

154 FERC ¶ 61,248
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Internal MISO Generation

Docket Nos. EL15-99-000

v.

Midcontinent Independent System Operator, Inc.

EL16-12-000
(not
consolidated)

ORDER GRANTING IN PART AND DENYING IN PART COMPLAINT,
INSTITUTING SECTION 206 PROCEEDING AND COMMENCING PAPER
HEARING PROCEDURES AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued March 29, 2016)

1. On September 4, 2015, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² Internal MISO Generation³ filed a complaint against Midcontinent Independent System Operator, Inc. (MISO). As described more fully below, Internal MISO Generation requests that the Commission: (1) find that MISO's protocol to provide the network resource

¹ 16 U.S.C. § 824e (2012).

² 18 C.F.R. § 385.206 (2015).

³ Internal MISO Generation is comprised of EDF Renewable Energy, Inc., E.ON Climate & Renewables North America, LLC, and Invenergy LLC.

interconnection service (NRIS)⁴ delivery product to generators external to MISO (E-NRIS)⁵ to accommodate their participation in MISO capacity and energy markets (E-NRIS Protocol) is unjust and unreasonable and unduly discriminatory and preferential to the extent that it does not require E-NRIS customers to make an M2 Milestone Payment; (2) order MISO to submit Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) revisions that address its E-NRIS Protocol, including a requirement for an Initial Payment and *pro forma* Service Agreement; and (3) immediately issue an order providing interim relief that directs MISO to remove E-NRIS customers from MISO's generation interconnection definitive planning phase (DPP) studies and allow the remaining pending DPP studies to move forward.

2. In this order, we grant the complaint in part and deny it in part, and direct MISO to submit a compliance filing within 60 days of the date of this order. Additionally, we find that MISO's Tariff may be unjust, unreasonable, unduly discriminatory or preferential because it does not include detailed provisions regarding NRIS-only customers (described below) and the application of the M2 Milestone Payment to various classes of service. Accordingly, we institute a proceeding in Docket No. EL16-12-000 pursuant to section 206 of the FPA to examine MISO's Tariff, as discussed more fully below.

I. Background

3. The DPP is the final phase of MISO's generator interconnection process, during which MISO conducts reliability and deliverability studies that determine whether there is available transmission capacity to accommodate the interconnection of new proposed generation facilities or whether network upgrades are needed. In the interconnection process, both new NRIS and Energy Resource Interconnection Service (ERIS)⁶ customers undergo two concurrent studies – the system impact study and the interconnection facilities study. MISO uses these two studies to determine each

⁴ NRIS allows an interconnection customer to connect its generating facility to the transmission system or distribution system, as applicable, and integrate its generating facility with the transmission system in the same manner as for any generating facility being designated as a network resource. MISO, FERC Electric Tariff, Attachment X (0.0.0), § 1.

⁵ E-NRIS refers to an NRIS customer outside the MISO footprint.

⁶ ERIS is an interconnection service that allows an interconnection customer to connect its generating facility to the transmission system or distribution system, as applicable, and to deliver the generating facility's electric output using the existing firm or non-firm capacity of the transmission system on an as available basis. MISO, FERC Electric Tariff, Attachment X (0.0.0), § 1.

project's injection rights and to determine deliverability of the project and any required upgrades to meet the requested level of service. After the system impact study and interconnection facilities study, customers will be subjected to the network upgrade facilities study. Through a combination of these studies, MISO will prepare a construction schedule and cost analysis for any required upgrades. Finally, MISO will inform the customer of its *pro rata* share of the cost of any required network upgrades based on its share of the megawatt contribution to the constraint.⁷

4. New generation customers seeking NRIS or ERIS must provide a M2 Milestone Payment when they first enter MISO's DPP study queue,⁸ pursuant to MISO's Tariff and Business Practice Manual.⁹ The M2 Milestone Payment is refundable once a Generation Interconnection Agreement (GIA) is executed and the interconnection customer provides an Initial Payment¹⁰ under the GIA towards the cost of any required network upgrades. However, if the interconnection customer withdraws from the queue, the M2 Milestone Payment will first be applied to the cost of network upgrades that are shifted to concurrent or later-queued projects, with the remaining funds refunded to the withdrawing interconnection customer.¹¹

⁷ See MISO Business Practice Manual No. 015, Generator Interconnection, § 6.1.1.1.8 (BPM-No. 015).

⁸ A project is eligible to enter the DPP after the interconnection customer has provided the cash payment DPP entry milestone (M2 Milestone Payment), technical data requirements, and DPP study deposit. MISO, FERC Electric Tariff, Attachment X (0.0.0), § 8.2. Together, these requirements are commonly referred to as the M2 Milestone.

⁹ See MISO, FERC Electric Tariff, Attachment X (0.0.0), § 8.2; BPM-No. 015.

¹⁰ An interconnection customer is required to make either an Initial Payment equal to 10-20 percent of the total cost of its network upgrades or provide security equal to the total cost of its network upgrades within a prescribed time period following the execution of the GIA or the filing of an unexecuted GIA with the Commission. See MISO, FERC Electric Tariff, Attachment X (0.0.0), § 11.5.

¹¹ See BPM-No. 015, § 6.2.11.

5. On March 8, 2013, the Commission conditionally accepted revisions to Module E of MISO's Tariff to allow generation external to MISO to participate in capacity auctions by obtaining NRIS.¹²

II. Complaint

6. Internal MISO Generation claims that MISO has amended its Business Practice Manual to accommodate E-NRIS customers' participation in MISO capacity and energy markets. Specifically, Internal MISO Generation states that E-NRIS generation can enter and be studied in MISO's DPP queue without making the M2 Milestone Payment or Initial Payment.¹³ Internal MISO Generation argues that this is unjust and unreasonable because it allows the very harms to occur that the M2 Milestone Payment is supposed to prevent for generators that first enter the DPP. Internal MISO Generation further argues that this is unduly discriminatory and preferential because it allows new E-NRIS customers to pay a significantly lower entry fee than generation internal to MISO to be studied, allocated reliability injection rights, and participate in MISO markets.

7. Internal MISO Generation states that the Commission found MISO's M2 Milestone Payment just and reasonable because it would eliminate speculative projects and late-stage withdrawals in the generator interconnection queue, which could cause restudies.¹⁴ Internal MISO Generation asserts that the E-NRIS Protocol does not deter E-NRIS customers from submitting speculative requests or withdrawing from the DPP queue while MISO is performing its studies or has assigned network upgrade cost responsibility after completing such studies. Internal MISO Generation argues that it is unjust and unreasonable to subject interconnection customers to the delay and shifted network upgrade costs that will result if an E-NRIS customer withdraws, noting that MISO has moved 7 GW of E-NRIS into the DPP.¹⁵ Internal MISO Generation argues that such a cost shift would be inconsistent with the Commission's cost causation policy and rationale for approving the M2 Milestone Payment.¹⁶

¹² See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,182 (2013).

¹³ Complaint at 3, 19.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 20.

¹⁶ *Id.* at 21.

8. Internal MISO Generation states that new NRIS and ERIS customers with generation located within MISO and E-NRIS customers are similarly situated in terms of the studies their requests undergo, the transmission capacity for which they are competing, and the set of rates, terms and conditions to which they will be subject by participating in MISO's markets.¹⁷ Internal MISO Generation states that the location of the customers is not a meaningful distinction and that interconnection customers with generation internal to MISO would be competitively disadvantaged against the E-NRIS customers who do not have to pay the M2 Milestone Payment. In addition, Internal MISO Generation argues that MISO's E-NRIS Protocol creates differential treatment because it does not impose a cost on E-NRIS customers to enter the DPP, while new NRIS and ERIS customers internal to MISO must make the M2 Milestone Payment to participate in DPP reliability studies. Internal MISO Generation claims that E-NRIS customers will be subject to reliability studies, and thus, should be subject to the M2 Milestone Payment.

9. Internal MISO Generation contends that MISO has argued that the M2 Milestone Payment is only a readiness requirement and that E-NRIS customers will already have a GIA with a neighboring Regional Transmission Organization (RTO) or utility and may already be operating or have a transmission service request to the border of MISO.¹⁸ Internal MISO Generation contends that an E-NRIS customer could decide that the cost of network upgrades to participate in the MISO markets outweighs the return that may be derived by participating in MISO's markets, such that the E-NRIS customer's project achieving commercial status is not relevant in determining readiness. Internal MISO Generation further argues that an E-NRIS customer having a GIA with a neighboring RTO is not relevant because it could be canceled and, as MISO itself previously stated, execution of a GIA is not a sufficient indicator of readiness.¹⁹ For these same reasons, Internal MISO Generation continues, an E-NRIS customer having a transmission service request to the border of MISO does not protect the queue.

10. Internal MISO Generation states that existing internal generators seeking NRIS only (NRIS-only customers)²⁰ are not assessed the M2 Milestone Payment because NRIS-only customers are not subjected to the reliability study to establish their injection

¹⁷ *Id.*

¹⁸ *Id.* at 26.

¹⁹ *Id.* at 28 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at P 36 (2012) (*MISO I*)).

²⁰ NRIS-only service refers to when a generating facility located within MISO with only ERIS re-enters the queue to obtain NRIS.

rights. Internal MISO Generation contends that E-NRIS customers are different than NRIS-only customers because, unlike E-NRIS customers, NRIS-only customers will be assessed only for deliverability on the MISO system. Internal MISO Generation notes that NRIS-only customers were already subjected to a reliability analysis that establishes their capacity injection rights when they first entered the DPP as a new ERIS or NRIS customer.²¹ Internal MISO Generation therefore argues that the Commission should find that MISO must require E-NRIS customers to make the M2 Milestone Payment. In the alternative, Internal MISO Generation argues that the Commission should find that new ERIS and NRIS customers with generation located within MISO no longer have to submit the M2 Milestone Payment.

11. Furthermore, Internal MISO Generation states, for the same reasons that E-NRIS customers should be subject to the M2 Milestone Payment, they should also be required to submit some form of Initial Payment within 30 days of executing a Service Agreement, comparable to the Initial Payment that is currently required of interconnection customers under a GIA.²² Internal MISO Generation argues that it is unjust and unreasonable and unduly discriminatory and preferential to not subject E-NRIS customers to the same type of Initial Payment. Internal MISO Generation argues that this Initial Payment would provide further assurance against late-stage terminations without regard for the impact on the queue and cost shifts.²³

12. Internal MISO Generation also states that MISO has not provided any of the details about the terms and conditions of the Service Agreement among MISO and the E-NRIS customers.²⁴ Internal MISO Generation states that this creates a lack of transparency contrary to Commission policy underlying open access transmission and interconnection service. Similarly, Internal MISO Generation contends that because

²¹ Complaint at 31.

²² See BPM-No. 015, § 7. Service Agreement is defined in the Tariff as “[t]he initial agreement and any amendments or supplements thereto entered into by the Tariff Customer and the Transmission Provider for service under this Tariff, including, without limitation, any service agreement executed pursuant to Section 27A (an HVDC Service Agreement), Module F, and Attachment KK of the Tariff.” MISO, FERC Electric Tariff, Module A (30.0.0), § 1.S.

²³ Complaint at 26.

²⁴ *Id.* at 32.

MISO's E-NRIS Protocol will significantly affect rates and service, MISO should file tariff revisions to place the protocol in the Tariff, consistent with Commission policy.²⁵

13. Finally, Internal MISO Generation requests that the Commission order interim relief, directing MISO to immediately remove E-NRIS customers from DPP studies that have begun.

III. Notice of Filing and Responsive Pleadings

14. Notice of Internal MISO Generation's complaint was published in the *Federal Register*, 80 Fed. Reg. 55,611 (2015), with interventions and protests due on or before September 24, 2015. The Organization of MISO States and the Iowa Utilities Board filed notices of intervention. Timely motions to intervene were filed by NextEra Energy Resources, LLC; NRG Companies; Exelon Corporation; Wabash Valley Power Association, Inc.; Midcontinent MCN LLC; Alliant Energy Corporate Services, Inc.; MidAmerican Energy Company; Midwest TDUs;²⁶ Duke Energy Corporation; and Consumers Energy Company. Timely motions to intervene and comments were filed by American Wind Energy Association and Wind on Wires (Wind Parties), Wisconsin Electric Power Company and Wisconsin Public Service Corporation (Wisconsin Parties), and Great River Energy. On September 24, 2015, MISO filed an answer. On September 30, 2015, Internal MISO Generation filed an answer to MISO's answer and the comments. Ameren Services Company and Xcel Energy Services Inc. filed motions to intervene out-of-time.

A. MISO's Answer

15. MISO argues that the complaint fails to show that MISO's practices are unjust and unreasonable. First, MISO states that E-NRIS customers need not demonstrate "readiness" because they must be "existing" generators by definition under the Tariff. MISO notes that "existing Generating Facilities" in section 2.1(e) of the Generation Interconnection Procedures means "generators that are either in-service, under construction, or have an unsuspended interconnection agreement with the transmission provider to which they are directly physically connected at the time of request."²⁷ In

²⁵ *Id.* at 33 (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)).

²⁶ Midwest TDUs is comprised of Madison Gas and Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and WPPI Energy.

²⁷ MISO Answer at 5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,038, at P 20 (2010)).

addition, MISO explains that like E-NRIS customers, NRIS-only customers, i.e., existing internal generators seeking NRIS only, are not charged the M2 Milestone Payment. MISO explains that given that the M2 Milestone Payment is a “readiness” milestone, in these cases, both E-NRIS and internal NRIS-only customers are already complete and operational.²⁸

16. MISO states that Internal MISO Generation’s request to charge E-NRIS customers the M2 Milestone Payment is not practical, because currently the M2 Milestone Payment is refundable upon finalization of a GIA with MISO. MISO explains that because external generators do not have GIAs with MISO, MISO would have to create an entirely new process to refund this payment, which MISO argues would be counter to the existing Tariff requirement to process E-NRIS requests “under the terms of the Tariff.”²⁹

17. MISO also argues that Internal MISO Generation’s alternate request to treat new internal generation the same as existing external generation is unjust and unreasonable. MISO argues that because existing external generators are not similarly situated to internal new generators, different treatment of the two is not undue discrimination under Commission precedent.³⁰ MISO states that it treats projects that request NRIS-only service comparably, regardless of whether they are in MISO or not.

18. MISO states that the complainants’ concern with the application of MISO’s Initial Payment to E-NRIS has been resolved. MISO explains that it addressed this issue via the stakeholder process and will include “a form of the Initial Payment” in the Service Agreement for E-NRIS.³¹

19. MISO contends that the complaint inappropriately asks the Commission to direct revisions to its Tariff and Business Practice Manual rather than continuing the stakeholder process that is underway. MISO states that in the past, the Commission has rejected complaints that pre-empt the stakeholder process.³² MISO argues that the complaint is procedurally flawed in three ways, including that the complainants did not

²⁸ *Id.* at 6.

²⁹ *Id.* (citing Generation Interconnection Procedures, § 2.1(e)).

³⁰ *Id.* at 7 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,282, at P 30 (2009)).

³¹ *Id.* at 9.

³² *Id.* at 10 (citing *CSOLAR IV South, LLC v. CAISO*, 142 FERC ¶ 61,250, at P 47 (2013)).

seek dispute resolution, the complainants did not meet their burden of proof, and that the complainants have not shown adequate evidence of harm.³³

20. MISO argues that interim relief is not available as a right, but rather in an unusual and specialized circumstance. MISO states that the complaint does not cite to a specific project that will be immediately harmed and that the potential harm of an E-NRIS customer withdrawing from the queue is not an unusual circumstance that justifies interim relief. Further, MISO argues that the requested interim relief would discount the value of the stakeholder process.

B. Comments

21. The Wind Parties and Great River Energy filed comments in support of the complaint. The Wind Parties and Great River Energy share many of the concerns raised in the complaint and request that the Commission grant the requested relief.

22. The Wisconsin Parties state that although they appreciate the complainants' concerns, they submit that when a resource, whether internal or external to MISO, already has interconnection service through a GIA and desires a deliverability study, that request should not be subject to the M2 Milestone Payment. Instead, to address the complainants' concerns, they propose that the Commission direct MISO to perform the deliverability-only studies outside of the MISO generation interconnection process, just as it does for long-term firm transmission service requests.

C. Internal MISO Generation's Answer

23. Internal MISO Generation states that it understands that MISO has completed the studies for 3.4 GW of E-NRIS in the February 2014 DPP, such that the harms identified in the complaint are now very active and real. Internal MISO Generation believes that if any of the E-NRIS withdraws, MISO will have to undertake a DPP restudy causing queue delays and cost shifts for network upgrades. Internal MISO Generation further states that the February 2014 DPP report identifies numerous constraints, but no solutions or costs to address the constraints, except to note that the constraints will be taken care of through firm transmission service within MISO. Internal MISO Generation argues that neither the E-NRIS Protocol nor the Tariff says anything about the use of firm transmission service within MISO as an alternative to obtaining NRIS. Internal MISO Generation questions which parties will be responsible for the reliability impacts of this new external generation on the MISO system. Internal MISO Generation argues this firm transmission service declaration allows E-NRIS customers to game the system in that they are being studied in the DPP to determine what level of NRIS they can obtain for the entire MISO

³³ *Id.* at 10-11.

footprint, but they may be able to opt for firm transmission service for select sub-regions of MISO if the cost impact is more favorable.

24. Internal MISO Generation also argues that MISO failed to address in its answer the impact to the queue and its market if an E-NRIS customer withdraws during the stakeholder process that led to MISO adopting its E-NRIS Protocol. Internal MISO Generation also argues that MISO did not answer Internal MISO Generation's claim that E-NRIS and NRIS-only customer are dissimilar for DPP study purposes.

25. Internal MISO Generation further argues that MISO mischaracterizes its E-NRIS Protocol as involving "existing" generation or "existing operational generators."³⁴ Internal MISO Generation states that there is no language in MISO's E-NRIS Protocol that limits E-NRIS availability to existing operational generation. Internal MISO Generation contests MISO's claim that section 2.1(e) of MISO's Generation Interconnection Procedures supports MISO's theory because, as noted by MISO's answer, NRIS is available to external generation that is either "in-service, under construction, or has an unsuspended interconnection agreement." Internal MISO Generation also argues that section 2.1(e) of MISO's Generation Interconnection Procedures does not provide a basis for MISO not to require E-NRIS customers to submit the M2 Milestone Payment because section 2.1(e) provides that "[s]uch a request for Network Interconnection Service can be made by applying under the terms of this Attachment X"³⁵ Internal MISO Generation notes that the "terms of Attachment X" require customers seeking NRIS to submit the M2 Milestone Payment to enter the DPP.

26. Internal MISO Generation acknowledges that MISO will require the E-NRIS customer to provide an Initial Payment as a term of the Service Agreement. However, it argues that there is no information about whether the E-NRIS customer will be subject to the same level, type, and terms of Initial Payment as new NRIS and ERIS customers.³⁶

IV. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding in

³⁴ Internal MISO Generation Answer at 16 (citing MISO Answer at n.2, n.5, n.7).

³⁵ *Id.* at 18 (citing Generation Interconnection Procedures, § 2.1(e)).

³⁶ *Id.* at 23.

Docket No. EL15-99-000. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission grants Ameren Services Company's and Xcel Energy Services Inc.'s late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 358.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept Internal MISO Generation's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

29. As discussed below, we grant the complaint in part and deny it in part, direct MISO to submit a compliance filing within 60 days of the date of this order, and institute a proceeding under section 206 of the FPA.

30. We find that Internal MISO Generation has met its burden under section 206 of the FPA to show that MISO's Tariff is unjust, unreasonable, unduly discriminatory, or preferential because the terms and conditions governing E-NRIS, including details of the Initial Payment and Service Agreement for E-NRIS customers, should be included in the Tariff. The Commission requires that matters that significantly affect rates and services, are readily susceptible of specification, and are not so generally understood, be in the tariff rather than business practice manuals.³⁷ Accordingly, we grant Internal MISO Generation's complaint in part and direct MISO to file, within 60 days of the date of this order, in addition to the initial briefs ordered below in Docket No. EL16-12-000, revisions to its Tariff to provide language that addresses its E-NRIS Protocol, including the details of the Service Agreement for E-NRIS customers, as well as the requirement for an Initial Payment and the details related thereto. As for a Service Agreement, we note that MISO filed a *pro forma* Service Agreement for E-NRIS customers on March 9, 2016, which is pending in Docket No. ER16-1120.³⁸

³⁷ See *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171, at P 80 (2012).

³⁸ We further note that the *pro forma* Service Agreement filed in Docket No. EL16-1120 does not contain a requirement for an Initial Payment.

31. With respect to the M2 Milestone Payment, Section 8.2 of Attachment X in the MISO Tariff states:

In addition, Interconnection Customer shall provide the [DPP] entry milestone in the form of either cash or irrevocable letter of credit reasonably acceptable to Transmission Provider. The [DPP] entry milestone will be refunded to Interconnection Customer upon satisfaction of the initial payment milestone pursuant to Article 11.5 of a non-provisional GIA, upon commencement of Commercial Operation of the entire Generating Facility as described in Appendix A of a provisional GIA under Section 11.5 of this [Generation Interconnection Procedures], or in the event the total Network Upgrade cost estimates in the Interconnection Facilities Study increased by more than twenty-five percent (25%) over the Network Upgrade cost estimates in the Interconnection System Impact Study in the [DPP].

Although its Tariff is silent as to whether certain interconnection customers are exempt from the M2 Milestone Payment, MISO states in its answer to the complaint that neither E-NRIS nor NRIS-only customers are required to provide the M2 Milestone Payment to enter the DPP under its current practices.³⁹

32. It appears that MISO's Tariff may be unjust, unreasonable, unduly discriminatory, or preferential because the Tariff does not specify in sufficient detail which interconnection customers must make the M2 Milestone Payment. We understand that MISO intends for the M2 Milestone Payment not to apply to existing generators, whether they are E-NRIS or NRIS-only customers; however, we believe this may be unduly discriminatory because it does not treat all interconnection customers comparably. All interconnection customers, whether they are new or existing, or internal or external, are seeking interconnection service and will be entering the DPP. If an interconnection customer withdraws from the queue, it potentially impacts other customers in the queue in the form of restudies or shifted cost allocation, and the M2 Milestone Payment is intended, in part, to protect other customers against the consequences of a withdrawal. Therefore, we believe it is appropriate that all interconnection customers post the M2 Milestone Payment, given that the potential harm to other customers in the DPP from a late-stage withdrawal is present regardless of the type of service being sought.

33. Furthermore, it appears that MISO's Tariff may be unjust, unreasonable, or unduly discriminatory or preferential because it does not include detailed provisions regarding NRIS-only customers. For example, Attachment X of the Tariff lays out in detail the

³⁹ MISO Answer at 5-7.

service provided to new ERIS and NRIS customers and the procedure for receiving that service, but MISO's Tariff does not provide NRIS-only customers the same clarity. Additionally, Attachment X appears to indicate that NRIS-only customers would be subject to the same study procedures as new NRIS customers. However, MISO's answer to the complaint indicates otherwise.⁴⁰

34. Accordingly, we institute a proceeding in Docket No. EL16-12-000, pursuant to section 206 of the FPA, to examine MISO's Tariff. Upon initial review, the concerns identified by the Commission might be addressed by revising MISO's Tariff to: (1) make clear that the M2 Milestone Payment is assessed to *all* interconnection customers, whether new or existing, or internal or external, or a showing by MISO that it should not be required to do so; and (2) clarify the services it provides and the process for receiving that service for every class of interconnection customer to which the Tariff applies.⁴¹ The Tariff provisions should ensure that all interconnection customers, internal and external, and new and existing, are treated comparably, and are consistent with the overall goals of interconnection queue reform of "discouraging speculative or unviable projects from entering the queue and getting projects that are not making progress towards commercial operation out of the queue."⁴² We also find that a paper hearing, as ordered below, is the appropriate procedure to resolve this matter.

35. As ordered below, any entity desiring to participate in the paper hearing must file a notice of intervention or timely motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015).

36. MISO and other interested parties may file initial briefs no later than 30 days after the publication of notice in the *Federal Register* of the Commission's initiation of this section 206 proceeding in Docket No. EL16-12-000. Parties also may file reply briefs in response to parties' initial briefs within 21 days after the due date of initial briefs.

37. In cases where, as here, the Commission institutes a proceeding under section 206 of the FPA, the Commission must establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of the proceeding in the

⁴⁰ *See id.* at 8.

⁴¹ MISO may continue to include the implementation details of these revisions in its Business Practice Manuals, but the overall framework must be provided in the Tariff since it significantly affects rates and services.

⁴² *See MISO I*, 138 FERC ¶ 61,233 at P 30.

Federal Register, and no later than five months subsequent to that date.⁴³ Consistent with Commission precedent,⁴⁴ we will establish a refund effective date at the earliest date allowed, i.e., the date the notice of the initiation of the proceeding in Docket No. EL16-12-000 is published in the *Federal Register*. The Commission is also required by section 206 to indicate when it expects to issue a final order. We expect to issue a final order in this proceeding within six months of receiving reply briefs, or November 30, 2016.

38. Finally, we deny Internal MISO Generation's request for interim relief, which is in essence a request for preliminary relief.⁴⁵ Based upon record evidence, we are not persuaded that an interim order is warranted.⁴⁶

The Commission orders:

(A) The complaint is hereby granted in part and denied in part, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL16-12-000, as discussed in the body of this order.

⁴³ 16 U.S.C. § 824e(b) (2012).

⁴⁴ See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

⁴⁵ *Complaint Procedures*, Order No. 602, FERC Stats. & Regs., Regulations Preambles July 1996 - December 2000 ¶ 31,071, *order on reh'g*, Order No. 602-A, FERC Stats. & Regs. ¶ 31,076 (1999), *order on reh'g*, Order No. 602-B, FERC Stats. & Regs. ¶ 31,083 (1999).

⁴⁶ See *id.* (describing limited circumstances in which Commission might issue what could be categorized as "interim" or "preliminary" order that is within the Commission's authority to grant).

(D) MISO and other interested parties may file initial briefs no later than 30 days after the publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding in Docket No. EL16-12-000. Reply briefs may be filed no later than 21 days thereafter.

(E) Any interested person desiring to be heard in Docket No. EL16-12-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2015)) within 21 days of the date of issuance of this order.

(F) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation under section 206 of the FPA of the proceeding in Docket No. EL16-12-000.

(G) The refund effective date in Docket No. EL16-12-000 established pursuant to section 206 of the FPA shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (F) above.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.