

137 FERC ¶ 61,188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER12-56-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS IN PART,
REJECTING TARIFF REVISIONS IN PART,
AND DIRECTING FURTHER COMPLIANCE FILING

(Issued December 9, 2011)

1. On October 11, 2011, Midwest Independent Transmission System Operator, Inc. (MISO) submitted, under section 205 of the Federal Power Act (FPA),¹ proposed revisions to Attachment X of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). Attachment X includes MISO's generator interconnection procedures and *pro forma* interconnection agreements, including the *pro forma* Generator Interconnection Agreement (GIA). In this order, we conditionally accept in part and reject in part MISO's proposed revisions effective December 11, 2011, as requested, and direct MISO to submit a compliance filing within thirty (30) days of the date of this order.

I. Background

2. On December 11, 2007, the Commission held a technical conference (Technical Conference) to address the delays and backlogs in processing interconnection queues in regions managed by Regional Transmission Organizations (RTO) and Independent Transmission System Operators (ISO), and the need for these entities' interconnection procedures to advance the goals of Order No. 2003.² The Commission's order³ resulting

¹ 16 U.S.C. § 824d (2006).

² *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.

(continued...)

from the Technical Conference directed the RTOs and ISOs to report their efforts to improve interconnection queue processing. MISO's April 21, 2008 compliance report⁴ stated that MISO was consulting with stakeholders about tariff revisions to address the problems. On June 26, 2008, MISO filed proposed queue reform revisions to Attachment X of its Tariff.⁵

3. In its order on the Queue Reform Filing, the Commission conditionally accepted the proposed tariff revisions.⁶ These revisions changed MISO's existing "first-come, first-served" approach to an approach based on the progress that a generation project is making towards coming on line, essentially, a "first-ready, first-to-proceed" approach. The proposed revisions also changed the characteristics of the milestones that a generation project must meet in order to proceed toward interconnection, and the amounts and the timing of the monetary deposits accompanying each milestone. Further, the revisions introduced provisional Generator Interconnection Agreements (GIA) that conditionally permit projects that are ready to proceed to use available transmission capacity based upon the results of available studies.

II. Filing

4. MISO states that it is submitting the instant filing to make clarifying changes and to correct typographical errors in the Attachment X language the Commission previously accepted in the Queue Reform Order.⁷ Specifically, MISO proposes clean up revisions, clarifying edits and typographical corrections to certain definitions contained in Module A, "Common Tariff Provisions," and Attachment X, to the Generator Interconnection Procedures (GIP), to the *pro forma* GIA, and other provisions in Attachment X. MISO states that the clean-up revisions have been provided to stakeholders for review, and requests an effective date of December 11, 2011.

¶ 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).

³ *Interconnection Queue Practices*, 122 FERC ¶ 61,252 (2008).

⁴ MISO's April 21, 2008 Filing in Docket No. AD08-2-000.

⁵ MISO June 26, 2008 Filing in Docket No. ER08-1169-000 (Queue Reform Filing).

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183 (2008) (Queue Reform Order), *order on reh'g*, 127 FERC ¶ 61,294 (2009), *order on compliance*, 127 FERC ¶ 61,295 (2009).

⁷ Filing at 1.

III. Notice of Filings and Responsive Pleadings

5. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 64,939 (2011), with interventions and protests due on or before November 1, 2011.

6. The following filed timely motions to intervene: Duke Energy Corporation, on behalf of its affiliates;⁸ Exelon Corporation; Consumers Energy Company; Iberdrola Renewables, Inc. (Iberdrola) PNE Wind USA, Inc. (PNE); Infigen Asset Management LLC (Infigen); EDP Renewables North America LLC (EDP); Calpine Corporation; Dynegy Power Marketing, LLC and Dynegy Midwest Generation, LLC; American Municipal Power, Inc.; St. Joseph Energy Center, LLC (St. Joseph); Edison Mission Energy (Edison); Clipper Windpower Development Co., LLC (Clipper Wind); Invenergy Wind Development LLC and Invenergy Thermal Development LLC (together, Invenergy); Wisconsin Electric Power Company; E.ON Climate & Renewables North America LLC; Acciona Wind Energy USA LLC (Acciona); the Midwest TDUs;⁹ the Midwest ISO Transmission Owners (MISO Transmission Owners);¹⁰ Tenaska Energy, Inc. (Tenaska); NextEra Energy Resources, LLC; and, jointly, the American Wind Energy Association (AWEA) and Wind on the Wires (WOW). In addition, the

⁸ Duke Energy Indiana, Inc., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services, LLC.

⁹ For the purposes of this proceeding, the Midwest TDUs include: Indiana Municipal Power Agency, Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, and WPPI Energy.

¹⁰ The MISO Transmission Owners for this proceeding consist of: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company and Ameren Transmission Company of Illinois; American Transmission Company LLC; 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; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Midwest Developers,¹¹ E.ON, the Midwest TDUs, the Midwest ISO Transmission Owners, Tenaska, and NextEra submitted timely comments.

7. On November 2, 2011, AWEA and WOW filed a motion to submit comments out-of-time and the Electric Power Supply Association (EPSA) filed a motion to intervene out-of-time.

8. On November 16, 2011, MISO filed a motion for leave to answer and answer. On December 1, 2011, E.ON filed an answer to MISO's answer.

IV. Discussion

A. Procedural Matters

9. 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. We will also accept AWEA and WOW's late comments and grant EPSA's motion to intervene out-of-time given their interest in the proceeding, the early stage of the proceeding, and absence of any undue prejudice or delay.

10. 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 a protest or answer unless otherwise ordered by the decisional authority. We will accept MISO's and E.ON's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

11. As discussed further below, we will conditionally accept, in part, and reject, in part, MISO's proposed revisions, effective December 11, 2011, as requested. To the extent that MISO's proposed revisions are not addressed directly below, we note that we have examined these revisions and that we find that these revisions are just and reasonable, and not unduly discriminatory or preferential.

1. Definitions

a. Proposal

12. MISO proposes revisions to various definitions contained in Attachment X of its Tariff.

¹¹ For the purposes of this proceeding, the Midwest Developers consist of: Invenergy, Acciona, Clipper Wind, Edison, EDP, Iberdrola, Infigen, PNE, and St. Joseph.

13. MISO also proposes to revise the definition of External Resource in Module A as follows: **1.218 External Resource:** A Generator located outside of the ~~Metered~~physical boundaries of the Midwest ISO Balancing Authority Area.

b. Comments

14. The MISO Transmission Owners state that MISO revised the definitions for the following terms in the GIP, but did not make corresponding changes to the definitions for the same terms in the GIA: Affected System, In-Service Date, Interconnection Customer's Interconnection Facilities, Interconnection Study, and Transmission Owner's Interconnection Facilities.¹² Similarly, state the MISO Transmission Owners, MISO revised the definitions for the following terms in the GIA, but did not make corresponding changes to the definitions for those terms in the GIP: Applicable Reliability Council, Generator Upgrades, Local Balancing Authority, and Network Resource. The MISO Transmission Owners maintain that the definitions in the GIP and GIA should be the same and ask the Commission to direct MISO to submit a compliance filing correcting these discrepancies.¹³

15. The Midwest TDUs ask the Commission to direct MISO to explain the significance of substituting "physical" boundaries for "Metered" boundaries in the definition of External Resource. Among other things, Midwest TDUs ask whether any categories of resources, currently classified as External Resources, would be placed outside of this definition, and whether any resource categories not currently classified as External Resources would be brought into that classification.¹⁴

c. Answer

16. MISO agrees that the definitions should be consistent between the GIP and GIA and states that it will revise the provisions accordingly if so directed by the Commission.¹⁵

17. MISO states that its proposed revision to the definition of External Resource is not intended to change which resources are considered External Resources under the Tariff but is intended to resolve a potential inconsistency between the definitions of External Resource and Generation Resource under the Tariff. MISO notes that the definition of Generation Resource includes External Resources that are Pseudo-tied into MISO's

¹² MISO Transmission Owners Comments at 3-4.

¹³ *Id.*

¹⁴ Midwest TDUs Comments at 3-4.

¹⁵ MISO Answer at 15.

balancing authority area.¹⁶ According to MISO, the definition of Generation Resources coupled with the reference to the metered boundaries of MISO may cause confusion because a resource that is Pseudo-tied into MISO is by definition within the “Metered” boundaries of MISO. MISO explains that its proposed revision is intended to distinguish an External Resource as being outside the “physical” boundaries of MISO. MISO states that it recognizes that it may be more appropriate to alternatively revise the definition of Generation Resource to remove the reference to “External Resource” to clarify that a resource no longer qualifies as an External Resource once the resource is Pseudo-tied into MISO’s balancing authority area. MISO commits to revise these definitions in the Tariff accordingly if directed by the Commission.¹⁷

d. Commission Determination

18. We will accept MISO’s revisions to the definitions contained in Attachment X on the condition that MISO submits a compliance filing, within thirty (30) days of this order, proposing revisions to correct the discrepancies between the definitions contained in the GIA and GIP that were identified by the MISO Transmission Owners.

19. We will reject, without prejudice, MISO’s proposed revision to the definition of External Resource. We find that MISO’s proposed change to the definition of External Resource in Module A of the Tariff, which contains common tariff provisions that apply to the Tariff as a whole, could have wide-spread impacts on its Tariff, and MISO has not supported here how its proposal to change External Resource, or its alternative suggestion to revise the definition of Generation Resource, is consistent with the rest of the MISO Tariff. Without such a review by MISO of the impacts of a change to a general definition in its Tariff, we can not assess whether to accept a revision of either Generation Resource or External Resource. Accordingly, we will direct MISO to submit a compliance filing, within thirty (30) days of this order, eliminating the proposed revision to the definition of External Resource in Module A.

¹⁶ *Id.* at 5 (citing Section 1.267 of its tariff):

1.267 Generation Resource: A Generation Resource is a Generator within the Midwest ISO Balancing Authority Area or an External Resource that is Pseudo-tied into the Midwest ISO Balancing Authority Area and that: (i) is registered to participate in the Energy and Operating Reserve Markets; (ii) is capable of supplying Energy, Capacity and/or Operating Reserve; (iii) is capable of complying with the Transmission Provider’s Setpoint Instructions; and (iv) has the appropriate metering equipment installed).

¹⁷ MISO Answer at 4-6.

2. Article 2.3.1 of the GIA

a. Proposal

20. In article 2.3.1 “Written Notice” of the *pro forma* GIA’s termination procedures, MISO proposes to add language permitting the Transmission Provider to terminate the GIA, subject to certain notification requirements, if the Generating Facility or a portion of the Generating Facility fails to achieve Commercial Operation for three (3) consecutive years following the Commercial Operation Date.¹⁸

b. Comments

21. The Midwest Developers argue that the Commission should reject MISO’s proposed revisions to article 2.3.1 of the *pro forma* GIA. The Midwest Developers claim that MISO’s proposed revisions would grant MISO new substantive authority to terminate a GIA if the generating facility fails, or a portion of the generating facility fails, to achieve commercial operation for three consecutive years following the Commercial Operation Date.¹⁹ They state that MISO has failed to provide any support justifying this revision.²⁰ Further, they argue that MISO’s change is contrary to Commission precedent because it treats all extensions of Commercial Operation Dates beyond the three-year period as a Material Modification under the Tariff.²¹ They explain that the Commission has previously found that such an extension is not a *per se* Material Modification and should be accommodated if, after an evaluation of the facts of the case, the extension

¹⁸ MISO’s proposed language in article 2.3.1 reads as follows:

“This GIA may be terminated by Interconnection Customer after giving ~~the~~ Transmission Provider and Transmission Owner ninety (90) Calendar Days advance written notice or by Transmission Provider if the Generating Facility fails or a portion of the Generating Facility to achieve Commercial Operation for three (3) consecutive years following the Commercial Operation Date, or has ceased Commercial Operation for three (3) consecutive years, beginning with the last date of Commercial Operation for the Generating Facility, after giving ~~the~~ Interconnection Customer ninety (90) Calendar Days advance written notice....”

¹⁹ Midwest Developers Comments at 2.

²⁰ *Id.* at 2.

²¹ *Id.* at 4 (citing *Judith Gap Energy LLC*, 125 FERC ¶ 61,169, at P 17 (2008) (*Judith Gap*)).

does not amount to a Material Modification.²² Further, they contend that MISO's proposed revisions fail to meet the Commission's requirement that tariff provisions be clear and precise, as they do not explain what constitutes "failure" in this context.²³ They further contend that the proposed revisions are unreasonable because, as revised, the section would require the termination of a project's GIA if the customer failed to develop the entirety of a proposed project; for example, if a developer phases its project and constructs only 180 MW of a proposed 200 MW wind farm after three years.²⁴

22. Tenaska, AWEA and WOW state that they support the comments filed by the Midwest Developers. Additionally, Tenaska adds that the proposed revisions could severely disrupt the development process by allowing MISO to terminate a GIA even in circumstances where only a small portion of the facility has not yet achieved commercial operation.²⁵ AWEA and WOW further add that article 2.3.1 does not comport with the reality of timelines for required network upgrades for many interconnection customers because many interconnections in MISO are dependent on network upgrades that have in-service dates well beyond the three-year period permitted under article 2.3.1.²⁶

23. The MISO Transmission Owners state that article 2.3.1 should be revised to correct the placement of the verb "fails" so that the language reads as follows: "Generating Facility or a portion of the Generating Facility fails to achieve Commercial Operation for three (3) consecutive years following the Commercial Operation Date, or."²⁷

c. Answers

24. MISO maintains that the proposed language is a clean-up edit that clarifies its interpretation of this GIA provision in conjunction with the current MISO interconnection process in which suspension of a GIA for up to three years is no longer permissible as a matter of right, but only if a *force majeure* event occurs. MISO argues that a project that never enters Commercial Operation should not be permitted to hold

²² *Id.* at 4.

²³ *Id.* at 5.

²⁴ *Id.* at 6.

²⁵ Tenaska Comments at 3-4.

²⁶ AWEA and WOW Comments at 3.

²⁷ MISO Transmission Owners Comments at 6-7.

that capacity indefinitely and that any need for delay should be addressed at the time the GIA is negotiated and prior to execution by the parties.²⁸

25. As far as the argument regarding Material Modifications is concerned, MISO explains that it has only permitted extensions to the Commercial Operation Date prior to execution of a GIA for projects that are subject to the current provisions of the GIP governing suspension. MISO notes that the interconnection customer chooses its Commercial Operation Date in the first instance and, accordingly, it is reasonable for MISO to hold the interconnection customer to its commitment and for lower-queued projects to rely on that date to determine whether needed upgrades will in fact be built.²⁹ In this regard, MISO notes that the Commission explained in the Queue Reform Order that MISO's new interconnection procedures were designed so that the network upgrades will be built once a customer executes an interconnection agreement and that the interconnection customer may build long lead times into the Appendix B timetable for construction of network upgrades in its interconnection agreement if the customer needs additional time to make commercial and economic arrangements.³⁰ MISO claims that the precedent cited by the Midwest Developers is inconsistent with MISO's GIP, which restricts suspension under the GIA, and is also inconsistent with MISO's ongoing queue reform efforts. MISO explains that while the Midwest Developers dispute the change because it treats all extension of the Commercial Operation Date beyond the three-year period as a Material Modification, this position is consistent with MISO's queue reform measures accepted by the Commission and the policies articulated in the Queue Reform Order, and the proposed revisions are meant to ensure that section 2.3.1 is read consistently with the limited right of suspension under MISO's Tariff.³¹

26. Regarding protests asserting that MISO's proposed revisions will allow MISO to terminate a GIA in its entirety where only a portion of the project is not in service by the three-year limit, MISO argues that these protests misinterpret MISO's intent. MISO explains that it would only seek to terminate that portion of a facility that fails to achieve Commercial Operation within three years of the Commercial Operation Date. MISO states that it will revise this text to clarify its intent if directed by the Commission.³²

²⁸ MISO Answer at 9-10.

²⁹ *Id.* at 11.

³⁰ *Id.* at 11-12 (quoting Queue Reform Order, 124 FERC ¶ 61,183, at P 109 (2008)).

³¹ *Id.* at 12.

³² *Id.*

27. As to the arguments that the term “failure” is unclear or ambiguous, MISO states that the Commercial Operation Date is defined by the date on which the Generating Facility commences Commercial Operation, as agreed to by the Parties, pursuant to Appendix E to the GIA. MISO states that as it applies to article 2.3.1, failure to achieve Commercial Operation Date means not achieving Commercial Operation and not providing the completed form in Appendix E to the GIA within the required three-year limit.³³

28. E.ON states that MISO’s assertions in its answer fail to come to terms with several realities associated with the generation interconnection process. E.ON argues that MISO’s proposal fails to address how interconnection customers should be compensated for the network upgrades that will likely be installed and available to accommodate service before MISO attempts to terminate a project. Additionally, E.ON contends that the suggestion that the need for delays should be addressed when the GIA is negotiated and that interconnection customers should be held to their Commercial Operation Dates is disingenuous because the *pro forma* GIA only imposes a reasonable efforts standard on the transmission owner for bringing its interconnection facilities and network upgrades to commercial operation. Moreover, E.ON states that MISO’s justification is contrary to reality because the transmission owner may be delayed in completing all or a portion of the required network upgrades, which, by necessity, would cause the Commercial Operation Date for a project to slip for an unknown period of time. E.ON states that while MISO fails to account for the possibility of delay on the part of the transmission owner, this problem could be solved by revising section 2.3.1 to provide that the three year time period begins to run from the date the customer submits its Appendix E notification identifying the actual Commercial Operation Date for its generation facility.³⁴

d. Commission Determination

29. We will conditionally accept MISO’s proposed revision to article 2.3.1 of the GIA. We agree with MISO that a project that never enters Commercial Operation should not be permitted to hold that capacity indefinitely, and that MISO’s proposed revision is consistent with the goals of queue reform. Moreover, as MISO properly notes in its answer, MISO cannot unilaterally terminate a GIA of its own accord and must seek Commission authorization before doing so.³⁵ With respect to the assertion that the

³³ *Id.* at 12-13.

³⁴ E.ON Answer at 6-8.

³⁵ The Commission has stated that it will only accept a notice of termination if the applicant demonstrates that the proposed termination is not unjust, unreasonable, unduly discriminatory or preferential, or if it is consistent with the public interest. When considering whether to extend milestones or to grant or extend a suspension, the

(continued...)

provision will allow MISO to terminate an entire GIA where only a portion of the facility has failed to reach Commercial Operation, we will direct MISO to file, within 30 days of this order, revisions to article 2.3.1 to clarify that, consistent with MISO's answer, MISO would only seek to terminate that portion of a facility that fails to achieve Commercial Operation within three years of the Commercial Operation Date agreed to and specified in the GIA.³⁶

30. Also, we find that MISO's language regarding "failure" is not ambiguous or otherwise unclear. We agree with MISO that "failure" means a failure to achieve Commercial Operation and/or to provide the completed Appendix E to the GIA within the required three year limit.

31. Finally, we direct MISO to file, within 30 days of this order, revisions to article 2.3.1 to correct the placement of the word fail, as suggested by the MISO Transmission Owners.

3. Article 11.3.1 of the GIA

a. Proposal

32. In article 11.3.1 of the GIA, MISO proposes to add "when ordered to restudy by FERC" as an eighth instance when network upgrades, system protection facilities, and distribution upgrades may be modified.³⁷

b. Comments

33. E.ON maintains that MISO's proposed revision to article 11.3.1 of the *pro forma* GIA to allow MISO to perform a generation interconnection restudy is unjust and unreasonable. E.ON claims that this revision is unnecessary because it is clear that MISO and any other affected party would be obligated to abide by any Commission order directing a restudy. E.ON further claims that this proposed revision would inject an unreasonable degree of uncertainty into the interconnection process. E.ON notes that when proposing the existing language of article 11.3.1, which represents a departure from the language of the Commission's *pro forma* LGIA, MISO explained that its proposed

Commission takes into account many factors, including whether the extension would harm generation lower in the interconnection queue and any uncertainty that speculative projects may present to other projects in the queue. *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008, at P 25 (2011).

³⁶ We note that the Commercial Operation date, as other terms of the appendices of the GIA, may be modified by mutual agreement. Tariff, *pro forma* GIA, art. 30.10.

³⁷ Filing at 5.

language was intended to reduce the uncertainty of interconnection customers by delineating the circumstances giving rise to the need for restudy.³⁸ E.ON states that, in contrast to MISO's proffered rationale when proposing article 11.3.1, MISO's proposal would increase uncertainty by giving MISO an open-ended opportunity to seek an order to conduct a restudy whenever MISO sees fit and for whatever reason, which would have serious financial implications for generators. Additionally, E.ON maintains that MISO's proposal would undermine the responsibility of MISO and Transmission Owners to perform interconnection studies correctly by giving MISO and a Transmission Owner a contractual right to seek authorization to conduct a restudy when it fails to study a project correctly.³⁹ Moreover, E.ON states that the inclusion of such a right in each GIA would place each interconnection customer at a disadvantage if it disagreed with the reasons that MISO was seeking to restudy a project.⁴⁰

34. The MISO Transmission Owners note that it appears that MISO inadvertently placed the word "and" before (8) instead of the word "or." They explain that the placement of the word "and" could result in the section being interpreted as requiring each of the eight items for a modification.⁴¹

c. Answers

35. MISO states that its revisions merely acknowledge the fact that, as noted by E.ON, a restudy would be performed if the Commission so directed. Thus, according to MISO, these revisions do not create a new right, but merely clarify situations as they already exist so that interconnection customers are on notice of that possibility.⁴²

36. In its answer, E.ON argues that MISO's explanation of this provision confirms that its proposed provision is unnecessary, unjust, and unreasonable. E.ON argues that MISO's proposal is contrary to the rationale that MISO offered when originally proposed article 11.3, to reduce the uncertainty provided by an open-ended restudy provision and to delineate the circumstances giving rise to the need for restudy.⁴³ E.ON contends that MISO neither addresses this precedent nor responds to the possible adverse consequences

³⁸ E.ON Comments at 3-4 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027, at P 148, *order on reh'g*, 109 FERC ¶ 61,085 (2004)).

³⁹ *Id.* at 6.

⁴⁰ *Id.* at 7.

⁴¹ MISO Transmission Owners Comments at 7.

⁴² MISO Answer at 6-7.

⁴³ E.ON Answer at 2 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027, at P 148, *order on reh'g*, 109 FERC ¶ 61,085 (2004)).

identified by E.ON in its protest. E.ON acknowledges that a customer would be subject to a Commission order directing restudy outside of the GIA; however, that is not the same as including such a contractual right in the GIA and that MISO should have no objection to deleting this language if it merely restates a fact. Additionally, E.ON rejects the notion that the inclusion of this language increases certainty by putting interconnection customers on notice of this fact.⁴⁴

d. Commission Determination

37. We will conditionally accept MISO's proposed revisions to article 11.3.1 of the GIA. We agree with E.ON's and MISO's statements that "MISO and any other affected party would be obligated to abide by any Commission order directing a restudy." Thus, contrary to E.ON's assertions, listing a Commission-ordered restudy as one of the instances where network upgrades, system protection facilities, and distribution upgrades may be modified appropriately puts the interconnection customer on notice of this possibility. Additionally, we disagree with E.ON that MISO's proposed revisions increase uncertainty by giving MISO an open-ended opportunity to seek restudy. MISO's proposed language does not confer any additional filing rights on MISO to seek a restudy; it merely clarifies the instances where the network upgrades, system protection facilities, and distribution upgrades that are required to accommodate a generating facility may be modified. Additionally, we will direct MISO to submit a compliance filing, within thirty (30) days of the date of this order, correcting the placement of "and" to address the error noted by the MISO Transmission Owners.

4. Addition of Milestones to Appendix B of the GIA

a. Proposal

38. MISO proposes two new milestones in Appendix B to the GIA. Proposed milestone 13 would require the interconnection customer to provide notice on the status of the Generating Facility, including the Commercial Operation Date, at least six (6) months before the earlier of either the Generating Facility Commercial Operation Date or commencement of testing. Proposed milestone 14 would require the interconnection customer to provide notice of its test plan in the notice contained in Appendix B-1 prior to conducting tests for the Generating Facility at least five (5) business days prior to the first testing date.⁴⁵

⁴⁴ *Id.* at 3-4.

⁴⁵ Filing at 7.

b. Protests

39. NextEra argues that MISO's proposed revisions to Appendix B of the GIA to add new milestones relating to testing of the generating facility and achievement of the Commercial Operation Date should be rejected, as they do not reflect how wind facilities are tested. According to NextEra, an interconnection customer is required to provide notice by submitting a form provided in Appendix B-1 to the GIA, which contains specific testing information including Date Start Time and End Time, Expected MW Output and Expected MVAR Output.⁴⁶ NextEra claims that it is unclear how the actual process of testing a wind facility, which is generally performed on both a turbine-by-turbine and an aggregate basis by technicians from the turbine manufacturer, fits in the form provided in Appendix B-1. Additionally, NextEra states that it is unrealistic and unreasonable to require an owner to comply with the six month notice requirement in milestone 13 because wind facilities can be constructed in just several months. NextEra states that any milestones for testing must be sufficiently flexible to allow the owner of a generating facility to be able to schedule its test efficiently and to bring its project online without delay. Therefore, NextEra asks the Commission to reject these changes and to direct MISO to consider how to solicit the required information in a manner that reflects the need of interconnection customers.⁴⁷

40. The MISO Transmission Owners state that the proposed language contained in item 1 of the table in Appendix B to the GIA contains an extra "and." They suggest the following edit to remove the extra word: "Provide security, i.e., a guarantee, surety bond, letter of credit or other security in the form satisfactory to Transmission Owner (GIA 11.5)."⁴⁸

c. Answer

41. MISO states that the form contained in Appendix B-1 can include additional information and clarification that would resolve NextEra's concerns that the form does not match wind farm testing timelines. MISO explains that it expects the type of communications described in milestones 13 and 14 to occur in any event and that the addition of these milestones is intended to ensure that the proper information is conveyed at the appropriate time and on a consistent basis.⁴⁹ Furthermore, MISO states that the six month timeline can be modified for GIAs, including "provisional GIAs," in particular

⁴⁶ NextEra Comments at 3.

⁴⁷ *Id.* at 5.

⁴⁸ MISO Transmission Owners Comments at 7.

⁴⁹ MISO Answer at 14.

circumstances such as those raised by NextEra, if such facilities will actually be in service in less than six months after the execution of the GIA.

42. MISO also states that it agrees with the revision to item 1 of the table in Appendix B proposed by the MISO Transmission Owners and will revise the text accordingly if so directed by the Commission.⁵⁰

d. Discussion

43. We conditionally accept MISO's proposed addition of milestones 13 and 14 to Appendix B of the GIA. We agree with NextEra that the timelines included in these milestones may not be appropriate in all circumstances. At the same time, MISO has not provided any convincing reason why the timelines that it has proposed are necessary or appropriate. Accordingly, we will direct MISO to remove the timelines included in milestones 13 and 14 and instead provide that these timelines are subject to the mutual agreement of the parties. In addition, we will direct MISO to revise, within thirty (30) days of the date of this order, item 1 of the table in Appendix B to correct the typographical error identified by the MISO Transmission Owners.

5. Section 3(d) of Appendix A to the GIA

a. Proposal

44. In Appendix A to the GIA, MISO proposes revisions to section 3(d), which relates to cost responsibilities for Shared Network Upgrades, to describe an interconnection customer's funding responsibility for costs of Shared Network Upgrades under two different options. Under both options, the interconnection customer would be required to provide initial funding for Network Upgrades subject to reimbursement for costs not subject to participant funding. However, under Option 1, the Interconnection Customer would be refunded all Network Upgrade costs initially funded and be responsible for monthly charges to recover the carrying costs of participant-funded Network Upgrade costs.

b. Comments

45. E.ON contends that MISO should revise section 3(d) of Appendix A to the *pro forma* GIA. E.ON argues that the sentence relating to "Option 1 under Attachment FF" should be removed because the Commission recently determined that Option 1 is unjust

⁵⁰ *Id.* at 18.

and unreasonable and should be removed from the Tariff.⁵¹ Additionally, E.ON maintains that MISO should revise section 3(d) to provide how the initial interconnection customer will receive reimbursement if the network upgrades are determined to be Shared Network Upgrades. E.ON states that such a provision should be included in the GIA in order to ensure that the interconnection customer has the means to ensure that MISO will collect such amounts from any subsequent interconnection customers. Specifically, E.ON proposes that the following be added to section 3(d):

Subsequent interconnection customer(s) identified by the Transmission Provider as obligated to pay portions of specific Shared Network Upgrade(s) shall provide the identified amount or an Irrevocable Letter of Credit for the amount to the Transmission Provider. Transmission Provider shall include a requirement in the milestones in Appendix B identifying the amount and the date by which such amount shall be provided to the Transmission Provider, which date shall be in advance of the Commercial Operation Date for such subsequent interconnection customer's generating project. Transmission Provider shall tender such amount to Interconnection Customer upon the Commercial Operation Date for such subsequent interconnection customer(s)' generating project, and cause such amount to be collected under any Irrevocable Letter of Credit as necessary.⁵²

Additionally, E.ON notes that its proposed revision is just and reasonable because it is consistent with and would implement other revisions to Appendix B of the *pro forma* GIA that MISO has proposed.⁵³

c. Answers

46. MISO argues that Shared Network Upgrade arrangements do not need to be further detailed in Appendix A, as the tariff provisions accepted by the Commission for such upgrades in Docket No. ER10-1791-000 and the details provided in MISO's Business Practices Manual provide sufficient details on the mechanisms for repayment. MISO claims that any new payment mechanism that would apply to all interconnection customers would be better raised by E.ON in the MISO stakeholder process rather than in the instant docket. Additionally, MISO contends that the proposal to delete the reference to Option 1 under Attachment FF is premature, as the order contained its own compliance

⁵¹ E.ON Comments at 8 (citing *E.On Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076 (2011)) (October 20, 2011 Order).

⁵² *Id.* at 8-9.

⁵³ *Id.* at 9.

filing requirement, and is subject to rehearing. Moreover, the sentence would not apply if Option 1 is not used.⁵⁴

47. E.ON rejects the assertion that the existing tariff provisions relating to Shared Network Upgrades and MISO's Business Practices Manual provide sufficient details regarding the repayment mechanism for repayment. According to E.ON, it has reviewed both the Tariff and the Business Practices Manual and has discovered that there is not a single provision addressing how an interconnection customer will be reimbursed.⁵⁵ E.ON also disagrees with MISO's statement that E.ON should raise its concerns in the stakeholder process. E.ON claims that MISO has not provided a single reason why this is necessary. E.ON notes that MISO has filed revisions in this docket to amend the GIA to provide that the interconnection customer may be required to pay the costs of Shared Network Upgrades to another interconnection customer; that same interconnection customer, however, also may be paying for network upgrades identified in the GIA that may be eligible for reimbursement as a Shared Network Upgrade from a subsequent interconnection customer. E.ON maintains that there is no reason that the issue of adding language explaining how MISO will collect that reimbursement needs to be revisited at MISO stakeholder meetings and notes that neither MISO nor any other market participant has raised a substantive objection to E.ON's proposed language.⁵⁶

d. Commission Determination

48. We agree with E.ON that the sentence relating to "Option 1 under Attachment FF" should be removed from section 3(d) of Appendix A to the GIA. In the October 20, 2011 Order, the Commission found that the Option 1 is unjust, unreasonable, and unduly discriminatory and that it should be removed from the Tariff.⁵⁷ Thus, we direct MISO to submit a compliance filing, within thirty (30) days of this order, removing the Option 1 language from section 3(d) of Appendix A to the GIA. We will decline to require MISO to make the revision proposed by E.ON because we agree with MISO that details regarding the identification of Shared Network Upgrades and any subsequent reimbursements are adequately memorialized in Attachment FF of its Tariff. In particular, we note that section III.A.2.d.3 states that each interconnection customer with shared network upgrades subject to Option 2 shall make a one-time payment under Schedule 26-B to MISO and that both section III.A.2.d.3 and Schedule 26-B obligate MISO to distribute this revenue to the appropriate interconnection customer or customers.

⁵⁴ MISO Answer at 7-8.

⁵⁵ E.ON Answer at 5.

⁵⁶ *Id.* at 5-6.

⁵⁷ October 20, 2011 Order, 137 FERC ¶ 61,076 at P 36.

6. Section 11.3 of the GIP

a. Proposal

49. In section 11.3 of the GIP, MISO proposes revisions that require a Transmission Owner to either execute various agreements or request that they be filed unexecuted to the Commission within thirty (30) Calendar Days from tender of the draft GIA or ten (10) Business Days following execution of the GIA, whichever is later.⁵⁸

b. Comments

50. The MISO Transmission Owners claim that MISO should revise section 11.3 of the GIP to clarify the timeframe that a Transmission Owner has to execute a GIA and other interconnection agreement or request that the agreement be filed unexecuted, as the proposed language is unclear as to when the time period in which the Transmission Owner has to act begins to run. Further, they state that the proposed language appears to require a Transmission Owner to execute a GIA before the interconnection customer has executed the agreement or even if the interconnection customer does not execute the agreement. They state that if it was MISO's intent to provide that the Transmission Owner is required to execute the GIA or other agreements within ten (10) business days of the interconnection customer executing the agreement, the Transmission Owner would have more time if the interconnection customer executed the agreement very early upon it being tendered to the interconnection customer, and should be clarified by, for example, adding "Following execution of the GIA, and, as applicable, draft FCA(s) and MPFCA(s) by Interconnection Customer" at the beginning of the proposed sentence.⁵⁹

c. Answer

51. MISO states that the revisions are intended to provide parallel execution provisions and deadlines for the Transmission Owner that track the existing provisions for Interconnection Customers. Specifically, MISO states that it obligates the Transmission Owner to either execute the agreement or request that it be filed unexecuted within no less than thirty (30) days but never prior to the Interconnection Customer executing the agreement or requesting an unexecuted filing. MISO explains that the "later of" reference in the proposed language ensures that even if the Interconnection Customer executes the agreement or requests that it be filed unexecuted on the first day, the Transmission Owner would still benefit from the "later of" thirty-day deadline. However, according to MISO, if the Interconnection Customer executes the agreements or requests an unexecuted filing on the thirty-first day, the Transmission Owner would

⁵⁸ Filing at 3, Attachment X, section 11.3.

⁵⁹ MISO Transmission Owner Comments at 5-6.

then have an additional ten (10) Business Days to act. MISO states that it will revise the text of section 11.3 to clarify the intent if so directed by the Commission.⁶⁰

d. Commission Determination

52. We conditionally accept MISO's proposed revisions to section 11.3 of the GIP. While we agree with MISO that providing a parallel path for either executing agreements or requesting that they be filed unexecuted is reasonable, we share the MISO Transmission Owners' concern that the intent of the language is not clearly captured in the proposed language. Therefore, we direct MISO to revise this language in a compliance filing to be made no more than thirty (30) days from the date of this order.

The Commission orders:

(A) MISO's proposed tariff revisions are hereby accepted in part and rejected in part, as discussed in the body of this order.

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

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁰ MISO Answer at 16.