

136 FERC ¶ 61,035
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.

Edison Mission Energy

v.

Docket No. EL11-43-000

Midwest Independent Transmission System Operator, Inc.

ORDER ON COMPLAINT

(Issued July 15, 2011)

1. On June 3, 2011, pursuant to section 206 of the Federal Power Act¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² Edison Mission Energy (Edison Mission), on behalf of the NorthStar and Pheasant Ridge wind projects (collectively, Edison Wind Projects), filed a complaint (Complaint) against Midwest Independent Transmission System Operator, Inc. (MISO). Edison Mission alleges that MISO is acting contrary to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) and the Commission's August 25, 2008 order on MISO's queue reform³ by requiring the Edison Wind Projects to meet the M3 milestone in section 8.2 of the Generator Interconnection Procedures (GIP) in Attachment X of the Tariff by June 25, 2011. Edison Mission seeks fast track processing and a finding that the M3 milestone and other queue reform procedures, except for the rules governing suspension, do not apply to the Edison Wind Projects. In this order, we grant the Complaint for the reasons discussed below.

¹ 16 U.S.C. § 824e (2006).

² 18 C.F.R. § 385.206 (2011).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183 (2008) (*Queue Reform Order*).

I. Background

2. Edison Mission is a holding company that owns, through its subsidiaries and affiliates, wind generation facilities located in the MISO balancing authority area. Edison Mission also has agreements to participate in the development of, and investment in, the Edison Wind Projects. The NorthStar project is a 200 megawatt (MW) wind project located in Emmet and Dickson Counties, Iowa. The Pheasant Ridge project is a 57 MW wind project located in Noble County, Minnesota. NorthStar and Pheasant Ridge submitted interconnection requests for their respective projects to MISO on March 24, 2006 and May 8, 2006, respectively.

3. As part of its cluster study approach to the interconnection process, MISO assigned the Edison Wind Projects to Group 5, comprising over 2,000 MW of wind generation in Southwest Minnesota, Northwest Iowa, and Eastern South Dakota (collectively, Group 5 Projects). MISO completed the System Impact Study for the Group 5 Projects on October 12, 2007 and, consequently, NorthStar and Pheasant Ridge executed Facilities Study Agreements with MISO on August 31, 2007 and September 21, 2007, respectively.

4. In an effort to reduce the backlog of pending interconnection requests, MISO proposed to revise its GIP to replace a “first-come, first-served” approach with a “first-ready, first-served” approach, which the Commission conditionally accepted to become effective August 25, 2008.⁴ Among the reforms accepted in the *Queue Reform Order*, MISO adopted three milestones: the M1 milestone to initiate an interconnection request, the M2 milestone for entry into the Definitive Planning Phase,⁵ and the M3 milestone before starting a Facilities Study, described in section 8.2 of the GIP.⁶ Of particular relevance to this proceeding, the M3 milestone requires that the interconnection customer provide one of the following to MISO in order to remain in the interconnection queue:

- (i) security reasonably acceptable to [MISO] for the greater of the cost of

⁴ *Queue Reform Order*, 124 FERC ¶ 61,183 at P 1.

⁵ The Definitive Planning Phase consists of System Planning and Analysis Review, which may be a System Impact Study or re-study, and a Facilities Study. MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 3085, Attachment X, § 8.1.

⁶ *Queue Reform Order*, 124 FERC ¶ 61,183 at P 64-66; *see also* MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3068, Attachment X, § 3.3.1; MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 3085-87, Attachment X, § 8.2.

the Network Upgrades or Interconnection Facilities, as determined in the System Planning and Analysis Review, (ii) execution of a contract for the sale of electric energy or capacity from the Generating Facility, or a statement signed by an officer or authorized agent of the Interconnection Customer attesting that the Generating Facility is included in an applicable state resource adequacy plan or other information that [MISO] deems to be reasonable evidence that the Generating Facility will qualify as a designated network resource, or (iii) demonstration that generation turbines have been ordered for the Generating Facility.⁷

5. To implement the revised GIP, MISO proposed a 60-day transition period to give projects in the queue a reasonable amount of time to meet the specified milestones and deposit requirements. MISO clarified that projects that have not started a Facilities Study will be subject to all provisions of the new interconnection procedures within 60 days, and projects that have started a Facilities Study will only be subject to the new suspension rules.⁸ The Commission further clarified in the *Queue Reform Order* that an interconnection customer that “has executed a Facility Study Agreement in accordance with the [existing generation interconnection procedures] . . . will be deemed to have started its Facilities Study and will only be subject to the new rules governing suspension.”⁹ In accordance with the *Queue Reform Order*, MISO established a Transition Plan for each project currently active in the interconnection queue.¹⁰ In particular, the Transition Plan indicated that each of the Edison Wind Projects were “[n]ot required to conform to the new process, except for revised suspension rules.”¹¹

6. Subsequent to the queue reform proceeding, MISO filed with the Commission an unexecuted Amended and Restated Generator Interconnection Agreement (Amended GIA) for another Group 5 Project, Community Wind North LLC (Community Wind North).¹² On October 9, 2009, the Commission conditionally accepted the Amended

⁷ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 3087, Attachment X, § 8.2.

⁸ *Queue Reform Order*, 124 FERC ¶ 61,183 at P 89.

⁹ *Id.* P 90.

¹⁰ Complaint, Ex. D, Midwest Independent Transmission System Operator, Inc., Generator Interconnection Planning (2008) (Transition Plan).

¹¹ *Id.* at 2-3.

¹² MISO, Amended and Restated Generator Interconnection Agreement, Docket No. ER09-1581-000 (filed on Aug. 13, 2009).

GIA but required MISO to modify the agreement to remove language relating to Community Wind North's cost responsibility for the Brookings Line—a 230-mile, 345 kilovolt transmission line—because MISO had not provided any evidence that the Brookings Line would not have been built “but for” the interconnection of Community Wind North and the other Group 5 Projects.¹³ As a result of the *Community Wind North Order*, MISO performed a new System Impact Study for the Group 5 Projects (Group 5 Re-Study), which MISO completed on May 19, 2011.

7. Based on the completion of the Group 5 Re-Study, MISO notified several of the Group 5 Projects, including the Edison Wind Projects, that they would need to enter into another Facilities Study Agreement and meet the M3 milestone within 30 days or be removed from the interconnection queue.¹⁴ Pursuant to section 3.6 of the GIP, if an interconnection customer fails to adhere to all requirements of the GIP, MISO “shall deem the Interconnection Request to be withdrawn and shall provide written notice to the Interconnection Customer of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal.”¹⁵ Upon receipt of a notice of withdrawal, the interconnection customer has 15 business days “in which to either respond with information or actions that cure the deficiency or notify [MISO] of its intent to pursue Dispute Resolution.”¹⁶ If the interconnection customer cures the deficiency within the 15-business-day period, MISO restores the interconnection customer to its queue position. However, if the interconnection customer chooses to dispute the withdrawal and loss of its queue position, then “during Dispute Resolution, the Interconnection Customer’s Interconnection Request is eliminated from the queue until such time that the outcome of Dispute Resolution would restore its Queue Position.”¹⁷

¹³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019, at P 24 (2009) (*Community Wind North Order*), *order on reh’g and compliance filing*, 131 FERC ¶ 61,165, *order on reh’g and compliance filing*, 133 FERC ¶ 61,011 (2010).

¹⁴ Complaint at 8; Iberdrola Renewables, Inc. Comments at 1-2; Minnesota Municipal Power Agency Comments at 3.

¹⁵ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3072, Attachment X, § 3.6.

¹⁶ *Id.*

¹⁷ *Id.*

II. The Complaint

8. Edison Mission alleges that MISO is acting in violation of the Tariff and the Commission's *Queue Reform Order* by insisting that the Edison Wind Projects meet the M3 milestone. Edison Mission argues that the Edison Wind Projects are exempt from meeting the M3 milestone under section 5.1.1.1 of the Tariff, which states that "[a]ll Interconnection Request for which Interconnection Facilities Study deposits have been received, including those in Generator Interconnection Agreement negotiation, will not be required to conform to the revised [GIP] as of the effective date of [s]ection 5.1, with the exception of the revised requirements in Appendix 6 to this Attachment X."¹⁸ Edison Mission states that section 5.1 became effective on August 25, 2008 pursuant to the *Queue Reform Order*.¹⁹

9. Edison Mission states that the Edison Wind Projects qualify for the exclusion under section 5.1.1.1 because both of the Edison Wind Projects executed Facilities Study Agreements nearly one year before the August 25, 2008 effective date of the revised GIP. Despite what it views as the clear language in section 5.1.1.1 of the GIP and the Commission's *Queue Reform Order*, Edison Mission states that MISO is now requiring the Edison Wind Projects to meet the M3 milestone, arguing that the Group 5 Re-Study necessitates that the Edison Wind Projects enter into new Facilities Study Agreements, which trigger the application of the M3 milestone and other queue reform procedures.²⁰

10. Edison Mission maintains that MISO's argument is contrary to the clear language of the Tariff and the Commission's *Queue Reform Order* exempting interconnection customers with Facilities Study Agreements executed prior to the August 25, 2008 deadline from the queue reform procedures.²¹ Because the Edison Wind Projects executed Facilities Study Agreements prior to this deadline, Edison Mission argues that the Tariff and the *Queue Reform Order* make clear that the Edison Wind Projects are only to be subject to the rules governing suspension and not the M3 milestone or other queue reform procedures.

¹⁸ *Id.* at First Revised Sheet No. 3078. Appendix 6 to Attachment X stipulates the rules governing suspension.

¹⁹ Complaint at 12 (citing *Queue Reform Order*, 124 FERC ¶ 61,183 at P 1).

²⁰ *Id.* 13-14.

²¹ *Id.* at 13. Edison Mission adds that MISO's insistence that the Edison Wind Projects meet the M3 milestone is contrary to MISO's own statement in the Transition Plan. *Id.*

11. Furthermore, Edison Mission argues that there is no language in either the Tariff or the *Queue Reform Order* that supports MISO's argument that the Group 5 Re-Study triggers the application of the M3 milestone to otherwise exempt projects. In fact, Edison Mission asserts, accepting MISO's argument would effectively annul the transition approach set forth in the Tariff and adopted by the Commission in the *Queue Reform Order* and would not provide the intended protection granted to late-stage interconnection projects.²²

12. Edison Mission also maintains that MISO incorrectly assumes that the Group 5 Re-Study necessitates that the Edison Wind Projects enter into new Facilities Study Agreements. Edison Mission argues that MISO has not explained why the existing Facilities Study Agreements are not sufficient to take into account the results of the Group 5 Re-Study.²³

13. Edison Mission asserts that the exemption granted to late-stage interconnection customers recognizes that these customers had relied on the existing queue procedures, and the transition procedures were intended to protect such interconnection customers from significant disruptions as a result of the queue reforms. Edison Mission argues that MISO's attempt to force the Edison Wind Projects into complying with the M3 milestone is precisely the disruption and violation of an interconnection customer's reasonable expectation that the transition approach adopted in the *Queue Reform Order* was intended to prevent. Edison Mission states that the Edison Wind Projects, in the years since the *Queue Reform Order*, have pursued development plans in reliance on the expectation that they would not be subject to the M3 milestone. Edison Mission argues that MISO's unilateral alteration of the exemption unjustly and unreasonably imposes additional costs and creates uncertainty for the Edison Wind Projects.²⁴ Edison Mission argues that

²² *Id.* at 14-15.

²³ *Id.* at 15. Edison Mission also notes that the basis for conducting the Group 5 Re-Study was due to MISO's failure to adhere to the "but for" interconnection standard set forth in its Tariff. *See Community Wind North Order*, 129 FERC ¶ 61,019 at P 24. Accordingly, Edison Mission states that the Commission should not permit MISO to use the consequence of its own failure as grounds for denying the Edison Wind Projects an exemption from the queue reform procedures they are otherwise due. Complaint at 15-16.

²⁴ Edison Mission estimates the deposit requirement in meeting the M3 milestone for both Edison Wind Projects to be \$35.46 million. *Id.* at 21.

MISO's actions are contrary to MISO's own admission that the queue reform procedures would not disrupt late-stage interconnection requests.²⁵

14. Edison Mission states that, if the Edison Wind Projects do not satisfy the M3 milestone, as demanded by MISO, MISO could remove the Edison Wind Projects from the interconnection queue shortly after the June 25, 2011 deadline established by MISO.²⁶ Due to the uncertainty surrounding removal from the interconnection queue, Edison Mission states that removal, even if temporary, can cause substantial harm to the development of the Edison Wind Projects.

15. Edison Mission requests that the Commission issue an order on an expedited basis, on or before June 24, 2011, finding that the M3 milestone and other queue reform procedures, except the rules governing suspension, do not apply to the Edison Wind Projects. In the event that the Commission is unable to render a decision on the merits of the Complaint on or before June 24, 2011, Edison Mission requests that the Commission issue a preliminary order granting waiver of the M3 milestone in section 8.2 of the GIP to the Edison Wind Projects until the Commission has an opportunity to rule on the Complaint.

III. Notice of Filing and Responsive Pleadings

16. Notice of the Complaint was published in the *Federal Register*, 76 Fed. Reg. 34,691 (2011), with interventions and protests due on or before June 17, 2011. On June 15, 2011, Duke Energy Corporation filed a motion to intervene. On June 17, 2011, the Midwest ISO Transmission Owners²⁷ filed a motion to intervene, and Iberdrola

²⁵ *Id.* at 17 (citing Queue Reform Transmittal Letter at 28; *Queue Reform Order*, 124 FERC ¶ 61,183 at P 90; *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at P 19 (2008)).

²⁶ On June 29, 2011, Edison Mission filed a letter confirming that MISO sent deficiency notices to the Edison Wind Projects on June 27, 2011 indicating that MISO had withdrawn the projects because they had failed to meet the M3 milestone.

²⁷ The Midwest ISO Transmission Owners for this filing consist of: 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; American Transmission Company LLC; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; ITC Midwest

(continued...)

Renewables, Inc. (Iberdrola) and Minnesota Municipal Power Agency (MMPA) filed motions to intervene and comments.

17. On June 10, 2011, MISO filed an answer to the Complaint. On June 16, 2011, Edison Mission filed a response to MISO's answer.

A. Comments

18. Iberdrola, on behalf of five wind projects,²⁸ submitted comments in support of the Complaint. Iberdrola states that its wind projects are similarly situated to the Edison Wind Projects and, as part of the Group 5 study cluster, it received notice from MISO that it must meet the M3 milestone and sign new Facilities Study Agreements. Iberdrola argues that MISO provides no support for its analysis that the Group 5 Re-Study triggers the application of the M3 milestone and that nothing in the Tariff supports MISO's position. Iberdrola asserts that MISO cannot read into its Tariff a limitation to a clear provision without first seeking approval from the Commission. Iberdrola agrees with Edison Mission that there is no reason why the Facilities Study Agreements previously executed by these customers cannot address the issues raised by the Group 5 Re-Study.²⁹

19. MMPA also submitted comments in support of the Complaint. MMPA is the sole owner of the Oak Glen Wind Farm, which MISO included in the Group 5 study cluster. Similar to the Edison Wind Projects, MMPA states that the Oak Glen Wind Farm executed a Facilities Study Agreement with MISO prior to August 25, 2008, and MISO is now requiring it to meet the M3 milestone and execute another Facilities Study Agreement or risk removal from the interconnection queue. MMPA requests that all

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; 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.

²⁸ The five wind projects are: Barton 1 Wind Project, Barton 2 Wind Project, Stevens County Wind Project, Buffalo Ridge 4, and Buffalo Ridge 5.

²⁹ Iberdrola Comments at 1-5.

interconnection projects in Group 5 be afforded protection from the June 25, 2011 deadline imposed by MISO.³⁰

B. MISO's Answer

20. In its answer, MISO requests that the Commission dismiss the Complaint because, according to MISO, Edison Mission fails to meet its burden to show that application of the GIP is unjust and unreasonable.

21. MISO asserts that meeting the M3 milestone demonstrates that an interconnection customer is still ready to proceed. MISO notes that the M3 milestone must be met as part of the Definitive Planning Phase before a project proceeds to a Facilities Study. MISO states that the Group 5 Re-Study triggered the need for meeting the M3 milestone in order to proceed to the Facilities Study. MISO asserts that, absent some milestone, it will not be able to implement the policies under its GIP that are meant to impose order on the queue process.³¹

22. MISO claims that it informed Edison Mission as early as April 2010 that the Edison Wind Projects would be subject to the M3 milestone.³² MISO characterizes Edison Mission's decision to wait until June 3, 2011 to file its Complaint as a "delaying tactic" contrary to the goals of the revised GIP, namely, to alleviate the queue backlog and to transition to a "first ready, first served" study methodology. MISO notes that the Commission, in the *Queue Reform Order*, expressly referenced the System Impact Study for the Group 5 Projects and did not agree with comments requesting that these projects be grandfathered to avoid the new milestones.³³ Because the Commission accepted the transition provisions without including any grandfathering language for the Group 5 projects, MISO argues that the logical interpretation is that the Commission considered and rejected these arguments at that time. Moreover, MISO contends that the Commission found that the M3 milestone in section 8.2 of the revised GIP struck the appropriate balance between discouraging speculative projects and permitting projects ready to proceed to do so.³⁴

³⁰ MMPA Comments at 2-4.

³¹ MISO Answer at 3-4 & n.6.

³² *Id.* at 6; *see also* MISO Answer, Ex. 1 (containing emails sent by MISO to Edison Mission regarding the negotiation of GIAs for its projects, which ceased due to the Group 5 Re-Study).

³³ *Id.* at 8 (citing *Queue Reform Order*, 124 FERC ¶ 61,183 at P 86).

³⁴ *Id.*

23. MISO argues that Edison Mission inappropriately reads section 5.1.1.1 as affording the Edison Wind Projects a permanent exemption from the revised GIP. MISO explains that section 5.1.1.1 describes one of four transitional categories that delineated pending interconnection requests based on their status at the time the revised GIP went into effect. MISO contends that section 5.1.1.1 only exempted the Edison Wind Projects from meeting further GIP requirements at that time. MISO points to section 5.1.2 of the revised GIP—which calls for pending interconnection requests to transition to the new procedures within 60 calendar days—as supporting its position that section 5.1.1.1 only afforded the Edison Wind Projects a temporary exemption.³⁵

24. Moreover, MISO argues that interpreting section 5.1.1.1 as not containing a permanent exemption for the Edison Wind Projects is consistent with Order No. 2003's transition process.³⁶ MISO states that, in Order No. 2003, the Commission specifically gave projects with interconnection study agreements a choice to proceed under the old or new interconnection study procedures, whereas MISO's revised GIP does not provide a choice.³⁷ Additionally, MISO argues that the Commission further explained in Order No. 2003-A that an interconnection customer should not be forced to complete its remaining interconnection studies under the old interconnection procedures.³⁸ MISO asserts that it is clear that the Commission intended to transition pending interconnection requests into the new procedures rather than grandfather them under old study procedures.³⁹

25. MISO further notes that, based on Edison Mission's reasoning, some Group 5 interconnection customers would be required to meet the M3 milestone while others would not. MISO maintains that grandfathering projects in this manner “can create the

³⁵ *Id.* at 12 (citing MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3079, Attachment X, § 5.1.2).

³⁶ *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (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 (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).

³⁷ MISO Answer at 10 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 186).

³⁸ *Id.* at 11 (citing Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 140).

³⁹ *Id.* at 10-12.

opportunity for ‘undue discrimination and discourage expeditious development of new generation.’”⁴⁰ MISO states that every project in the Group 5 Re-Study is responsible for at least one new upgrade, and it is requiring all Group 5 interconnection customers to execute new Facilities Study Agreements and meet the M3 milestone.

26. Alternatively, if the Commission does not agree that the section 5.1.1.1 exemption is temporary, MISO asserts that the completion of the Group 5 Re-Study has positioned Group 5 projects in the transition category described in section 5.1.1.4 of the revised GIP. Therefore, MISO argues, these projects must conform to the requirements of section 8.2 prior to commencement of the Facilities Study.⁴¹

27. With respect to Edison Mission’s comments regarding the Transition Plan prepared by MISO following the *Queue Reform Order*, MISO states this document merely reiterates and applies, in tabular form, the language in section 5.1 of the revised GIP. MISO notes that page one of the Transition Plan plainly states that there is a 60-day transition period in section 5.1.2 of the GIP. MISO argues that it is clear from this text and the August 27, 2008 date on the table that this document was meant as a reference guide for the implementation of the revised GIP and not as an indicator of a permanent “grandfathering” exemption. MISO asserts that the Commission should not provide any exemption for the Edison Wind Projects based on this Transition Plan.⁴²

28. Finally, MISO argues that it would be illogical for the Group 5 Re-Study to be conducted under a pre-GIP, pre-*Queue Reform Order* process only for the Edison Wind Projects. The Group 5 Re-Study was needed in part due to the withdrawal of higher queued projects and the directive in the *Community Wind North Order*. MISO states that a new Facilities Study Agreement is needed because of the changed circumstances that have transpired since Edison Mission executed the original Facilities Study Agreements for the Edison Wind Projects. MISO claims that proper evaluation of these altered circumstances requires the use of new Facilities Study Agreements under the revised GIP.⁴³

⁴⁰ *Id.* at 12 (quoting Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 140).

⁴¹ *Id.* at 13.

⁴² *Id.* at 14-15 (citing Complaint, Ex. D).

⁴³ *Id.* at 16.

C. Edison Mission's Response

29. In its response, Edison Mission clarifies that the Complaint does not attack the terms of the Tariff but challenges MISO's failure to follow its Tariff and the Commission's *Queue Reform Order*. Edison Mission alleges that MISO presents in its answer a series of contrived and illogical Tariff interpretations that are inconsistent with not only the unambiguous terms of the Tariff and *Queue Reform Order* but also MISO's own guidance to interconnection customers in the Transition Plan.⁴⁴

30. Edison Mission states that, pursuant to the filed rate doctrine, MISO "can claim no rate as a legal right that is other than the filed rate"⁴⁵ and may not "charge rates for its services other than those properly filed"⁴⁶ with the Commission. Edison Mission asserts that section 5.1.1.1 applies to all interconnection requests for which Facilities Study deposits had been received as of the effective date of the revised GIP and exempts these requests from the new procedures, except for the new suspension provisions. Thus, Edison Mission argues, MISO's contention that the Edison Wind Projects must meet the M3 milestone is in contravention of the terms of the Tariff and the Commission's *Queue Reform Order* and is therefore in violation of the filed rate doctrine.⁴⁷

31. With regard to MISO's assertion that section 5.1.1.1 only provided a temporary, 60-day exemption for late-stage interconnection customers, as provided under section 5.1.2 of the revised GIP,⁴⁸ Edison Mission argues that the 60-day transition period in section 5.1.2 does not apply because section 5.1.2, on its own terms, must be read "in accordance with section 5.1.1."⁴⁹ Edison Mission states that while two of the four interconnection request categories in section 5.1.1—sections 5.1.1.2 and 5.1.1.3—explicitly reference the 60-day transition period,⁵⁰ the 60-day transition period is

⁴⁴ Edison Mission Answer at 3.

⁴⁵ *Id.* at 4 (quoting *Montana-Dakota Utils. Co. v. North-Western Pub. Serv. Co.*, 341 U.S. 246, 251 (1951)).

⁴⁶ *Id.* (quoting *Ark. Lo. Gas. Co. v. Hall*, 453 U.S. 571, 577 (1981)).

⁴⁷ *Id.* at 4-5.

⁴⁸ *Id.* at 6 (citing MISO Answer at 9-13).

⁴⁹ *Id.* (quoting MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3079, Attachment X, § 5.1.2).

⁵⁰ *Id.* at 7 (citing MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3078, Attachment X, §§ 5.1.1.2, 5.1.1.3).

conspicuously absent from section 5.1.1.1. Edison Mission contends that if MISO had intended to impose the 60-day transition period on the section 5.1.1.1 exemption, it would have explicitly done so, as it did in sections 5.1.1.2 and 5.1.1.3. Moreover, Edison argues, MISO never proposed that the 60-day transition period applied to projects that had commenced the Facilities Study process.⁵¹

32. Edison Mission also takes issue with MISO's assertion that, due to the Group 5 Re-Study, the Edison Wind Projects fall into the fourth category of interconnection requests, as detailed in section 5.1.1.4 of the GIP, and therefore must conform to section 8.2 of the GIP prior to the commencement of the Facilities Study. Edison Mission notes that MISO admitted that the four categories in section 5.1.1 were meant to divide interconnection requests into groups based on their status "at the time the GIP was implemented."⁵² Thus, Edison Mission argues, the subsequent Group 5 Re-Study should not reset the clock for section 5.1.1. Edison Mission contends that, if re-studies trigger the application of the revised GIP to interconnection requests previously exempted by section 5.1.1.1, as suggested by MISO, then section 5.1.1.1 has no meaning or applicability separate from section 5.1.1.4.⁵³

33. Edison Mission also argues that MISO's current interpretation of its transition process is inconsistent with the interpretation it communicated to its interconnection customers immediately following the *Queue Reform Order* in the Transition Plan, which lists both of the Edison Wind Projects as "[n]ot required to conform to the new process, except for revised suspension rules."⁵⁴ Edison Mission points out that the Transition Plan does not specifically reference section 5.1.2 of the revised GIP and states generally that "[c]ustomers have 60 calendar days from the effective date of the order to conform to the new procedures."⁵⁵ Edison Mission claims that MISO's current interpretation goes against the long-held expectations it had regarding the transition process, as originally communicated by MISO in the Transition Plan.⁵⁶

⁵¹ *Id.* (citing MISO, Filing, Docket No. ER08-1169-000, at 28 (filed June 26, 2008); *Queue Reform Order*, 124 FERC ¶ 61,183 at P 89).

⁵² *Id.* at 8 (quoting MISO Answer at 9).

⁵³ *Id.* at 9.

⁵⁴ *Id.* at 10 (citing Complaint, Ex. D at 2-3).

⁵⁵ *Id.* (citing Complaint, Ex. D at 1).

⁵⁶ *Id.* Edison Mission also takes issue with MISO's assertion that it had communicated to Edison Mission as early as April 2010 that the Edison Wind Projects would be subject to the M3 milestone. *Id.* at 10 n.37 (citing MISO Answer at 6). Edison

34. Finally, Edison Mission argues that MISO, in its answer, has not demonstrated why a new Facilities Study Agreement is necessary or why the existing Facilities Study Agreements are not sufficient to reflect the results of the Group 5 Re-Study. Edison Mission notes that MISO, in its queue reform filing, deleted language in sections 7.6 and 8.5 of its old interconnection procedures requiring study agreements for re-studies and revised section 11.3.2 of the GIA to specify that re-study agreements would not be required to conduct re-studies before the execution of a GIA.⁵⁷

IV. Discussion

A. Procedural Matters

35. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

36. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to an answer, unless otherwise ordered by the decisional authority. We will accept Edison Mission's response to MISO's answer because it provided information that assisted us in our decision-making process.

B. Substantive Matters

37. We find that the M3 milestone and other queue reform procedures, except the rules governing suspension, do not apply to the Edison Wind Projects and, therefore, grant Edison Mission's Complaint and the relief requested. Furthermore, we find MISO's position that the Group 5 Re-Study triggered the need to execute another Facilities Study Agreement is unsupported.⁵⁸

claims these emails are not applicable to its Complaint because the emails deal with milestone requirements in section 11.3 of the revised GIP that interconnection customers must meet following the execution of a GIA. Edison Mission clarifies that its Complaint challenges the applicability of the milestones in section 8.2 of the revised GIP and not the milestones in section 11.3. *Id.*

⁵⁷ *Id.* at 11.

⁵⁸ Given the withdrawal notice issued by MISO to the Edison Wind Projects on June 27, 2011, we are acting within the 15-business-day cure period specified in section 3.6 of the GIP in order to provide certainty to affected interconnection customers and to prevent disruption of the interconnection study process.

38. As noted by both MISO and Edison Mission, section 5.1.1 of the GIP divides interconnection requests into four categories based on their status at the time the revised GIP became effective. The first category, under section 5.1.1.1 (and as clarified in the *Queue Reform Order*), applies to interconnection requests for which a Facilities Study Agreement had been executed at the time the revised GIP became effective.⁵⁹ These interconnection requests were exempt from the revised GIP provisions, except for the new suspension provisions.⁶⁰ The second category, under section 5.1.1.2, applies to interconnection requests for which a System Impact Study Agreement had not yet been executed at the time the revised GIP went into effect. These interconnection requests were required to transition to the revised GIP provisions in 60 calendar days.⁶¹ The third category, under section 5.1.1.3, applies to interconnection requests for which a System

⁵⁹ See *Queue Reform Order*, 124 FERC ¶ 61,183 at P 90. The Commission found that signing a Facilities Study Agreement was an appropriate milestone to distinguish between early- and late-stage interconnection requests.

⁶⁰ Section 5.1.1.1 of the GIP reads:

All Interconnection Requests for which Interconnection Facilities Study deposits have been received, including those in Generator Interconnection Agreement negotiation, will not be required to conform to the revised [GIP] as of the effective date of [s]ection 5.1, with the exception of the revised requirements identified in Appendix 6 to this Attachment X. Interconnection Requests meeting these criteria may suspend performance under the Generator Interconnection Agreement for any reason for a period ending six months after the effective date of this [s]ection 5.1, after which all terms of Article 5.16 of the Generator Interconnection Agreement shall apply.

MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3079.

⁶¹ Section 5.1.1.2 of the GIP reads:

All Interconnection Requests that have not yet executed Interconnection System Impact Study agreements will be required to conform to the revised [GIP]. Within sixty (60) Calendar Days as of the effective date of [s]ection 5.1. Interconnection Customers subject to the revised [GIP] shall revise the previously submitted Interconnection Request to conform with all deposit and data required in [s]ection 3.1.1 of this GIP.

Id.

Impact Study Agreement had been executed but a System Impact Study was only partially completed at the time the revised GIP became effective. These interconnection requests were required to transition to the revised GIP provisions in 60 calendar days.⁶² The fourth category, under section 5.1.1.4, applies to all other interconnection requests for which a System Impact Study Agreement had been executed at the time the revised GIP went into effect. Interconnection requests falling under the fourth category were required to conform to the requirements of section 8.2 in the GIP, including the M3 milestone, prior to commencement of the Facilities Study.⁶³

39. Based on the terms of the Tariff, we find that the interconnection requests for the Edison Wind Projects fall within section 5.1.1.1 of the GIP and are entitled to an exemption. The Edison Wind Projects entered into Facilities Study Agreements with MISO nearly one year before the effective date of the revised GIP. The *Queue Reform Order* established that interconnection projects such as the Edison Wind Projects would only be subject to the new rules governing suspension. Therefore, with the exception of the rules governing suspension, the interconnection requests for the Edison Wind Projects are exempt from meeting the M3 milestone and other queue reform procedures.

40. We disagree with MISO's contention that section 5.1.1.1 only afforded interconnection requests meeting the criteria of this section a temporary exemption from

⁶² Section 5.1.1.3 of the GIP reads:

All Interconnection Requests that have an executed Interconnection System Impact Study agreement and where constraints have been identified through the stability and first contingency analysis work in the Interconnection System Impact Study, but have not yet completed the identification of transmission to mitigate those constraints as of the effective date of this [s]ection 5.1 will be required to conform to the revised [GIP] within sixty (60) Calendar Days of the effective date of [s]ection 5.1, including the execution of an Interconnection Feasibility Study under the revised [GIP]. This application of the GIP requires updating the previously submitted Interconnection Request to conform with all deposit and date required in [s]ection 3.3.1 of this GIP.

Id.

⁶³ Section 5.1.1.4 of the GIP reads: "All other Interconnection Requests that have executed Interconnection System Impact Study agreements will be required to conform to the requirements of [s]ection 8.2 prior to commencement of the Interconnection Facilities Study." *Id.* at First Revised Sheet No. 3079.

the queue reform procedures. Nothing in section 5.1.1.1 suggests that the exemption is temporary. Unlike the second and third categories in section 5.1.1 that explicitly reference a 60-day transition period; the first category is silent on any such transition period. We find this silence in section 5.1.1.1 to mean that no such 60-day transition period applies to the first category of interconnection requests.

41. Furthermore, we are not persuaded by MISO's argument that the 60-day transition period in section 5.1.2 makes the exemption in section 5.1.1.1 temporary. While section 5.1.2 of the GIP specifies that outstanding interconnection requests must transition to the GIP within 60 calendar days, section 5.1.2 also indicates that this transition must be read "in accordance with [s]ection 5.1.1 of this GIP."⁶⁴ Because section 5.1.1.1 does not provide for a 60-day transition period, we find that the 60-day transition period set forth in section 5.1.2 is not applicable to interconnection requests covered by section 5.1.1.1.⁶⁵

42. Moreover, we find MISO's position that the Group 5 Re-Study placed the Group 5 projects in the fourth transition category in section 5.1.1, and thus triggering the application of the M3 milestone and the need to execute another Facilities Study Agreement, is unsupported. The Tariff does not specify that interconnection requests under the first category would shift to the fourth category upon MISO completing a re-study of a System Impact Study, as suggested by MISO. Rather, determining the applicable category for an interconnection request is based on the status of the request *at the time* the revised GIP became effective. Therefore, switching interconnection requests to different categories based on a re-study conducted after the implementation of the GIP

⁶⁴ *Id.* Section 5.1.2 states, in part:

To the extent necessary, and in accordance with Section 5.1.1 of this GIP, the Transmission Provider and Interconnection Customers with an outstanding request (i.e., an Interconnection Request for which a GIA has not been submitted to the Commission for approval as of the effective date of the GIP) shall transition to the GIP within a reasonable period of time not to exceed sixty (60) Calendar Days.

Id.

⁶⁵ The 60-day transition period set forth in section 5.1.2 was used to allow those interconnection customers subject to new procedures time to meet new milestone requirements (e.g., post security) or withdraw their requests from the interconnection queue. For the second and third transitional categories in section 5.1.1 of the GIP, application of the transition period is appropriate because interconnection requests in these categories are subject to new procedures.

is inconsistent with the terms of the Tariff. Moreover, if re-studies trigger the application of the revised GIP provisions to interconnection requests previously exempted under section 5.1.1.1, we agree with Edison Mission that section 5.1.1.1 would have no meaning or applicability separate from section 5.1.1.4 and would undermine the protections granted to late-stage interconnection requests approved by the Commission in the *Queue Reform Order*. If an interconnection customer, upon re-study of its request, must re-execute an agreement it has previously executed, then the GIP should explicitly state this as a requirement; but as of this moment it does not.⁶⁶

43. MISO also asserts that the precedent set under Order No. 2003's transition process supports its position that the exemption in section 5.1.1.1 was meant to be a temporary exemption.⁶⁷ We disagree. The transition provisions in Order No. 2003 and the MISO queue reform proceeding address two different transition processes and were tailored specifically for those situations. If MISO envisioned a transition process similar to the one used in Order No. 2003 and intended only a temporary exemption for interconnection requests in the first category, it should have explicitly stated in section 5.1.1.1 that those interconnection requests would have to transition to the revised GIP in 60 days, as it did in sections 5.1.1.2 and 5.1.1.3.

44. We reject MISO's assertion that it would be unduly discriminatory to require some Group 5 interconnection customers to meet the M3 milestone while others would not.⁶⁸ In the *Queue Reform Order*, the Commission clarified that the execution of a Facilities Study Agreement was an appropriate milestone to distinguish between early- and late-stage interconnection requests.⁶⁹ Thus, those interconnection customers who had executed a Facilities Study Agreement by the time the revised GIP became effective were deemed to be late-stage interconnection requests and were afforded the exemption in section 5.1.1.1. We do not find it unduly discriminatory to treat interconnection requests that did not fall within the section 5.1.1.1 exemption differently, because those interconnection requests were not similarly-situated at the time the revised GIP became effective. We also note that MISO did not use membership in a specific study cluster as a distinction between early- and late-stage interconnection requests in its transition design.

⁶⁶ We also agree with Edison Mission and Iberdrola that MISO has not explained why the Facilities Study Agreements previously executed by these customers cannot address the issues raised by the Group 5 Re-Study.

⁶⁷ MISO Answer at 10-11.

⁶⁸ MISO Answer at 12.

⁶⁹ *Queue Reform Order*, 124 FERC ¶ 61,183 at P 90.

45. We also disagree with MISO's assertions that it plainly communicated its interpretation of section 5.1.1.1 to interconnection customers. At the outset, though, how or how poorly it communicated its interpretation is not relevant here; the fact remains that its interpretation is incorrect. Separately, it is unclear how the April 2010 emails presented by MISO in Exhibit 1 of its Answer demonstrate that it communicated to Edison Mission that its projects would be subject to the M3 milestone after a re-study of the Group 5 System Impact Study. The emails concern the GIA negotiation process and reference milestones pertinent to the GIA, *not* to the Facilities Study. The emails do not address the effects of a re-study on the Edison Wind Projects or how a re-study would transfer the Edison Wind Projects into a different category in section 5.1.1 of the GIP. We also note that MISO's interpretation of section 5.1.1.1 is not clearly stated in the Transition Plan it developed for customers following the Commission's *Queue Reform Order*.

46. MISO claims that the Commission, in the *Queue Reform Order*, expressly referenced the System Impact Study for the Group 5 Projects and did not agree with comments requesting that these projects be grandfathered to avoid the new milestones.⁷⁰ We note that the only mention of the Group 5 Projects in the *Queue Reform Order* occurs in a paragraph summarizing comments made by Iberdrola.⁷¹ The Commission did not specifically reference the Group 5 Projects or Iberdrola's request to grandfather these interconnection requests when making its determination regarding MISO's transition proposal.⁷² Instead, the Commission referenced a stage of the interconnection study process—the execution of a Facilities Study Agreement—as being a reasonable distinction between early- and late-stage interconnection requests. The Commission noted that late-stage interconnection requests would only be subject to the new rules governing suspension, as laid out in MISO's transition procedures.

47. For these reasons, we grant Edison Mission's Complaint and direct MISO to reinstate the queue position of any Group 5 interconnection customers meeting the criteria for a section 5.1.1.1 exemption that have been withdrawn from the MISO queue for failure to meet the M3 milestone and/or to execute a Facilities Study Agreement.

⁷⁰ MISO Answer at 8 (citing *Queue Reform Order*, 124 FERC ¶ 61,183 at P 86).

⁷¹ See *Queue Reform Order*, 124 FERC ¶ 61,183 at P 86.

⁷² *Id.* P 90.

The Commission orders:

(A) Edison Mission's Complaint is hereby granted, as discussed in the body of this order.

(B) MISO is hereby directed to reinstate the queue position of any Group 5 interconnection customer that met the criteria for a section 5.1.1.1 exemption, but was removed from the queue for failing to meet the M3 milestone and/or to execute a new Facilities Study Agreement, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.