

134 FERC ¶ 61,013
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Jeffers South, LLC

v.

Docket No. EL10-86-000

Midwest Independent Transmission
System Operator, Inc.

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued January 7, 2011)

1. On September 1, 2010, Jeffers South LLC (Jeffers South) filed a complaint alleging that Midwest Independent Transmission System Operator, Inc. (Midwest ISO) has violated its obligation with respect to the study of network upgrades that are required to accommodate the interconnection of Jeffers South's project. In this order, we deny the complaint in part and establish hearing and settlement judge procedures. Further, we set a refund effective date of September 1, 2010, the date the complaint was filed.

I. Background

2. Jeffers South is a Minnesota limited liability company owned by a group of 57 local landowners and farmers and Outland Renewable Energy, LLC, a Minnesota-based firm focused on developing, owning, operating, and maintaining commercial renewable energy projects in partnership with landowners, rural communities, and municipalities.

3. In May 2005, Summit Wind LLC (Summit Wind), the predecessor in interest to Jeffers South¹ submitted an interconnection request to Midwest ISO. In its request, Summit Wind sought to interconnect its 130 megawatts (MW) wind powered generation

¹ On July 1, 2009, Summit Wind transferred all of its interests in the underlying generation project to Jeffers South.

facility² (Generating Facility) to transmission facilities that were then owned by Interstate Power and Light Company (IP&L).³

4. On September 14, 2007, following the completion of the required interconnection studies and extensive negotiations, Midwest ISO filed an unexecuted Large Generator Interconnection Agreement (LGIA) in Docket No. ER07-1375-000 among Summit Wind as interconnection customer, IP&L as transmission owner, and Midwest ISO as transmission provider. The LGIA identified network upgrades designed to provide two outlets for the Generating Facility. The LGIA provided for the upgrade of existing IP&L transmission facilities and the construction of a new Cottonwood Substation to the south of the Generating Facility in order to provide a southern outlet. The LGIA also provided for facilities to provide a northern outlet for the output of the Generating Facility. In particular, the LGIA provided for the construction of a new 161 kV line running from the Cottonwood Substation to an existing substation owned by Great River Energy (Great River) near Dotson, Minnesota (Dotson Substation). It was anticipated that this line would interconnect with a new transmission line planned by Great River, a 161 kV line running from the Dotson Substation to New Ulm, Minnesota (Dotson-New Ulm Line).

5. In addition, on December 10, 2007, Midwest ISO filed an unexecuted Facilities Construction Agreement among Summit Wind, Great River, and Midwest ISO in Docket No. ER08-320-000. The Facilities Construction Agreement provided for the construction of certain network upgrades on Great River's system to accommodate the requested interconnection of the Generating Facility. The Facilities Construction Agreement identified an upgrade to the Dotson Substation from a 69 kV substation to a 69/161 kV substation, which was allegedly necessary to accommodate a new Cottonwood County to Dotson Corner 161 kV transmission line.

6. The LGIA and Facilities Construction Agreement were filed unexecuted because Summit Wind contested its cost responsibility for the network upgrades identified in the LGIA. Specifically, Summit Wind argued that the network upgrades to the IP&L system identified by the LGIA were designed to provide general system benefits and were not required to interconnect the Generating Facility within the meaning of the "but for" standard, i.e., that the proposed network upgrades would not be needed "but for" the interconnection of the Summit Wind generating resource. Midwest ISO contended that the identified upgrades were needed not only to connect the Summit Wind facility, but also to ensure regional reliability once such facilities are connected, and that Summit

² The original interconnection application was for 150 MW. During the study process, however, Summit Wind reduced its request to 130 MW in an attempt to reduce costs.

³ On December 20, 2007, ITC Midwest acquired the transmission facilities of IP&L. *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007).

Wind had agreed to use the costs determined from the facilities study. On February 8, 2008, the Commission issued an order consolidating Docket Nos. ER07-1375-000 and ER08-320-000 and setting the LGIA and Facilities Construction Agreement for hearing and settlement judge procedures.⁴

7. On May 22, 2009, Summit Wind, ITC Midwest LLC (ITC Midwest), Great River, and Midwest ISO jointly filed a settlement agreement (Settlement Agreement) to resolve all issues in dispute in the proceeding. On August 3, 2009, the Commission issued an order approving the uncontested Settlement Agreement.⁵ Among other things, the Settlement Agreement provides that: (1) Summit Wind will be entitled to 100 percent reimbursement for the network upgrade costs it funds under the LGIA; (2) revised suspension procedures shall not be applied to the project, and Summit Wind shall be deemed to have exercised its suspension right on the dates the LGIA and Facilities Construction Agreement were filed; (3) Summit Wind shall notify ITC Midwest and Midwest ISO of its desire to end the suspension period, after which Summit Wind will update the parties on the projected in-service date and any modifications to the Generating Facility, and Midwest ISO will use the information to determine whether additional system impact and facilities studies are required for interconnection, with Summit Wind bearing the costs of any additional studies; and (4) the LGIA and Facilities Construction Agreement will be revised to reflect changes described in the Settlement Agreement, as well as any changes to the currently identified network upgrades required for interconnection.

8. Soon after the Settlement Agreement was approved, on September 18, 2009, Great River announced that it no longer intended to construct the Dotson-New Ulm Line. Following Great River's announcement, two restudies of the Generating Facility were performed by Excel Engineering, Inc., one commissioned by Midwest ISO (July 2010 Restudy) and the other commissioned by Jeffers South.

II. Complaint

9. Jeffers South explains that Great River's decision not to construct the Dotson-New Ulm Line prompted restudy of the Generating Facility.⁶ Jeffers South states that the study that it commissioned to evaluate upgrades that do not involve the construction of the Dotson-New Ulm Line identified a number of alternative options costing approximately \$14 million or less that could be used to accommodate the interconnection of the Generating Facility.⁷ Jeffers South explains that the

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,113 (2008).

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,121 (2009).

⁶ Complaint at 10.

⁷ *Id.*

July 2010 Restudy, however, retains the previous two-outlet interconnection plan and assigns the costs of the Dotson-New Ulm Line (approximately \$43 million) to Jeffers South, raising Jeffers South's total cost responsibility for network upgrades to approximately \$81 million (July 2010 Restudy).⁸

10. Jeffers South states that Midwest ISO has requested that Jeffers South provide additional funding by September 1, 2010, to support the completion of facility studies by ITC Midwest and Great River based on the network upgrades identified in the July 2010 Restudy. Jeffers South explains that, rather than provide the additional funds, Jeffers South has elected to file the instant complaint for the reasons discussed below.⁹

11. Jeffers South argues that Midwest ISO violated its obligation under the "but for" standard as interpreted by *Community Wind*¹⁰ to identify and quantify the least-cost option when determining what network upgrades are required to interconnect the Generating Facility. According to Jeffers South, Midwest ISO is not necessarily required to select the least-cost option when determining what network upgrades should be constructed to accommodate a requested interconnection, but the least-cost option must nevertheless be identified and quantified during the study process in order to establish the maximum amount of costs that may be allocated to the interconnection customer.¹¹ Jeffers South maintains that the fact that the July 2010 Restudy considered a one-outlet plan that would eliminate the need for the Dotson-New Ulm line by eliminating the northern outlet (Option Three), which would cost approximately \$20 million, demonstrates that the option selected by Midwest ISO does not represent the least-cost option available.¹²

12. Jeffers South explains that while Midwest ISO rejected Option Three on the basis that it would constitute a material modification and would aggravate an existing stability constraint, Option Three would not be a material modification because material

⁸ *Id.* at 10-11. Jeffers South states that it executed a restudy agreement with Midwest ISO on October 19, 2009. Jeffers South argues that while the restudy agreement clearly stated that the July 2010 Restudy would determine the extent of any network upgrades required to interconnect the Generating Facility, Midwest ISO directed a broader study despite the fact that Great River had clearly stated that the entire basis for the original improvements no longer existed. *Id.* at 10 n.22.

⁹ *Id.* at 11.

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2009) (*Community Wind I*), order on reh'g, 131 FERC ¶ 61,165 (*Community Wind II*), order on reh'g, 133 FERC ¶ 61,011 (2010) (together, *Community Wind*).

¹¹ *Id.* at 12-15 (citing *Community Wind I*, 129 FERC ¶ 61,019; *Community Wind II*, 131 FERC ¶ 61,165).

¹² *Id.* at 16-17.

modifications involve modifications to information provided by generators in their interconnection requests and not a change to the configuration of network upgrades.¹³ Jeffers South further contends that the July 2010 Restudy neither provides clear evidence of the nature of the existing stability constraint nor quantifies the degree to which that constraint would be aggravated by Option Three.¹⁴ Jeffers South argues that even if such a constraint exists, the July 2010 Restudy suggests that the constraint could be resolved by the installation of capacitor banks at a cost of less than \$2 million.¹⁵

13. Jeffers South explains that while it would normally wait until the completion of the facilities studies and until the submission of draft interconnection and facility construction agreements before seeking Commission review, it has elected to file its complaint now in light of the amount of time that has already passed since the interconnection request was first made, Midwest ISO's unwillingness to reconsider the scope of the restudy, and Midwest ISO's request for additional funds to cover the cost of facility studies.¹⁶ Jeffers South states that it filed the complaint because it believes that timely Commission guidance would help define the scope of Midwest ISO's restudy process and enable deficiencies in the restudy report to be cured on a timely basis. According to Jeffers South, absent such guidance, the scope of Midwest ISO's restudy will violate Commission policy and ultimately require another restudy, consuming more time and further jeopardizing Jeffers South's ability to bring its project to fruition.¹⁷

14. Accordingly, Jeffers South asks that the Commission issue an order by December 1, 2010, or as soon as possible thereafter, providing guidance regarding the scope of the restudy process that Midwest ISO must follow in this instance. Jeffers South argues that the Commission should find that Midwest ISO's restudy process violates the "but for" standard reflected in Midwest ISO's Tariff as interpreted in *Community Wind* to the extent that the restudy process does not identify and quantify the "least-cost option" with respect to the network upgrades that are required to accommodate the requested interconnection. Jeffers South requests that the Commission direct Midwest ISO to waive any additional costs that might otherwise be charged to Jeffers South for the completion of the restudy. Jeffers South notes that it would be inappropriate to require it

¹³ *Id.* at 17-18 (citing Midwest Indep. Transmission Sys. Operator, Inc. Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fourth Revised Volume No. 1, Attachment X §§ 1, 4.4 (Tariff)).

¹⁴ *Id.* at 18.

¹⁵ *Id.* at 19. Jeffers South notes that it is not arguing that Option Three is necessarily the least-cost option available and that it has identified several even lower cost options. *Id.* at 19 n.44.

¹⁶ *Id.* at 20.

¹⁷ *Id.*

to pay for a restudy that is only necessary due to Midwest ISO's failure to complete the restudy appropriately the first time.¹⁸

III. Notice of Filing and Responsive Pleadings

15. Notice of the complaint was published in the *Federal Register*, 75 Fed. Reg. 55,323 (2010), with answers, interventions, and protests due on or before September 21, 2010.

16. On September 21, 2010, Midwest ISO filed an answer to the complaint and ITC Midwest LLC, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. filed timely motions to intervene.

17. On October 6, 2010, Jeffers South filed an answer to Midwest ISO's answer. On October 21, 2010, Midwest ISO filed an answer to Jeffers South's answer.

18. On October 26, 2010, Edison Mission Energy (Edison) filed a motion to intervene out-of-time. On November 8, 2010, Jeffers South filed an answer opposing Edison's motion to intervene out-of-time. On November 12, 2010, Edison filed an answer to Jeffers South's answer opposing Edison's motion to intervene out-of-time. On November 29, 2010, Jeffers South filed an answer opposing Edison's answer.

IV. Midwest ISO's Answer to the Complaint

19. Midwest ISO states that it has labored to accommodate Jeffers South's many revisions to its project as permitted under its generator interconnection procedures and the Settlement Agreement. Midwest ISO argues that the history of this project shows that Midwest ISO identified a least-cost alternative back in 2006. According to Midwest ISO, after the initial System Impact Study results were provided to Summit Wind, a planning level estimate of approximately \$39 million, which included the generator's interconnection costs and other network upgrade costs for the southern outlet, was provided to the interconnection customer. Midwest ISO states that the interconnection customer then requested that Midwest ISO reevaluate the results of the study based on recommendations provided to it by its consultants, Excel Engineering.¹⁹ Midwest ISO states that these alternatives were discussed with the affected transmission owners and it was ultimately concluded that the most desirable plan would be to build a northern outlet consisting of a transmission connection north of Storden 161 kV as well. Midwest ISO states that the estimate for this revised plan was approximately \$26 million and that the facility study for this option provided a more accurate estimate of \$37 million. Thus, Midwest ISO maintains that it provided Summit Wind with two alternatives (\$39 million or \$37 million) and that the least cost option available at that time was selected.

¹⁸ *Id.* at 21.

¹⁹ Midwest ISO Answer at 7-8, 10, Ex. 1, Ex. 2.

Midwest ISO explains that this option was eventually incorporated into the unexecuted LGIA and Facilities Construction Agreement and is the same option recommended by the July 2010 Restudy.²⁰

20. Midwest ISO argues that the July 2010 Restudy was conducted in accordance with standard practice under the Tariff and the Settlement Agreement and that Jeffers South's allegations simply reflect its discontent with the high cost of upgrades.²¹ Midwest ISO states that while Jeffers South contests the outcome of the July 2010 Restudy and has provided its own alternative study, neither Jeffers South's proposed alternative nor the fact that the cost responsibility of Jeffers South has increased from prior studies demonstrates that Midwest ISO's study was unjust or unreasonable.²² Midwest ISO asserts that the complaint provides an instructive example of the fact that interconnection customers have an incentive to propose upgrades based on unrealistic assumptions that favor a specific project. Midwest ISO states that the processing of interconnection requests would slow to a crawl if alternative studies were prepared in anticipation of litigation any time expensive upgrades are anticipated.²³ Midwest ISO states that Order No. 2003-A²⁴ clarified that an interconnection customer is responsible for funding the cost of all network upgrades (other than those already in the Transmission Provider's *current* expansion plan) that must be constructed to support the in-service date of the customer.²⁵ Midwest ISO maintains that in this case the upgrades that Great River had planned were listed as contingent facilities for Jeffers South and that the obligation to fund these upgrades falls to Jeffers South because they are no longer part of Great River's transmission plan.²⁶

²⁰ *Id.* at 10.

²¹ *Id.* at 12-13.

²² *Id.*

²³ *Id.* at 23-25.

²⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *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).

²⁵ *Id.* at 17 (citing Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 320).

²⁶ *Id.* at 17-18 (citing LGIA at Original Sheet No. 107). However, Midwest ISO also states that the upgrades on the system of Great River that were part of the overall coordinated plan "could have been shown as contingent facilities but were not" because they were to be built coincident with the network upgrades on the ITC Midwest system. Thus, Midwest ISO states that it was known that the upgrades to Great River's system were required for the coordinated interconnection of the Generating Facility and for the
(continued...)

21. Midwest ISO states that the costs for Jeffers South's project have increased due to the actions of Jeffers South and Summit Wind. Midwest ISO states that ultimately Jeffers South bears the risks associated with suspending its project, which, in this case, includes the fact that Great River has decided not to fund the Dotson-New Ulm Line. According to Midwest ISO, the study process cannot protect Jeffers South from all business risk and must consider conditions as they exist. Midwest ISO notes that in Order No. 2003 the Commission recognized that the cost estimates included within a generator interconnection agreement should be maximum cost estimates based on known contingencies.²⁷

22. Midwest ISO states that while it is possible that changes to the configuration of the Generating Facility would result in fewer upgrades and costs, including the alternative configuration rejected by Summit Wind in 2006, adopting these changes would constitute a material modification under the Tariff to the extent that they would shift approximately \$40 million in upgrade costs to lower-queued projects. Midwest ISO states that Jeffers South should not be permitted to use its decision to come out of suspension to re-litigate the upgrades associated with its project to the detriment of lower-queued projects.²⁸

23. Midwest ISO claims that Jeffers South's assertion that the July 2010 Restudy was too broad is incorrect and states that the scope of the study was based on the preliminary results from the Jeffers South commissioned restudy, which identified several options, including the operation of the Storden-Heron Line at 115 kV (rather than 161 kV) and the construction of a new 69 kV or 115 kV line. Midwest ISO explains that it ultimately rejected these options for valid reasons, including the fact that the proposed 69 kV interconnection required a tripping system that is inconsistent with ITC Midwest's policies and that changing the voltage of the Storden-Heron Line constituted a material modification. Midwest ISO also states that it considered the upgrades used for the LGIA and the Facilities Construction Agreement despite the fact that Great River had announced that it would no longer fund some of these upgrades.²⁹

operation of the transmission systems of ITC Midwest and Great River in that area. *Id.* at 18 n.32.

²⁷ *Id.* at 13-14 (*Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 736 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171, *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190, *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277).

²⁸ *Id.* at 15-16.

²⁹ *Id.* at 19-20.

24. Midwest ISO claims that Jeffers South confuses the facts here on several points. Midwest ISO states that, as an initial matter, the July 2010 Restudy was conducted because Jeffers South provided notice ending its suspension and was not prompted by Great River's determination not to fund certain upgrades. Midwest ISO states that the upgrades on Great River's system were appropriately considered in the earlier study for Jeffers South because the Dotson-New Ulm line had been included in Appendix A of the Midwest Transmission Expansion Plan and such facilities must be included in the base case for all studies under Midwest ISO's procedures for interconnection studies. According to Midwest ISO, failing to include the Dotson-New Ulm line in the July 2010 Restudy would amount to a material modification.³⁰ Midwest ISO maintains that Jeffers South is also incorrect in asserting that the Settlement Agreement required Midwest ISO to accept any modifications proposed by Jeffers South. Midwest ISO states that nothing in the restudy agreement or the Settlement Agreement limits the upgrades that can be considered as part of the restudy or supports the least-cost requirement proposed by Jeffers South.

25. Midwest ISO argues that Jeffers South's proposed alternatives are inconsistent with the Tariff and good utility practice. Midwest ISO explains that Jeffers South's proposed alternatives are material modifications, as Midwest ISO has determined that at least one lower-queued project, G769, would be directly impacted by the changes proposed by Jeffers South and that it appears that modifications to the upgrades needed for Jeffers South may also impact projects in the Group 5 Study Group.³¹ Midwest ISO claims that Jeffers South's reference to the use of "material modification" in the definition of interconnection request is misleading. Midwest ISO contends that it is clear that a material modification may involve other types of changes that impact lower-queued projects when the definitions of "interconnection request" and "material modification" are examined in their entirety.³² Midwest ISO further states that adopting Jeffers South's interpretation of the Tariff would mean that modifications to the configuration of a generating facility and associated network upgrades could be made after the completion of interconnection studies regardless of their effect on lower-queued customers. According to Midwest ISO, any change proposed by Jeffers South may potentially be a material modification if it affects the cost or timing of lower-queued projects.³³

26. Midwest ISO argues that the "but for" standard does not impose an obligation on Midwest ISO to identify a "least-cost" option in the study process for Jeffers South.

³⁰ *Id.* at 20.

³¹ *Id.* at 25-26 (citing System Impact Study for Generation Interconnection Midwest ISO Projects: Minnesota DPP Cycle 3 (July 2009) Group Out-Year Thermal Analysis, at 7, 24-25 (Mar. 26, 2010)).

³² *Id.* at 26-27.

³³ *Id.* at 27-28.

Midwest ISO explains that the “but for” standard applies to the cost estimates for the upgrades determined through the study process. Midwest ISO states that the “but for” standard does not require the evaluation of every alternative configuration in order to provide each interconnection customer with a bare minimum least-cost dollar figure based on hypothetical conditions that ignore the reality of the transmission system; on the contrary, upgrades should reliably and efficiently connect a generating facility.³⁴

Midwest ISO asserts that the “but for” standard does not alter the Midwest ISO’s study methodology, but applies to the costs of upgrades that are developed from an appropriately performed study. Midwest ISO further asserts that the “but for” standard neither imposes a limit on the upgrades to be studied or built nor imposes a duty on Midwest ISO to perform additional analysis of a hypothetical least-cost minimum.³⁵

Midwest ISO argues that the Commission’s discussion of the “but for” standard in *Community Wind* does not give Jeffers South the ability to revert to the option that it initially rejected in 2006 and to shift \$40 million in costs to lower-queued generators.³⁶

27. Midwest ISO maintains that the July 2010 Restudy provides sufficient evidence that the identified upgrades are appropriate to interconnect the Generating Facility consistent with the “but for” standard. Midwest ISO notes that although Jeffers South points to two other restudies, only the July 2010 Restudy was prepared through Midwest ISO’s study process. Midwest ISO asserts that there is no evidence to demonstrate that the upgrades identified in the July 2010 Restudy are not appropriate to reliably and efficiently interconnect Jeffers South’s project. Midwest ISO states that, due to Great River’s decision not to fund certain upgrades, these upgrades would no longer be built but for the interconnection of the Generating Facility and its impact on the Great River transmission system as an Affected System.³⁷

28. Accordingly, Midwest ISO argues that Jeffers South’s proposed remedies are inappropriate and that Commission guidance on the scope of any further study is not necessary. Midwest ISO states that study-by-study evaluation by the Commission would result in a miniature rate case for every interconnection. Midwest ISO further states that identifying what Jeffers South characterizes at this time as a “least cost” option without regard for the effect on lower-queued projects would permit a material modification. Midwest ISO also claims that the Commission should reject Jeffers South’s attempt to insulate itself from the costs of any further restudies. Midwest ISO notes that the Commission rejected a similar request in *Community Wind II*. Midwest ISO states that a facilities study is necessary and that Jeffers South’s request is contrary to the terms of the Settlement Agreement. Midwest ISO states that in this case Jeffers South is challenging

³⁴ *Id.* at 30-31 (citing *Community Wind II*, 131 FERC ¶ 61,165 at P 21 & n.30).

³⁵ *Id.* at 31.

³⁶ *Id.* at 29-30.

³⁷ *Id.* at 32-33.

the results of a system impact restudy prior to even having funded a facilities study, which will be used to make cost estimates for the facilities.³⁸

29. Finally, Midwest ISO states that if no funds for the facilities study are received by September 30, Midwest ISO will consider Jeffers South's project to be in suspension. Midwest ISO notes that Jeffers South has approximately one year of suspension time remaining.³⁹

V. Discussion

A. Procedural Matters

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

31. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant Edison's late-filed motion to intervene given the early stage of this proceeding, its interest in the proceeding and the absence of undue prejudice or delay.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers of Jeffers South, Midwest ISO, and Edison and will, therefore, reject them.

B. Substantive Matters

33. As an initial matter, we find that Jeffers South's reliance on our decision in *Community Wind* is misplaced. Jeffers South argues that the Commission's decision in *Community Wind* requires Midwest ISO to identify and quantify the least-cost option during the study process. We disagree. In *Community Wind II*, the Commission clarified that, in the context of Midwest ISO's Tariff, the "but for" standard is a cost allocation principle that limits the cost responsibility of an interconnection customer or a group of interconnection customers to the cost of the upgrades that would not be necessary but for the interconnection of the customer or reasonably constituted group of customers.⁴⁰

However, the Commission never stated that Midwest ISO was required to identify and quantify the least-cost option during the study process. In fact, to the extent that the Commission discussed the study process at all, the Commission recognized that the Tariff

³⁸ *Id.* at 35-36.

³⁹ *Id.* at 36.

⁴⁰ *Community Wind II*, 131 FERC ¶ 61,165 at P 20.

affords Midwest ISO discretion when determining what facilities should be built in order to accommodate the interconnection of a project or group of projects. Specifically, the Commission noted that Midwest ISO's generator interconnection procedures recognize that Midwest ISO should use its study process to identify network upgrades that both ensure that an interconnection customer or group of interconnection customers can reliably connect to the transmission system and ensure that the network upgrades chosen promote efficiency.⁴¹ Accordingly, we will deny the complaint to the extent that Jeffers South argues that Midwest ISO violated the "but for" standard by failing to identify and quantify the least-cost option to interconnect Jeffers South during the study process.

34. Nevertheless, we find that Jeffers South's complaint otherwise raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. These issues include, but are not limited to, whether the July 2010 Restudy was performed in a manner consistent with the various agreements between the parties, such as the Settlement Agreement and the restudy agreement, and whether the Dotson-New Ulm Line would not be necessary but for the interconnection of the Generating Facility.⁴² Accordingly, we will set the complaint for investigation and a trial-type evidentiary hearing under section 206 of the Federal Power Act (FPA).

35. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁴³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁴⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to

⁴¹ *Id.* P 21.

⁴² *See, e.g.*, Complaint at 10 n.22, 11 n.26 (alleging that breadth of the July 2010 Restudy went beyond the scope agreed to by the parties); Midwest ISO Answer at 18.

⁴³ 18 C.F.R. § 385.603 (2010).

⁴⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

36. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b), as amended by section 1285 of the Energy Policy Act of 2005, requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,⁴⁵ we will set the refund effective at the earliest date possible, i.e., the date of the filing of the complaint, which is September 1, 2010.

37. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within nine months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by September 30, 2011. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions, or by May 31, 2012.

The Commission orders:

(A) Jeffers South's complaint is hereby denied in part, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Jeffers South's complaint (other than the matter concerning *Community Wind* as discussed in paragraph 33 of the body of this order). However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to

⁴⁵ See, e.g., *Seminole Elec. Coop., Inc. v. Florida Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.