as transmission owner, and MISO as transmission provider (Border Winds FCA). MISO stated that the unexecuted Border Winds FCA generally conformed to the *pro forma* FCA, with the exception of non-conforming language in section 3.2.1 that provided Otter Tail (as the affected system operator) with the option to elect to provide the initial funding for the network upgrades.¹⁹ On December 12, 2014, the Commission conditionally accepted the unexecuted Border Winds FCA, to become effective July 19, 2014, as requested, subject to removal of the

¹⁷ Thus, in *Hoopeston*, the Commission sought to make the types of costs to be recovered pursuant to Article 11.3, when the transmission owner elects to initially fund the network upgrades, comparable with the costs recovered under Option 2.

¹⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,301, at P 5 (2009).

¹⁹ MISO Border Winds FCA Filing, Docket No. ER14-2464-000, Transmittal Letter, at 2 (filed July 18, 2014).

non-conforming language that would have provided Otter Tail the unilateral right to elect to initially fund the network upgrades and subsequently assess a network upgrade charge.²⁰ The Commission's reasoning for the removal of the non-conforming language was that MISO did not assert any specific reliability concerns, novel legal issues, or other unique factors to justify the proposed non-conforming provisions to the Border Winds FCA.²¹ MISO and Otter Tail filed requests for rehearing of the Border Winds FCA Order in Docket No. ER14-2464-002.

11. On January 12, 2015, Otter Tail filed a complaint, pursuant to sections 206 and 306 of the FPA,²² alleging that MISO's Tariff is unjust and unreasonable to the extent that the *pro forma* FCA contained therein does not permit an affected system operator to elect to provide the initial funding for network upgrades, a right which is provided to directly-connected transmission owners under MISO's *pro forma* GIA.²³ Otter Tail argued that there is no technical or engineering reason to treat network upgrades made in response to direct generator interconnections any differently than network upgrades made in response to indirect impacts from generator interconnections.²⁴ Otter Tail stated that, when funding and constructing network upgrades to facilitate the integration of new generation sources to its transmission system, regardless of whether a generator directly or indirectly connects with the transmission system, Otter Tail must conduct the same facilities studies, complete similar engineering and procurement tasks, and pay for similar services and materials.²⁵ Otter Tail requested that the Commission direct MISO to revise the Tariff to include a provision in the *pro forma* FCA that permits an affected system operator to elect to initially fund network upgrades.

12. Otter Tail argued that its position was supported by *Hoopeston*, where the Commission determined that it is just and reasonable for a transmission owner under a GIA to elect to initially fund necessary network upgrades and recover from the

²⁰ *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,224, at PP 1, 22 (2014) (Border Winds FCA Order).

²¹ *Id.* P 25.

²² 16 U.S.C. §§ 824e, 825e (2012).

²³ Otter Tail Complaint and Request for Fast-Track Processing, Docket No. EL15-36-000, at 1 (filed Jan. 12, 2015).

²⁴ *Id.* at 14.

²⁵ *Id.* at 15.

interconnection customer a return of and on the capital costs of the network upgrades.²⁶ Otter Tail stated that the Commission noted in *Hoopeston* that the transmission owner's decision to initially fund network upgrades was consistent with Orders Nos. 2003 and 2003-A.²⁷

13. In the June 18 Order, the Commission denied rehearing of the Border Winds FCA Order.²⁸ The Commission affirmed its finding that a transmission provider seeking Commission acceptance of a non-conforming agreement bears a high burden to justify and explain that the non-conforming aspects of the agreement are necessary, and that MISO did not assert any specific reliability concerns, novel legal issues, or other unique factors to justify the proposed non-conforming provisions in the Border Winds FCA.²⁹

14. In the June 18 Order, the Commission also granted Otter Tail's complaint in part, finding that the customers of an affected system operator under MISO's *pro forma* FCA or MPFCA and the customers of a directly-connected transmission owner under MISO's *pro forma* GIA are similarly situated, and that the comparability principle requires similarly situated customers to be treated comparably in the transmission system planning context.³⁰ However, the Commission denied Otter Tail's complaint in part because it disagreed with Otter Tail that the *pro forma* FCA should adopt the language in Article 11.3 of MISO's *pro forma* GIA, which allowed the transmission owner to unilaterally elect to provide the initial funding for network upgrades.³¹ The Commission found that Article 11.3 of MISO's *pro forma* GIA may be unjust, unreasonable, unduly discriminatory or preferential because it allows the transmission owner the discretion to elect to initially fund the upgrades and subsequently assess the interconnection customer a network upgrade charge that is not later reimbursed to the interconnection customer through the provision of credits, which may result in discriminatory treatment by the transmission owner of different interconnection customers. The Commission additionally found that, by *unilaterally* electing to initially fund network upgrades where the interconnection customer is held responsible for such costs and does not receive credits to

²⁶ *Id.* at 13 (citing *Hoopeston*, 145 FERC ¶ 61,111 at P 41).

²⁷ *Id.* (citing Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 720).

²⁸ June 18 Order, 151 FERC ¶ 61,220 at P 22.

²⁹ *Id.* PP 22, 23.

³⁰ *Id.* P 47.

³¹ *Id.* P 48.

reimburse it for those costs, pursuant to MISO's Interconnection Customer Funding Policy, the affected system operator or transmission owner may deprive the interconnection customer of other options to finance the cost of the network upgrades that provide more favorable terms and rates. For instance, the Commission found that the transmission owner's unilateral election to initially fund network upgrades may increase costs of interconnection service by assigning increased capital costs and a security requirement to the interconnection customer with no corresponding increase in service, a situation that shared similar characteristics to those of Option 1, which the Commission eliminated in *E.ON*.³²

15. The Commission also disagreed with Otter Tail's assertion that *Hoopeston* provides support for applying the unilateral initial funding option to MISO's *pro forma* FCA.³³ The Commission noted that *Hoopeston* did not consider whether the *unilateral* aspect of the initial funding option in Article 11.3 of MISO's *pro forma* GIA was just and reasonable; rather, the Commission was presented for the first time with the issue of how MISO's Interconnection Customer Funding Policy should be implemented under the initial funding option, as it was written into MISO's *pro forma* GIA. The Commission stated that *Hoopeston* implemented the existing Tariff language and 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 initial funding option, because an interconnection customer charged under Option 2 would only be required to pay for the capital costs of the network upgrades.³⁴ By contrast, in the complaint proceeding, the Commission stated that it considered the justness and reasonableness of the unilateral initial funding language in MISO's *pro forma* GIA and found that, because there is the possibility for an increase in costs presented by a transmission owner's unilateral election to provide initial funding as compared with Option 2, and yet there is no increase in interconnection service provided, such unilateral election may be contrary to *E.ON*, and may otherwise be unjust and unreasonable.

16. Given its determination that Article 11.3 of MISO's *pro forma* GIA may be unjust, unreasonable, unduly discriminatory or preferential in light of the opportunities for undue

³² *Id.* P 49 (citing *E.ON*, 137 FERC ¶ 61,076 at P 37 (finding that "the election of Option 1 by a transmission owner increases the costs that are directly assigned to the interconnection customer, but there is no difference in the interconnection service provided.")).

³³ *Id.* P 51.

³⁴ *Hoopeston*, 145 FERC ¶ 61,111 at P 41.

discrimination and for increasing costs where there is no increase in service, the Commission instituted a proceeding in Docket No. EL15-68-000, pursuant to section 206 of the FPA, to examine MISO's *pro forma* FCA, GIA, and MPFCA.³⁵ The Commission required MISO to either: (1) report whether it will propose Tariff changes to revise Article 11.3 of its *pro forma* GIA to remove the ability for a transmission owner to unilaterally elect to initially fund network upgrades and include the same initial funding language in its *pro forma* FCA and *pro forma* MPFCA; or (2) explain why such changes are not necessary to address the potential that MISO transmission owners may exercise their discretion to increase the network upgrade costs that are directly assigned to interconnection customers under MISO's Interconnection Customer Funding Policy.³⁶ The Commission also ordered that any interested person desiring to be heard in Docket No. EL15-68-000 must file a notice of intervention or motion to intervene, as appropriate, within 21 days of the date of the order.³⁷ Additionally, the Commission established a refund effective date of June 24, 2015, the date the notice of the initiation of the investigation in Docket No. EL15-68-000 was published in the *Federal Register*.³⁸

II. Notices, MISO's Filing, and Responsive Pleadings

17. On June 24, 2015, a notice of the institution of a proceeding under section 206 of the FPA to investigate the justness and reasonableness of MISO's *pro forma* FCA, GIA, and MPFCA was published in the *Federal Register*, 80 Fed. Reg. 36,333 (2015). The notice indicated that the refund effective date will be the date of publication of the notice in the *Federal Register*.

18. Timely motions to intervene in Docket No. EL15-68-000 were filed by: Iberdrola Renewables, LLC; the Wisconsin Public Service Corporation; EDF Renewable Energy, Inc.; E.ON Climate & Renewables North America LLC; the American Wind Energy Association (AWEA) and Wind on the Wires; Great River Energy; NextEra Energy Resources, LLC; the MISO Transmission Owners;³⁹ Hoopeston Wind, LLC (Hoopeston);

³⁵ June 18 Order, 151 FERC ¶ 61,220 at P 53.

³⁶ *Id.* PP 53-54.

³⁷ *Id.* at ordering para. E.

³⁸ *Id.* P 56. *See also* 80 Fed. Reg. 36,333-334 (2015) (publication of notice in *Federal Register*).

³⁹ The MISO Transmission Owners for this filing consist of: Ameren; American Transmission Company LLC; Arkansas Electric Cooperative Corporation; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light

Wisconsin Electric Power Company; Edison Electric Institute; Ameren and Otter Tail; and Consumers Energy Company. Alliant Energy Corporate Services, Inc. (Alliant) and the American Electric Power Service Corporation filed motions to intervene out-of-time.

19. On July 20, 2015, the Certain MISO Transmission Owners filed a request for rehearing of the June 18 Order.

& Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, Inc.; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; South Mississippi Electric Power Association; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

20. On August 17, 2015, in Docket No. EL15-68-000, *et al.*, MISO filed an “informational report” regarding the initial funding mechanism in MISO’s *pro forma* GIA.⁴⁰ On September 15, 2015, notice of the MISO Report was published in the *Federal Register*, 80 Fed. Reg. 55,351 (2015), with comments due on or before September 30, 2015. The notice stated that the Commission was providing an opportunity for other parties to comment on the Commission’s preliminary findings in the section 206 proceeding in Docket No. EL15-68-000, as well as the MISO Report. Timely comments were filed by: Ameren and Otter Tail;⁴¹ the Indicated Transmission Owners;⁴² AWEA; Alliant; and Hoopeston.

21. On July 29, 2015, AWEA filed reply comments to the comments submitted by Ameren and Otter Tail on July 9, 2015, in Docket No. EL15-68-000.

22. On October 15, 2015, Ameren filed a motion for leave to answer and answer to Hoopeston’s comments. On October 15, 2015, the Indicated Transmission Owners filed a motion for leave to answer and answer to AWEA’s comments. On October 30, 2015, AWEA filed a motion for leave to answer and answer to the Indicated Transmission Owners’ answer. On October 30, 2015, Hoopeston filed a motion for leave to answer and answer to Ameren’s answer.

III. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene in Docket No. EL15-68-000 serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant the late-filed motions to

⁴⁰ MISO Commission Proposed Language Informational Report, Docket Nos. ER14-2464-002 *et al.* (filed Aug. 17, 2015) (MISO Report).

⁴¹ Ameren and Otter Tail filed their comments on July 9, 2015, in response to the publication of the June 18 Order.

⁴² For the purposes of this proceeding, the Indicated Transmission Owners consist of: Ameren; Northern Indiana Public Service Company; Otter Tail; International Transmission Company d/b/a ICTTransmission; Michigan Electric Transmission Company, LLC; ITC Midwest LLC; Indianapolis Power & Light Company; and MidAmerican Energy Company.

intervene of Alliant and the American Electric Power Service Corporation given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the October 15, 2015 answers of Ameren and the Indicated Transmission Owners and the October 30, 2015 answers of AWEA and Hoopeston, and therefore reject them.

B. Substantive Matters

1. Request for Rehearing of the June 18 Order

a. Request for Rehearing

25. The Certain MISO Transmission Owners state that the Commission failed to explain why removal of the initial funding option is necessary when its removal can impose costs on transmission owners by depriving them of the ability to fund network upgrade costs up front and recover a return of and return on such investment from the interconnection customer.⁴³ They further state that the Commission fails to address why other avenues of relief are inadequate to protect the interconnection customer if it feels the initial funding option was elected improperly, such as MISO's dispute resolution procedures or filing a complaint under section 206 of the FPA.

26. The Certain MISO Transmission Owners argue that the Commission erred by failing to explain its departure from Order No. 2003 and *Hoopeston*, where the Commission made clear that a transmission owner has the right to unilaterally elect to initially fund network upgrades.⁴⁴ They state that the *pro forma* LGIA established by Order No. 2003 and MISO's *pro forma* LGIA are virtually identical, and nothing in the *pro forma* Order No. 2003 LGIA requires a transmission provider to obtain the interconnection customer's consent prior to electing to fund the capital for network

⁴³ Request for Rehearing of the Certain MISO Transmission Owners, Docket Nos. EL15-36-001 and EL15-68-001, at 16 (filed July 20, 2015) (the Certain MISO Transmission Owners Request for Rehearing).

⁴⁴ *Id* at 8-10 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 676) (“Network Upgrades...would be funded initially by the Interconnection Customer unless the Transmission Provider elects to fund them”).

upgrades.⁴⁵ They argue that the Commission erroneously distinguished *Hoopeston* when it asserted that, in that case, the Commission did not consider whether the unilateral aspect of the initial funding option in Article 11.3 of MISO's GIA was just and reasonable, and that no party challenged the Tariff language.⁴⁶ They point to Hoopeston's protest in that proceeding, where Hoopeston (the interconnection customer) protested Ameren's election to initially fund certain network upgrades under an unexecuted GIA, arguing that the initial funding provision violated *E.ON* because there the Commission held that it was unjust, unreasonable, unduly discriminatory, and contrary to Order No. 2003 for a transmission owner to have the sole discretion to unreasonably increase the interconnection customer's costs.⁴⁷ The Certain MISO Transmission Owners state that the Commission in *Hoopeston* recognized that these arguments had been made and found that, with the exclusion of certain costs from the charges that the interconnection customer would pay, it was appropriate for a transmission owner to elect to initially fund network upgrades.⁴⁸ Thus, the Certain MISO Transmission Owners conclude that the issue of a transmission owner's right to elect the initial funding option was directly before the Commission in *Hoopeston*, and the Commission in the instant case did not justify its departure from the prior approval of the initial funding option.⁴⁹

27. The Certain MISO Transmission Owners further assert that the Commission in *Hoopeston* determined that limiting cost recovery to the return of and on capital costs is sufficient to address the potential for unreasonable imposition of costs arising from a transmission owner's decision to elect the initial funding option in Article 11.3 of MISO's GIA.⁵⁰ They state that the Commission in the June 18 Order provided no reason why the Commission's finding in *Hoopeston* is no longer valid.

28. The Certain MISO Transmission Owners argue that the Commission's findings in the June 18 Order lack any evidentiary or record support, and are therefore not reasoned

⁴⁵ *Id.* at 9.

⁴⁶ *Id.* at 11 (citing June 18 Order, 151 FERC ¶ 61,220 at P 51).

⁴⁷ *Id.* (citing Motion to Intervene and Protest of Hoopeston Wind, LLC, Docket No. ER13-2157-000, at 2 (filed Sept. 3, 2013)).

⁴⁸ *Id.* at 12 (citing *Hoopeston*, 145 FERC ¶ 61,111 at P 42).

⁴⁹ *Id.* at 11-12.

⁵⁰ *Id.* at 12-13 (citing *Hoopeston*, 145 FERC ¶ 61,111 at P 42).

decision-making.⁵¹ They state that the Commission sought to restrict the initial funding option based on the possibility for an increase in costs to the interconnection customer without an attendant increase in service, but that nothing in the record supports that conclusion or points to any exercise of the initial funding option that shows actual unduly discriminatory treatment.⁵²

b. Commission Determination

29. We deny the request for rehearing of the June 18 Order. We affirm the finding in the June 18 Order that, under MISO's Interconnection Customer Funding Policy, allowing the transmission owner to unilaterally elect the initial funding option would improperly impose costs on interconnection customers. By unilaterally electing to initially fund network upgrades where the interconnection customer is held responsible for such costs and does not receive credits to reimburse it for those costs, pursuant to MISO's Interconnection Customer Funding Policy, the transmission owner may deprive the interconnection customer of other options to finance the cost of the network upgrades that provide more favorable terms and rates. Thus, allowing the transmission owner to charge more for upgrade costs than the interconnection customer may have incurred on its own may result in unjust and unreasonable rates. In addition, the unilateral election to initially fund network upgrades in MISO's *pro forma* GIA also triggers the requirement for the interconnection customer to post security on the full cost of the network upgrades over the term of the facilities service agreement which is an additional charge over that required under Option 2.⁵³ In this way, Otter Tail's proposed funding is similar to Option 1 pricing.

30. We reject the claim by the Certain MISO Transmission Owners that the Commission in the June 18 Order failed to explain its departure from prior precedent. We reject the argument that the removal of the transmission owner's unilateral election to initially fund network upgrades is contrary to Order No. 2003 and *the pro forma* LGIA established therein. The Commission recognized that the initial funding option under Article 11.3 of the Order No. 2003 *pro forma* LGIA works differently than the initial funding option under MISO's *pro forma* GIA because of MISO's Interconnection

⁵¹ *Id.* at 14.

⁵² *Id.* at 15.

⁵³ Under Option 2, the interconnection customer posts security during construction of the project. Under the transmission owner's initial funding option, the interconnection customer posts security during construction of the project and over the term of the facilities service agreement.

Customer Funding Policy, and the Commission repeatedly held that the unilateral option to initially fund network upgrades in MISO was unjust and unreasonable in the context of MISO's Interconnection Customer Funding Policy.⁵⁴ Specifically, under Order Nos. 2003 and 2003-A, the interconnection customer is reimbursed for any network upgrade payments it made through transmission credits, and the non-independent transmission owner recovers the costs of the network upgrades through its transmission rates charged to *all* transmission customers. In contrast, in MISO, an interconnection customer is responsible for 100 percent of network upgrade costs, with a possible 10 percent reimbursement for projects that are 345 kV and above. A transmission owner electing to initially fund network upgrades would assign the non-reimbursable portion of the costs of the network upgrades directly to the interconnection customer through a network upgrade charge. We affirm the finding in the June 18 Order that the unilateral election to initially fund network upgrades (where the interconnection customer is held responsible for such costs and does not receive credits to reimburse it for those costs, pursuant to MISO's Interconnection Customer Funding Policy), may increase costs of interconnection service by assigning increased capital costs and a security requirement to the interconnection customer with no corresponding increase in service.⁵⁵

31. We reject the Certain MISO Transmission Owners' argument that the transmission owner's unilateral right to elect the initial funding option was directly before the Commission in *Hoopeston*, and the Commission in that case confirmed that it is appropriate for transmission owners to have the unilateral option to initially fund network upgrades. The Certain MISO Transmission Owners' argument is based on a misinterpretation of *Hoopeston*. In that proceeding, the Commission was implementing the initial funding option in the existing provisions of Article 11.3 of MISO's Tariff; the Commission was not considering whether the initial funding option itself, including the unilateral aspect of it, is unjust and unreasonable.

32. We affirm the finding in the June 18 Order that the Commission in *Hoopeston* implemented the existing Tariff language of Article 11.3 of MISO's *pro forma* GIA when it found that that the initial funding option would be not be unduly discriminatory compared to Option 2 after MISO revised the GIA to remove the recovery of costs other than the return of and on the capital costs of network upgrades. However, we clarify the statement in the June 18 Order that the Commission in *Hoopeston* did not consider the effect of allowing the transmission owner to unilaterally elect the initial funding option.⁵⁶

⁵⁴ June 18 Order, 151 FERC ¶ 61,220 at P 6 n.8, PP 48-52.

⁵⁵ *Id.* P 49.

⁵⁶ June 18 Order, 151 FERC ¶ 61,220 at P 51.

The Commission agreed with Hoopeston that it would be unduly discriminatory to give a transmission owner the discretion to unreasonably increase an interconnection customer's costs by choosing the initial funding option as opposed to Option 2, but reasoned based on the record in that case that removal of costs other than the return of and on the capital costs of the network upgrades addressed this concern.⁵⁷ By contrast, the Commission considered for the first time in the June 18 Order the justness and reasonableness of the unilateral aspect of the initial funding language in MISO's *pro forma* GIA where evidence was provided that the proposed recovery of capital costs and security increased costs to the interconnection customer with no corresponding increase in service. We affirm the finding that, because there is the possibility for an increase in costs presented by a transmission owner's unilateral election to provide initial funding as compared with Option 2, and yet there is no increase in interconnection service provided, such unilateral election is unjust and unreasonable.⁵⁸

33. We reject the Certain MISO Transmission Owners' claim that there is no record evidence to support the Commission's decision in the June 18 Order that the transmission owner's unilateral election to initially fund network upgrades could result in increased costs to interconnection customers or be implemented in an unduly discriminatory manner. The Border Winds protest of the unexecuted Border Winds FCA submitted in Docket No. ER14-2464-000 (Border Winds FCA Proceeding) provided record evidence that Otter Tail's election to initially fund the network upgrades increased the costs to Border Winds as the interconnection customer. Specifically, Border Winds compared the net present value of its own cost of capital to the net present value of Otter Tail's cost of capital, calculated using the formula in Attachment GG, as allowed under *Hoopeston*.⁵⁹ Border Winds stated that, at Otter Tail's proposed fixed rate of 15.8 percent applied over a 20-year term, Border Winds' approximately \$3.9 million in network upgrades would result in total costs of nearly \$6.6 million. However, if Border Winds were applying its own cost of capital to the network upgrades under Option 2 funding, Border Winds stated that it would save over \$1.8 million as compared to Otter Tail electing the initial funding option.⁶⁰ We recognize that Otter Tail's proposed fixed rate was not calculated in

⁵⁷ *Hoopeston*, 145 FERC ¶ 61,111 at P 41.

⁵⁸ *Id.* P 52.

⁵⁹ Motion to Intervene and Protest of Border Winds Energy, LLC, Docket No. ER14-2464-000, at 5 (filed Aug. 8, 2014).

⁶⁰ *Id.* Border Winds further explained that the "comparison includes the cost to Border Winds of maintaining a letter of credit at 1.5 percent over 20 years. With that cost excluded, customer-funding still results in over \$1 million in savings to Border

(continued...)

conformity with the Commission's clarification in the *Hoopeston Rehearing* order.⁶¹ Nevertheless, Border Winds did not provide comments in the Border Winds FCA Proceeding that to the extent a lower Otter Tail fixed charge rate would result from applying the *Hoopeston Rehearing* order clarification to the Otter Tail fixed charge rate, it would not still represent an increase in cost compared to Border Winds' capital costs. Therefore, the case record in Border Winds provided evidence that, under the unilateral election of the initial funding option by a transmission owner, a transmission owner's cost on capital could significantly increase costs to an interconnection customer relative to the interconnection customer's cost on capital under Option 2.

34. We reject the Certain MISO Transmission Owners' argument that the Commission in the June 18 Order did not explain its departure from the determination in *Hoopeston* that limiting cost recovery to the return of and on capital costs is sufficient to address the potential for the unreasonable imposition of increased costs on the interconnection customer under the initial funding option as compared to Option 2.⁶² As stated above, the Commission in *Hoopeston* considered only the types of costs (i.e., capital versus non-capital costs) that should be properly included in the cost recovery mechanism proposed by Ameren under the initial funding option; it did not consider the effect that the transmission owner's unilateral election of the initial funding option would have on the relative capital costs (the transmission owner's versus the interconnection customer's). The Commission in *Hoopeston* stated "that it *would* be unduly discriminatory to give a transmission owner the discretion to unreasonably increase an interconnection customer's costs by choosing the initial fund option as opposed to Option 2."⁶³ So, the Commission limited the transmission owners to the recovery of and on capital costs "because an interconnection customer charged under Option 2 would only be required to pay for the capital costs of the network upgrades."⁶⁴ Thus, the Commission in *Hoopeston*

Winds." *Id.* n.10.

⁶¹ *Hoopeston Rehearing*, 149 FERC ¶ 61,099 at P 20 ("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.").

⁶² *Hoopeston*, 145 FERC ¶ 61,111 at PP 41, 42.

⁶³ *Id.* P 41 (emphasis added).

⁶⁴ *Id.*

determined that it would be just and reasonable for a transmission owner to recover a return on and of capital under the initial funding option based on the record before it in that proceeding, which lacked any comparison of capital costs or any claim that a transmission owner's cost of capital would increase costs to the interconnection customer relative to Option 2. The Hoopeston protest argued that the net present value of the payments that Hoopeston would have to make to Ameren under Ameren's proposed Attachment GG initial funding pricing policy would increase costs to Hoopeston by \$4.15 million, or 49.7 percent, relative to the total nominal cost of all of the network upgrades under the Hoopeston GIA.⁶⁵ Hoopeston did not compare capital costs between Hoopeston and Ameren, but instead compared the net present value of a full Attachment GG network upgrade charge to the nominal base cost of capital that Hoopeston would pay under Option 2. In contrast, in the June 18 Order, the Commission had record evidence from the Border Winds protest that the unilateral election of the initial funding option by Otter Tail would significantly increase the capital costs of network upgrade costs assessed to Border Winds relative to Border Winds' cost of capital under Option 2.

35. We reject the Certain MISO Transmission Owners' assertion that the Commission failed to address why other avenues of relief are inadequate to protect the interconnection customer if it feels the initial funding option was elected improperly, such as MISO's dispute resolution procedures or filing a complaint under section 206 of the FPA. These other avenues of relief do not have any bearing on the Commission's authority to institute a proceeding under section 206 of the FPA here where it perceives that a Tariff provision is unjust, unreasonable, unduly discriminatory, or preferential.⁶⁶

2. MISO's Report

⁶⁵ Hoopeston Protest at 21-22.

⁶⁶ See *E.ON*, 137 FERC ¶ 61,076 at P 38 (citing to Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 696 ("The Commission remains concerned that, when the Transmission Provider is not independent and has an interest in frustrating rival generators, the implementation of participant funding, including the 'but for' pricing approach, creates opportunities for undue discrimination . . . [A] number of aspects of the 'but for' approach are subjective, and a Transmission Provider that is not an independent entity has the ability and incentive to exploit this subjectivity to its own advantage. For example, such a Transmission Provider has an incentive to find that a disproportionate share of the costs of expansions needed to serve its own customers is attributable to competing Interconnection Customers. The Commission would find *any policy that creates opportunities for such discriminatory behavior to be unacceptable.*" (emphasis added))).

36. In the MISO Report, MISO states that it will propose the Tariff changes the Commission discussed in the June 18 Order when the Commission addresses the comments, protests, and request for rehearing filed in the related dockets.⁶⁷ MISO states that it has heard concerns from some transmission owners echoing the concerns in the filings, and believes that the Commission is the appropriate authority to address these concerns.

a. Transmission Owner Comments

37. Ameren and Otter Tail argue that the June 18 Order effectively limits transmission owners to Option 2 funding, under which the generator makes an up-front cash payment for the capital costs of network upgrades, and has no further payment obligation.⁶⁸ They argue that this limitation leaves a transmission owner with no ability to recover from the interconnection customer its other costs of service, including a return on transmission plant in service, and gives the interconnection customer a choice to avoid paying a compensatory rate.⁶⁹ In addition, they argue that a proliferation of Option 2 funded network upgrades would place the costs of operating and maintaining the entire transmission system on zonal transmission customers, even though many transmission upgrades were built solely for generators. Ameren and Otter Tail state that providing Option 2 funding as the sole means of recovering network upgrade costs requires the load using the transmission system to subsidize interconnecting generators.

38. Ameren and Otter Tail argue that the Commission erred by grounding its decision in part by finding the initial funding option under Article 11.3 unjust and unreasonable by comparison to Option 2.⁷⁰ First, they state that Option 2 has never been found to be just and reasonable as the only option for meeting the generator's funding obligation. Second, they state that effectively allowing Option 2 funding as the sole option may be unlawful because it fails to compensate a transmission owner for its costs of providing utility service, and instead allows interconnection customers to opt out of paying a return on transmission facilities.⁷¹ They argue that the Commission may not compel a

⁶⁷ MISO Report at 2.

⁶⁸ Motion to Intervene and Initial Comments of Ameren Services Company and Otter Tail Power Company, Docket No. EL15-68-000, at 2 (filed July 9, 2015).

⁶⁹ *Id.* at 2, 10.

⁷⁰ *Id.* at 10.

⁷¹ *Id.* at 10-11.

transmission owner to construct and own transmission facilities without the opportunity to recover its cost of service beyond capital costs. They state that filling up a transmission owner's plant in service accounts with the sometimes large-scale upgrades funded by others creates a situation where a transmission owner's rate base, upon which it can earn a return and satisfy its investors, is an increasingly smaller part of the transmission system it owns and operates.⁷²

39. Ameren and Otter Tail ask the Commission to terminate the section 206 proceeding established by the June 18 Order and retain the initial funding option in Article 11.3 of MISO's GIA.⁷³ Alternatively, they ask the Commission to craft a single, uniformly applicable cost recovery mechanism that balances the interests of transmission owners, generators, load-serving entities, and other transmission customers.⁷⁴ At a minimum, they argue that the Commission should not eliminate a funding mechanism in order to eliminate potential discrimination without developing a record on whether what remains is just and reasonable.⁷⁵ Regardless of what path the Commission takes, Ameren and Otter Tail state that the Commission should make clear that all prudently-incurred transmission costs of service, including the associated O&M costs caused by those facilities, are recoverable in transmission rates if not directly assigned to interconnection customers.⁷⁶

40. Ameren and Otter Tail also note that the Commission recently issued a notice seeking comment on a petition for rulemaking on generator interconnection issues submitted by AWEA in Docket No. RM15-21.⁷⁷ They argue that the Commission should not compel a prescriptive outcome for the MISO region in this proceeding while simultaneously considering generic interconnection cost issues in a rulemaking proceeding.⁷⁸

⁷² *Id.* at 11.

⁷³ *Id.* at 2.

⁷⁴ *Id.* at 3.

⁷⁵ *Id.* at 9.

⁷⁶ *Id.* at 12.

⁷⁷ *Id.* at 12.

⁷⁸ *Id.* at 13.

41. The Indicated Transmission Owners submit comments responding generally to the proposition in the June 18 Order that the initial funding mechanism be made optional.⁷⁹ They argue that the Commission should not order a Tariff change as proposed in the section 206 proceeding because there is no actual evidence in the record that vesting the choice of initial funding in the transmission owner leads to undue discrimination.⁸⁰

42. The Indicated Transmission Owners argue that the proposed tariff change is based on the false premise that allowing a transmission owner to elect to initially fund network upgrades increases costs to interconnection customers.⁸¹ First, they argue that transmission owners should be able to earn a just and reasonable return on invested capital, and that this should not be considered an increased cost.⁸² Second, they state that the Commission assumes that interconnection customers funding their own upgrades will have free access to capital under Option 2 funding, and that the Commission did not consider that interconnection customers will incur capital costs when they borrow the funds needed to finance the upgrade or pay cash. They state that the cash option involves a lost opportunity cost, because the funds used to pay for network upgrades could have otherwise been invested. Third, the Indicated Transmission Owners argue that there is nothing in the record to indicate what costs are associated with financial security or how they compare to financing costs.

43. The Indicated Transmission Owners state that in no instance under Order No. 2003 was a transmission owner compelled to build network upgrades with no opportunity to earn a return, because under Order No. 2003, all networked facilities are included in transmission rate base, upon which a return is earned.⁸³ They further state that the Commission's proposed Tariff language would give interconnection customers the ability to require transmission owners to build network transmission facilities on a cash basis with no opportunity to earn a return on investment, which creates an unconstitutional taking in violation of the Fifth Amendment.⁸⁴ Specifically, they allege

⁷⁹ Motion for Leave to Answer and Answer of the Indicated Transmission Owners, Docket No. EL15-68-000, *et al.*, at 9 (filed Sept. 2, 2015).

⁸⁰ *Id.* at 10.

⁸¹ *Id.*

⁸² *Id.* at 11.

⁸³ *Id.* at 12.

⁸⁴ *Id.* at 12-13.

that Option 2 does not allow transmission owners to set a rate of return to compensate for business risk associated with the transmission business, such as lawsuits, reliability compliance obligations, environmental and construction risk.

44. The Indicated Transmission Owners state that the Commission did not justify reversing *Hoopeston*, where they argue that the Commission found that, when implementing the initial funding option under Article 11.3 of MISO's GIA, the transmission owner is permitted to charge the capital costs of the directly-assigned network upgrades plus a reasonable return of and on invested capital.⁸⁵ They state that the Commission is now reversing that holding by finding that the return increases costs without any record to support that decision.⁸⁶

b. Interconnection Customer Comments

45. Alliant states that it supports the Commission's investigation, as the current Tariff does not provide a transparent process for interconnection customer's funding costs to be explored and considered.⁸⁷ Alliant supports a balanced approach that takes costs to customers into consideration when determining which party should fund network upgrades.⁸⁸

46. AWEA states that the Indicated Transmission Owners have not addressed the central reasons why the Commission ordered the section 206 investigation; namely, the opportunities for undue discrimination and increasing costs when there is no increase in service, given MISO's Interconnection Customer Funding Policy.⁸⁹ They argue that the unilateral election of the transmission owner to initially fund network upgrades will result in increased costs to the interconnection customer because the interconnection customer will be required to pay for 100 percent of the network upgrades plus a return on the 100 percent of the cost of capital invested by the transmission owner collected over time,

⁸⁵ *Id.* at 14 (citing *Hoopeston*, 145 FERC ¶ 61,111 at P 41).

⁸⁶ *Id.* at 15.

⁸⁷ Supportive Comments of Alliant Energy Corporate Services, Inc., Docket No. EL15-68-000, at 3 (filed Sept. 30, 2015).

⁸⁸ *Id.* at 4.

⁸⁹ Comments of American Wind Energy Association, Docket No. EL15-68-000, at 3 (filed Sept. 30, 2015) (AWEA Comments).

such as a 20 to 30 year period.⁹⁰ They state that this cost is higher than under Option 2 funding, where the interconnection customer must pay either a 90 or 100 percent non-reimbursable cost of the network upgrades. Thus, they argue that interconnection customers paying under Option 2 will have a cost advantage over similarly situated interconnection customers paying under the initial funding option in Article 11.3 of MISO's *pro forma* GIA, with no attendant increase in service.⁹¹ AWEA rejects the Indicated Transmission Owners' argument that the premise of increased costs is flawed because, transmission owners argue, when the transmission owner elects to initially fund network upgrades, the interconnection customer is free to invest funds it would have spent on network upgrades elsewhere (i.e. the interconnection customer's opportunity cost of money).⁹² AWEA states that how the interconnection customer chooses to use its funds to undertake its cost of doing business has no bearing under the FPA on whether the rate that a public utility charges is just and reasonable.

47. AWEA rejects Ameren and Otter Tail's claim that, if the initial funding option is revised as the Commission proposes, Option 2 funding will become the sole means to fund network upgrades, arguing that the transmission owner will still be able to initially fund network upgrades if the interconnection customer agrees.⁹³ AWEA rejects the claim that Option 2 will leave transmission owners with no ability to recover other costs of service, including a return on transmission plant in service. AWEA states that the Commission in Order No. 2003 already limited the ability of the transmission owner to recover costs such as O&M expenses on facilities up to, but not beyond, the point of interconnection.⁹⁴ In addition, AWEA states that the interconnection customer (or its purchaser of energy) will take transmission service from the transmission owner, and thus pay its fair share of other costs of service, including a return on transmission plant in service.⁹⁵

⁹⁰ *Id.* at 4.

⁹¹ *Id.* at 5-8.

⁹² *Id.* at 9.

⁹³ *Id.* at 17; Reply Comments of the American Wind Energy Association, Docket No. EL15-68-000, at 3 (filed July 29, 2015) (AWEA Reply Comments).

⁹⁴ AWEA Comments at 12; AWEA Reply Comments at 3.

⁹⁵ AWEA Comments at 13; AWEA Reply Comments at 4.

48. AWEA rejects claims that the June 18 Order would result in a proliferation of Option 2 funded network upgrades that foist the cost of operating and maintaining the entire transmission system on zone transmission customers.⁹⁶ AWEA states that the initial funding option has been available since 2003, but only two transmission owners within MISO have sought to use it, while all others have used Option 2 funding.⁹⁷ Furthermore, AWEA notes that the cost issue is limited to O&M on network upgrades added in the zone, and not O&M costs for the entire transmission system; but, as it previously noted, AWEA states that Commission precedent does not allow collection of O&M costs for network upgrades directly from interconnection customers.⁹⁸

49. AWEA rejects Ameren and Otter Tail's claim that Option 2 funding results in load subsidizing the interconnection customer.⁹⁹ AWEA argues that the subsidization is actually reversed under the current initial funding mechanism – the lack of transmission credits, coupled with MISO's Interconnection Customer Funding Policy of essentially zero reimbursement, provides that the interconnection customer subsidizes the capital cost of network upgrades for which all system users rely on and benefit from. AWEA states that allowing transmission owners the sole discretion to choose initial funding is unduly discriminatory because it will provide an environment where similarly-situated interconnection customers in MISO pay differently for network upgrades. AWEA states that, if transmission owners want to retain the discretion to elect initial funding, then either (1) MISO's Interconnection Customer Funding Policy should be revised to provide full credits against the cost of transmission service or a full reimbursement as Order No. 2003 required or (2) the transmission owner should be required to roll the costs of network upgrades into its transmission rate base, which will allow the transmission owner to earn a rate of return as provided in Order No. 2003.¹⁰⁰ AWEA states that, when MISO

⁹⁶ AWEA Comments at 18; AWEA Reply Comments at 4.

⁹⁷ AWEA Comments at 17; AWEA Reply Comments at 4-5.

⁹⁸ AWEA Comments at 18; AWEA Reply Comments at 4-5 (citing *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,161 (2003) (the transmission provider could not recover the cost of O&M for network upgrades directly from interconnection customers, but the expense must be collected in transmission rates from transmission customers). *Duke Energy Corp.*, 95 FERC ¶ 61,279 (2001) (same); *see also Hoopeston*, 145 FERC ¶ 61,111 at PP 41-42 (limiting recovery to a return of and on network upgrades under Option 1 and disallowing recovery of other costs such as O&M)).

⁹⁹ AWEA Comments at 18-19; AWEA Reply Comments at 5-6.

¹⁰⁰ AWEA Comments at 11; AWEA Reply Comments at 6-7.

adopted its Interconnection Customer Funding Policy, the opportunity to earn a return as contemplated in Order No. 2003 was shifted away from the MISO transmission owners in favor of shifting the entirety of the capital funding costs to interconnection customers.¹⁰¹

50. AWEA states that the June 18 Order is not inconsistent with *Hoopeston*, as the Commission in that case made no finding that paying a return on network upgrade costs does not increase the interconnection customer's cost.¹⁰² Rather, AWEA states that the record in *Hoopeston* showed an increase in costs as compared to Option 2 funding, but the Commission justified this increase because the transmission owner would be providing the capital investment.¹⁰³ AWEA asserts that this rationale will not be disturbed when the MISO Tariff is revised to allow the transmission owner to provide initial funding for network upgrades only upon mutual agreement by the interconnection customer.

51. AWEA does not agree with MISO's statement that it will propose Tariff changes once the Commission addresses pending comments and issues raised by MISO transmission owners – AWEA notes that the Commission has the authority to order MISO to submit Tariff revisions, and AWEA urges the Commission to order MISO to make the Tariff changes as soon as possible.¹⁰⁴

52. Hoopeston supports the Commission's finding in the June 18 Order, but asks the Commission to provide guidance on how to apply its order to GIAs that are pending Commission action.¹⁰⁵ Hoopeston notes that it has a MISO GIA (Hoopeston GIA) that is awaiting Commission action on rehearing in Docket Nos. ER13-2157 *et seq.* and ER14-2754-000, and Hoopeston argues that the Hoopeston GIA is therefore not final.¹⁰⁶

¹⁰¹ AWEA Comments at 14.

¹⁰² *Id.* at 15.

¹⁰³ *Id.* at 15-16.

¹⁰⁴ *Id.* at 2.

¹⁰⁵ Comments and Motion to Consolidate of Hoopeston Wind, LLC, Docket No. EL15-68-000, at 2 (filed Sept. 30, 2015).

¹⁰⁶ *Id.* at 2-3. Hoopeston further notes that it has not yet entered into a facilities service agreement for the Hoopeston GIA, which is the document that memorializes the funding policy and binds the interconnection customer to a 20 or 30 year payment plan. *Id.* at 5.

Hoopeston states that the transmission owner under the Hoopeston GIA has unilaterally elected to provide initial funding for the network upgrades under Article 11.3. Hoopeston argues that, since the section 206 investigation in the instant proceeding centers on the justness and reasonableness of Article 11.3, the final order should apply to pending GIAs where the transmission owner has unilaterally elected to provide initial funding under that Tariff provision. Hoopeston notes that such application should apply to GIAs pending as of the refund effective date set in the instant proceeding, June 24, 2015, such that any funding that has occurred under the GIA up to the refund effective date would not be disturbed.¹⁰⁷ Hoopeston argues that Commission precedent supports this application of a new ruling going forward to a pending GIA – for instance, in the rehearing of *E.ON*, the Commission stated that its decision to remove Option 1 from MISO’s Tariff would not apply to agreements effective prior to the refund effective date set in *E.ON*.¹⁰⁸

53. Hoopeston requests that, should the Commission decline to provide guidance on the issue of pending GIAs, the Commission consolidate the instant proceeding with the pending Hoopeston GIA proceedings in Docket Nos. ER13-2157 *et seq.* and ER14-2754 *et seq.*¹⁰⁹ Hoopeston states that these proceedings have common issues of law and fact because the transmission owner in the Hoopeston proceedings has unilaterally chosen to provide initial funding for network upgrades under Article 11.3 of MISO’s *pro forma* GIA, which the Commission found potentially unjust and unreasonable in the instant proceeding.¹¹⁰ Hoopeston further states that consolidation of these proceedings will result in greater administrative efficiency and avoid the potential for inconsistent results.

54. Hoopeston requests clarification from the Commission that, if the interconnection customer elects to provide funding for the network upgrades under the FCA or GIA, the customer would not be required to enter into a facilities service agreement.¹¹¹

c. **Commission Determination**

¹⁰⁷ *Id.* at 3-4, 6.

¹⁰⁸ *Id.* at 4-5 (citing *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34).

¹⁰⁹ *Id.* at 8.

¹¹⁰ *Id.* at 11.

¹¹¹ *Id.* at 8.

55. We reject arguments that the Commission's finding in the June 18 Order removes the initial funding option from Article 11.3 of MISO's *pro forma* GIA or effectively limits transmission owners to Option 2 funding as the sole funding option for network upgrades. As the Commission stated, the option to initially fund is available to the transmission owner if the interconnection customer is in agreement.¹¹² We reject the argument that Option 2 has never been found just and reasonable as the only option for meeting the generator's funding obligation. First, as stated above, Option 2 is not the only option for network upgrade funding. Second, the Commission in *E.ON* explicitly found that Option 2 represents a just and reasonable alternative to Option 1.¹¹³

56. We note that, in the June 18 Order, the Commission rejected the argument that removing the transmission owner's unilateral option to initially fund network upgrades would harm an affected system operator through the cost impact of being forced to use Option 2 customer funding, and we affirm that finding here. As the Commission stated,¹¹⁴ this argument implies that the affected system operator is owed the interconnection customer's financing business and need not allow the interconnection customer to choose freely how to fund the costs of network upgrades for which the interconnection customer is responsible. Furthermore, as between 90 to 100 percent of the costs for network upgrades in MISO are the responsibility of the interconnection customer under MISO's Interconnection Customer Funding Policy,¹¹⁵ it stands to reason that the interconnection customer would have the incentive to find the lowest cost solution to funding network upgrades associated with its interconnection requests, and therefore the affected system operator should not have control over the interconnection customer's decision of a funding source in order to meet the interconnection customer's obligation.

57. We reject arguments that removal of the unilateral aspect of the initial funding option improperly imposes costs on transmission owners by depriving them of the ability to recover prudently-incurred transmission costs of service from the interconnection customer beyond capital costs of the network upgrades. We find that the claim that the initial funding option under Article 11.3 allows transmission owners to recover cost of service beyond capital costs (i.e., non-capital costs) is misplaced given the Commission's

¹¹² June 18 Order, 151 FERC ¶ 61,220 at P 50.

¹¹³ *E.ON*, 137 FERC ¶ 61,076 at P 40.

¹¹⁴ June 18 Order, 151 FERC ¶ 61,220 at P 50.

¹¹⁵ The interconnection customer may receive 10 percent reimbursement for the costs of projects that are 345 kV or above.

prior holding that MISO transmission owners may not recover these non-capital costs from MISO interconnection customers when the transmission owner unilaterally elects to initially fund the network upgrades.¹¹⁶ In *Hoopeston*, the Commission found that it would be unduly discriminatory to give a transmission owner the discretion to unreasonably increase an interconnection customer's costs by choosing the initial funding option as opposed to Option 2.¹¹⁷ Specifically, 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 initial funding option in Article 11.3 of MISO's *pro forma* GIA, because an interconnection customer charged under Option 2 would only be required to pay for the capital costs of the network upgrades. We also reject the argument that, by not allowing transmission owners to recover non-capital costs from interconnection customers, the Commission is compelling a transmission owner to construct and own transmission facilities without the opportunity to recover its cost of service (beyond capital costs). Transmission owners will recover their cost of service (beyond capital costs) through their transmission rates. And the transmission rates will be charged to interconnection customers as the interconnection customers take transmission service on the transmission owner's transmission system.¹¹⁸ To the extent that MISO believes that the mutual agreement aspect of the initial funding option raises concerns about the impact of certain costs on particular transmission owners and their customers, MISO may file a proposal under section 205 of the FPA to address such concerns.

58. We reject the Indicated Transmission Owners' argument that the Commission has assumed the customer has free access to capital if they elect Option 2 and that the Commission has not considered the customer's financing costs or opportunity cost of money. We make no finding that the interconnection customer will not incur its own financing costs under Option 2 funding. The costs that the interconnection customer incurs are irrelevant to our finding that, when the transmission owner unilaterally elects to initially fund network upgrades where the interconnection customer is held responsible for such costs and does not receive credits to reimburse it for those costs, the affected

¹¹⁶ *Hoopeston*, 145 FERC ¶ 61,111 at P 41.

¹¹⁷ *Id.*

¹¹⁸ For instance, both Ameren and Otter Tail are allowed recovery of their transmission related O&M expenses through their associated Attachment O rate formula templates. See MISO, FERC Electric Tariff, Attachment O, § 33, OTP Rate Formula Template (32.0.0); MISO, FERC Electric Tariff, Attachment O, § 38, AIC Rate Formula Template (34.0.0).

system operator or transmission owner may deprive the interconnection customer of other options to finance the cost of the network upgrades that may provide more favorable terms. The unilateral election of the initial funding option by the transmission owner may deny the interconnection customer the opportunity to use cash to fund its own network upgrades when the interconnection customer's perceived cost of that cash is below the transmission owner's rate charged to the interconnection customer (i.e. the interconnection customer's avoided cost through using cash is above its opportunity cost of cash).

59. We reject the Indicated Transmission Owners' argument that the Commission's proposed Tariff language would not allow transmission owners to "set" a rate of return to directly assign compensation for business risk, such as lawsuits, reliability compliance obligations, environmental and construction risks, to an interconnection customer, inasmuch as such business risks associated with owning transmission are even included in a transmission owner's return on component under the initial funding option. Our decision does not preclude the transmission owner from *earning* a return on these network upgrades from the interconnection customer where the transmission owner and the interconnection customer mutually agree to the transmission owner initially funding the network upgrade. Moreover, Option 2 is a just and reasonable rate and is available under MISO's Tariff. As such, the Indicated Transmission Owners' argument ignores the continued existence of the transmission owner's initial funding option and as a result misses the fact that any return that was available to a transmission owner when the initial funding election was made on a unilateral basis by the transmission owner is still available when the transmission owner's initial funding option is made on a mutually agreed upon basis. However, inasmuch as the obligation to fund these network upgrades rests with the interconnection customer under MISO's Tariff and as credits are not provided in return for this funding, we find that it is potentially unjust, unreasonable and unduly discriminatory to deprive the interconnection customer of the ability to provide its own capital funding. Furthermore, if there are any other costs that the transmission owner fails to recover for the network upgrades, the same would be true for Option 2, and as stated above to the extent that MISO believes that the mutual agreement aspect of the initial funding option raises concerns about the impact of certain costs on particular transmission owners and their customers, MISO may file a proposal under section 205 of the FPA to address such concerns. We further note that MISO's Tariff requires the interconnection customer to post security in order to address risk during construction.

60. We reject Ameren and Otter Tail's assertion that the Commission should not compel a prescriptive outcome for the MISO region in this proceeding while simultaneously considering generic interconnection cost issues in a separate rulemaking proceeding in Docket No. RM15-21. The Commission in this proceeding is making a specific finding that MISO's Tariff is unjust, unreasonable, and unduly discriminatory based on the record before us here.

61. The arguments related to the Commission's alleged departure from Order No. 2003 and *Hoopeston* are addressed on rehearing above. In addition, we reject the Indicated Transmission Owners' argument that there is no record evidence supporting the Commission's decision in the June 18 Order, as we have addressed this argument on rehearing.

62. We reject Hoopeston's request to apply the ruling in this order to the Hoopeston GIAs that were conditionally accepted in Docket Nos. ER13-2157 and ER14-2754. The Hoopeston GIAs were effective and in existence prior to the June 24, 2015 effective date of the revised Article 11.3 Tariff language ordered below. In recent precedent, "the Commission has declined to modify interconnection agreements that predate revisions to the relevant Tariff provisions."¹¹⁹ This approach is consistent with Commission precedent – for example, in *E.ON*, the Commission removed Option 1 from the Tariff effective March 22, 2011, the refund effective date in that proceeding.¹²⁰ On rehearing, the Commission clarified that the removal of Option 1 would not apply to agreements effective prior to March 22, 2011.¹²¹

63. We deny Hoopeston's motion to consolidate the instant proceeding with the Hoopeston GIA proceedings in Docket Nos. ER13-2157 and ER14-2754. We find no common issues of law and fact. The Hoopeston proceedings applied the MISO Tariff that was in effect at the time the GIAs were effective, and the instant proceeding amends the MISO Tariff on a prospective basis beginning June 24, 2015. Moreover, the justness and reasonableness of Article 11.3 was not at issue in the Hoopeston proceedings, and we are not ordering further hearing procedures.

64. We grant in part Hoopeston's request for clarification. The purpose of a facilities service agreement is to specify the terms of repayment of money owed to the

¹¹⁹ See *Rail Splitter Wind Farm, LLC v. Ameren Services Company*, 146 FERC ¶ 61,017, at P 21 & n.34 (2014).

¹²⁰ *E.ON*, 137 FERC ¶ 61,076 at P 43.

¹²¹ *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34. See also *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,050, at PP 68-69 (2013) (allowing Option 1 funding in GIAs that were executed and effective before Option 1 was removed from the Tariff effective March 22, 2011, but rejecting the use of Option 1 funding in amended GIAs that were filed unexecuted and effective after the date of Option 1 removal).

transmission owner for the network upgrades needed to connect the interconnection customer's facilities when the transmission owner initially funds the network upgrades under MISO's Interconnection Customer Funding Policy. If the interconnection customer provides the up-front funding for its facilities, there will be no money owed to the transmission owner and thus no need for a facilities service agreement.

65. As discussed above, we have addressed the concerns stated in the comments on and request for rehearing of the June 18 Order and denied rehearing of that order. We therefore direct MISO, within 10 days of the date of this order, to propose the Tariff changes, as MISO committed to do in its informational report filing. Specifically, MISO should revise Article 11.3 of its *pro forma* GIA to remove the ability for a transmission owner to unilaterally elect to initially fund network upgrades, as follows:

Transmission Owner shall provide Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 ~~that~~ Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities, which election shall only be available upon mutual agreement of Interconnection Customer and Transmission Owner; otherwise, such facilities, if any, shall be solely funded by Interconnection Customer.

In addition, MISO should also include the initial funding language above in its *pro forma* FCA and *pro forma* MPFCA, revising as necessary to reflect the proper terminology for each *pro forma* agreement. We direct that these Tariff changes be made effective prospectively as of June 24, 2015, the date the notice of the initiation of the investigation in Docket No. EL15-68-000 was published in the *Federal Register*.

The Commission orders:

(A) The request for rehearing of the June 18 Order is hereby denied, as discussed in the body of this order.

(B) Hoopeston's motion for consolidation is hereby denied, as discussed in the body of this order. Hoopeston's request for clarification is hereby granted in part, as discussed in the body of this order.

(C) MISO is hereby directed to submit a compliance filing to revise its Tariff, within 10 days of the date of this order, to be effective on a prospective basis as of June 24, 2015, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.