

138 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Shetek Wind Inc., Jeffers South, LLC and Allco
Renewable Energy Limited

v.

Docket No. EL11-53-000

Midwest Independent Transmission
System Operator, Inc.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-188-000

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-188-001

[not consolidated]

ORDER ON COMPLAINT AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES,
FURTHER ORDER ON INTERCONNECTION AGREEMENT,
AND DISMISSING REHEARING

(Issued March 30, 2012)

1. On July 15, 2011, Shetek Wind Inc. (Shetek Wind), Jeffers South, LLC (Jeffers South), and Allco Renewable Energy Limited (Allco) (Complainants or Shetek, *et al.*) filed a complaint in Docket No. EL11-53-000 against the Midwest Independent Transmission System Operator, Inc. (MISO or Respondent) pursuant to section 206 of the Federal Power Act (FPA).¹ Complainants, developers of commercial renewable energy projects, contend that MISO has improperly processed generator interconnection applications and generator interconnection agreements (GIA) based upon a “Net Zero”

¹ 16 U.S.C. § 824e (2006).

interconnection policy (Net Zero).² Complainants request certain relief, including that the Commission direct MISO to discontinue processing interconnection applications on the basis of Net Zero-type arrangements unless and until tariff changes approved by the Commission are implemented.

2. On October 25, 2011, MISO filed with the Commission in Docket No. ER12-188-000 a provisional GIA among itself, Northern States Power Company, a Minnesota corporation (NSP),³ and Prairie Rose Wind, LLC (Prairie Rose) (collectively, GIA Parties).⁴ MISO indicated that the GIA included a request for Net Zero Interconnection Service, a form of Energy Resource Interconnection Service (ERIS), and requested waiver of the prior notice requirement so that the Prairie Rose GIA could become effective as of October 26, 2011. On December 23, 2011, the Commission issued an order conditionally accepting the Prairie Rose GIA, suspending it for a nominal period, and making it effective subject to refund and subject to a further order.⁵ *Shetek, et al.*, seek rehearing of the December 23 Order.

3. As discussed below, in this order the Commission grants the complaint, finding that MISO has violated its Tariff when it provided Net Zero Interconnection Service inasmuch as this is a service not presently provided in MISO's Tariff and this service had not been accepted by the Commission. The Commission sets for hearing and settlement judge procedures the issue of whether MISO's past application of its posted Net Zero interconnection policy resulted in undue discrimination for the following interconnection projects: Projects J182, J183 (Prairie Rose), J184, and J189. Also in this order, the Commission directs that the Prairie Rose GIA conditionally accepted in the December 23 Order, be subject to the outcome of MISO's proposed revisions to its Generator Interconnection Procedures (GIP) in Docket No. ER12-309-000 (Queue Reform

² As posted on its website in 2008, MISO's Net Zero policy allows a new interconnection customer and an existing generating resource (i.e., an existing interconnection customer) to operate such that the sum of the net output of all generation resources at their shared point of interconnection does not exceed the output capability or study rating of the existing generating resource. The entirety of the policy is attached as Appendix A to this order.

³ Northern States Power Company is a subsidiary of Xcel Energy Inc.

⁴ The Parties executed the Prairie Rose GIA on October 11, 2011. MISO designated the agreement as Original Service Agreement No. 2406 under its FERC Electric Tariff, Fifth Revised Vol. No. 1 (Tariff).

⁵ *Midwest Indep. Transmission System Operator, Inc.*, 137 FERC ¶ 61,234 (2011) (December 23 Order).

Proceeding) with respect to the filing requirements for Net Zero Interconnection Service, as described below.⁶ In addition, the Commission dismisses rehearing of the December 23 Order for the reasons discussed herein. The Commission also sets a refund effective date of July 15, 2011, the date the complaint was filed.

I. Background

A. MISO Interconnection Queue Procedures

4. The allegations in the complaint involve the process by which generators interconnect to the transmission grid in MISO's footprint. MISO previously revised the GIP in Attachment X of its Tariff in 2008⁷ and 2009.⁸ Currently, MISO utilizes a Feasibility Study as a qualitative screen to direct interconnection requests either to the System Planning and Analysis phase for additional work, or to the Definitive Planning Phase to be fast-tracked. Additionally, projects may proceed based on the achievement of milestones, rather than strict queue position. MISO refers to this approach as "first-ready, first served."⁹

5. MISO filed further revisions to its interconnection queue process on November 1, 2011 in Docket No. ER12-309-000 (Queue Reform Proceeding), including proposed Tariff revisions to implement its Net Zero interconnection policy. The Commission is addressing that proposal in a separate order issued concurrently with this order.¹⁰

B. Complaint

6. Complainants ask the Commission to find that MISO's processing of certain generator interconnection requests and GIAs (including the Prairie Rose GIA that was subsequently filed in Docket No. ER12-188-000) has been unjust and unreasonable and

⁶ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at PP 302-303, 306 (2012) (MISO Queue Reform III).

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183 (2008) (Queue Reform Order), *order on reh'g*, 127 FERC ¶ 61,294 (2009).

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,301 (2009) (MISO Queue Reform II).

⁹ See Queue Reform Order, 124 FERC ¶ 61,183 at P 17.

¹⁰ See MISO Queue Reform III, 138 FERC ¶ 61,233 (2012) (MISO Queue Reform III)

unduly discriminatory and/or preferential in violation of section 206 of the FPA, and that MISO has violated its obligations with respect to the study process for certain GIAs and amended GIAs. Complainants assert that MISO has processed interconnection requests that involve material changes to the operating characteristics of certain existing generators in contravention of the requirements of MISO's GIP, and allowed certain new interconnection customers that have "special arrangements" with an existing generator to interconnect without following its Tariff.¹¹ Complainants allege that these practices result in discriminatory queue-jumping and the shifting of network upgrade costs to other projects.¹²

7. Complainants state that, under the Net Zero interconnection policy posted on MISO's website, a vertically integrated utility could build a new plant and retire an old one, with the new plant taking over the interconnection rights and network resource designation of the old plant under an existing GIA, and without following certain requirements of MISO's GIP.¹³ Complainants contend that the policy often results in the transmission owner's favored wind project displacing another wind project, allowing lower-queued projects to jump over other projects that entered the queue at an earlier date or otherwise receive treatment inconsistent with MISO's Tariff.

8. Shetek Wind and Jeffers South allege that they have been harmed because the timing of their respective interconnection requests has changed and the costs of the interconnections have increased due to the absence of network upgrades that should have been required when the change in the operating characteristics of certain existing generating resources occurred.¹⁴ When their projects do interconnect with MISO, they claim that their status as energy resources will make them subordinate to unauthorized GIA projects that have now assumed a network resource status or a lesser level of service provided by the Net Zero interconnection policy. According to Complainants, the Net Zero interconnection policy undermines effective competition by allowing incumbent generators to select new projects for preferential treatment.

9. Complainants provide several examples of harm to non-Net Zero projects in the queue, one of which involves modifications to an existing interconnection of Great River

¹¹ Complaint at 4.

¹² *Id.*

¹³ *Id.* at 6.

¹⁴ *Id.* at 6-7. In addition, Complainants allege that Allco has been harmed because of unduly preferential treatment for competing generators, hampering the ability of its projects to interconnect.

Energy's (Great River) 550 MW combustion turbine Lakefield Generating Station to include three wind projects [Trimont Wind (Project G263), Elm Creek Wind (Project G386), and Heartland Wind (Project G514)]. The Lakefield Generating Station was studied by MAPP and received interconnection service in 2000, assuming the existence of a Special Protection System.¹⁵

10. In October 2002, Great River submitted to MISO an interconnection request and a transmission service request (since it predated the availability of Network Resource Interconnection Service (NRIS) under Order No. 2003¹⁶), for Trimont Wind, and asked that MISO study this interconnection assuming the continued use of the existing Special Protection Scheme at the Lakefield Generating Station site. The transmission service request studies concluded that upgrades would be needed to deliver the output of the planned wind farm at the point of interconnection. However, Great River arranged for MISO to temporarily dispatch the planned wind farm and Lakefield Generating Station in a manner that would limit the sum of their outputs to the amount of the existing transmission capacity available to the Lakefield Generating Station pursuant to a coordination agreement between the generators. The Commission approved the interconnection agreement in 2005 on the condition that MISO bring it into compliance with its *pro forma* interconnection agreement. The proceeding was not protested, and the

¹⁵ Special Protection Systems, or Schemes, are defined by NERC in its Glossary of Terms as the following:

An automatic protection system designed to detect abnormal or predetermined system conditions, and take corrective actions other than and/or in addition to the isolation of faulted components to maintain system reliability. Such action may include changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows. An SPS does not include: (a) underfrequency or undervoltage load shedding; or (b) fault conditions that must be isolated; or (c) out-of-step relaying (not designed as an integral part of an SPS). Also called Remedial Action Scheme.

Available at: http://www.nerc.com/files/Glossary_of_Terms.pdf

¹⁶ *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).

pleadings did not discuss any specific non-conforming provisions, including the sharing of capacity incorporated in the Lakefield Generating Station GIA.¹⁷

11. In December 2003 and April 2005, respectively, Great River also entered Elm Creek Wind and Heartland Wind into the queue, and these projects were studied using the existing Special Protection Scheme at the Lakefield Generating Station site. In 2006, Jeffers South entered project G517 into the queue and this project was studied in the same group study as Heartland Wind. The group study identified network upgrades required on Great River's system that were needed to accommodate the generation in the group study. Although Jeffers South and Heartland Wind were studied under the same group study, MISO made an exception to allow the Heartland Wind project to interconnect without resolving a portion of the overloads in the project's area, while Jeffers South was required to address all of its line overloads. As a result, Complainants state that Heartland Wind is now operational, while Jeffers South remains in suspension pending hearing in Docket No. EL10-86-000.¹⁸

12. In a revised GIA Filing, which was accepted by the Commission in Docket No. ER11-2550-000,¹⁹ MISO increased the output capacity of the combined Great River combustion turbine and Trimont Wind from 550 MW to 650 MW; that is, MISO specifically proposed that the prior output limitation of 550 MW no longer apply to Trimont Wind, explaining that transmission improvements had been placed into service such that the output limitation was no longer needed. The Complainants allege that the increase in the combined facilities' output without applying for a new interconnection request allowed Trimont Wind to bypass the entire queue and interconnection process and avoid building network upgrades.

¹⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,067 (2005).

¹⁸ In September 2010, Jeffers South filed a complaint alleging that MISO violated its obligation with respect to the study of network upgrades required to accommodate Jeffers South's project. Specifically, Jeffers South argued that MISO violated its obligation under the "but for" standard as interpreted by *Community Wind (Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2009) *order on reh'g*, 131 FERC ¶ 61,165, *order on reh'g*, 133 FERC ¶ 61,011 (2010) (together, *Community Wind*)) to identify and quantify the least-cost option when determining what network upgrades are required to interconnect the generating facility. This proceeding is currently in hearing on other issues.

¹⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER11-2550-000 (Feb. 3, 2011) (delegated letter order).

13. Complainants seek a number of remedies, which are described fully below.

C. Pending Prairie Rose GIA

14. As indicated, on October 25, 2011, MISO filed the provisional non-conforming GIA with NSP and Prairie Rose. Prairie Rose owns and intends to operate a 200 MW wind farm in Minnesota. The proposed GIA includes a request for Net Zero Interconnection Service, “a form of Energy Resource Interconnection Service.” Under the GIA, Prairie Rose would share the existing interconnection capacity at the Split Rock substation with the existing generator, NSP’s Angus Anson peaking plant, which has a study limit of 392 MW. The Prairie Rose wind farm is one of the projects identified in the complaint as being improperly studied and processed based on the Net Zero interconnection policy.

15. Shetek Wind, Jeffers South, and Allco (Shetek, *et al.* or Joint Protestors) protested the filing, arguing that the Prairie Rose GIA should be rejected for both procedural and substantive reasons. Procedurally, Joint Protestors contend that the filing is incomplete because it failed to include all the necessary terms and conditions governing the GIA, such as the coordination agreement between NSP and Prairie Rose, as well as evidence of the study limit of the Angus Anson plant. Substantively, Joint Protestors claim that the filing is deficient because MISO’s Tariff does not provide for a Net Zero interconnection. They characterize the filing as a *de facto* amendment to the Tariff.

16. Joint Protestors assert that the GIA does not conform to MISO’s Tariff and was processed in violation of the Tariff and the Commission’s regulations, for the same reasons raised in the complaint, and because: (1) MISO does not exercise independent control over NSP’s facilities as required by the Commission’s regulations; (2) the GIA is governed by agreements to which MISO is not a party; (3) the GIA is a variable assignment of another generator’s rights which is not permitted by the *pro forma* GIA; and (4) the GIA constitutes an amendment to the terms of the *pro forma* GIA that would be applicable to Angus Anson and should necessitate that Angus Anson’s GIA conform to the current *pro forma* GIA and that the Angus Anson plant be restudied. In addition, Joint Protestors argue that MISO must demonstrate that a deviation from the *pro forma* interconnection agreement is operationally necessary, and MISO has not met that burden. Finally, as a result of less transmission being built and less renewable energy being implemented, Joint Protestors request that the Commission perform an environmental impact statement to evaluate possible environmental effects of the Net Zero interconnection policy.

17. In answer to the protest, MISO states that Joint Protestors’ points have little or no merit, bear little or no relationship with the GIA, or are more appropriately addressed in the pending complaint proceeding.

18. Given that the issues raised by the GIA would likely be affected by the Commission's decisions in the pending complaint proceeding, as well as informed by action on the proposed Net Zero policy in the pending Queue Reform Proceeding in Docket No. ER12-309-000, the Commission, in the December 23 Order, accepted and suspended the GIA for a nominal period, effective October 26, 2011, subject to refund and further Commission order.²⁰

19. Joint Protestors request rehearing of the December 23 Order, as described further below.

II. Notices of Filing and Responsive Pleadings

20. Notice of the complaint in Docket No. EL11-53-000 was published in the *Federal Register*, 76 Fed. Reg. 43,682 (2011), with interventions and protests due on or before August 4, 2011. Timely motions to intervene were filed by Duke Energy Corporation; Edison Mission Energy; High Country Wind Energy, LLC; Integrys Energy Group, Inc.; ITC Companies (International Transmission Company d/b/a/ ITCTransmission, Michigan Electric Transmission Company, LLC, and ITC Midwest LLC); Missouri River Energy Services; American Municipal Power, Inc.; and NextEra Energy Resources, LLC.

21. MISO filed an answer and motion to dismiss (Answer) on July 29, 2011. Timely motions to intervene and comments in support of the Answer were filed by Iberdrola Renewables, Inc. (Iberdrola), PNE Wind USA, Inc. (PNE Wind), Great River, Prairie Rose; and Detroit Edison Company (Detroit Edison). Xcel Energy Services Inc. (Xcel), on behalf of its utility operating company affiliates Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation filed a timely motion to intervene and protest. EcoEnergy LLC (EcoEnergy) and Renewable Energy Systems Americas Inc. (RES Americas) filed timely motions to intervene and comments in support of the complaint. Wind on the Wires (WOW) and Midwest ISO Transmission Owners²¹ filed timely motions to intervene and limited comments.

²⁰ December 23 Order, 137 FERC ¶ 61,234 at P 23.

²¹ For the purposes of Docket No. EL11-53-000, Midwest ISO Transmission Owners include: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; 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
(continued...)

22. Subsequently, on August 15, 2011, and August 16, 2011, respectively, the Complainants and EcoEnergy filed answers in response to MISO's answer and motion to dismiss. On August 30, 2011, MISO filed a further response, as did Xcel and Great River.

23. Commission staff sent to MISO a request for additional information on October 7, 2011 (Data Request). MISO submitted its response on November 7, 2011 (November 7 Response). The Commission provided a comment period until November 28, 2011 for parties to intervene and to file comments on MISO's November 7 Response. Exelon Corporation (Exelon) filed a timely motion to intervene. Complainants and EcoEnergy filed timely comments regarding the November 7 Response. MISO filed a motion for leave to answer and answer on December 13, 2011.

24. On November 15, 2011, Complainants filed a pleading jointly in Docket No. EL11-53-000 and Docket No. ER12-188-000 which, among other things, sought consolidation of the two proceedings.

25. Notice of the GIA Filing in Docket No. ER12-188-000 was published in the *Federal Register*, 76 Fed. Reg. 69,264 (2011), with interventions and protests due on or before November 15, 2011. The December 23 Order described all of the responsive pleadings.²²

26. On January 31, 2012, Prairie Rose filed a petition for acceptance of its GIA pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207 (2011). Subsequently, Joint Protestors filed a protest and answer to the petition, and on March 1, 2012, Prairie Rose filed an answer thereto.

Power Agency; Indianapolis Power & Light Company; 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; 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.

²² December 23 Order, 137 FERC ¶ 61,234 at PP 8-10.

III. Discussion

A. Procedural Matters

27. 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 filed in Docket No. EL11-53-000 serve to make the entities that filed them parties to the complaint proceeding.

28. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2011), prohibits an answer to a protest or an answer, unless otherwise permitted by the decisional authority. We will accept the answers filed on August 15, 2011 by Complainants and EcoEnergy, as they have provided information that assisted us in our decision-making process. However, we are not persuaded to accept the answers to those answers filed August 30, 2011, nor are we persuaded to accept MISO's answer to comments on its November 7 Response filed December 13, 2011, and we will, therefore, reject them. In addition, we are not persuaded to accept Prairie Rose's March 1 answer regarding its petition for acceptance, and we will reject that as well.

29. In the December 23 Order, the Commission granted the interventions of Prairie Rose, Xcel, Joint Protestors, and Midwest ISO Transmission Owners in Docket No. ER12-188-000.²³ In addition, the Commission denied the motion to consolidate the

²³ December 23 Order, 137 FERC ¶ 61,234 at PP 17-21. For purposes of Docket No. ER12-188, Midwest ISO Transmission Owners 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; Big Rivers Electric Corporation; 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 ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; 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.

proceeding in Docket No. ER12-188-000 and the complaint proceeding, given that the Commission did not set the proceedings for a trial-type evidentiary hearing.²⁴

B. Complaint Proceeding

30. As discussed below, we will grant the complaint and establish hearing and settlement judge procedures with regard to whether a lack of transparency and fairness in MISO's application of its Net Zero interconnection policy resulted in undue discrimination against Complainants or other parties to the complaint. With respect to MISO's proposed Net Zero Tariff revisions in the Queue Reform Proceeding, in an order in that proceeding being issued concurrently with this order, we accept MISO's proposal to implement Net Zero Interconnection Service on the condition that it modify its proposal to ensure that Net Zero Interconnection Service is offered on a fair, transparent, and non-discriminatory basis and that it complies with the filing requirements of FPA section 205.²⁵

1. Tariff Violations

a. Summary of Pleadings

i. Complaint

31. As referenced above, Complainants contend that MISO improperly granted invalid GIAs and amended GIAs and failed to properly restudy existing generator interconnections applications and GIAs when it permitted certain generators to interconnect under its Net Zero interconnection policy. Complainants maintain that when processing a generator interconnection request, MISO has a duty to adhere to its Tariff which requires that certain procedures be followed with respect to all GIAs.²⁶ Complainants explain that MISO's GIP prescribes a process for an interconnection customer to submit a generator interconnection application, which requires a new application for any substantive modification in the operating characteristics of its facility.²⁷ Complainants aver that MISO's Tariff does not provide for an interconnection

²⁴ December 23 Order, 137 FERC ¶ 61,234 at P 21.

²⁵ *See* MISO Queue Reform III, 138 FERC ¶ 61,233 at PP 293-306.

²⁶ Complaint at 3.

²⁷ *Id.* at 3 (citing Attachment X, Section 2.1a ("The GIP specifically applies when one of the following is proposed by an Interconnection Customer: ... (ii) additional generation at an existing Point of Interconnection, (iii) an increase in the capacity of an existing Generating Facility, (iv) a substantive modification to the operating

(continued...)

customer to receive interconnection service based upon the existence or operating characteristics of a completely different generating facility that may be owned by another entity; rather, the Tariff provides that, if a generator wants to substantively change its operating characteristics, it is *that generator* that must make the request for *its* facility, and the GIP must be followed to ensure that the proper studies are performed for that change in operating characteristics.²⁸

32. Complainants claim that MISO has processed, and is processing, material changes to the operating characteristics of certain generators under its posted Net Zero interconnection policy, without following its Tariff, allowing certain projects to avoid building network upgrades that would otherwise be required if the GIP were followed, and to jump ahead in the queue.²⁹ Complainants also state that MISO has rationalized the ability of a Net Zero interconnection policy to avoid the procedures required by the Tariff by viewing the existing generator as having the ability to subcontract a portion of the energy production that it is permitted to generate to some other third-party generator, a theory that Complainants consider flawed since GIP requirements are avoided by both generators.³⁰

33. They further state that, under MISO's posted Net Zero interconnection policy, a vertically integrated utility could build a new plant and retire an old one, with the new plant taking over the interconnection rights and network resource designation of the old plant under an existing GIA, and without following certain requirements of MISO's GIP.³¹ Complainants contend that the policy often results in the transmission owner's favored wind project displacing another wind project, allowing lower-queued projects to jump over other projects that entered the queue at an earlier date or otherwise receive treatment inconsistent with MISO's Tariff.

34. Complainants further allege that MISO allowed four projects (J182, J183, J184, and J189) to advance to the Definitive Planning Phase despite findings of congestion in Feasibility Studies for higher-queued projects seeking interconnection at or near the same

characteristics on an existing Generating Facility, or (v) evaluations of the replacement of equipment failures at an existing Generating Facility that constitute a Material Modification to the operating characteristics.”)).

²⁸ *Id.* at 3-4.

²⁹ *Id.* at 4.

³⁰ *Id.* at 5.

³¹ *Id.* at 6.

points of interconnection in a procedure contrary to the Tariff.³² Complainants identify several projects of similar size proposing to interconnect at the same location, and which entered the queue as much as 3.5 years earlier than J182, but following the Feasibility Studies, were directed to the System Planning and Analysis phase whereas J182 was fast-tracked to the Definitive Planning Phase, jumping over higher-queued projects that remained in the System Planning and Analysis phase. Complainants contend that similar treatment occurred with J183 and J184.³³ Complainants state that identified constraints are fewer for the queue-jumping projects, and the Feasibility Studies for the favored new generator disregard impacts and constraints identified in prior studies for higher-queued projects, which could only occur if Section 4.1 of the Tariff is violated.³⁴ As a result, Complainants assert that the favored new generator and the existing generator can avoid cost responsibility for network upgrades, while other projects bear substantial upgrade costs.

ii. MISO's Answer

35. MISO responds that the complaint fails to identify a Tariff violation. MISO disagrees with Complainants' assertion that permitting one interconnection customer to submit an interconnection request for use of capacity reserved by another existing generator is not permitted by the Tariff. MISO responds that there is no reason an interconnection customer cannot enter into such an agreement to use an existing generator's capacity since it is not prohibited by the Tariff. MISO concedes, however, that the process could be improved if the existing generator itself made the interconnection request.³⁵ Citing another case as support,³⁶ MISO explains that in accepting MISO's revisions on Conditional Energy Resource Interconnection Service

³² *Id.* at 16.

³³ *Id.* at 19.

³⁴ *Id.* at 27 (citing Attachment X, Section 4.1 (“[t]he Queue Position of each Interconnection Request will be used to determine the order of performing the Interconnecting Feasibility Studies and therefore entrance into either the Definitive Planning Phase or the System Planning and Analysis Phase. The Queue Position will also be used for the determination of cost responsibility for the facilities necessary to accommodate the Interconnection Request”)).

³⁵ MISO July 29 Answer at 16-17.

³⁶ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,306, at PP 2-3, 29-32 (2006) (discussing the benefits of more efficient use of existing resources).

(ERIS) and Network Resource Interconnection Service (NRIS), the Commission expressed support for enhancing use of existing system capacity.³⁷

36. In addition, MISO disputes Complainants' allegation that MISO has allowed unauthorized queue jumping, contending that processing interconnection requests for projects based on readiness is not a Tariff violation. In this regard, MISO states that the Commission has recognized that MISO can process interconnection requests out of order on a first-ready, first-served basis under its revised GIP.³⁸

37. As to the interconnection requests currently under study (J182, J183, J184, and J189), in response to Complainants' contention that queue jumping can only occur if Section 4.1 of the GIP is violated, MISO asserts that allegations of queue jumping also ignore the following: (1) no new interconnection service is being created, allocated, or utilized; and (2) for three of the four projects, the criticized interconnections involve different specifications, different locations, and different levels of service than other interconnection requests in the vicinity, i.e., ERIS or NRIS as opposed to the "lesser" level of service provided by Net Zero Interconnection Service.³⁹ MISO states that the listed projects seek the lesser level of service provided by a Net Zero interconnection because that meets their business needs, and that, while the Tariff does not provide a right to use the capacity allocated to an existing project, neither does it prohibit it, arguing that this method was accepted by the Commission with regard to the GIA for Trimont Wind. Accordingly, MISO asserts that it is not a violation of open access principles if study results warrant such processing.⁴⁰ Finally, according to MISO, its Tariff permits it to process interconnection requests pursuant to the Net Zero interconnection policy posted on its website.

iii. Complainants' Answer

38. In their answer, Complainants emphasize that the issue here is whether MISO should be processing any interconnection applications other than in accordance with the terms of the Tariff; the Tariff is at the heart of the Commission's open access policy, and without specified rules, the interconnection process is not open.⁴¹ Complainants reiterate

³⁷ MISO July 29 Answer at 18, n.51.

³⁸ *Id.* at 13 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,065, at P 43 (2011)).

³⁹ *Id.* at 49-51.

⁴⁰ *Id.* at 51.

⁴¹ Complainants August 15 Answer at 2.

that if the application of the policy is not a modification to an existing generator, then it is a process that allows a new generator to interconnect without following the current procedures of the Tariff.⁴² Complainants argue that a change to the Tariff must be made pursuant to a filing with the Commission, and not by the issuance of two-page memorandum from MISO announcing a conceptual policy, the contours of which continue to change.⁴³ Furthermore, Complainants state that the addition of another process for generators to interconnect to the transmission system is not the type of change in the Tariff that should be implemented through a back-door method such as an approval of, or an amendment to, a GIA.⁴⁴

39. Complainants further argue that MISO's contention that it can do whatever it wants as long as it is not expressly prohibited turns the entire GIP on its head. According to Complainants, the purpose of the Tariff is to insure that MISO acts in accordance therewith.⁴⁵ Also, with regard to MISO's request that any relief be prospective only, Complainants state that MISO's argument contravenes the filed rate doctrine, and while relief under FPA section 206 is generally prospective, that is not the case when a tariff violation has occurred.⁴⁶ Lastly, Complainants maintain that developers of the Net Zero projects had full access to the Tariff at the time of their interconnections, and nothing in the Tariff or Commission policy suggests that they are now entitled to indemnification or insulation from the consequences of their decision to seek Net Zero Interconnection Service.⁴⁷

iv. Comments

40. Like the Complainants, EcoEnergy asserts that MISO's implementation of the Net Zero interconnection policy is inconsistent with its Tariff since Net Zero is not identified as one of the types of interconnection services available for new interconnection requests in Attachment X, Section 3.2.⁴⁸ EcoEnergy states the Net Zero interconnection policy effectively allows an incumbent generator to transfer

⁴² *Id.* at 4.

⁴³ *Id.* at 2.

⁴⁴ *Id.* at 2-3.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 7-8.

⁴⁷ *Id.* at 8.

⁴⁸ EcoEnergy August 4 Comments at 2.

interconnection capacity, allowing the new generator to jump over other projects in the interconnection queue and avoid responsibility for network upgrades in a way that is neither transparent nor open to competition.⁴⁹ EcoEnergy maintains that, while the Tariff expressly permits reassignment or resale of firm point-to-point transmission service and HVDC service, there are no parallel provisions allowing for reassignment of interconnection capacity,⁵⁰ and the Tariff makes clear that transmission service and interconnection service are separate and distinct.⁵¹ Furthermore, EcoEnergy states that the requirement in Section 2.1a(iv) of the Tariff for a new interconnection request, subject to the full range of interconnection studies, when a generator proposes a substantive modification to the operating characteristics of its facility, recognizes that different types of generating facilities have different operational impacts on the transmission system, while the Net Zero interconnection policy simply assumes that different types of generating facilities are fungible for interconnection purposes.⁵²

41. EcoEnergy stresses that not a single entity that opposed the complaint made any attempt to identify any Tariff provision that they claim authorizes Net Zero Interconnection Service.⁵³ In addition, EcoEnergy states that the negative impact on market competitors will be increased if transmission rights are able to be shared along with interconnection capacity. EcoEnergy cites Xcel's statements to the Minnesota Public Utilities Commission (MPUC) as evidence that Net Zero generators intend to take advantage of network transmission service granted to existing generators.⁵⁴ It goes on to point to Great River's comments related to Trimont Wind as further evidence of a "double advantage" of receiving preferential interconnection and transmission service under the Net Zero interconnection arrangement.⁵⁵

⁴⁹ *Id.* at 3-4.

⁵⁰ *Id.* at 4 (quoting Tariff, Attachment X, Section 2.4 ("Nothing in the GIP shall constitute a request for transmission service or confer upon an Interconnection Customer any right to receive transmission service...under the Tariff.")).

⁵¹ *Id.* at 2.

⁵² *Id.* at 4-5.

⁵³ EcoEnergy August 16 Answer at 3.

⁵⁴ *Id.* at 11-12.

⁵⁵ *Id.* at 12-13 (explaining that Great River intended to have Trimont Wind share not only the interconnection capacity for Great River's peaking plant but also network integration transmission service, as indicated in Xcel's Petition for Approval of a Power

42. RES Americas agrees that MISO's Net Zero policy is unauthorized and violates MISO's Tariff. RES Americas states that MISO's answer wrongly equates the resale or "sub-contracting" of existing interconnection service with the resale of point-to-point transmission service. According to RES Americas, they are separate services, subject to different Tariff provisions.⁵⁶ Similarly, RES Americas states that a GIA does not create a tradable interconnection right that may be sold by an existing generator to a new generator under any set of conditions.⁵⁷ Furthermore, RES Americas rebuts MISO's claims that its Net Zero policy is permitted because it is not expressly prohibited in the Tariff by its assertion that all rates, terms, and conditions of service must be filed with and approved by the Commission and MISO cannot seriously argue that the absence of a prohibition on terms and conditions equates to implied approval. Moreover, RES Americas argues that MISO cannot avoid its filing requirements under the FPA simply by adopting a policy statement.⁵⁸ RES Americas also points out that MISO misstates the application of its first ready, first served policy since projects should not be expedited using procedures not found in the Tariff.⁵⁹

43. Several other commenters support MISO's position. Great River asserts that Complainants have not demonstrated that MISO has violated its Tariff.⁶⁰ PNE Wind also supports the Net Zero policy and refutes Complainants' queue jumping allegations. Contrary to comments that indicate Net Zero service will also result in preferential transmission service, PNE Wind indicates Net Zero generators have no rights to the existing generator's transmission service and so must arrange their own transmission service.⁶¹ WOW expresses its support for the use of Net Zero interconnections along with the development of Tariff language governing the new type of interconnection service.⁶²

Purchase Agreement with Geronimo Wind Energy, LLC filed with the MPUC on June 30, 2011, and that MISO was aware of Great River's intention).

⁵⁶ RES Americas August 4 Comments at 4.

⁵⁷ *Id.* at 4-5.

⁵⁸ *Id.* at 5-6.

⁵⁹ *Id.* at 7.

⁶⁰ Great River August 4 Comments at 5.

⁶¹ PNE Wind August 4 Comments at 5.

⁶² WOW August 4 Comments at 3.

44. In MISO's November 7 response to the Data Request, when asked to provide Tariff language that permits an agreement to share interconnection capacity, MISO cites the following: (1) Articles 9.3 and 9.4 of the *pro forma* GIA which obligate the transmission provider, transmission owner, and interconnection customer to operate in a safe and reliable manner that is consistent with the appropriate operating protocols and any operating limits; (2) Appendix A, Section 1 of the *pro forma* GIA, which distinguishes between the gross and net output values of the generating facility at a point of interconnection; (3) Article 1 of the *pro forma* GIA defining Generating Facility Capacity to mean "the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices;" and (4) Section 1.352 of Module A which defines "Jointly Owned Generation Resources" as "[a] Generation Resource owned by more than one (1) entity."⁶³

45. When asked to explain how its Tariff permits a generator with a GIA to change the generation stations that are interconnected where the nameplate capacity of the generation stations under the GIA does not exceed the capacity approved in the GIA, MISO states that nameplate capacity is less important than the actual output permitted on the transmission system, which is governed by the provisions of the GIA, operating limits, and ultimately the security constrained dispatch used by the energy market.⁶⁴

b. Commission Determination

46. The Commission finds that MISO's Tariff in effect at the time the complaint was filed did not permit sharing of interconnection capacity between different generators, did not allow the modification of study requirements and interconnection procedures based on such sharing, and did not provide for Net Zero Interconnection Service in Attachment X, Section 3.2. MISO itself, while attempting to justify how existing Tariff provisions allow for Net Zero Interconnection Service, concedes in its data response that the Tariff is silent on an agreement between existing generators to share capacity.⁶⁵ The fact that MISO subsequently filed modifications to its Tariff in Docket No. ER12-309-000 to incorporate a process for Net Zero interconnections is further indication that no terms and conditions governing this process existed in its Tariff prior to that filing. It is also true, as EcoEnergy asserts, that Net Zero is not listed as one of the types of service available for new interconnection requests in Section 3.2 of Attachment X.

⁶³ MISO November 7 Response at 4.

⁶⁴ *Id.* at 5.

⁶⁵ *Id.* at 4 (stating that "[t]he Tariff is silent on an agreement between existing generators.").

47. In its answer to the complaint, MISO contends that the complaint should be dismissed because Complainants failed to identify a specific action or inaction which is alleged to be a violation; yet MISO itself provides no tangible justification that its utilization of Net Zero interconnections is not a Tariff violation. Regarding the provisions that MISO invokes as authorization for the Net Zero process,⁶⁶ we have examined each of the identified provisions and find that none of these provisions, either individually or in combination, authorize Net Zero service. Articles 9.3 and 9.4 of the GIA include general statements that facilities should operate in a safe and reliable manner and in accordance with operating limits. Appendix A, Section 1 provides both a gross and net amount of output without imparting a reason or significance for the differentiation. Article I of the GIA contains a definition for Generating Facility Capacity without suggesting something of more consequence. Lastly, Section 1.352 of Module A contains a definition for Jointly Owned Generation Resources. Nothing in these provisions specifies how and under what circumstances interconnection service could be shared with a new generating unit not previously identified by the party holding the interconnection service.

48. Furthermore, there are instances where the Net Zero policy is inconsistent with the existing Tariff. For example, MISO used a truncated study approach for Net Zero projects that differed from what the existing Tariff requires for other projects. Specifically, while the posted Net Zero policy provided that MISO would perform required studies, including stability and short circuit analyses for Net Zero interconnection requests, the existing Tariff in addition requires a thermal analysis to evaluate interconnection projects. To the extent that MISO did not follow its interconnection study approach according to the Tariff, it violated those Tariff provisions.

49. Accordingly, we agree with the Complainants and RES Americas that MISO is not authorized to implement whatever policies or procedures that it chooses as long as they are not specifically prohibited. Whether the Net Zero interconnection policy has merit or not, merely stating that nothing in the Tariff prohibits such a policy is not justification for implementing it. This is especially true where the Commission has developed detailed Tariff procedures for dealing with a specific process as it has done for generator interconnection.⁶⁷ Rates, terms and conditions of service must be specified in the Tariff,

⁶⁶ *Id.* at 4.

⁶⁷ See, e.g., Order No. 2003, and *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006).

and such provisions must have received Commission approval prior to their implementation.⁶⁸

50. Complainants aver a violation of Section 4.1 of Attachment X of the Tariff, which provides that entrance into the Definitive Planning Phase or System Planning and Analysis phase, and resulting cost responsibility, is ultimately based on queue position. In the Queue Reform Order, the Commission approved a first-ready, first-served policy for MISO where projects are processed based on their readiness to proceed, which does permit lower-queued projects to jump ahead of other projects.⁶⁹ Thus, moving ahead of a higher-queued project is not in itself a Tariff violation. Nonetheless, as discussed above, the Commission finds that MISO has acted outside of its Tariff and GIP by allowing several interconnection customers to advance through the interconnection process based on the Net Zero interconnection policy.

51. Regarding allegations that Net Zero generators are attempting to share transmission rights, in addition to interconnection rights, any reassignment of point-to-point transmission capacity is governed by Order Nos. 888⁷⁰ and 890.⁷¹ To the extent that parties may have negotiated a sale or reassignment of point-to-point transmission capacity, appropriate provisions of MISO's Tariff must be followed, including executing service agreements and posting the transactions on MISO's OASIS. Any other type of "sharing" would constitute a Tariff violation; however, there is no evidence in the record demonstrating that any such specific violations have occurred.

⁶⁸ FPA § 205 (c) and (d), 16 U.S.C. § 824d(c) and (d).

⁶⁹ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183 (2008) (Queue Reform Order), *order on reh'g*, 127 FERC ¶ 61,294 (2009).

⁷⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

52. As explained above, our analysis indicates that MISO's implementation of its Net Zero interconnection policy prior to appropriate Tariff provisions having been reviewed and accepted by the Commission is a clear violation of the Tariff.

53. As a result, MISO must discontinue processing all Net Zero interconnection applications in accordance with the policy posted on its website. The Commission is conditionally accepting MISO's Tariff revisions implementing its Net Zero Interconnection Service as part of its Queue Reform Proceeding in Docket No. ER12-309-000 concurrently with this order.⁷² Henceforth, requests for Net Zero Interconnection Service must be processed pursuant to the procedures laid out in that proceeding, and all Net Zero interconnection customers must conform to any and all conditions determined in that proceeding. The Commission's disposition with respect to existing Net Zero projects is discussed later in this order.

2. Project Processing and Errors in Studies

a. Summary of Pleadings

i. Complaint

54. Complainants' allegations regarding studies fall into two categories: those relating to projects recently processed under MISO's posted Net Zero policy, and those related to projects that interconnected over a number of years at Great River's Lakefield Generating Station.

55. First, Complainants allege that MISO has allowed at least four projects to advance to the Definitive Planning Phase despite findings of congestion in earlier Feasibility Studies for higher-queued projects seeking interconnection at or near the same points of interconnection as the Net Zero projects.⁷³ Complainants state that the studies for the Net Zero projects were based upon past studies performed for existing generators with no regard for the current state of congestion or higher-queued intervening projects and analyses.⁷⁴

⁷² MISO Queue Reform III, 138 FERC ¶ 61,233 at PP 293-306.

⁷³ The projects alleged to have been improperly studied include projects J182, J183, J184, and J189. Prairie Rose's project is J183; Projects J182, J184, and J189 have not been identified in the record.

⁷⁴ Complaint at 16.

56. Complainants state that Project J182 is a Net Zero project; its interconnection request was submitted on November 15, 2010, proposing to interconnect at the Pleasant Valley Substation.⁷⁵ According to Complainants, three higher queued projects also proposed to interconnect at the Pleasant Valley Substation.⁷⁶ The Feasibility Study results for these three projects did not meet the acceptable limits to move into the Definitive Planning Phase, since transmission capacity was not available without significant upgrades, and the projects were sent to the System Planning and Analysis phase.⁷⁷ Complainants assert that because two of these projects had reached the Definitive Planning Phase stage and had met all M2 milestones as of the date that Project J182 entered the queue, Section 4.2.5 of MISO's Business Practice Manual required that those constraints be reflected in any study for J182.⁷⁸ According to Complainants, the Feasibility Study results for Project J182 showed fewer regional constraints than indicated for the other projects and indicated that transmission was available immediately at the Pleasant Valley Substation point of interconnection.⁷⁹ Complainants believe that MISO has assumed that thermal analyses applicable to an existing generator interconnected at the Pleasant Valley Substation apply to Project J182, but not to other projects proposing to interconnect at the same substation.⁸⁰

57. Complainants also allege that similar treatment has occurred with respect to Projects J183 and J184, which both entered the queue on November 15, 2010, and propose to interconnect to the Split Rock Substation near Brandon, SD,⁸¹ vis-à-vis two higher-queued projects that also propose to interconnect at the Split Rock Substation.⁸²

58. Complainants believe similar conduct of Net Zero treatment has occurred with respect to Project J189. Project J189 entered the interconnection queue on

⁷⁵ *Id.*

⁷⁶ The higher-queued projects are G762, G852, and J111. The project names have not been identified in the record. They entered the interconnection queue as early as 2007.

⁷⁷ Complaint at 16-17.

⁷⁸ *Id.*

⁷⁹ *Id.* at 18.

⁸⁰ *Id.*

⁸¹ *Id.* at 19.

⁸² *Id.* The higher-queued projects are G829 and J151.

December 10, 2010, proposing to interconnect to the Angus Anson substation. On February 7, 2011, Project J198 entered the queue proposing to interconnect to a substation approximately 80 miles away and located in the same congested area. MISO studied these projects in the same study cycle and identified more than 20 constraints for Project J198 while Project J189 had four constraints identified.

59. Regarding Great River's Lakefield Generating Station, Complainants explain that a restudy was avoided when Great River allowed a wind farm to interconnect and use the same interconnection facilities.⁸³ Complainants state that a new System Impact Study would have been required for the Lakefield Generating Station because its operating characteristics changed by adding the wind farm and the existing tripping scheme would no longer be permitted.⁸⁴ Complainants further assert that the elimination of the tripping scheme would require Great River to build network upgrades to eliminate most of the upgrades assigned to other non-favored projects.⁸⁵

60. Complainants explain that three wind projects (Trimont Wind, G263; Elm Creek Wind, G386; and Heartland Wind, G514) were allowed to interconnect because MISO and Great River concluded that Great River had a transferable property right that it could assign to a third party to generate power from a different energy source.⁸⁶ According to Complainants, the sharing of this property right was taken a step further when MISO amended the GIA for Trimont Wind to allow the Lakefield Generating Station and the wind farm to go from a limit of 550 MW to a combined limit of 655 MW of generation without following the GIP.⁸⁷

ii. MISO's Answer

61. In response, MISO argues that the movement of some projects to the Definitive Planning Phase and others to the System Planning and Analysis phase is a normal part of the GIP process and asserts that Complainants do not point to a specific error in the Feasibility Studies for the projects.⁸⁸ MISO explains that the studies for one Net Zero project (J182) did take the higher-queued projects into account and that another Net Zero

⁸³ *Id.* at 23.

⁸⁴ *Id.* at 24.

⁸⁵ *Id.* at 24.

⁸⁶ *Id.* at 25.

⁸⁷ *Id.* at 26. The amended GIA was accepted in Docket ER11-2550-000.

⁸⁸ MISO July 29 Answer at 15.

project (J189) was higher-queued than the project that was not moved to the Definitive Planning Phase, Project J198.⁸⁹ According to MISO, Complainants cannot claim harm to another project (Project J198) because it was lower in the queue than Project J189, and J189 would normally have moved through the process faster.⁹⁰ In addition, MISO asserts that Complainants “miss the fundamental factual point of ‘net zero’ interconnections, namely that there is no new service being provided.”⁹¹

iii. Comments

62. EcoEnergy comments that the reassignment of interconnection capacity to another generator is inconsistent with the requirement of Section 2.1 of Attachment X, which requires a new interconnection request, subject to all studies required in the GIP when an existing generator proposes substantive modifications to the operating characteristics of its facility.⁹² EcoEnergy asserts that the study parameters for different types of generating plants (i.e., peaking versus baseload versus wind) will differ, and states that the Net Zero concept assumes that these different types of facilities “are fungible for interconnection purposes.”⁹³ EcoEnergy also states that the Net Zero concept relies on a Special Protection Scheme⁹⁴ to ensure that the combined output from the Net Zero generator and the incumbent generator does not exceed the maximum output allowed under the GIA for the incumbent generator, but that outside of the Net Zero context, MISO does not allow a new generator to submit a Special Protection Scheme to avoid paying for network upgrades.⁹⁵ EcoEnergy believes this is discriminatory because it allows Net Zero projects to avoid responsibility for network upgrades and denies use of a Special Protection Scheme to other interconnection customers.⁹⁶

⁸⁹ *Id.* at 15-16.

⁹⁰ *Id.* at 16.

⁹¹ *Id.* at 15.

⁹² EcoEnergy August 4 Comments at 4-5.

⁹³ *Id.* at 5.

⁹⁴ The Commission interprets comments about Special Protection Schemes or tripping schemes as referring to Special Protection Systems, as defined by NERC. *See supra* n.15.

⁹⁵ EcoEnergy August 4 Comments at 6.

⁹⁶ *Id.*

63. RES Americas requests that the Commission rule that MISO may not implement its Net Zero policy in a manner that departs from queue order or that allows existing interconnection customers to decide which new generators are permitted to obtain an interconnection based on the existence of a Special Protection Scheme. However, it disagrees with Complainants that the use of Special Protection Schemes should be prohibited. According to RES Americas, a Special Protection Scheme allows real-time monitoring of equipment and the Special Protection Scheme will immediately trip the affected generation facility if an operating condition is detected that is not within predefined criteria.⁹⁷ RES Americas further asserts that prohibiting Special Protection Scheme-based interconnections would prevent timely and cost effective interconnection of new projects that would otherwise require costly and unnecessary network upgrades.⁹⁸

64. RES Americas notes that the ISO/RTO Council reported that Special Protection Schemes are used throughout MISO and transmission systems throughout the country.⁹⁹ According to RES Americas, Special Protection Scheme-based interconnections must be evaluated in queue order and capacity be made available based on queue order, and pending interconnection requests should have the right to proceed under such an arrangement before later-queued projects are offered that opportunity.¹⁰⁰

65. Great River argues that Complainants mischaracterize the interconnection of Lakefield Generating Station and Trimont Wind.¹⁰¹ Great River explains that the Lakefield Generating Station interconnection was studied as required under Mid-Continent Area Power Pool's (MAPP) requirements and the tripping scheme was implemented in 2001 to preserve system reliability in the event of the unavailability of a particular 345 kV transmission line.¹⁰² Additionally, Great River finds the Complainants' argument to be speculative and unsupported about whether a new outlet from the Lakefield Generating Station would have been constructed to the benefit of future

⁹⁷ RES Americas August 4 Comments at 2.

⁹⁸ *Id.* at 3.

⁹⁹ *Id.* at 8.

¹⁰⁰ *Id.* at 11-12.

¹⁰¹ Great River August 4 Comments at 6.

¹⁰² *Id.* at 7.

interconnection customers if the tripping scheme was not permitted since the existing facility interconnected in accordance with the processes in effect at the time.¹⁰³

66. Great River states that the interconnection of Lakefield Generating Station and Trimont Wind took place before MISO formed its Net Zero interconnection policy.¹⁰⁴ According to Great River, the interconnection request pre-dated the availability of Network Resource Interconnection Service under Order No. 2003, so it also submitted two Transmission Service Requests each for 50 MW to account for the additional generation capacity that would be interconnected through Trimont Wind. Great River explains that it requested a plan to temporarily dispatch Trimont Wind and the Lakefield Generating Station in a manner that would limit the sum of their outputs to the amount of the existing transmission capacity available to the Lakefield Generating Station since the required upgrades to deliver the output of Trimont Wind would not be in place for several years. Great River further explains that this GIA was approved in Docket ER05-1018-000, and eventually the upgrades identified were placed into service and the restriction was removed from the GIA. Great River disagrees with Complainants that the Lakefield Generating Station has changed its operating characteristics because Great River did not seek to increase the capacity of the station.¹⁰⁵

67. Xcel challenges the data Complainants put forth to describe relevant transmission constraints and to explain the genesis of the Net Zero concept. Xcel asserts that the reports cited by Complainants rely on faulty assumptions and stale data.¹⁰⁶

68. In response to MISO's Answer, Complainants argue that Net Zero projects do have an effect on the system because the System Impact Study for Trimont Wind shows overloads on the system.¹⁰⁷ Complainants explain that the existing generators were studied at only peak times and would need to be restudied in the off-peak scenario if it has a Net Zero arrangement.¹⁰⁸ Complainants note that there was not a generator interconnection study conducted in 2010 when Trimont Wind was allowed to increase its

¹⁰³ *Id.* at 8.

¹⁰⁴ *Id.* at 10.

¹⁰⁵ *Id.* at 9.

¹⁰⁶ Xcel August 4 Protest at 17.

¹⁰⁷ Complainants August 15 Answer at 10-11.

¹⁰⁸ *Id.* at 11.

output and the increase was based upon transmission studies, and not generator interconnection studies.¹⁰⁹

69. EcoEnergy states that there is no information which shows that the existing units were studied for off-peak conditions.¹¹⁰ EcoEnergy also raises the concern that adverse impacts to other market participants are worsened if Net Zero projects have the ability to share the transmission rights of existing units.¹¹¹ EcoEnergy points to Xcel which informed the Minnesota Public Utilities Commission that it expects to be able to share transmission service arranged for its Angus Anson peaking generator with the Prairie Rose Wind Project J183.¹¹²

iv. Data Request Response

70. The Commission staff's Data Request sought additional explanation about how MISO implements its GIP. In response to the Data Request, MISO states that Trimont Wind, Elm Creek, and Heartland Wind were studied under the applicable Tariff processes and are not Net Zero interconnections. MISO asserts that modifications are substantive based on a *net* increase in interconnection capacity at a point of interconnection, and the outcome of studies performed that analyze the electro-mechanical interaction of the transmission system with the generator.¹¹³ According to MISO, the existing generator would not have a material change in operating characteristics because the modifications are not substantive.¹¹⁴

71. With respect to Trimont Wind, Elm Creek, and Heartland Wind, MISO claims that all three interconnection requests made the network upgrades required for their requested level of service under the rules in place at the time.¹¹⁵

72. MISO states that Trimont Wind was studied in a group study under MISO's procedures that predated Order No. 2003. The System Impact Study for Trimont Wind

¹⁰⁹ *Id.* at 12.

¹¹⁰ EcoEnergy August 16 Answer at 10.

¹¹¹ *Id.* at 11.

¹¹² *Id.*

¹¹³ MISO November 7 Response at 2.

¹¹⁴ *Id.* at 3.

¹¹⁵ *Id.* at 6-9.

identified steady-state thermal overloads, but generators were not required to make upgrades to resolve thermal issues in the interconnection process. Two Transmission Service Requests were submitted with the interconnection request and Great River and MISO developed an operating guide until upgrades were in place to temporarily dispatch the wind farm and the Lakefield Generating Station to limit the sum of their outputs to the existing unit.¹¹⁶ This interconnection agreement was accepted by the Commission in Docket ER05-1018-000. Once the upgrades were placed in service, the restriction was removed.¹¹⁷

73. For Elm Creek Wind, MISO states that it was studied for both ERIS and NRIS under MISO's interconnection procedures consistent with Order No. 2003. Steady state thermal overloads were found in the study, but only one of the overloads exceeded the threshold to require an upgrade for ERIS, which the customer selected.¹¹⁸

74. MISO also discusses how Heartland Wind was studied in the same group study as Jeffers South and Project G520. The group as a whole faced thermal overloads and Heartland Wind had responsibility for some of these overloads. Heartland Wind was required to upgrade three 345 kV lines and 345 kV breakers.¹¹⁹

75. Responding to a question about whether the existing generators' interconnection requests were evaluated for off-peak conditions, MISO provides data regarding their studies. MISO shows that the Lakefield Generating Station, Pleasant Valley Station, and Angus Anson Station were evaluated by the MAPP Design Review Subcommittee with peak and off-peak conditions considered.¹²⁰ MISO notes that the reliability regions outside of MAPP typically only considered a summer peak case for generator additions, but this was not the case for the former MAPP region.¹²¹ In response to EcoEnergy, MISO also reiterates that interconnection service is not transmission service and does not grant deliverability rights to the generating facility.¹²²

¹¹⁶ *Id.* at 6.

¹¹⁷ *Id.* at 7.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 9.

¹²⁰ *Id.* at 10-11.

¹²¹ *Id.* at 12.

¹²² *Id.*

76. In comments on MISO's Response, EcoEnergy replies that the omission of the thermal study and associated upgrades for Net Zero projects is the mechanism for queue jumping.¹²³ EcoEnergy also disagrees with MISO's comments that no new additional service is being provided, because a wind facility may not utilize the transmission system when the existing generator had been accustomed to utilizing the transmission system.¹²⁴ With respect to Trimont Wind, EcoEnergy argues that NRIS was available at the time the GIA for Trimont Wind was filed and the project should have followed the requirements of Order No. 2003.¹²⁵ EcoEnergy also notes that MISO's response about the studies for peaking generators does not address the fact that the MISO queue study process has consistently assumed these plants to operate only during summer peak hours.¹²⁶ EcoEnergy adds that MISO's study procedures in place since 2008 assume that gas turbines are not on-line when wind generators are likely to be producing.¹²⁷

77. Complainants also respond to MISO's comments and argue that Net Zero is new capacity on the transmission system, and would still require a new interconnection application.¹²⁸ Complainants note that it is not clear what off-peak condition might have actually been studied and the assumptions would need to be determined through further evidentiary proceedings.¹²⁹

b. Commission Determination

78. We find that the three projects that are interconnected at Great River's Lakefield Generating Station were processed correctly for the type of interconnection service they were seeking at the time. The Special Protection Scheme approved by MAPP for the Lakefield Generating Station and utilized by Trimont Wind was an interim solution to address the limited availability of thermal capacity at the time until the upgrades for transmission service were in place. Although Elm Creek Wind and Heartland Wind later interconnected to the same point of interconnection as Trimont Wind, they did not propose to do so on the basis of sharing the interconnection capacity of the Lakefield

¹²³ EcoEnergy November 28 Comments on MISO November 7 Response at 3.

¹²⁴ *Id.* at 4.

¹²⁵ *Id.* at 7.

¹²⁶ *Id.* at 8.

¹²⁷ *Id.*

¹²⁸ Complainants November 28 Comments on MISO November 7 Response at 4-5.

¹²⁹ *Id.* at 6.

Generating Station. Rather, their output was viewed as additional output on the transmission system, and was properly studied in accordance with the requirements for ERIS. Additionally, as MISO has indicated, the upgrades required for these projects to interconnect were placed into service.

79. In response to Complainants' assertion that Trimont Wind's System Impact Study showed overloads on the system that were unaddressed, we dismiss this argument. While the System Impact Study showed overloads, Trimont Wind eventually had the necessary upgrades in place for its level of service as explained above. As to the suggestion that Trimont Wind was a Net Zero project, we note that this project predates MISO's posting of its Net Zero interconnection policy. Further, we agree with MISO that a study for Trimont Wind was not needed in 2010 at the time the output limit was lifted because this limitation was contingent upon Trimont Wind addressing the upgrades and conditions found in its Group Facilities Study. We disagree with EcoEnergy's assertion that Trimont Wind should have requested NRIS at the time its GIA was filed, because the interconnection request was filed before the Commission issued Order No. 2003, and the project was appropriately studied based on MISO's procedures at that time.¹³⁰

80. We also find that the Lakefield Generating Station did not require a restudy. Each of the three wind projects sharing a point of interconnection with the Lakefield Generating Station had its own queue number and study performed for its additional capacity. Further, the existing generator, Great River, did not increase or otherwise substantially modify its output, and the output allowed at the point of interconnection remained at the levels already studied for the existing generating facility. Additionally, we find that MISO has provided evidence which indicates that Great River was studied for off-peak conditions.¹³¹ As shown in the MAPP study for Great River, peak and off-peak conditions were considered when the project was studied.¹³² Therefore, we reject Complainants' argument that a restudy would be required.

81. Thus, we conclude that Trimont Wind, Elm Creek Wind, and Heartland Wind were studied properly, and that their interconnection at the Lakefield Generating Station did not trigger the need for a new interconnection request or a restudy for the existing generating plant pursuant to the GIP, Attachment X, Section 2.1a(iv).

82. With respect to the projects processed under MISO's posted Net Zero interconnection policy, we find that Project Nos. J182, J183, J184, and J189 were

¹³⁰ Trimont Wind filed an interconnection request with MISO on October 2, 2002.

¹³¹ MISO November 7 Response at Ex. 1.

¹³² *Id.*

processed improperly because, as discussed previously, MISO's Tariff does not permit interconnection customers to be processed pursuant to that policy. If these projects wish to be evaluated for Net Zero Interconnection Service, they will need to comply with the requirements established in the Queue Reform Proceeding for Net Zero Interconnection Service.

83. However, we find that restudy is not required for the existing Pleasant Valley station associated with Net Zero project J182 or for the existing Angus Anson Station associated with Net Zero projects J183, J184, and J189. Similar to the finding for Great River, the studies by MAPP indicate that off-peak conditions were considered when these projects were studied.¹³³ Additionally, we note that the existing capacity was not increased by the existing generators, and the output allowed at the point of interconnection remained at the levels already studied for the existing facilities. Additionally, we believe the studies conducted by MAPP adequately show that steady-state and dynamic conditions were evaluated for peak and off-peak conditions for the existing generators; therefore, we reject Complainants' argument that further evidentiary proceedings are needed.

84. With respect to the use of Special Protection Systems, we agree with MISO that there may be limited uses for their application, and Net Zero Interconnection Service is a possible example. A Net Zero resource has an obligation to limit its output, such that the output of the existing and Net Zero resource does not exceed the output capability of the existing resource. In order to be able to trip the Net Zero resource offline, a mechanism or procedure needs to be in place so the resource can be disconnected in a safe and reliable manner. Additionally, Net Zero Interconnection Service is a lower level of service than ERIS¹³⁴ and NRIS, and tripping capability of the resource is intended to reflect the limitation placed on its output, in contrast to ERIS and NRIS resources which do take into consideration the thermal impact of the resource on the transmission system. The issue of how to allocate their availability in an equitable manner should be addressed in MISO's compliance proceeding established in Queue Reform III, issued concurrently with this order.¹³⁵

¹³³ *Id.* at Ex. 2 and Ex. 3.

¹³⁴ In both the complaint proceeding and the Queue Reform Proceeding, MISO refers to Net Zero Interconnection Service as conditional ERIS which is a subset of ERIS, and it is the lowest level of interconnection service with the ability to be curtailed before ERIS and NRIS.

¹³⁵ See MISO Queue Reform III, 138 FERC ¶ 61,233 at PP 293-306.

85. While we agree with EcoEnergy that the study parameters for different types of generating facilities will differ, we disagree that the Net Zero interconnection policy assumes that the different types of generating facilities are fungible. The Net Zero resource was never intended to be interchangeable with the existing resource because such a resource by definition is a Capacity resource, and the Net Zero resource is not. As described by MISO, a Net Zero resource is not intended to serve as a replacement or substitution for the Capacity resource.¹³⁶ Furthermore, a Net Zero resource that proposes to replace a Capacity resource would be required to have a full study for NRIS. Although these resources are not fungible, a Net Zero resource processed in accordance with MISO's proposal in its Queue Reform Proceeding would have been studied in a manner that ensures that the Net Zero resource and existing resource will continue to meet the existing resource's requirement for thermal, stability, and short circuit conditions.

3. Net Zero Competitive Impact and Property Rights Issues

a. Summary of Pleadings

86. The Complainants contend that the Net Zero interconnection policy harms competition and that it will result in transmissions owners' preferred projects being selected for Net Zero Interconnection Service. The Complainants assert that affiliate and preferred recipients of Net Zero Interconnection Service avoid network upgrade costs and receive service under terms that others would not receive.¹³⁷ They argue that the policy effectively allows existing generators to determine which projects will be able to avoid upgrade costs.¹³⁸ They go on to outline a possible scenario in which a retiring plant can transfer its rights and network resource designation to a new plant without complying with the GIP. The Complainants state that Net Zero interconnections could be used by utilities to avoid competition and to "protect the monopoly of the utilities, creating an incentive for the transmission function to not pursue transmission build out as aggressively."¹³⁹ In their answer, Complainants point to the potential use of Net Zero at the Split Rock station as an example whereby an entity such as Xcel could avoid upgrade costs for which it should be responsible.¹⁴⁰

¹³⁶ MISO July 29 Answer, Ex. 1 at 26.

¹³⁷ Complaint at 5, 6.

¹³⁸ *Id.* at 28.

¹³⁹ *Id.* at 6, 27.

¹⁴⁰ Complainants August 15 Answer at 14 – 15.

87. In addition to competitive advantages related to network upgrade cost avoidance, the Complainants argue that the recipients of Net Zero Interconnection Service effectively “jump” over higher queued projects for interconnection sooner and that existing generators providing Net Zero Interconnection Service effectively get to decide which entities connect sooner.¹⁴¹ The Complainants assert that the Commission has already indicated it could not endorse such a policy.¹⁴²

88. The Complainants argue that Net Zero service presents fundamental property law issues. They assert that it is a rationalization for MISO to avoid Tariff procedures by assuming that existing generators have the right to transfer a portion of their interconnection rights to other generators.¹⁴³ Complaints assert that a Net Zero interconnection policy effectively allows existing generators to control the disposition of interconnection capacity in perpetuity preventing others from pursuing access through a transparent and open process.¹⁴⁴

89. According to the Complainants, the *pro forma* GIA only allows complete transfer of a generator’s interest and does not allow partial assignment of its rights to other entities. Complainants contend that a generator receiving interconnection through Net Zero arrangements will be able to piggy back on the transmission service requests of the peaking plant and receive a service level beyond merely conditional ERIS.

90. They assert this pairing of assignable interconnection rights and ability to “piggy back” on the transmission service of the generator offering a Net Zero interconnection results in a transmission/ interconnection derivative that will allow the Net Zero generator to transmit energy on a priority basis. This will have the competitive effect of creating uncertainty in the market as potential new generators are unsure whether another entity will be able to use Net Zero to gain an advantage on them. If such a policy is acceptable to the Commission, it should be established through a Commission approved process rather through a “back door” process.¹⁴⁵

91. In its comments, EcoEnergy similarly voices a concern that Net Zero projects will be at a competitive advantage in terms of speed through the queue relative to other

¹⁴¹ Complaint at 27–29.

¹⁴² *Id.* at 30 - 31 (citing *Xcel Energy Operating Companies*, 106 FERC ¶ 61,260 (2004), *reh’g denied as moot*, 109 FERC ¶ 61,072 (2004)).

¹⁴³ *Id.* at 5.

¹⁴⁴ Complaint at 30.

¹⁴⁵ Complainants August 15 Answer at 12–14.

projects as well as cost responsibility. It argues that allowing existing generators to “transfer” interconnection capacity through the Net Zero Interconnection Service to preferred new projects imparts an unfair competitive advantage and harms all projects in the interconnection queue.¹⁴⁶ EcoEnergy refutes assertions that MISO is simply applying “first ready, first served” standards to Net Zero projects stating that MISO, through its own admission, had not signed any GIAs with generators processed through the Net Zero policy yet has advanced them as “imminent” projects. EcoEnergy goes on to cite the testimony of MISO’s Eric Laverty as an indication that these projects were studied in a non-standard manner. According to EcoEnergy, the only thing that defines these projects as “first ready” is the transfer of capacity from an existing generator to them.¹⁴⁷

92. Similar to comments from the Complainants, EcoEnergy indicates that the Commission has already denied entities the ability to devise a system by which “favored projects” would be able to jump ahead of other projects in the queue.¹⁴⁸

93. RES Americas also comments that Net Zero service allows lower-queued projects to jump ahead of higher-queued projects thereby shifting potential network upgrade costs to these higher queued projects, all without advance notice going to these higher queued projects that this interconnection capacity is available for use by others.

94. Prairie Rose, Xcel, Midwest ISO Transmission Owners, WOW and PNE Wind all made comments in support of the Net Zero interconnection policy. Prairie Rose, Xcel and PNE Wind note that the Net Zero interconnection policy has been publicly posted since 2008.¹⁴⁹ Prairie Rose, Xcel and WOW indicate that the Net Zero interconnection policy allows for more efficient use of the transmission system and that the policy enjoys broad stakeholder support.¹⁵⁰ Prairie Rose and PNE Wind note the 18-month “comprehensive” stakeholder review of MISO’s Net Zero interconnection policy.¹⁵¹

¹⁴⁶ EcoEnergy August 4 Comments at 7; EcoEnergy August 15 Answer at 8-9.

¹⁴⁷ EcoEnergy August 16 Answer at 9.

¹⁴⁸ *Id.* at 13 (citing *Xcel Energy Operating Companies*, 106 FERC ¶ 61,260 (2004), *reh’g denied as moot*, 109 FERC ¶ 61,072 (2004)).

¹⁴⁹ Prairie Rose August 4 Comments at 4; Xcel August 4 Comments at 11, 12; PNE Wind August 4 Comments at 13.

¹⁵⁰ Prairie Rose August 4 Comments at 4; Xcel August 4 Comments at 11, 12; WOW August 4 Comments at 3.

¹⁵¹ Prairie Rose August 4 Comments at 4, PNE Wind August 4 Comments at 4.

95. Xcel states that suspension of Net Zero service would undermine generator confidence in the ability to rely on MISO sanctioned policies. It states that the Commission itself has indicated that it is “unfair” for generators to have to question the validity of MISO interpretations of procedures for decision-making purposes.¹⁵² It goes on to assert that the Complaint itself has created new uncertainty in the interconnection process and as a result made uncertain commercial arrangements, potentially delaying projects from moving forward and creating financial risk given the impending expiration of the Production Tax Credit.¹⁵³

96. Contrary to comments that indicate Net Zero Interconnection Service will also result in preferential transmission service, PNE Wind asserts that Net Zero generators have no rights to the existing generator’s transmission service and so must arrange their own transmission service. PNE Wind also contends that no queue jumping is taking place under the Net Zero interconnection policy, but rather application of the “first ready, first served” policy. It asserts that requests are studied and processed in queue order and the efficient design of the Net Zero process allows them to expediently move through this process.¹⁵⁴

97. Midwest ISO Transmission Owners refute claims that the Net Zero policy results in favoritism and discrimination. They contend that the Net Zero policy applies in the same manner to all generators that wish to interconnect at a specific location. They state that MISO administers the interconnection queue and the study process and so decides whether a generator qualifies for Net Zero service, thereby eliminating the ability for a generator to “favor” a project.¹⁵⁵

98. Midwest ISO Transmission Owners also dispute claims that Net Zero Interconnection Service provides a competitive advantage in which vertically integrated utilities can replace old plants with new ones while avoiding competition for the transferred interconnection service. They state that a number of factors prevent this from occurring: (1) the Standards of Conduct set forth in section 358 of the Commission’s regulations prohibit undue discrimination to the benefit of affiliates; and (2) MISO’s transmission planning process gives consideration to the needs of all market participants addressing any concerns of those that contend Net Zero Interconnection Service could be

¹⁵² *Id.* at 12 (citing *PPL EnergyPlus, LLC v. New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,383, at P 29 (2006)).

¹⁵³ Xcel August 4 Comments at 13.

¹⁵⁴ *Id.* at 5.

¹⁵⁵ Midwest ISO Transmission Owners August 4 Comments at 3, 4.

used by vertically integrated utilities to keep the transmission system congested to their benefit. They assert that, pursuant to MISO's process, if a transmission owner is directed to construct an upgrade it must construct this upgrade and can not pick and choose which ones to do.¹⁵⁶

99. While supporting Net Zero Interconnection Service, WOW indicates it takes no position on the merits of the specified projects discussed in the Complaint. In its argument that Net Zero Interconnection Service allows for more efficient use of the transmission system, it draws an analogy between Conditional Firm Transmission service and Net Zero Interconnection Service indicating that Net Zero Interconnection Service allows for greater use of interconnection capacity by allowing that capacity to be used by another generator when a "consenting generator" is not using the interconnection rights granted to them.¹⁵⁷ According to WOW, Net Zero Interconnection Service can provide a "bridge" for increased development of wind and other generation until transmission upgrades can be built.¹⁵⁸ Refuting the assertion that Net Zero Interconnection Service receives special treatment, WOW goes on to state that Net Zero service must move through the same interconnection process as all other interconnection requests.¹⁵⁹

b. Commission Determination

100. The Complainants and protesters voice concerns regarding the ability of existing generators to choose preferred projects to receive Net Zero Interconnection Service instead of other potential recipients. Specifically cited are concerns regarding the potential for utilities to use Net Zero Interconnection Service to guard against competition and to transfer interconnection capacity from retiring plants to new plants without complying with the GIP. The Complainants and EcoEnergy cite *Xcel Energy*,¹⁶⁰ as an example where the Commission has previously ruled against proposed variations to the *pro forma* Large Generator Interconnection Procedures and GIA which would allow market participants a great deal of discretion over which entities receive interconnection service; thereby allowing for undue discrimination in direct contravention of open access policies. Conversely, supporters of Net Zero Interconnection Service cite its ability to

¹⁵⁶ *Id.* at 5 – 8.

¹⁵⁷ WOW August 4 Comments at 3.

¹⁵⁸ *Id.* at 4.

¹⁵⁹ *Id.*

¹⁶⁰ *Xcel Energy Operating Companies*, 106 FERC ¶ 61,260 (2004), *reh'g denied as moot*, 109 FERC ¶ 61,072 (2004) (*Xcel Energy*).

make more efficient use of the transmission system. Notwithstanding the arguments in support of MISO's Net Zero proposal, the Commission will continue to protect against undue discrimination in the provision of interconnection service, pursuant to FPA section 205.

101. As a practical matter, allowing existing generators to determine which entities they share interconnection service with provides for the possibility of undue discrimination, especially in the situation here where MISO provided such service outside its Tariff. In Order No. 2003 and subsequent interconnection queue-related proceedings, the Commission has sought to balance the goal of limiting opportunities for undue discrimination while fostering the development of new generation and encouraging needed investment.

102. Accordingly, the Commission recognizes the possibility of undue discrimination in the awarding of Net Zero Interconnection Service. For these past periods, we will provide a forum for Complainants and other parties to the complaint to address the extent to which a lack of transparency and fairness resulted in undue discrimination against them.

103. Thus, as explained below in the discussion of remedies, we set for hearing the issue of whether MISO's past application of its posted Net Zero interconnection policy resulted in undue discrimination against Complainants or other parties to the complaint proceeding.

4. Burden of Proof and Demonstration of Harm

a. Summary of Pleadings

104. According to the complaint, Shetek Wind and Jeffers South have been harmed with respect to the timing and costs of their interconnection "because of the absence of network upgrades that should have been required when the change in the operating characteristics occurred."¹⁶¹ They allege that when their projects do interconnect, "their status as 'energy resources' (ER) will make them be subordinate to unauthorized GIA projects that have now assumed a 'network resource' (NR) status or assumed a certain status under an existing transmission service request."¹⁶² They allege harm to Allco due

¹⁶¹ Complaint at 6-7.

¹⁶² *Id.* at 7.

to preferential treatment for certain generators which harms the ability of Allco's projects to develop.¹⁶³

105. In its Answer, MISO asserts that the complaint fails to meet its burden of proof as to facts and law and does not provide evidence of any harm for the Commission to remedy. MISO points to precedent laying out the minimum requirements for a complaint,¹⁶⁴ and argues that Complainants fail to meet each of the enumerated requirements, as described below. Hence, MISO asserts that the complaint should be dismissed.

106. First, MISO asserts that Complainants have failed to proffer relevant facts to support their assertions. Regarding the contention that proposed Net Zero projects are material changes to the operating characteristics of certain generators, MISO responds that the material changes to operating characteristics do not result in new or increased interconnection service, but instead permit the more efficient use of existing capacity.¹⁶⁵ MISO concludes that these facts do not support a complaint. MISO rebuts other assertions in the complaint stating that Complainants' expectations about the deliverability of wind generators with ERIS are skewed. MISO explains that projects with ERIS use the transmission system on an "as available" basis and have no rights to capacity reserved by an existing generator; thus, according to MISO, Complainants' expectations of available capacity at certain times do not provide a basis for a claim that Net Zero projects harm their projects.¹⁶⁶

107. Second, MISO claims that Complainants failed to provide an adequate basis in law and fact for their position. Regarding Complainants' reading of GIP Section 4.1 and Section 4.2.5 of the Business Practice Manual for interconnection, MISO argues that the Complainants' interpretation is contrary to the policy of the GIP allowing projects to be processed on a first-ready, first-served basis. Further, MISO asserts that the complaint does not provide evidence in errors in Feasibility Studies; merely comparing pending projects and noting differing outcomes does not prove error occurred.

¹⁶³ *Id.*

¹⁶⁴ MISO July 20 Answer at 7-8 (citing *CALifornians for Renewable Energy, Inc., v. Pac. Gas & Elec. Co., et al.*, 134 FERC ¶ 61,060, at PP 54-64 (2011) (CARE) (dismissing complaint for numerous deficiencies)).

¹⁶⁵ *Id.* at 8-9.

¹⁶⁶ *Id.* at 10.

108. Third, MISO argues that the complaint fails to identify actions that were prohibited and fails to demonstrate harm to Complainants' project or any pending interconnection requests. MISO states that Complainants ask it to prove a negative, alleging harm based on the absence of network upgrades that should have been required. MISO notes that Complainants provide no evidence that could be used to assess whether the costs or timing of the projects have been affected; the only estimation of costs is that "it is 'impossible to calculate' and is 'likely to be considerable.'"¹⁶⁷

109. Moreover, MISO claims that the complaint is not ripe for review because Complainants did not attempt alternative dispute resolution, and review would prejudge the Tariff filing addressing MISO's Net Zero policy,¹⁶⁸ and MISO also contends that Commission review of the complaint would complicate its review of related matters in ongoing proceedings.¹⁶⁹

110. Detroit Edison, Great River, Iberdrola and PNE Wind support MISO's Answer and concur that the Commission should dismiss the complaint as the Complainants have not met their burden of proof nor provided evidence of harm.¹⁷⁰

111. On the other hand, EcoEnergy cites to Order No. 2003 for the proposition that delays in interconnection undermine the ability to compete in the market.¹⁷¹ Hence, granting faster processing to Net Zero projects "clearly confers a competitive advantage on the [Net Zero] projects,"¹⁷² and allowing Net Zero projects to move ahead of others can have a "dramatic and permanent impact on the relative costs for interconnection."¹⁷³ EcoEnergy concludes that the undue competitive advantage enjoyed by Net Zero projects harms all other projects in the interconnection queue.

¹⁶⁷ *Id.* at 20-21 (quoting Complaint at 32).

¹⁶⁸ MISO filed this proposal as part of broader queue reform on November 1, 2011 in Docket No. ER12-309-000.

¹⁶⁹ MISO July 29 Answer at 24 (referencing Docket No. ER11-2550 (amending the GIA for Trimont Wind) and Docket No. EL10-86-000 (pending complaint regarding Project G517)).

¹⁷⁰ Detroit Edison August 4 Comments at 2; Great River August 4 Comments at 2; Iberdrola August 4 Comments at 2; PNE Wind August 4 Comments at 4.

¹⁷¹ EcoEnergy August 4 Comments at 6 (citing Order No. 2003 at P 11).

¹⁷² *Id.* at 6.

¹⁷³ *Id.* at 7.

112. EcoEnergy adds in its response to MISO's Answer that Complainants have provided a more than sufficient demonstration of harm, given their allegation that the manner in which MISO processes its interconnection queue "constitutes a tariff violation that must necessarily carry with it an assumption of inherent harm to the market."¹⁷⁴ Further, the transfer of interconnection capacity from an incumbent generator to a Net Zero generator is neither transparent nor open to competition. EcoEnergy counters MISO's assertion that the advancement of Net Zero projects in the queue simply reflects its "first-ready, first-served" policy noting that Net Zero interconnections can only be characterized as ready because they are being given the benefit of a capacity transfer, which assumes the validity of the Net Zero construct.¹⁷⁵

113. In response to MISO's Answer, Complainants state their burden of proof is satisfied by MISO's admission as to the facts; MISO has implemented a change to the GIP without an appropriate Tariff change. Complainants bolster their demonstration of harm by explaining that developers of projects in the MISO footprint are harmed when MISO processes generator interconnection applications on a discriminatory basis, or not in accordance with the Tariff.

b. Commission Determination

114. As discussed above, we agree with Complainants that MISO has implemented its Net Zero interconnection policy without Commission acceptance of appropriate Tariff provisions and has thereby violated its Tariff. Thus, we find that the Complainants have satisfied the required burden of proof. Accordingly, there are no grounds to dismiss the complaint, as MISO and others urge. In addition, we disagree with MISO's contention that the complaint is not ripe for review. Even at the time the complaint was filed, before MISO submitted its queue reform proposal in Docket No. ER12-309-000, the complaint was ripe for review because MISO had been processing interconnection requests under its Net Zero interconnection policy for some time.

115. Whether Complainants have provided evidence of harm that may be remedied in this proceeding is a more difficult question. While we find that Tariff violations have occurred, it is not clear whether Complainants were harmed by them. However, the Commission values open access transmission services, and we will provide an additional opportunity for Complainants and other parties to demonstrate whether they suffered undue discrimination as a result of MISO's implementation of its Net Zero interconnection policy, as directed below.

¹⁷⁴ EcoEnergy August 16 Answer at 8.

¹⁷⁵ *Id.* at 8-9.

5. Request for Relief and Possible Remedies

a. Summary of Pleadings

116. With respect to relief, Complainants ask the Commission to grant the complaint, and to direct MISO to discontinue processing Net Zero interconnections and process all pending interconnection requests in accordance with MISO's GIP. In addition, Complainants request, among other things, that the Commission direct MISO to reprocess its interconnection queue in compliance with MISO's Tariff, the Commission's regulations, and the non-discrimination requirements of the FPA. Specifically, they seek new Feasibility Studies for any projects that have been studied on the basis of a Net Zero approach and further processing in accordance with the results of the restudies and the GIP; a study for the Lakefield Generating Station taking into account the modified operating characteristics of the combined Lakefield Generating Station and three wind projects interconnected there; and the reprocessing of certain GIAs.¹⁷⁶

117. MISO asserts in its Answer that the complaint fails to offer a just and reasonable alternative treatment.¹⁷⁷ According to MISO, the relief requested is overbroad because numerous projects not even owned by Complainants would need to be restudied, and their costs subsequently reallocated. MISO states that the ripple effect of any restudies would lead to restudy of numerous lower-queued projects and further delay the processing of Complainants' and others' projects. If the Commission does grant the complaint, MISO argues that the Commission should provide for only prospective relief "to avoid upsetting the settled expectations of projects with pending [Net Zero interconnections]."¹⁷⁸

118. In their Answer, Complainants object to MISO's argument that relief should be prospective only, noting that while relief under section 206 of the FPA is generally prospective, that is not the case when a tariff violation has occurred.¹⁷⁹ Nevertheless, Complainants revise their requested relief, acknowledging the challenges that could occur from widespread restudies. With respect to projects that are already in operation (i.e., Trimont Wind, Elm Creek Wind, and Heartland Wind), Complainants propose that generators that may have been adversely affected by those projects not being required to

¹⁷⁶ Complaint at 2, 7-8, and 34-36.

¹⁷⁷ MISO July 29 Answer at 25 (citing *Conn. Mun. Elec. Energy Coop. v. ISO New England, Inc.*, 128 FERC ¶ 61,270, at P 25 (2009)).

¹⁷⁸ MISO July 29 Answer at 27.

¹⁷⁹ Complainants August 15 Answer at 7-8 & n.9.

build upgrades should be able to present their cases on an individual basis and seek a restudy if interconnection costs, point of interconnection, or level of service (Network Resource vs. Energy Resource) may have been affected by the absence of such network upgrades. With respect to interconnection applications that have recently been filed, however, Complainants posit that there are few, if any, settled expectations, and request that the Commission order MISO to discontinue any processing of Net Zero applications and continue to process interconnection applications in accordance with the current GIP.¹⁸⁰

119. RES Americas also urges the Commission to reject MISO's request that the Commission's ruling be limited to prospective relief only. RES Americas maintains that granting this request would adversely impact other projects pending in the queue, some for many years, by denying them their right to be processed in queue order.¹⁸¹

120. EcoEnergy similarly states that there is no justification for limiting relief for the Tariff violations demonstrated in the complaint in the manner suggested by MISO and other proponents of the Net Zero concept because the consequences would be to make the results of the Tariff violations permanent and not susceptible to any remedy. More importantly, EcoEnergy states, the Net Zero projects under development have no legitimate expectation to reap the benefits of actions that are currently prohibited under the Tariff.¹⁸²

121. Great River, on the other hand, asserts that Complainants' request that Great River's Lakefield Generating Station be restudied under MISO's current Attachment X GIP should be summarily rejected. Great River explains that interconnection of the Lakefield Generating Station was accomplished pursuant to MAPP's interconnection process, which predated creation of the MISO market, the Order No. 2003 requirements, and the Complainants' projects entering the queue. Great River maintains that there have been no material changes to this interconnection which warrant restudies under Order No. 2003 metrics.¹⁸³ Great River believes that requiring restudies would adversely impact planned projects in the queue that are currently being studied,

¹⁸⁰ *Id.* at 9-10.

¹⁸¹ RES Americas August 4 Comments at 3.

¹⁸² EcoEnergy August 16 Answer at 14.

¹⁸³ Great River August 4 Comments at 5-6.

resulting in delay and uncertainty going forward; as such, any relief should be on a prospective basis.¹⁸⁴

122. In MISO's response to the Data Request, MISO concedes that describing the challenges faced in restudying peaking plants (such as the Lakefield Generating Station) is difficult without more information. It declares that the biggest challenge would be setting the appropriate scope of the study, followed by the plan and methodology to utilize the results. MISO states that, for units that predate MISO, assigning upgrades to those generators creates a competitive disadvantage to those generators compared to generators located near upgrades that were determined and allocated through MISO's planning process. For specific peaking units, MISO states that because of the differences in the study process among these units, determining how to fairly restudy those units and what study assumptions to use will raise initial challenges and obviously impact the results, while determining how to apply those results would raise additional challenges. MISO cites anticipated difficulties regarding which version of Attachments R, X, and FF of the Tariff would be used to allocate costs, how to determine if generators are owed a refund or require new upgrades, or both, and the ripple effect as projects lower in the queue would need to be re-examined. MISO suggests the process would amount to an infinite loop of restudy, reallocation, and litigation as projects face changes in their costs.¹⁸⁵

b. Commission Determination

123. As discussed above, we find that MISO violated its Tariff when it provided Net Zero Interconnection Service as described in the body of this order when such service had not been accepted by the Commission. While MISO apparently believed that implementation of its Net Zero interconnection policy was authorized under existing Tariff provisions, we do not agree with its overly broad view of its authority. Regardless of whether it may be reasonable in some instances to interpret a tariff's silence or ambiguity with respect to a practice to mean it is permissible, this is not the case for the development of an entirely new type of service such as Net Zero Interconnection Service.

124. MISO objects that Complainants have not proposed a remedy that is just and reasonable. In this proceeding, however, Complainants allege that MISO has violated its

¹⁸⁴ *Id.* at 13.

¹⁸⁵ MISO November 7 Response at 13-14.

Tariff and seek to enforce the existing Tariff. In the event of a tariff violation, the Commission has broad discretion to fashion an appropriate remedy.¹⁸⁶

125. While, as discussed elsewhere, we do not find that all of Complainants' allegations are supported by the record in this proceeding, there is a sufficient showing to find that MISO's provision of Net Zero Interconnection Service was not authorized by its Tariff. As discussed elsewhere in this order, the record demonstrates that MISO violated its Tariff in processing Prairie Rose's interconnection request. The proposed GIA for Prairie Rose specifically provides for Net Zero Interconnection Service where such service is not yet available in MISO's Tariff. Further, as discussed in the order on MISO's queue reform proposal issued concurrently with this order, MISO's proposed Net Zero interconnection policy lacks transparency and may allow undue discrimination in the provision of interconnection service, in violation of FPA section 205.¹⁸⁷ Thus, the implementation of this policy, prior to addressing the lack of transparency, may have resulted in undue discrimination in applying the Net Zero interconnection policy, in violation of the FPA.

126. However, we do not find it appropriate to require relief with respect to the three projects that connected at Great River's Lakefield Generating Station and are already in operation (i.e., Trimont Wind, Elm Creek Wind, and Heartland Wind) because the evidence indicates that these projects were evaluated for the appropriate service in effect at the time they were in the queue, and each of the interconnection customers ultimately addressed the network upgrades identified in their agreements. Additionally, we will not require Great River to be restudied, because the Special Protection System it uses was accepted by MAPP and later grandfathered by MISO. As discussed earlier in this order, we believe it was reasonable for MISO to rely on the existence of the Special Protection System when additional generators sought service at the same point of interconnection.

¹⁸⁶ See, e.g., *Niagara Mohawk Serv. Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (stating that "the breadth of agency discretion is . . . at [its] zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates that statute, or regulations, but rather to the fashioning of . . . remedies."); *Louisiana Public Service Commission v. FERC*, 174 F.3d 218, 225 (D.C. Cir. 1999) (finding the Commission did not abuse its discretion by declining to order refunds when tariff violation conferred benefits on the system).

¹⁸⁷ While Prairie Rose competed and was awarded NSP's request for proposal to supply wind energy, it is not clear from the record that Prairie Rose competed for and was awarded Net Zero Interconnection Service in a transparent and not unduly discriminatory manner.

127. With respect to other projects, we find that Complainants raise issues of material fact regarding interconnection requests processed under MISO's Net Zero interconnection policy that cannot be resolved based on the record before us. Accordingly, we will institute a trial-type evidentiary hearing under section 206 of the FPA to establish a more complete factual record upon which to determine whether a lack of transparency and fairness in MISO's past application of its posted Net Zero interconnection policy resulted in undue discrimination against Complainants or other parties to the complaint. Given that the Commission is conditionally accepting MISO's proposed Tariff revisions to establish Net Zero Interconnection Service prospectively with compliance requirements to protect against discriminatory or preferential treatment, the focus of the hearing in this proceeding will be that issue alone, and any relief that may be granted by the Commission will be limited accordingly. Any other impacts on parties from implementation of the Net Zero policy in violation of MISO's Tariff prior to the effective date established in MISO's Queue Reform Proceeding Docket No. ER12-309-000 are outside the scope of this inquiry.

128. Accordingly, we direct the presiding judge to determine whether any parties were similarly situated to the Net Zero developers that were chosen (i.e., Projects J182, J183 (Prairie Rose), J184, or J189)¹⁸⁸ and, if so, whether the existing generators gave undue preference to an affiliate or another developer when choosing a Net Zero project with which to partner. If the fact-finding establishes that any parties were similarly situated to the Net Zero developers that were chosen, and if the fact-finding establishes that a lack of transparency resulted in undue discrimination against those parties, then we also set for hearing the issue of an appropriate remedy to address the discrimination.

129. While we are setting the issue of undue discrimination for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁸⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the

¹⁸⁸ When considering whether the projects were similarly situated in this context, the presiding judge should consider whether, *inter alia*, the Complainants or other parties could have used the specific point of interconnection in question or whether their projects were more geographically remote.

¹⁸⁹ 18 C.F.R. § 385.603 (2011).

proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁹⁰ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

6. Refund Effective Date

130. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,¹⁹¹ we will set the refund effective date at the earliest date possible, i.e., the date of the filing of the complaint, which was July 15, 2011.

131. Section 206(b) of the FPA also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. This case has been set for hearing and settlement judge procedures. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within 12 months of the commencement of hearing procedures or, if this case were to go to hearing immediately, by October 25, 2012. We estimate that, if the case were to go to hearing immediately, we would be able to issue our decision within approximately seven months of the filing of briefs on and opposing exceptions, or by July 25, 2013.

¹⁹⁰ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

¹⁹¹ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

C. GIA Proceeding – Docket No. ER12-188-000

132. As indicated above, the proposed Prairie Rose GIA is provisional in nature, in accordance with section 11.5 of MISO’s GIP.¹⁹² Under the GIA, Prairie Rose would share, pursuant to MISO’s Net Zero policy, existing interconnection capacity at the Split Rock substation with the existing generator, i.e., NSP’s Angus Anson natural gas combined-cycle peaking plant in Sioux Falls, South Dakota. Pursuant to the Net Zero policy, the output of the Prairie Rose wind facility and the Angus Anson peaking plant will not exceed the existing facility’s study limit of 392 MW. MISO noted that the Net Zero nature of the ERIS provided under the GIA is the subject of the complaint in Docket No. EL11-53-000. MISO reiterated that Net Zero interconnections are permissible and consistent with the Tariff and explains that it is submitting the GIA as a non-conforming agreement because of the change in Section 4.1 and in recognition of the complaint. MISO states that Net Zero interconnection has been an established policy for several years and argues that Prairie Rose and NSP should be entitled to rely on it.

133. MISO requested waiver of notice to allow an effective date of October 26, 2011. MISO also suggested that the requirements of 18 C.F.R. § 35.13 that have not been specifically addressed are not applicable to the filing; in the alternative, MISO seeks waiver of the Commission’s requirements.

1. Summary of Pleadings

134. As summarized in the December 23 Order, Joint Protestors argued that the Prairie Rose GIA should be rejected for both procedural and substantive reasons. Procedurally, Joint Protestors contended that the filing is incomplete because it has failed to comply with the requirements of sections 35.1(a) and (g) of the Commission’s regulations to include all the necessary terms and conditions governing the GIA, such as the coordination agreement between NSP and Prairie Rose, as well as evidence of the study limit of the Angus Anson plant.¹⁹³ Substantively, they claim that MISO’s Tariff simply does not provide for a Net Zero interconnection, and they characterized the filing as a *de facto* amendment to the Tariff.¹⁹⁴

135. Joint Protestors claim that the “gateway” substantive issue in this case is whether NSP has under its interconnection agreements the right to generate during non-peak times

¹⁹² Section 11.5 of MISO’s GIP permits provisional generator interconnection agreements to be used prior to the completion of all necessary upgrades.

¹⁹³ 18 C.F.R. § 35.1(a), (g) (2011); Joint Protestors November 15 Protest at 14-17.

¹⁹⁴ Joint Protestors November 15 Protest at 49.

as MISO and NSP contend. Joint Protestors asserted that NSP does not possess the right to operate the Angus Anson plant during non-peak periods because it is a peaking plant, not a baseload plant. Joint Protestors alleged that NSP knew its peaking plant would be studied assuming that it was operating only at peak times and that required network upgrades would be based on the plant being turned off in non-peak times. Joint Protestors thus maintained that NSP avoided millions of dollars in network upgrades because its peaking plant was only seeking to operate during peak times.¹⁹⁵ Joint Protestors also alleged that the plant has used up whatever transferable rights that it may have had,¹⁹⁶ and that an earlier expansion of the plant was not studied with summer off-peak models.¹⁹⁷

136. Joint Protestors further asserted that the GIA does not conform to MISO's Tariff and was processed in violation of the Tariff and the Commission's regulations for the following reasons: (1) MISO does not exercise independent control over NSP's facilities as required by the Commission's regulations;¹⁹⁸ (2) the GIA is governed by agreements to which MISO is not a party;¹⁹⁹ (3) MISO's Tariff does not permit one generator to apply for interconnection service based upon the purported rights of another generator;²⁰⁰ (4) the GIA was processed in violation of the Tariff and does not contain the necessary upgrades for interconnection;²⁰¹ (5) the GIA is a variable assignment of another generator's rights which is not permitted by the *pro forma* GIA;²⁰² (6) the GIA constitutes an amendment to the terms of the GIA applicable to Angus Anson and should necessitate that the Angus Anson GIAs conform to the current *pro forma* GIA and that the Angus Anson plants be restudied;²⁰³ and (7) MISO has allowed NSP to circumvent the Tariff since this type of interconnection effects a substantive change in the operating characteristics of the generator, and thus should require NSP to file a new interconnection

¹⁹⁵ *Id.* at 19-21.

¹⁹⁶ *Id.* at 34-37.

¹⁹⁷ *Id.* at 37-39.

¹⁹⁸ *Id.* at 23-24.

¹⁹⁹ *Id.* at 24.

²⁰⁰ *Id.* at 24-27.

²⁰¹ *Id.* at 27-28.

²⁰² *Id.* at 28.

²⁰³ *Id.* at 28-29.

application and conduct new studies.²⁰⁴ In addition, Joint Protestors argued that MISO must demonstrate that a deviation from the *pro forma* GIA is operationally necessary, and MISO has not met that burden.²⁰⁵

137. In addition, Joint Protestors alleged that MISO's Net Zero policy: (1) violates the Commission's open access regulations in that NSP controls the point of interconnection and is attempting to provide access to a generator outside an open access transmission tariff;²⁰⁶ (2) is anti-competitive and leaves market control to the vertically integrated utilities;²⁰⁷ and (3) will harm renewable energy development.²⁰⁸ As a result of less transmission being built and less renewable energy being implemented, Joint Protestors request that the Commission perform an environmental impact statement to evaluate possible environmental effects of the Net Zero policy, pursuant to the Commission's regulations implementing the National Environmental Policy Act.²⁰⁹

138. In their comments, Prairie Rose and Xcel expressed their support for the Net Zero interconnection policy and ask the Commission to support both the policy and the GIA. Xcel stated that Net Zero Interconnection Service is an effective use of existing transmission system and generation interconnection capacity, thereby facilitating interconnection of additional wind generation resources in the MISO region.

139. In its answer to the protest, MISO stated that Joint Protestors' points have little or no merit, bear little or no relationship with the proposed Prairie Rose GIA, or are more appropriately addressed in the pending complaint proceeding. Xcel made similar points in its answer. The Midwest ISO Transmission Owners responded that the Joint

²⁰⁴ *Id.* at 29-30.

²⁰⁵ *Id.* at 17-18.

²⁰⁶ *Id.* at 39-45.

²⁰⁷ *Id.* at 45-46.

²⁰⁸ *Id.* at 46-49. For example, Joint Protestors state that NSP indicated to Minnesota Public Utilities Commission that Prairie Rose will see no curtailment because Angus Anson is deliverable as a network resource 24 hours a day, seven days a week and that that status is extended to Prairie Rose. Joint Protestors further assert that the 100 percent Network Resource Interconnection Service status of the existing plant could be extended to the Net Zero plant such that the latter would become exempt from [real-time security-constrained economic] dispatch.

²⁰⁹ *Id.* at 50-51 (citing 18 C.F.R. § 380.4(a)(15) (2011)).

Protestors' numerous allegations that the use of the Net Zero construct favors incumbent utilities are unfounded and are beyond the scope of the proceeding. Prairie Rose asserted in its answer that the GIA is reasonable and consistent with MISO's *pro forma* Tariff, and that rejection would unduly prejudice Prairie Rose. Xcel and Prairie Rose stated that, if the Commission is not inclined to accept the GIA at this time, the Commission should instead approve the agreement subject to the outcome of MISO's queue reform proceeding.

2. December 23 Order

140. In the December 23 Order, the Commission explained that the justness and reasonableness of the proposed Net Zero policy was pending in the Queue Reform Proceeding, and that in the GIA proceeding, the question to be decided was whether the Prairie Rose GIA is just and reasonable. Given that the issues raised by the Prairie Rose GIA would likely be affected by the Commission decisions in the pending complaint proceeding, as well as informed by action on the proposed Net Zero policy in the pending Queue Reform Proceeding, the Commission accepted and suspended the Prairie Rose GIA for a nominal period, effective October 26, 2011, subject to refund and further Commission order.

3. Commission Determination

141. We conditionally accept the Prairie Rose GIA, subject to the outcome of the Queue Reform Proceeding in Docket No. ER12-309-000 with respect to filing requirements of Net Zero Interconnection Service. With respect to the process that led to the selection of Prairie Rose as a Net Zero generator and issues of undue discrimination, those matters will be addressed in the hearing and settlement judge procedures established in the complaint proceeding in Docket No. EL11-53-000.

142. As our acceptance of the Prairie Rose GIA is subject to the outcome of the Queue Reform Proceeding, any compliance filing requirements necessitated by the outcome of that proceeding must be made with the Commission within 30 days of the issuance of a Commission order accepting a compliance filing in the Queue Reform Proceeding.

143. As explained above, we agree that MISO's Tariff does not provide for Net Zero Interconnection Service, so characterizing the Prairie Rose GIA as a *de facto* amendment to the Tariff is a reasonable interpretation. In response to Joint Protestors' assertions that the GIA was processed in violation of the Tariff, we agree, and are directing that the Net Zero aspects of the GIA be accepted subject to the outcome of the Queue Reform Proceeding. To the extent that that processing, and in particular, a lack of transparency and fairness in MISO's application of its posted Net Zero policy may have resulted in undue discrimination against Joint Protestors or other parties to the complaint, we are establishing an evidentiary hearing under section 206 of the FPA, as discussed above.

144. Regarding Joint Protestors' contention that the GIA Filing is incomplete because it failed to include governing documents such as the coordination agreement between NSP and Prairie Rose and evidence of the study limit of the Angus Anson plant, we note that the terms and conditions of Net Zero service to be established in the Queue Reform Proceeding in Docket No. ER12-309-000 will determine the requirements for filing Net Zero GIAs prospectively. Since the Prairie Rose GIA is conditionally accepted subject to the outcome of that proceeding, it thus must conform to the same filing requirements ultimately accepted there, including the filing of any related agreements and studies. With regard to the contention that MISO's Tariff does not permit one generator to apply for interconnection service based upon the purported rights of another generator, again we address this in the Queue Reform Proceeding.

145. Joint Protestors claim that a threshold issue in this case is whether NSP has the right to generate during non-peak times. As discussed above, we believe that MAPP's study of the Angus Anson plant adequately shows that the facility was evaluated for peak and non-peak conditions. Accordingly, there is no reason why that facility should not operate during non-peak hours. In response to Joint Protestors' contentions that: (1) the Prairie Rose GIA constitutes an amendment to the terms of the GIA applicable to Angus Anson requiring that it be restudied; and (2) MISO has allowed NSP to circumvent the Tariff since Prairie Rose's interconnection comprises a substantive change in the operating characteristics of the generator, again requiring a new interconnection application to be filed and new studies to be conducted, we have addressed these issues above in the discussion of project processing and errors in studies and find them to be without merit.

146. Joint Protestors also argue that the GIA is a variable assignment of another generator's rights which is not permitted by the *pro forma* GIA. As support, Joint Protestors point to a statement in Article 19.1 of the GIA providing that "[a]ny attempted assignment that violates this Article is void and ineffective," and asserted that this article is not intended to allow for a variable assignment. MISO responds that Joint Protestors do not explain what is meant by a "variable assignment" and note that the Prairie Rose GIA has not been assigned. Variable assignment is not a defined term in the GIA, and we are not sure of the nature of Joint Protestors' assertion. To the extent Joint Protestors intend to refer to varying the sharing of existing capacity rights between the generators, we note that Article 19.1 refers to the assignment of a GIA itself for purposes such as financing, and not the sharing of capacity that occurs under the Net Zero process. Therefore, Article 19.1 does not support Joint Protestors' contention.

147. Additional issues raised by Joint Protestors, including assertions that the Net Zero policy violates the Commission's open access regulations, is anti-competitive, and will harm renewable energy development are all addressed in the concurrent order in Docket No. ER12-309.

148. Finally, we dismiss as speculative Joint Protestors' argument that MISO does not exercise independent control over NSP's facilities.

4. Petition for Acceptance

149. On January 31, 2012, Prairie Rose filed a petition for acceptance of its GIA pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207 (2011). Citing its reliance on MISO's posted Net Zero policy, Prairie Rose urges the Commission to accept its GIA without conditions, regardless of the outcome of the Net Zero proposal in MISO's Queue Reform Proceeding in Docket No. ER12-309-000. Prairie Rose summarizes the events that led to its GIA Filing and mentions in passing that the Net Zero policy was initially derived from Trimont Wind's GIA, accepted by the Commission in 2005.²¹⁰ It describes the substantial financial commitments it has made pursuing the project, and warns that if the Commission does not quickly accept the GIA it is at risk of "irrevocable financial harm and of not meeting the [federal Production Tax Credit's] December 31, 2012 in-service deadline."²¹¹ It claims that the Net Zero policy has received broad industry support, including from most wind developers active in the Midwest wind market, environmental organizations, and MISO's transmission owners. It concludes that:

to the extent the Commission cannot accept MISO's net zero proposals in the ER12-309 docket, the Commission should recognize the parties' reasonable reliance on MISO's published net zero policy and should exercise its discretion to allow the GIA to become effective as of its proposed effective date. To find otherwise will cause severe, unjust and irreparable economic harm to [Prairie Rose] and its funding partners.^[212]

150. Joint Protestors filed a protest and answer to the petition. Citing communications that occurred during MISO's stakeholder process regarding the Net Zero policy and the filing of their complaint on July 15, 2011, Joint Protestors assert that Prairie Rose knew its proposed Net Zero arrangement depended on MISO finalizing its Tariff revisions and obtaining Commission approval for them. Thus, they argue that Prairie Rose cannot be found to have reasonably relied on MISO's posted policy. Joint Protestors also protest the petition on procedural grounds, asserting that the petition was not appropriately filed under Rule 207 of the Commission's Rules of Practice and Procedure. They argue that the proper pleading for Prairie Rose to raise its concerns would have been a request for

²¹⁰ Petition at 2 & n.3.

²¹¹ *Id.* at 4.

²¹² *Id.* at 6.

rehearing of the December 23 Order, or, now that that deadline has passed, a request for reconsideration. Complainants also introduce new evidence concerning the allegedly adverse impact of Net Zero interconnections.

151. We will deny Prairie Rose's petition. While the Commission has found that parties may rely on interpretations in a Regional Transmission Operator's publications and business practice manuals, here MISO had no Net Zero Tariff provisions accepted by the Commission. Neither MISO's Tariff nor its business practice manuals mention Net Zero service; the entirety of its policy consisted of a one-paragraph description found only on its website. Further, MISO's processing of Net Zero interconnections was not consistent with its GIP. In these circumstances, we find that it was not reasonable for Prairie Rose to rely on MISO's posted policy.²¹³

152. Accordingly, we deny the petition to accept Prairie Rose's GIA unconditionally.²¹⁴ For the reasons discussed elsewhere in this order, we will conditionally accept the GIA subject to the submission of a compliance filing and subject to the outcome of MISO's Queue Reform proceeding in Docket No. ER12-309.

D. Request for Rehearing in Docket No. ER12-188-001

153. On January 23, 2012, Joint Protestors filed a request for rehearing of the December 23 Order. Joint Protestors argue that the Commission erred in the December 23 Order: (1) by conditionally accepting the GIA without substantial evidence; (2) by conditionally accepting the GIA with an effective date (October 26, 2011) earlier than that proposed for MISO's Net Zero Tariff revisions in Docket No. ER12-309-000 (January 1, 2012); (3) by acting on the proposed GIA without MISO having provided actual notice of the GIA Filing to all those with property rights that would be adversely affected; and (4) by conditionally accepting the GIA without addressing the substantive issues identified in their protest.

²¹³ Reliance on the Commission's acceptance of Trimont Wind's GIA for acknowledgement of the Net Zero policy was also not warranted. In that proceeding, MISO did not mention the generators' proposed sharing of interconnection capacity in its pleading, and the Commission did not discuss the arrangement when it accepted the GIA. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,067 (2005).

²¹⁴ We disagree with Joint Protestors that the Commission should dismiss the petition as inappropriately filed under Rule 207. As discussed elsewhere in this order, the December 23 Order was interlocutory and rehearing did not lie. Therefore, in these circumstances, Rule 207(a)(5), which covers situations for which "no other form of pleading" is provided, was an appropriate vehicle for Prairie Rose's pleading.

154. The Commission will dismiss the rehearing request because the December 23 Order was interlocutory, and was not subject to rehearing. The Commission action in the December 23 Order was not final, as it conditionally accepted the GIA subject to a further order. For purposes of judicial review, an order is final and subject to rehearing when it imposes an obligation, denies a right, or fixes some legal relationship as the consummation of the administrative process.²¹⁵ Conditional acceptance of the Prairie Rose GIA “decide[d] nothing concerning the merits of the case;”²¹⁶ it merely acted to reserve the issues pending further consideration of MISO’s Net Zero policy and proposed Tariff revisions. The December 23 Order did not impose any obligation, deny any right, or fix a legal relationship, and was therefore interlocutory.

155. Where an action by the Commission is interlocutory, to be succeeded by further Commission action, a request for rehearing may be dismissed.²¹⁷ In the December 23 Order, the Commission contemplated consideration of the GIA in a subsequent proceeding, after which Joint Protestors may raise their concerns, regarding the state of the record and any legal conclusions reached, in a request for rehearing. Accordingly, we dismiss Joint Protestors’ rehearing request.

156. In any event, we note that this order addresses alleged deficiencies identified in the Joint Protest that are also raised by Shetek, *et al.*, in the complaint in Docket No. EL11-53-000. Further, we note that Joint Protestors’ argument that MISO’s Net Zero concept violates the Public Utility Regulatory Policies Act of 1978 (PURPA)²¹⁸ was not addressed in the December 23 Order lacks merit because Joint Protestors did not raise the

²¹⁵ See *Papago Tribal Authority v. FERC*, 628 F.2d 235 (1980) (holding that Commission acceptance of a rate filing pending hearing was “undeniably interlocutory”); see also *City of Hamilton, Ohio*, 82 FERC ¶ 61,349 (1998) (setting a matter for a trial-type hearing was interlocutory).

²¹⁶ *Papago Tribal Authority v. FERC*, 628 F.2d 235 at 240.

²¹⁷ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,157 (2004) (dismissing rehearing where prior order conditionally accepted Tariff provisions subject to further orders, retaining throughout the process the authority to reject the Tariff later). See also *Public Utility District No. 1 of Douglas County, Washington*, 122 FERC ¶ 61,032, at P 7 & n.9 (2008) (enumerating examples in which the Commission has dismissed requests for rehearing of Commission action as interlocutory).

²¹⁸ 16 U.S.C. 2601, *et seq.* (1978).

issue in their November 15 Protest. Hence, the Commission did not commit error by failing to address the allegation.²¹⁹

The Commission orders:

(A) The complaint in Docket No. EL11-53-000 is hereby granted, as discussed in the body of this order.

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

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

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

²¹⁹ In any event, we note that the order in the Queue Reform Proceeding being issued concurrently with this order analyzes Joint Protestors' allegations concerning PURPA. *See* MISO Queue Reform III, 138 FERC ¶ 61,233 at P 297.

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

(F) The refund effective date established pursuant to section 206(b) of the Federal Power Act is July 15, 2011.

(G) The Prairie Rose GIA filed in Docket No. ER12-188-000 is hereby conditionally accepted, as discussed in the body of this order.

(H) MISO is hereby directed to make a compliance filing within 30 days of the date of issuance of an order on compliance in Docket No. ER12-309, modifying the Prairie Rose GIA with respect to any filing requirements that may be necessitated by the outcome of that proceeding, as discussed in the body of this order.

(I) Joint Protestors' request for rehearing filed in Docket No. ER12-188-001 is hereby dismissed.

(J) Prairie Rose's January 31, 2012 Petition is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Midwest ISO Policy on Net Zero Generator Interconnection Requests

In order for the Midwest ISO to accept a new Interconnection Request with net zero MW injection at the point of interconnection (POI), the new Interconnection Customer (IC) must have a written agreement with the existing Generation Resource owner such that the sum of the net MW output of all generation resources at that POI shall not exceed the lower of either the demonstrated output capability or study rating of the existing Generation Resource. Further, the IC must request a POI which is inside the same switching station and at the same voltage level, making it electrically equivalent to the POI of the existing Generation Resource. The IC must have a written acknowledgement from the interconnecting Transmission Owner to work with the IC to monitor the net injection at the POI once the Net Zero Generator Interconnection Agreement is signed. Any special protection scheme required to accomplish this arrangement must be approved by the Transmission Owner and appropriate Regional Reliability Authority. The Midwest ISO will perform required studies, including stability and short circuit analyses for such a request in its queue order. The Net Zero Generation Resource is only eligible for conditional Energy Resource Interconnection Service under this arrangement. Regardless of the total amount of Transmission Service Reservations, the Net Zero Generating Resource's actual output will be limited as explained above. The conditional Net Zero Energy Resource would require a new interconnection request so that additional interconnection studies can be performed if the Net Zero Generating Resource wishes to operate at total higher output levels that exceed the limit per stipulation as stated above.