

138 FERC ¶ 61,233
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-309-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued March 30, 2012)

	<u>Paragraph Numbers</u>
I. Background	<u>3.</u>
A. History of Interconnection Queue Issues	<u>3.</u>
B. MISO's Proposal	<u>9.</u>
II. Notice and Responsive Pleadings	<u>17.</u>
III. Discussion.....	<u>25.</u>
A. Procedural Matters	<u>25.</u>
B. Standard of Review	<u>28.</u>
C. Substantive Matters	<u>29.</u>
1. Need for Reform	<u>31.</u>
a. Comments	<u>31.</u>
b. Answers	<u>36.</u>
c. Supplemental Filing.....	<u>39.</u>
d. Comments on the Supplemental Filing	<u>47.</u>
e. Answers	<u>61.</u>
f. Commission Determination	<u>62.</u>
2. Implementation	<u>74.</u>
a. Proposal	<u>74.</u>
b. Comments	<u>77.</u>
c. Answers	<u>90.</u>
d. Supplemental Filing	<u>92.</u>
e. Comments on the Supplemental Filing	<u>95.</u>
f. Answers.....	<u>99.</u>
g. Commission Determination	<u>100.</u>

3. Two Queues	<u>108.</u>
a. Proposal	<u>108.</u>
b. Comments.....	<u>111.</u>
c. Answers	<u>114.</u>
d. Commission Determination	<u>116.</u>
4. Cash-at-Risk Milestones.....	<u>118.</u>
a. M2 milestone payment	<u>119.</u>
b. Elimination of Interest on Refunded Study Deposits.....	<u>157.</u>
c. Initial Payment.....	<u>169.</u>
5. Studies.....	<u>184.</u>
a. Section 8.7 “Interconnection Study Restudy”	<u>184.</u>
b. Changes to Point of Interconnection	<u>194.</u>
c. Model Sign-Off	<u>200.</u>
6. Modifications	<u>212.</u>
a. MISO’s Proposal	<u>212.</u>
b. Comments.....	<u>215.</u>
c. Answers	<u>222.</u>
d. Commission Determination	<u>223.</u>
7. Miscellaneous	<u>227.</u>
a. Article 5.9	<u>227.</u>
b. Appendix H	<u>231.</u>
c. Dispute Resolution	<u>235.</u>
d. GIP, Appendix 1.....	<u>238.</u>
e. Site Control.....	<u>244.</u>
f. Section 7.5.....	<u>247.</u>
g. Study Backfill.....	<u>250.</u>
8. Net Zero Interconnection Service.....	<u>253.</u>
a. Proposal	<u>253.</u>
b. Comments.....	<u>258.</u>
c. Answers	<u>271.</u>
d. Supplemental Filing	<u>281.</u>
e. Comments on Supplemental Filing	<u>287.</u>
f. Commission Determination	<u>293.</u>

1. On November 1, 2011, as supplemented on January 30, 2012 and February 9, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) submitted, under section 205 of the Federal Power Act (FPA),¹ proposed revisions to the Generator Interconnection Procedures (GIP) in Attachment X of its Open Access Transmission,

¹ 16 U.S.C. § 824d (2006).

Energy and Operating Reserve Markets Tariff (Tariff) in order to address backlogs in its generator interconnection queue and late-stage terminations of generator interconnection agreements.

2. As discussed below, we will conditionally accept MISO's proposed revisions and make the Tariff revisions effective January 1, 2012, as requested.

I. Background

A. History of Interconnection Queue Issues

3. In Order No. 2003,² the Commission issued standardized large generator interconnection procedures (LGIP) and a standardized large generator interconnection agreement (LGIA). The Commission's goal was to minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.

4. In its compliance filing to Order No. 2003 and 2003-A, MISO stated that the geographic expanse of its footprint made it inefficient to process Interconnection Requests according to time of receipt, without regard for geography; thus, MISO proposed revisions to the *pro forma* LGIP in order to use a "group study" approach to queue processing. MISO also sought changes to the *pro forma* LGIP and LGIA that would permit MISO to study individual interconnection requests out-of-queue order based upon: (1) the electrical remoteness of the generating facility; or (2) the request of the interconnection customer, when MISO concurs with the request and has the resources to perform the study, and if the interconnection customer accepts the financial risk of restudy and reassignment of upgrades when the Interconnection Request become the next in the queue.³

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027, at PP 122-123, *order on reh'g*, 109 FERC ¶ 61,085, at PP 25-28 (2004).

5. The Commission accepted MISO's proposal to process interconnection requests in groups and out-of-queue order, as proposed, conditioned on MISO meeting timing requirements in Order Nos. 2003 and 2003-A.⁴

6. In 2008, the Commission held a technical conference regarding interconnection queuing practices and queue related issues that emerged after the issuance of Order No. 2003 and issued an order directing Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) to develop and propose their own solutions to issues related to delays and backlogs in processing queues.⁵

7. To remedy this situation, MISO along with its stakeholders, created the Interconnection Practices Task Force to identify and correct the parts of its queue management procedures that were not functioning well. As a result of this stakeholder process, MISO proposed, and the Commission largely accepted, revisions to Attachment X of the Tariff in order to reform MISO's interconnection queue subject to annual informational reports.⁶ These revisions modified MISO's GIP to limit delays caused by inactive projects in the queue. Among other things, MISO revised its procedure for processing interconnection applications from a "first-come, first-served" approach to an approach based on the progress that the generation project is making towards commercial operation, essentially a "first-ready, first-served" approach. Under these procedures, an interconnection customer pays the M1 study deposit to enter the Pre-Queue Phase. In this phase, a Feasibility Study is performed to determine whether the transmission system can accommodate the interconnection request and whether the project can move directly to the second phase of the queue – the Definitive Planning Phase – or whether it should proceed to the first phase of the queue – the System Planning and Analysis phase – for additional study.⁷ If a project is not eligible to proceed to the Definitive Planning Phase, the customer then enters the System Planning and Analysis phase and undergoes a System Impact Study. After receiving its study results, the customer would then have to

⁴ *Id.*

⁵ *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at PP 8-9 (2008) (Conference Order).

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

⁷ The System Planning and Analysis phase replaced the System Impact Study Phase in MISO's first queue reform proceeding.

decide whether to fulfill the M2 milestone⁸ in order to enter the Definitive Planning Phase. In the Definitive Planning Phase, the customer would receive a System Impact Study Review that would give them an approximation of the type and cost of upgrades that would have to be funded in order to facilitate their interconnection request. After receiving this information, the customer would then have to decide whether to fulfill the M3 milestones⁹ in order to undergo a Facilities Study. Upon completion of the Facilities Study Review, the interconnection customer would then have the opportunity to negotiate an interconnection agreement. Under MISO's proposal, projects that had not yet started a Facilities Study were subject to all provisions of the new GIP; projects that had started a Facilities Study were only subject to revisions relating to suspension.

8. In 2009, MISO proposed, and the Commission accepted, additional revisions to its GIP that it characterized as its second phase of its interconnection queue reform.¹⁰ MISO stated that its revisions were intended to address physical constraints that were delaying the interconnection of new generation in many areas of MISO's footprint and streamline the processing of interconnection requests. To address these concerns, MISO put in place two new *pro forma* agreements into the GIP: a facilities construction agreement for a single interconnection customer and a facilities construction agreement for multiple interconnection customers.

B. MISO's Proposal

9. MISO notes that delays associated with the failure of projects within the Definitive Planning Phase to move through that phase are causing backups. MISO states that it examined the queue in August 2011 to identify interconnection requests that were active on January 1, 2009 and are still active now. MISO states that this examination indicated that there were 141 interconnection requests, or just under half the queue, that met this criteria. MISO explains that 128 of these projects are located in Minnesota, Iowa, North Dakota, and South Dakota.¹¹ MISO believes that the primary factor causing this backup is the lack of renewable energy purchasers in the market. MISO asserts that

⁸ The M2 milestone refers to a set of requirements that an interconnection customer must meet before entering the Definitive Planning Phase. These requirements are discussed in further detail below.

⁹ The M3 milestone refers to the requirements that an interconnection customer must meet in order to obtain a Facilities Study.

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,301 (2009) (Queue Reform II).

¹¹ Mr. Eric Laverty Test. at 9 (Laverty Testimony).

transmission uncertainty, particularly around Multi Value Projects (MVP),¹² creates a cost uncertainty for generators and makes it more difficult for generators to compete for the limited amount of demand in the market.¹³ MISO claims that this lack of demand has made interconnection customers reluctant to meet the milestone between the System Impact Study and the Facilities Study in the Definitive Planning Phase or to complete a GIA. MISO states that it has also seen an increase in interconnection customers questioning study methods, challenging results, and using dispute resolution.¹⁴

10. MISO states that there has been a recent increase in the uncertainty surrounding whether an interconnection customer will have to be restudied due to the occurrence of an event identified as a contingency in its GIA.¹⁵ MISO asserts that this uncertainty results from a recent increase in the number of projects with GIAs either terminating, breaching, or defaulting under their agreements. MISO explains that contingencies were less of an issue in 2008 when a low percentage of projects that executed a GIA withdrew their projects; in 2011, however, MISO states it has had between 10 and 20 projects with GIAs terminated, breached, or defaulted on their agreements.¹⁶

11. Also, MISO concedes that interconnection customers' concerns regarding study methods could be a result of mistakes made by MISO staff and that MISO takes these concerns seriously. MISO states that it was only after MISO saw the totality of the circumstances (i.e., similarities among the concerns, the reluctance of projects to move forward, and the lack of requests for proposals for new projects) that MISO determined that further queue reform was necessary.¹⁷

12. MISO explains that the reforms in this proceeding are intended to extend the idea of "first-ready, first-served" in the queuing process by removing timelines for

¹² *Midwest Independent Transmission System Operator, Inc.* 133 FERC ¶ 61,221 (2010).

¹³ Lavery Testimony at 9.

¹⁴ *Id.* at 9-10.

¹⁵ *Id.* at 9. *See also* MISO, FERC Electric Tariff, Attachment X (0.0.0), app. 6, art. 11.3 (providing for the restudy of a project if certain contingencies arise, including the withdrawal of a higher-queued customer, which may affect a project's responsibility for network upgrades).

¹⁶ Lavery Testimony at 8-9.

¹⁷ *Id.* at 11.

interconnection customers in order to allow them to proceed at their own pace.¹⁸ MISO explains that, under its proposal, an interconnection customer will be permitted to remain in the System Planning and Analysis phase indefinitely, so long as the interconnection customer refreshes its study once every 18 months. MISO also explains that an interconnection customer may request to be studied using a variety of assumptions during the System Planning and Analysis phase. Under MISO's proposal an interconnection customer will have 30 days to complete and execute an interconnection study review form, which allows the interconnection customer to recommend changes to the model used to study its interconnection request. MISO further explains, however, that the result of studies performed in the System Planning and Analysis phase will *not* form the basis for interconnection studies performed in the Definitive Planning Phase.¹⁹ Additionally, MISO explains that an interconnection customer may make changes to its interconnection request in the System Planning and Analysis phase.

13. At a time of its choosing, the customer may move to the Definitive Planning Phase by providing a study deposit, providing necessary information, and making a new M2 "cash-at-risk" payment.²⁰ Like in the System Planning and Analysis phase, under MISO's proposal, an interconnection customer will be required to complete and execute an interconnection study review form. Once in the Definitive Planning Phase, most modifications by the interconnection customer would be deemed to be Material Modifications.

14. Under MISO's proposal, an interconnection customer would be required to make an "initial payment" toward its network upgrade costs within a prescribed time period following the execution of its GIA or the filing of an unexecuted GIA with the Commission. In particular, the interconnection customer would be required to either pay a certain percentage of the total cost of its network upgrades or to provide security equal to 100 percent of the cost of network upgrades.²¹ MISO states that this revision prevents

¹⁸ *Id.* at 8.

¹⁹ Proposed revised section 7.3.

²⁰ The cash-at-risk payment entirely replaces all other means by which an interconnection customer can presently demonstrate readiness (e.g., ordering turbines). The cash-at-risk payment is generally based upon a formula that considers the \$/MW year long-term firm point-to-point transmission service rate for the interconnecting zone in schedule 7, the MW size of the facility, and the number and cost of constraints.

²¹ Under the currently effective *pro forma* GIA, an interconnection customer is required to provide security for the cost of its network upgrades 30 days prior to the commencement, design, procurement, installation, or construction of a discrete portion of

(continued...)

the customer from establishing a long lead time for a project without having to expend capital.

15. MISO proposes to apply its queue reform to certain existing interconnection requests. In particular, the revised GIP, including the M2 milestone payment, will apply to an interconnection customer that has an executed GIA but must be restudied due to, for example, a higher-queued interconnection customer withdrawing. The revised GIP will also apply where the interconnection customer is being studied for the first time and does not have an interconnection agreement. Such customers will be required by the end of a 90 day period following the effective date to transition to the new GIP.²² Those projects that are unable to make the new M2 milestone payment would be placed in the System Planning and Analysis phase.²³ Only interconnection requests for projects that are in commercial operation and have an executed GIA as of the effective date of the revised GIP will be exempt from the revised GIP. However, MISO clarifies in its answer that it intends *not* to apply the M2 milestone payment to a customer with a signed GIA, that has not reached commercial operation (and is being restudied), where such customer has satisfied the milestones in its GIA.

16. Finally, MISO proposes a new sub-class of Energy Resource Interconnection Service called Net Zero Interconnection Service. This new service, states MISO, would allow an existing interconnection customer to increase the gross generating capability at the point of interconnection of an existing generating facility without increasing the net generation output at the point of interconnection above the existing generating facility's capacity, thereby permitting a new generating facility to interconnect at that point.²⁴ MISO states that the existing generator and a new generator would work out a means of controlling the output of the combined units. According to MISO, with the output

certain network upgrades. MISO, FERC Electric Tariff, Attachment X (0.0.0), app. 6, art. 11.5.

²² Proposed revised sections 5.1.1.2, 5.1.2 and 8.2.

²³ Proposed revised section 5.1.1.

²⁴ According to MISO, the terms and conditions of Net Zero Interconnection Service will be governed by an Energy Displacement Agreement and a Monitoring and Consent Agreement. Under MISO's proposal, an interconnection customer seeking Net Zero Interconnection Service will be required to enter into an Energy Displacement Agreement with the owner of the existing generating facility prior to submitting a request for net zero service if the customer is not the owner or subsidiary of the existing generator.

controlled, the net effect on output seen by the system is unchanged, thus the name “net zero.”

II. Notice and Responsive Pleadings

17. Notice of the November 1 Filing was published in the *Federal Register*, 76 Fed. Reg. 69,716 (2011), with interventions or protests due on or before November 30, 2011.²⁵

18. On December 30, 2011, staff issued a letter informing MISO that the November 1 Filing was deficient and requesting additional information. MISO submitted a response to this letter on January 30, 2012 (Supplemental Filing).

19. Notice of MISO’s January 30 Response was published in the *Federal Register*, 77 Fed. Reg. 6103 (2012), with interventions or protests due on or before February 21, 2012.

20. The entities listed in Appendix A filed motions to intervene, including EDP, Prairie Rose, and Akuo, who filed motions to intervene out of time.

21. Intervenors who also submitted comments supporting MISO’s proposed revisions include MISO Transmission Owners, Xcel, Alliant, and Midwest TDUs.

22. Intervenors who protested or commented adversely on aspects of MISO’s proposed revisions include EcoEnergy, NextEra, Geronimo, National Renewable Solutions, AMP, Iberdrola, the Midwest Developers, AWEA and WOW, E.ON, Flat Hill, EPSA, Detroit Edison, Joint Protestors, Juhl, and Calpine. American Renewable Energy Solutions, LLC (ARES) filed comments but did not move to intervene.

23. Answers were filed by Prairie Rose, the Joint Protestors, Xcel, MISO, the Midwest Developers, and the MISO Transmission Owners.

24. On January 31, 2012, Prairie Rose filed a motion asking the Commission to separate its consideration of Net Zero Interconnection Service from the other issues in

²⁵ On November 3, 2011, the AWEA and WOW filed a motion asking the Commission to extend the time to file comments to December 6, 2011. On November 8, 2011, the Commission issued a notice extending the time to file comments, protests, and interventions to November 29, 2011. On November 15, 2011, WOW filed an additional motion asking the Commission to extend the time for submitting comments, protests, and interventions to December 2, 2011, and E.ON Climate & Renewables North America LLC (E.ON) subsequently filed a motion supporting WOW’s motion. On November 18, 2011, the Commission issued a notice extending the date for filing comments, protests, and interventions to November 30, 2011.

this docket and to expeditiously approve Net Zero Interconnection Service within 30 days of its motion. Joint Protestors filed an answer opposing Prairie Rose's motion.

III. Discussion

A. Procedural Matters

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

26. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant EDP's, Prairie Rose's, and Akuo's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. We will also accept the late protests of Juhl and ARES given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers that have been filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Standard of Review

28. The Commission applies an independent entity standard to evaluate RTOs and ISOs proposals for revisions to the procedures outlined in Order No. 2003.²⁶ Under that standard, independent entities, such as RTOs and ISOs, are entitled to more flexibility in proposing variations than are non-independent entities, primarily because they do not have affiliated generation and thus are less likely than non-independent entities to favor one generator over another. Under the independent entity standard, MISO must demonstrate that its proposed variations are just and reasonable and not unduly discriminatory, and that they would accomplish the purposes of Order No. 2003.²⁷

²⁶ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 822-827; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 759. *See also* Queue Reform Order, 124 FERC ¶ 61,183 at P 31; Conference Order, 122 FERC ¶ 61,252 at P 13.

²⁷ Conference Order, 122 FERC ¶ 61,252 at P 13, n.10.

C. Substantive Matters

29. We believe that, as modified below, the proposed revisions to the GIP are just and reasonable and build upon previous queue reform efforts in an attempt to further the goals of Order No. 2003: to minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.

30. In previous phases of queue reform, MISO has implemented reforms designed to expedite the processing of the queue, such as embracing a “first-ready, first-served” approach, modifying milestones that an interconnection customer must meet in order to proceed through the interconnection queue, and adopting limitations on the ability of projects to suspend. As discussed further below, the evidence provided in this proceeding indicates that, while progress has been made, further reform is necessary due to the fact that MISO continues to experience a backlog in the queue and has seen an increase in the number of projects withdrawing in the later stages of the interconnection process. We believe that, as modified below, MISO’s proposed revisions to the GIP, including the adoption of enhanced financial milestones, removing timelines for customers to proceed to the Definitive Planning Phase, and requiring interconnection customers to sign-off on study models will help achieve the overall goals of interconnection queue reform – discouraging speculative or unviable projects from entering the queue, getting projects that are not making progress toward commercial operation out of the queue, and helping viable projects achieve commercial operation as soon as possible.²⁸ We also find that MISO’s proposal to implement Net Zero Interconnection Service, as modified below, has the potential to foster the efficient use of the transmission system. Therefore, as discussed below, we conditionally accept MISO’s proposal under the independent entity standard, subject to MISO making a compliance filing.

1. Need for Reform

a. Comments

31. Several commenters argue that MISO’s proposal is premature and that the backlog identified by MISO results from the ongoing study of the so-called Group 5 projects²⁹ as

²⁸ Queue Reform Order, 124 FERC ¶ 61,183 at P 44.

²⁹ The Group 5 projects consist of interconnection requests in Southwest Minnesota, Northwest Iowa, and Eastern South Dakota. MISO’s GIP in Attachment X provides that generator interconnection projects may be studied as a group for the purpose of conducting interconnection studies. MISO conducted the generator interconnection system impact studies as a group for the Group 5 projects. The initial
(continued...)

well as the fact that the MVP projects have not yet gone into effect.³⁰ The Midwest Developers, AWEA, and WOW argue that the delay in studying the Group 5 projects, due to errors on the part of MISO and changes within Group 5, has resulted in a backlog of interconnection customers and has stalled other study groups within the western portion of MISO's footprint.³¹ The Midwest Developers state that they expect that the restudies of the Group 5 projects should be completed in the first quarter of 2012, with the negotiation and execution of interconnection agreements to occur in the second and third quarters of 2012.³² The Midwest Developers, AWEA, and WOW state that they expect that MISO's approval of its first set of MVPs, hopefully including upgrades that will allow the Group 5 projects to proceed, will reduce uncertainty and alleviate congestion in the queue.³³ The Midwest Developers add that the fact that the vast majority of the congestion is located in the western part of its footprint demonstrates that congestion in the queue is not the result of any flaws in the existing interconnection procedures as much as it is the result of unique factors in that region.³⁴ They further state that the existing queue procedures should be given time to work and that further reforms should only be considered after the issues driving the backlog in the queue are resolved.³⁵ Iberdrola argues that "[w]hile MISO's contentions regarding the supply and demand balance may be true, timely completing studies, and moving forward on transmission

studies were performed in 2006 and 2007 and the study reports were posted during the summer and fall of 2007. In late 2009, MISO indicated that restudy of the Group 5 projects was necessary due to the withdrawal of higher-queued generators, including some members of Group 5. *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,165, at P 28 (2010).

³⁰ Midwest Developers Protest at 2-4; AWEA and WOW Protest at 6-7; NextEra Protest at 2; Iberdrola Protest at 16-17.

³¹ Midwest Developers Protest at 2-3, 8-10; AWEA and WOW Protest at 6.

³² Midwest Developers Protest at 11.

³³ *Id.* at 10-11; *see also* AWEA and WOW Protest at 6-7.

³⁴ Midwest Developers Protest at 9.

³⁵ Midwest Developers Protest at 8; AWEA and WOW Protest at 7. *See also* NextEra Protest at 2-3.

projects that affect network upgrade costs and access to the market is the more appropriate path to increase certainty.”³⁶

32. AWEA and WOW state that, while MISO’s proposed revisions may make the interconnection process more efficient for MISO, they will result in an ineffective process for interconnection customers and will result in a burdensome and unnecessary queue clearing exercise that will create significant new barriers to entry for new generators.³⁷ The Midwest Developers similarly contend that MISO’s proposed revisions will lead to further uncertainty and unfairness for interconnection customers.³⁸

33. The Midwest Developers contend that MISO’s proposal is not entitled to the deference that is typically given to proposals that are vetted through the stakeholder process. They state that MISO’s proposal is largely barren of stakeholder input; MISO did not even hold a vote on its final proposal and instead chose to revise the generation procedures over the objections of affected stakeholders.³⁹ Iberdrola notes that very few substantive changes were made to MISO’s original proposal based on feedback it received through the stakeholder process, and that while stakeholder recommendations are advisory, it is an important opportunity for MISO to explain its rationale and address issues raised by stakeholders to avoid unintended consequences. Iberdrola states that the Commission should not afford deference to MISO’s proposal.⁴⁰

34. Accordingly, the Midwest Developers, AWEA and WOW, and Iberdrola ask that the Commission reject MISO’s proposal in its entirety with the exception of MISO’s proposal to implement Net Zero Interconnection Service. The Midwest Developers argue that, if the Commission decides that the scheduled completion of the Group 5 study process and the implementation of the MVP process, together with its existing queue procedures, might warrant additional scrutiny, the Commission should direct MISO to submit quarterly reports thereby apprising the Commission and stakeholders of its progress in implementing the MVP procedures and clearing out the Group 5 projects.⁴¹

³⁶ Iberdrola Protest at 4.

³⁷ AWEA and WOW Protest at 8.

³⁸ Midwest Developers Protest at 4-5.

³⁹ *Id.* at 13-14.

⁴⁰ Iberdrola Protest at 18.

⁴¹ Midwest Developers Protest at 14.

Likewise, AWEA and WOW state that, if the Commission determines that changes might be needed to the queue in the future, it could direct MISO to submit quarterly informational filings for the next calendar year.⁴²

35. A number of parties express support for MISO's proposals.⁴³ Alliant notes that MISO's latest effort to reform its queue has been ongoing for a year and that MISO actively engaged with stakeholders prior to proposing revisions, which resulted in several changes to MISO's proposals. Alliant states that it believes that MISO's proposal will substantially improve the queue and strikes a fair balance with all parties that need to use the queue. While acknowledging that MISO's proposals may result in projects withdrawing from the queue and deter other projects from entering the queue, it maintains that these consequences are necessary in order to address the current backlog issues and to prevent these issues from reoccurring. Alliant adds that the urgency of making improvements has been heightened due to the Environmental Protection Agency's Cross State Air Pollution Rule and other regulations, which will result in the retirement of a substantial amount of existing generation.⁴⁴

b. Answers

36. In its answer, MISO argues that the testimony of Mr. Eric Laverty, which it submitted in the November 1 Filing, demonstrates that there is an excessive buildup of projects in the Definitive Planning Phase, which is the result of inefficiencies caused by the use of timelines for customers to proceed through the interconnection process.⁴⁵ According to MISO, Mr. Laverty's testimony indicated that its previous phases of queue reform have not been as successful in eliminating the backlog in the queue to the extent that MISO hoped in those areas with a high density of interconnection as it has in areas with fewer interconnection requests. MISO explains that, as of December 1, 2011, out of the approximately 32 gigawatts (GW) of projects in the interconnection queue, there were approximately 25 GW of projects in the queue that were at or beyond the Definitive Planning Phase but that had not executed a GIA. MISO maintains that this pattern indicates that a number of projects that enter the Definitive Planning Phase are not ready to proceed and simply wait there while they attempt to resolve uncertainties or obtain

⁴² AWEA and WOW Protest at 5.

⁴³ Midwest TDUs Comments at 3; MISO Transmission Owners Comments at 2-3; Alliant Comments at 3.

⁴⁴ Alliant Comments at 3-4.

⁴⁵ MISO December 15 Answer at 4.

financing. MISO adds that approximately 15 percent of the total projects that met the M2 milestone⁴⁶ between 2009 and today have subsequently dropped out of the Definitive Planning Phase.⁴⁷ MISO explains that 28 projects that met the M2 Milestone subsequently dropped out of the queue in 2011. MISO further explains that these 28 projects are in addition to 12 projects that dropped out in 2009 and 2010.⁴⁸ MISO further maintains that even execution of a GIA has not been a sufficient indicator of readiness, as at least 12 projects with executed GIAs in place terminated their agreements in 2011 and several other projects breached their agreements.⁴⁹ MISO, therefore, argues that its proposed revisions are necessary to enhance certainty by ensuring that those customers that enter the Definitive Planning Phase are ready to proceed towards commercial operation.⁵⁰

37. Additionally, MISO rejects the notion that the root cause of the queue delay is ongoing commercial uncertainty about the cost responsibility of the Group 5 projects. MISO states that, even after MISO evaluates its first round of MVP projects, the Group 5 projects will still be responsible for approximately \$300 million in upgrades before these projects can interconnect. Accordingly, MISO states that it is unlikely that these projects will do so quickly; in fact, MISO states that it is likely that some of these projects will drop out and that these withdrawals will spur further withdrawals from the Definitive Planning Phase.⁵¹

38. In its answer to MISO's answer, the Midwest Developers argue that MISO has failed to establish any causal link between decisions made by interconnection customers and the queue backlog that would justify its sweeping proposal. The Midwest Developers argue that the 15 percent drop out rate identified by MISO actually appears

⁴⁶ The currently effective M2 milestone consists of three different elements. The first element is a study deposit based upon the size of the proposed interconnection. The second element requires the customer to provide detailed technical data (*e.g.*, point of interconnection, one-line diagrams, etc.) to MISO. The third element requires the customer to meet two out of six indicia of readiness.

⁴⁷ MISO December 15 Answer at 4-5.

⁴⁸ *Id.*

⁴⁹ *Id.* at 5-6.

⁵⁰ *Id.* at 7-10.

⁵¹ *Id.* at 6 n.12.

quite reasonable and does not support the proposal to fundamentally overhaul its queue procedures.⁵² They claim that the fact that the drop-out rate is fairly low is illustrative of developers' commitment to their projects in the queue, especially in light of the fact that many of these developers have been stuck in the queue for years without any material progress. In this regard, they note that MISO recently announced that some Group 5 Facilities Studies and the Definitive Planning Phase Cycle 1⁵³ System Impact Study would be further delayed. They state that MISO's assertions regarding the cost responsibility for the Group 5 projects actually demonstrates that MISO's proposed revisions will not address the actual problem. They claim that MISO's proposals will simply force the Group 5 projects to either pay large amounts of likely nonrefundable deposits to learn what portion of the \$300 million would be allocated to them or get out of the queue, which will cause costs to shift to other generators if projects drop out. They state that the resulting process would undermine the ability of customers to determine whether their project is ready to proceed and imposes greater risk on customers.⁵⁴

c. Supplemental Filing

39. MISO explains that it came to the conclusion that the primary factor driving the back-up in the queue is a mismatch between supply and demand based upon two forward looking forecasts and one backward looking assessment of wind data. First, MISO reviewed the Department of Energy's list of current requests for proposals for renewable energy, which show that not more than 250 MW of wind has been requested in MISO's footprint at any one time over the last year. Second, MISO points to its findings in its monthly Informational Forum presentations which include a comparison of the wind output over the last 12 months to the wind output necessary to meet the state renewable portfolio standards (RPS). MISO asserts that with the RPS requirements to purchase renewable energy already met, the market for such energy is more limited.⁵⁵

40. Third, MISO reviewed the work performed under the Regional Generator Outlet Study and looked at the nameplate installations required to meet those same state RPS

⁵² Midwest Developers December 20 Answer at 3 (noting that the drop-out rate in the footprints of other ISOs and RTOs can be significantly higher).

⁵³ See generally Supplemental Filing at 5. Group 5 is the first of 10 queued group studies in the west region of MISO. The subsequent west region group studies are referred to as Definitive Planning Phase Cycles 1 through 9.

⁵⁴ Midwest Developers December 20 Answer at 3-5.

⁵⁵ Supplemental Filing at 2-3.

requirements. MISO notes that this review involved a 2009-vintage load forecast and maintains that the lingering effects of the recession are ignored in that work. Based on this review, MISO determined that the currently installed wind capacity, plus the amount that was then scheduled to be installed through 2011 was already sufficient to meet the 2014-2015 level of wind capacity necessary to meet the RPS requirements in the MISO footprint.⁵⁶

41. MISO followed up on its third approach at the March 2011 meeting of its Interconnection Process Task Force. At that time, the review demonstrated a slight narrowing of the gap between the amount of renewable energy needed to meet RPS requirement and the renewable energy capacity in MISO (sufficient to meet 2013-2014 standards, rather than 2014-2015, still using 2009 load forecasts). However, this analysis still showed that renewable energy capacity in MISO was ahead of the amount needed to meet state RPS requirements based on a comparison of that graph of RPS needs with the wind projects in various stages of the queue at that time.

42. With respect to the Group 5 projects, MISO states that the System Impact Study has been completed and that facilities studies are due to be completed by the first week in February 2012 with the negotiation of GIAs, facilities construction agreements, and multi-party facilities construction agreements following those studies. MISO asserts that the delay in the commencement of facilities studies was caused by the disagreement between MISO and several interconnection customers with respect to the M3 milestones in the current process and the logistical step of obtaining proposals from multiple consultants to perform the facilities studies and then collecting the study deposits from the interconnection customers.⁵⁷ Interconnection customers now have initial estimates of their costs to interconnect, and are merely waiting on those cost estimates to be further refined in the Facilities Study phase. MISO states that as described above and in the Midwest Developers answer to MISO's answer, what interconnection customers do not know is what their anticipated revenue from a power purchase agreement will be.⁵⁸ Accordingly, states MISO, it is difficult for them to determine whether it is economical for them to fund the upgrades needed to interconnect their projects.

43. MISO further notes that Group 5 is the first of 10 study groups currently in the western region of MISO. MISO observes that two projects within Group 5 have withdrawn from the MISO queue and that while the withdrawal of these two projects alone will not cause a restudy, additional projects dropping out would likely trigger the

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 4 (footnote omitted).

⁵⁸ *Id.* at 3 (citing Midwest Developers December 20 Answer at 6-7).

need for yet another restudy for Group 5 and cause cascading restudies in all subsequent West region group studies in Definitive Planning Phase Cycles 1-9.

44. MISO states that, while the Group 5 projects are currently garnering attention, the issues identified by MISO go beyond the group. MISO cites to the Definitive Planning Phase Cycle 5 group study in North Dakota with seven projects. MISO states that before GIA negotiations had even started, one project dropped out, which led MISO to start negotiations with six projects that involved six GIAs and three multi-party facilities construction agreements. The process of withdrawals continued such that only two projects remain, requiring a GIA and only one facilities construction agreement. MISO further explains that Project G622 recently withdrew during negotiations, which has triggered a restudy of Definitive Planning Phase Cycle 5 in North Dakota to determine if the remaining facilities construction agreement and network upgrades are needed. MISO also explains that this restudy will very likely cause a second restudy of the Definitive Planning Phase Cycle 6 study in North Dakota. MISO states that the number of iterations due to projects dropping out of the queue because they are not ready to proceed has prolonged the study process and such “queue churn” is preventing the “ready” projects from moving forward in an expeditious manner.⁵⁹

45. MISO notes that it considered alternatives to its proposed revisions to the GIP to address the current backlog in the queue. MISO explains, for instance, that it considered a “non-queue” approach, which would have led to a complete separation of an interconnection queue position from the cost of interconnection. MISO states that, after considering feedback from stakeholders, it determined that this approach would not be achievable for a number of years and that the higher priority was to revise the queue to more quickly resolve the glut of capacity at the front of the queue.⁶⁰

46. Finally, in response to a staff deficiency letter asking questions concerning the status of projects in the queue, MISO provided a table containing the total number of interconnection requests in the following five categories: (1) those in the queue; (2) those in the System Planning and Analysis phase; (3) those with executed GIAs that have not commenced commercial operation that are expected to be restudied; (4) those that are currently in suspension; (5) those in the Group 5 study group; and (6) those that are contingent on the Group 5 projects.⁶¹

⁵⁹ Supplemental Filing at 4 (footnote omitted).

⁶⁰ *Id.* at 5.

⁶¹ *Id.* at 6.

d. Comments on the Supplemental Filing

47. Iberdrola maintains that the Commission should reject MISO's filing in its entirety, with the exception of the Net Zero Interconnection Service proposal, without prejudice. Iberdrola acknowledges that MISO continues to experience issues in its interconnection queue. However, according to Iberdrola, MISO has neither provided evidence supporting the urgency of its proposal nor justified its draconian queue clearing proposal. Iberdrola notes that nearly half of the interconnection requests that MISO identified in its Supplemental Filing are either contingent upon or included in the Group 5 projects. Iberdrola further notes that these interconnection requests will, by necessity, be provisional because they are dependent on construction of a subset of MVP transmission lines. As a result, according to Iberdrola, MISO has time to develop a reasoned solution with stakeholder consensus that addresses the complex issues that are actually hindering the processing of the queue.⁶²

48. Iberdrola states that MISO must develop long-term solutions that are consistent with its role as an independent entity. Iberdrola notes that the "non-queue" option would have provided an opportunity to discuss the causes of MISO's current GIP problems, if not an actual solution, and that it would have preferred that option over the current queue-clearing exercise.

49. Iberdrola states that MISO's justification for the proposed reforms is based on inherently discriminatory assumptions. Iberdrola argues that MISO makes little attempt to hide the fact that its proposed modifications to the GIP were targeted at wind generators. Iberdrola argues that MISO's proffered justification is based on an incorrect assumption about the link between RPS requirements and energy demand, as nothing limits a market participant from purchasing energy from renewable resources beyond its RPS requirements. Iberdrola maintains that MISO is attempting to predetermine market outcomes by assuming a fundamental market bifurcation between renewable energy and non-renewable energy, which is contrary to the purpose of an ISO.⁶³

⁶² Iberdrola February 21 Protest at 1-2.

⁶³ *Id.* at 6 (citing *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-A, 62 FR 12274 (Mar. 14, 1997), 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) (stating that "[t]he fundamental purpose of an ISO is to operate the transmission systems of public utilities in

(continued...)

50. Moreover, Iberdrola argues that MISO's Supplemental Filing makes it clear that MISO is unwilling to address the more complex problems of queue processing in a competitive market. Iberdrola states that, despite MISO's assertions to the contrary, MISO's proposal lacked broad based support and that real solutions need to address the complexity of transmission planning and acknowledge MISO's responsibility. According to Iberdrola, MISO has made no attempt to dispel the conclusion that its proposed revisions are intended to clear the queue to ease pressure on MISO by shifting the majority of risks and responsibility to interconnection customers through higher barriers to entry and limiting the ability to challenge the process. While Iberdrola concedes that it may be the case that interconnection customers are delaying the process because they don't have revenue risk, it is part of the process as MISO cannot provide clear cost estimates until it completes its studies.⁶⁴

51. Accordingly, Iberdrola maintains that the Commission should reject MISO's proposed reforms and direct it to propose a more comprehensive set of reforms developed through a robust stakeholder process.⁶⁵ Iberdrola further claims that the Commission should reiterate to MISO that any reforms must share responsibilities between the interconnection customer and MISO.⁶⁶

52. E.ON states that the data provided by MISO in response to the staff deficiency letter demonstrates that there is no systemic queue backlog resulting from interconnection customers' decisions and actions. E.ON states that this data shows that an overwhelming majority of interconnection requests in the Definitive Planning Phase – 92 out of the 123 requests in the Definitive Planning Phase (75 percent) – are contingent upon the Group 5 projects. This, E.ON concludes, demonstrates that a vast majority of the projects have been languishing in the queue as a result of the ongoing study of the Group 5 projects, not customer inaction. While E.ON acknowledges that the data provided by MISO shows that one-third of all interconnection requests in the queue have progressed to the last stage before a GIA is executed, E.ON states that no further conclusions can be drawn from this data and that it certainly does not demonstrate that customers are impeding the progress of projects through the queue. Moreover, E.ON identifies several questions that it believes that MISO's response does not address, including how many of

a manner that is independent of any business interest in sales or purchases of electric power by those utilities’’)).

⁶⁴ *Id.* at 7-8.

⁶⁵ *Id.* at 3-4.

⁶⁶ *Id.* at 9-10.

the projects in the Definitive Planning Phase have been subjected to restudy due to the occurrence of an event identified as a contingency or due to errors in an earlier study.⁶⁷

53. E.ON also notes that MISO's data shows that 81 out of the 364 requests in the MISO queue have moved out of the Definitive Planning Phase and have an executed GIA. E.ON states that this is significant, as these projects represent over 12,000 MW, and shows that interconnection customers are executing GIAs as required by the current GIP process. E.ON further states that the fact that only three of the 81 requests are in Group 5 is telling, as it shows that, even with the delays of the Group 5 restudy, the queue in other sub-regions of MISO has been moving forward nicely and as expected. Moreover, E.ON explains that the fact that these projects have not achieved commercial operation is not significant because commercial operation is driven by, among other things, when the interconnecting transmission owner can complete the required network upgrades.⁶⁸

54. Additionally, E.ON observes that there are only 6 interconnection requests with an executed GIA (only 7.4 percent of those projects with an executed GIA) that are expected to be restudied prior to commercial operation. E.ON argues that seven percent is not illustrative of a systemic MISO-wide problem and certainly does not demonstrate a significant "queue churn" problem as MISO alleges. On the contrary, E.ON claims that this data shows that 93 percent of the projects with an executed GIA will not be subjected to restudy or "queue churn," which means that the vast majority of projects that are lower in the queue will not be subject to queue churn. E.ON maintains that these data show that the GIP process is working as designed to move projects toward interconnection and commercial operation.⁶⁹

55. With respect to suspension, E.ON notes that Mr. Lavery's testimony in the November 1 Filing suggests that a significant number of projects have moved into suspension and that, on this basis, MISO is proposing to impose higher financial milestones earlier in the interconnection process. E.ON argues that the data contained in the Supplemental Filing belie Mr. Lavery's assertion because they show that only 9 out of the 364 projects in the queue (2.4 percent) have initiated suspension – hardly demonstrating that there is a queue-wide problem requiring sweeping revision of the queue. E.ON further argues that, given the fact that suspension is only available for force

⁶⁷ E.ON February 21 Protest at 2-3.

⁶⁸ *Id.* at 3-4.

⁶⁹ *Id.* at 4.

majeure, even if suspension were causing “queue churn,” it would be due to forces beyond the control of interconnection customers.⁷⁰

56. E.ON states that the only thing missing in the assessment of the factors causing the backlog is an examination of MISO itself. E.ON asks the Commission to exercise its authority under the FPA to require fast and accurate study results, partial refunds for late results, and greater finality of results, thereby minimizing restudies and delays. Similarly, E.ON argues that the Commission should order MISO to amend its tariff to provide that MISO will provide all costs that must be in an interconnection agreement according to the timing requirements listed in the particular and applicable phase (i.e., System Planning and Analysis phase or Definitive Planning Phase).⁷¹ Additionally, E.ON recommends the Commission institute monetary penalties if MISO misses study deadlines.

57. The Joint Protestors reject the idea that the problems in the queue result from a supply-demand imbalance and instead claim that the problem is MISO’s administration of the queue. They note that while the current economic situation exists throughout the United States, MISO is the only transmission provider that alleges the need to eliminate the queue and implement drastic reforms. The Joint Protestors state that while MISO is correct in stating that it is difficult to determine whether it is economical for them to fund the upgrades needed to interconnect a project without a power purchase agreement, MISO’s proposed changes will not solve that problem.⁷²

58. The Joint Protestors state that the first step in promoting certainty, speed, and predictability is to have a study process based upon a consistent model instead of the discriminatory practice of allowing study assumptions to vary for incumbent utility projects. According to the Joint Protestors, until there is a benchmark model created by an independent set of engineers and that model is applied uniformly, it would be reasonable to assume that disputes will continue to arise.⁷³

59. AWEA and WOW argue that the Commission should reject MISO’s proposal because MISO failed to respond to all of the questions posed in the deficiency letter. In particular, AWEA and WOW argue that MISO failed to explain how MISO had come to the conclusion that the primary factor driving the backlog in the queue is the lack of

⁷⁰ *Id.* at 5.

⁷¹ *Id.* at 7-8.

⁷² Joint Protestors February 21 Protest at 4-5.

⁷³ *Id.* at 5-6.

renewable energy purchasers in the market because MISO fails to demonstrate how this supposed lack of demand is causing the backlog in the queue. Additionally, AWEA and WOW state that MISO failed to respond to the question about whether it believes that the Group 5 restudies are impacting the backlog and failed to discuss the degree to which the queue issues would be resolved if the Group 5 studies were complete, merely providing an update about the status of those studies.⁷⁴

60. AWEA and WOW also argue that MISO misunderstands the market for wind power and the development process for new generators and, as a result, has unrealistic expectations of the interconnection process. They state that MISO's Supplemental Filing suggests that MISO believes that it understands how many MWs of wind projects will make it through the interconnection process and that it can predict or influence the amount of generation that should be developed in the region. They claim that MISO incorrectly assumes that the driver for wind development is state RPS requirements and that utilities' requests for proposals are the only way to participate in that market. They explain that developers are building projects based on a variety of commercial strategies and that there are buyers that purchase wind power even if not compelled to do so. AWEA and WOW further assert that, while MISO mistakenly assumes that withdrawals will not occur in a well-functioning queue, this is unrealistic and does not take into account the fact that the interconnection queue is intended to provide information to developers that is necessary to make informed decisions about whether to continue.⁷⁵

e. Answers

61. In its answer, MISO emphasizes that it believes that its proposal will provide more certainty of upgrade costs by permitting projects to obtain additional information while remaining in the queue.⁷⁶ MISO rejects the contention that the proposal disproportionately impacts wind projects. MISO explains that proposed wind accounts for approximately 85 to 90 percent of the capacity in the MISO queue. Thus, according to MISO, it is not surprising that the queue reforms impact many wind projects.⁷⁷

⁷⁴ AWEA and WOW February 21 Protest at 3-5.

⁷⁵ *Id.* at 5-7.

⁷⁶ MISO March 7 Answer at 9-11.

⁷⁷ *Id.* at 11-12.

f. Commission Determination

62. Based on the evidence provided by MISO, it appears that MISO is experiencing several challenges in administering its queue. We believe that such evidence justifies MISO's proposed tariff changes, subject to certain conditions established further below.

63. First, the evidence supports a finding that MISO continues to experience a substantial backlog in the Definitive Planning Phase of its queue. According to MISO, as of December 1, 2011, there were approximately 32 GW worth of projects in the queue. Out of these 32 GW, MISO explains that there were 25 GW of projects that were at or beyond entry into the Definitive Planning Phase but had not executed a GIA.⁷⁸ The data provided by MISO in the Supplemental Filing further supports MISO's assertion that it is currently experiencing a backlog in the queue, with many interconnection requests in the Definitive Planning Phase.⁷⁹ In addition, it appears that 141 interconnection requests have been in the queue for over three years – 128 of which lie in Minnesota, Iowa, North Dakota and South Dakota.⁸⁰

64. Second, we agree with MISO that the existing M2 milestones are not sufficient for distinguishing between projects that are likely to achieve commercial operation and those that are not. The evidence demonstrates that “queue churn” continues to be a significant problem in MISO.⁸¹ According to MISO, it has seen a recent increase in the number of projects withdrawing from the queue: 28 projects that met the M2 Milestone subsequently dropped out of the queue in 2011. These projects are in addition to 12 projects that dropped out in 2009 and 2010. MISO states that these terminations amount to a drop-out rate of 15 percent of the total projects that met the M2 Milestone between 2009 and present day.⁸² Further, MISO states that terminations have resulted in multiple and iterative restudies and a corresponding increase in uncertainty for lower-queued customers.⁸³ We believe that requiring interconnection customers to put more money at

⁷⁸ MISO December 15 Answer at 4.

⁷⁹ *See, e.g.*, Supplemental Filing at 6 (showing 123 interconnection requests currently in the Definitive Planning Phase).

⁸⁰ Laverty Testimony at 9.

⁸¹ The Commission has previously recognized the importance of eliminating “queue churn.” *See, e.g.*, Queue Reform Order, 124 FERC ¶ 61,183 at P 59.

⁸² MISO December 15 Answer at 5.

⁸³ Laverty Testimony at 8-9; Supplemental Filing at 3-4.

risk, earlier in the interconnection process, will help ensure that projects that do advance through the DPP will be more likely to reach commercial operation.

65. These commenters identify alternative explanations for why the issues identified by MISO exist, such as the ongoing restudy of the Group 5 projects, or identify developments that they believe will alleviate this backlog, such as the construction of the first set of MVP projects, and urge us to reject MISO's proposed reforms on this basis. They also argue that the "queue churn" problem identified by MISO does not exist or is not as severe as MISO alleges, as the drop-out rates in the footprints of other ISOs and RTOs are higher than the dropout rate in MISO and, based on data provided by MISO, the number of projects subject to restudy is low.

66. Nonetheless, we find that MISO has provided sufficient evidence to support its justification for its proposed tariff changes discussed herein. We have evaluated the potential cause(s) of the backlog in the Definitive Planning Phase described by MISO and interconnection customers, and find that it is likely that *all* of these causes contribute in some way to the backlog. At present there is a significant mismatch in power projects competing for purchase power agreements that are available through RPS mandates. For example, materials referenced by MISO in its Supplemental Filing⁸⁴ indicate that in December 2011, MISO's regional RPS energy target was just over 1,000 GWh, while commercially operational generators in MISO produced 2,771 GWh of renewable energy. While purchase power agreements arising from RPS mandates are not the only opportunity for power developers, we understand from MISO's testimony that interconnection customers are increasingly questioning study outcomes, which in turns contributes to the backlog in the Definitive Planning Phase. Finally, while these reforms will not solve the problem of a general lack of power purchase agreements or that there is more renewable energy available than MISO-wide RPS energy targets require, we note that MISO's proposal is consistent with the overall goals of interconnection queue reform – discouraging speculative or unviable projects from entering the queue, getting projects that are not making progress towards commercial operation out of the queue, and helping viable projects achieve commercial operation as soon as possible.⁸⁵

67. Clearly, there is also uncertainty for lower-queued interconnection customers due to cost responsibility not being resolved for Group 5. We understand from MISO that the facility study report on Group 5 will be issued this year. We also understand that while MVPs recently approved by the MISO Board of Directors will benefit Group 5, additional cost responsibility remains to be allocated among Group 5 members.⁸⁶ In addition, Group 5 is not the only group study creating uncertainty.

⁸⁴ Supplemental Filing at 2 n.3.

⁸⁵ Queue Reform Order, 124 FERC ¶ 61,183 at P 44.

⁸⁶ MISO asserts that the amount is \$300 million.

68. There is another problem to which commenters give short shrift: late-stage terminations. Commenters suggest that a 15 percent attrition rate (i.e., 15 percent of the projects that met the M2 milestone between 2009 and today have dropped out of the Definitive Planning Phase) does not warrant this queue reform proposal. MISO's Supplemental Filing notes situations where multiple customers have withdrawn from group studies (Group 5 and Definitive Planning Phase Cycle 5). In the case of Definitive Planning Phase Cycle 5, attritions required iterative restudy. MISO states that the same situation could occur for Group 5 if there is an additional termination, and that such restudy would "cause cascading restudies in all subsequent West region group studies in Definitive Planning Phase Cycles 1-9."⁸⁷ Commenters do not suggest that this problem will lessen or disappear any time soon. More broadly, we believe that the number of projects that have withdrawn from the interconnection queue at the later stages of the interconnection process is indicative of it being too easy for projects that are not ready to proceed or that are not commercially viable from being able to enter the interconnection queue.

69. In addition, we disagree with those protesters who allege that MISO's proposed justifications for its reforms are inherently discriminatory or that MISO fails to understand the market for wind power and the development of new generation. It is well documented that the influx of generation into MISO's region, driven in part by RPS standards, has posed a challenge to MISO's processing of the queue.⁸⁸ In this context, we believe that MISO's statements regarding the imbalance between supply and demand and the relationship between this imbalance and RPS standards do not evince a discriminatory intent on the part of MISO and do not indicate that MISO is attempting to pre-determine market outcomes. Instead, they reflect some of the challenges that have confronted MISO in the past and continue to challenge MISO today.

70. While some protesters argue that MISO's proposal was crafted without stakeholder input, MISO has provided evidence that it considered stakeholder input when it developed its proposal.⁸⁹ MISO in fact held stakeholder discussions at ten regularly scheduled Interconnection Practices Task Force meetings and at least two Planning Advisory Committee meetings over approximately the last year.⁹⁰ We recognize that the queue reform, as proposed here, is controversial among developers. Nonetheless, we

⁸⁷ Supplemental Filing at 4.

⁸⁸ Queue Reform Order, 124 FERC ¶ 61,183 at PP 9-13.

⁸⁹ See Supplemental Filing at 5, 11 (discussing MISO's consideration of a "non-queue" approach and the formula for calculating the M2 milestone payment).

⁹⁰ November 1 Filing at 20.

agree that queue reform at this time is appropriate to improve the existing situation and indeed to prevent the existing situation from getting worse.

71. However, as explained elsewhere in this order, we believe that some elements of this proposal have not been adequately supported, are contrary to Commission precedent, or are unfair to interconnection customers. We will require that MISO modify the proposal accordingly.⁹¹

72. Further, while we agree with MISO that further reform of the queue is necessary at this time, we direct MISO to submit informational filings detailing the effectiveness of the reforms approved in this order and on compliance. Accordingly, we direct MISO to make informational filings in April 2013, April 2014, and April 2015, detailing the progress in the queue and suggesting any tariff revisions it deems necessary to address identified inefficiencies in its GIP. In these filings, MISO should also detail its ability to meet the timing requirements in its GIP. This report will promote transparency and consistency in processing the current backlog of interconnection requests and future requests.⁹²

73. Finally, we will not require MISO to adopt additional timelines and requirements for itself in processing the queue at this time. We emphasize, however, that we expect MISO to make every reasonable effort, consistent with good utility practice, to process its queue in a fair and expeditious manner.

2. Implementation

a. Proposal

74. MISO's revisions to the GIP will apply to nearly all of the projects in the queue. According to MISO, only interconnection requests for projects that are in commercial operation and have an executed GIA as of the effective date of the revised GIP are exempt from the proposed GIP.⁹³ MISO explains that projects with executed GIAs that are not yet in commercial operation and are subject to restudy will become subject to the

⁹¹ We address the proposed Net Zero Interconnection Service separately, below.

⁹² We note that these filings will be for informational purposes only. The Commission will not notice the filings, nor accept comment on them, and the filings do not require Commission action. The first filing should be submitted by April 1, 2013 in Docket No. ER12-309.

⁹³ Proposed section 5.1.1.1 of the GIP; November 1 Filing at 10.

GIP in effect at the time of restudy, including the revised M2 Milestone payment in the revised GIP.⁹⁴

75. MISO also notes that a project with an executed “provisional” GIA will not be exempt from the revised GIP, because it is subject to further study.⁹⁵ Projects that are currently in suspension under executed GIAs will be automatically subject to restudy under the proposed GIP at the end of their suspension period.⁹⁶ Finally, outstanding interconnection requests will have 90 days from the proposed effective date to transition to the new GIP.⁹⁷

76. MISO claims that these transition provisions will result in a more efficient and reliable Definitive Planning Phase by ensuring that those projects that are not yet in commercial operation are ready to proceed through the queue.⁹⁸ MISO argues that its transition provisions are consistent with transition mechanisms that have been accepted by the Commission previously.⁹⁹

b. Comments

77. Several parties object to MISO’s proposal to apply the revised GIP to existing interconnection customers on the basis that MISO’s proposal fails to properly distinguish between early- and late-stage interconnection requests. These parties argue that the Commission requires transmission providers to include transition provisions distinguishing between early- and late-stage interconnection requests in order to accommodate the reasonable reliance of late-stage customers.¹⁰⁰ EPSA and Midwest

⁹⁴ Proposed sections 5.1.1.1 and 8.7 of the GIP; November 1 Filing at 10. As discussed below, MISO further clarified the application of its proposal to existing interconnection requests in subsequent pleadings. *See infra* text accompanying notes 123, 126-130.

⁹⁵ November 1 Filing at 10. Under the Tariff, an interconnection customer may request a provisional GIA for limited operation of its generating facility prior to completion of the requisite network upgrades. MISO, FERC Electric Tariff, Attachment X (0.0.0), § 11.5.

⁹⁶ Proposed section 8.7 of the GIP.

⁹⁷ Proposed section 5.1.2 of the GIP.

⁹⁸ November 1 Filing at 11.

⁹⁹ *Id.* at 11.

¹⁰⁰ EPSA Protest at 15 (citing Conference Order, 122 FERC ¶ 61,252 at P 19;

Developers argue that the Commission should require MISO to grandfather all existing interconnection agreements and all pending interconnection requests that have entered the Definitive Planning Phase or that have executed a Facilities Study Agreement. The Midwest Developers add that the Commission should direct MISO to exempt any project that has satisfied the comparable M3 milestone under the current procedures or any project that was in the queue prior to August 25, 2008 (i.e., the effective date of MISO's 2008 queue reform).¹⁰¹ The Midwest Developers state that the Commission has previously recognized that, at least by the time the GIA is executed, the project's exposure for Network Upgrade and related costs should be capped.¹⁰²

78. Flat Hill states that if the Commission determines that the proposed M2 milestone payment is reasonable it should, at a minimum, reject the proposal to impose the new milestone on virtually all interconnection customers because MISO's proposal would violate Commission precedent requiring MISO to distinguish between early- and late-stage interconnection requests and unlawfully permit MISO to impose tariff changes retroactively. Flat Hill argues that if the Commission does not reject MISO's proposed new milestones outright, the Commission should specifically exempt interconnection customers already in the Definitive Planning Phase from satisfying the proposed milestone requirement.¹⁰³

79. Iberdrola argues that MISO has failed to provide sufficient justification for applying the revised GIP to late-stage interconnection requests. While MISO asserts that it proposes to apply the revised GIP to late-stage projects in order to determine whether a project is ready to proceed or not, Iberdrola states that whether a project can proceed depends on factors beyond the control of the interconnection customer. Iberdrola states that many of the claimed issues leading to the current filing are related to uncertainties over factors that are outside an interconnection customer's control and that

Queue Reform Order, 124 FERC ¶ 61,183 at P 90; *Sw. Power Pool, Inc.*, 128 FERC ¶ 61,114, at P 98 (2009) (*SPP*)); Flat Hill Comments at 5-6; Midwest Developers Protest at 15-16; AWEA and WOW Protest at 18, 21-23 (citing *Calif. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,031, at P 78 (2008); *Calif. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,292, at P 61 (2008), *order on reh'g*, 127 FERC ¶ 61,117 (2009) (CAISO Queue Order)).

¹⁰¹ Midwest Developers Protest at 20.

¹⁰² *Id.* at 17-18.

¹⁰³ Flat Hill Protest at 5-7 (citing *Consolidated Edison Co. of N.Y., Inc. v. FERC*, 347 F.3d 964, 967-969 (D.C. Cir. 2003)).

interconnection customers should not be held responsible for delays due to MISO's actions in processing the queue.¹⁰⁴

80. EPSA, AWEA and WOW also claim that MISO's proposal to generically revise existing agreements is contrary to section 205 of the FPA and prior Commission precedent. They state that the Commission has previously determined that MISO may not make a blanket determination that applies new procedures to already executed GIAs and that MISO must demonstrate that its proposed changes to each agreement are just and reasonable.¹⁰⁵ EPSA and AWEA and WOW also state that MISO's proposal would upset settled investment expectations and would send a dangerous signal to the market that project economics are never settled.¹⁰⁶ EPSA maintains that the instant proceeding is simply not an appropriate forum for considering the individual facts and circumstances necessary to determine whether MISO's proposed revisions are just and reasonable with respect to each affected customer and agreement.¹⁰⁷ Moreover, EPSA contends that MISO could not demonstrate that its proposed changes are just and reasonable, either on a generic or an individualized basis, because its proposed changes are inconsistent with the purposes of Order No. 2003, such as promoting efficient siting, because generators with executed interconnection agreements have already made their siting decision, selected their point of interconnection, and committed to fund necessary upgrades.¹⁰⁸

81. Additionally, EPSA notes that MISO is proposing revisions that would give MISO broad, if not unfettered discretion, to determine whether a restudy of an individual project or group of projects is necessary, in which case it could unilaterally abrogate the existing agreements of the affected customers and the final, binding cost allocations therein.¹⁰⁹

¹⁰⁴ Iberdrola Protest at 13-15.

¹⁰⁵ EPSA Protest at 3, 9-12 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128, at PP 25, 27 (2006) (Order Rejecting Proposed Tariff Revisions), *order on reh'g*, 119 FERC ¶ 61,097, at PP 13-14 (2007) (Order Denying Rehearing); *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 118 FERC ¶ 61,169 (2007) (Marcus Hook III), *order on reh'g*, 123 FERC ¶ 61,289, at P 13 (2008) (Marcus Hook IV)); AWEA and WOW Protest at 18.

¹⁰⁶ EPSA Protest at 3; AWEA and WOW Protest at 19.

¹⁰⁷ EPSA Protest at 13.

¹⁰⁸ *Id.* at 11.

¹⁰⁹ *Id.* at 13 (citing proposed sections 5.1.1.2, 8.7).

EPSA argues that the Commission has previously found that this result is fundamentally at odds with Order No. 2003's goals of providing stability and predictability in the interconnection process.¹¹⁰

82. In the event that the Commission accepts the proposed transition provisions, EPSA argues that the Commission should clarify that the new rules will not apply to a customer with an existing interconnection agreement if any part of its proposed generation facility has commenced commercial operation. EPSA states that this issue is important to interconnection customers, such as Mankato Energy Center, LLC (Mankato), which was studied at the full capacity of two phases with an aggregate capacity of 720 MW and whose executed interconnection agreement requires Mankato to fund Network Upgrades necessary to accommodate the full capacity. However, to date Mankato has not secured a power purchase agreement for the output of the second phase of the project and therefore has not constructed the second phase. EPSA states that while it believes that Mankato should be exempt from the revised GIP, MISO might claim that Mankato is subject to the revised GIP because the second phase of the project has not entered service. EPSA requests that the Commission clarify that Mankato, and any other similarly situated customer, will be exempt from the revised GIP.¹¹¹

83. NextEra notes that the proposed tariff language implies that MISO intends to require projects with provisional GIAs to pay the Definitive Planning Phase entry milestone, even if the project is already under construction. Under provisional GIAs, states NextEra, interconnection customers can build and interconnect their projects even if interconnection studies have not yet been completed. NextEra states that the generator can thereby be operating before the interconnection customer enters the Definitive Planning Phase. NextEra further explains that interconnection customers can do this in order to start producing power at an earlier time, but the tradeoff is uncertainty about the network upgrade costs, which have yet to be determined. NextEra argues that the prospect of withdrawing from the queue has long since been eliminated, and the interconnection customer's eventual entry into the Definitive Planning Phase process is a given.¹¹²

84. E.ON argues that projects that are currently in the Definitive Planning Phase that have met all Definitive Planning Phase milestones, or that have moved to an executed GIA should not be subjected to the "cash-at-risk" milestone. E.ON maintains that such

¹¹⁰ *Id.* at 13-14 (citing *Marcus Hook III*, 118 FERC ¶ 61,169 at P 17; *Marcus Hook IV*, 123 FERC ¶ 61,289 at P 37).

¹¹¹ *Id.* at 16-17.

¹¹² NextEra Protest at 9-10.

projects have already demonstrated that they are ready to move forward and are progressing through the system, and there is no reasonable basis to penalize these projects. E.ON further asserts that projects that have not completed all the remaining milestones in the Definitive Planning Phase should be given 90 days from the date of the order accepting the “cash-at-risk” milestone to satisfy the remaining Definitive Planning Phase milestones or otherwise be subject to the new milestone.¹¹³ Moreover, E.ON states that a project should not be required to comply with the “cash-at-risk” milestone if the project has an effective GIA regardless of whether the facility is wholly or partially in commercial operation, as there may be a variety of reasons that are beyond the interconnection customer’s control that have precluded full or partial commercial operation.¹¹⁴

85. AMP asks the Commission to reject the proposal to apply the M2 Milestone under section 8.2, as revised,¹¹⁵ retroactively to all interconnection requests except for those that are in commercial operation and have an executed GIA. AMP states that retroactively applying section 8.2 to interconnection customers essentially requires projects that have already entered the Definitive Planning Phase to pay MISO to keep their queue position. AMP argues that MISO’s proposal should only apply to entities that have not entered the Definitive Planning Phase and thus have not shown that they are eligible under either the currently-effective requirements of section 8.2 or those suggested by MISO in this docket. AMP adds that retroactively applying MISO’s proposed revisions to section 8.2 could have the effect of abrogating certain existing GIAs that contain contrary provisions and that MISO should not be permitted to make this type of modification to its GIAs without obtaining its counterparties’ assent or satisfying the applicable legal burden for unilateral modification of contracts.¹¹⁶

86. Geronimo claims that MISO’s proposal would be unfair to existing interconnection customers, who have spent considerable time and resources in securing agreements under the existing tariff. Geronimo notes that the Commission refused to upset settled contracts in the name of greater queue efficiency and grandfathered existing

¹¹³ E.ON Protest at 33.

¹¹⁴ *Id.*

¹¹⁵ *See infra* text accompanying notes 156-166.

¹¹⁶ AMP Protest at 12-13.

interconnection agreements in Order No. 2003. Geronimo states that the Commission should make the same finding in this case.¹¹⁷

87. Detroit Edison asks the Commission to reject MISO's proposal to revise section 5.1.1.2 of the GIP requiring all interconnection requests subject to study or restudy, including those for which a GIA has been executed but the facility has not commenced commercial operation, to comply with the new Definitive Planning Phase milestone requirements.¹¹⁸ Detroit Edison explains that it is concerned about the impact of MISO's proposal on a project that it is developing which has completed the Definitive Planning Phase and has executed a GIA.¹¹⁹ Detroit Edison asserts that its project has already met the Definitive Planning Phase milestone requirements that were in effect for its project at the time that the GIA was executed and that no new or additional requirements should be imposed on it. Detroit Edison maintains that these requirements should only apply to new projects and to existing projects without an executed GIA. Detroit Edison states that while MISO argues that its proposed revisions are necessary to accelerate the pace at which generation projects are interconnected to the grid, this concern does not outweigh the importance that the Commission has previously placed on the sanctity of contracts. In this regard, Detroit Edison notes that in Order No. 2003 the Commission expressly chose not to require parties to make any retroactive changes to interconnection agreements in effect at that time.¹²⁰

88. Xcel believes that the new queue reform provisions should apply to all queued projects, including those with a GIA, that are subject to a restudy, unless those projects are in commercial operation. Xcel asserts that there are projects in the queue that are needed to serve the Northern States Companies' native load customers that are being delayed by projects ahead of them in the queue, many of which, Xcel alleges, have no interest or chance of actually moving forward to commercial operation.¹²¹

89. National Renewable Solutions argues that MISO's proposed revisions should be rejected because they effectively undermine or eliminate an ongoing backfill study. National Renewable Solutions states that two projects that are in the process of

¹¹⁷ Geronimo Protest at 2 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 187, 911; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at PP 136-140).

¹¹⁸ Detroit Edison Protest at 2.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 3-4 (Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 4).

¹²¹ Xcel Comments at 4-5.

developing paid Definitive Planning Phase fees to be included in the Big Stone II backfill study. They state that backfilling studies is one of the welcome reforms from MISO's 2008 queue reform proceeding. However, in this proposal, the M2 milestone payment requirement effectively changes the rules for those projects in the study. This, contends National Renewable Solutions, will result in a re-shuffling of the benefactors, which will have very little regard to original queue positions that initiated the study in the first place. National Renewable Services states that the time and effort of the two project companies will have been disregarded and that the new requirements will subject them to increased competition from better financed, late comers.¹²²

c. Answers

90. In its answer, MISO clarifies that, to the extent a project with an executed GIA in place is not subject to restudy, there is no requirement to meet the revised M2 milestone. MISO further clarifies that, for projects that are not in commercial operation but are involved in a restudy, those projects that have met all applicable milestones in an executed GIA have shown sufficient commitment to achieving commercial operation in a timely manner and should not be required to meet the M2 milestone despite having not yet reached commercial operation. MISO states that it will revise section 5.1.1. of Attachment X such that the trigger for exemption from the new GIP, if applicable, would include successful payment of all applicable milestones under an executed GIA.¹²³

91. In their response, the Midwest Developers argue that MISO's attempt to address their concerns is unsatisfactory given MISO's past practice of broadly interpreting its authority to restudy projects which have existing GIAs. The Midwest Developers observe that MISO has already attempted to subject numerous developers with GIAs to revised study models and new system upgrade costs after restudy.¹²⁴ The Midwest Developers argue that these projects would be subject to the additional risk of both the milestone payment and the new procedures if MISO's proposal is accepted and urge the Commission to reject MISO's proposal to apply its proposal to projects with executed GIAs.¹²⁵

¹²² National Renewable Solutions Protest at 3-4.

¹²³ MISO December 15 Answer at 11.

¹²⁴ Midwest Developers December 20 Answer at 7.

¹²⁵ *Id.*

d. Supplemental Filing

92. In the supplemental filing, MISO clarifies its assertion that a project that is subject to restudy will be subject to the GIP in effect at the time that it receives notice of restudy. Specifically, such project will be subject to milestone payments and will need to execute a new GIA. According to MISO, absent such a requirement, a restudy would effectively provide a suspension period at nominal cost which would provide an inappropriate incentive for interconnection customers to seek out rationales to justify restudy as a means of delay.¹²⁶ MISO states that the only exception to this rule is that if the interconnection customer had reached the point under its GIA that the M2 milestone payment would have been refunded,¹²⁷ then its readiness will have been determined and MISO would not require payment of the study milestone.

93. MISO asserts that if a restudy indicates that an amended GIA is required, the restudied project would be required to update to the new GIA, and the *pro forma* portion of the GIA would be updated to the then-effective language. MISO clarifies that this would usually require the interconnection customer to meet the Initial Payment that MISO has proposed¹²⁸ unless the interconnection customer's pre-amendment filing milestones have resulted in the interconnection customer already meeting this requirement.¹²⁹ MISO acknowledges that proposing to update agreements departs from MISO's past practice of amending only the appendices of GIAs after a restudy; however,

¹²⁶ Supplemental Filing at 7.

¹²⁷ The M2 Milestone will be fully refundable upon satisfaction of the initial payment milestone pursuant to Article 11.5 of a non-provisional GIA, upon commencement of commercial operation under a provisional GIA under Section 11.5 of this GIP, or in the event the total Network Upgrade cost estimates in the Interconnection Facilities Study increased by more than 25 percent over the Network Upgrade cost estimates in the Interconnection System Impact Study in the Definitive Planning Phase and the interconnection customer withdraws its Interconnection Request.

¹²⁸ Article 11.5 of the GIA would require an interconnection customer to make a payment in cash or security towards the total cost of network upgrades. As proposed, the Transmission Owner would elect between requiring the customer to provide either cash equal to 10 or 20 percent of the cost of required upgrades (depending on the time between the initial payment and the In-Service Date) or security equal to 100 percent of the cost of the upgrades.

¹²⁹ Supplemental Filing at 8.

MISO maintains that it is doing so in order to increase certainty rather than to prolong uncertainty.¹³⁰

94. MISO cautions the Commission against limiting the application of the new GIP to any pre-determined point in the queue. According to MISO, doing so would bifurcate interconnection requests into two separate queues and would not address the core issue here: the disincentive for projects to move forward without knowing what their revenues will be. MISO states that applying these procedures to all projects will require a business-plan review of each project, with each project determining whether it wishes to proceed through the Definitive Planning Phase or return to the System Planning and Analysis phase until the revenue outlook improves. Additionally, MISO contends that limiting the application of the new GIP to projects that are not yet in the Facilities Study would do nothing to eliminate the situation surrounding the North Dakota Definitive Planning Phase Cycle 5 study, which, MISO notes, has seen three rounds of projects withdrawing and subsequent restudies. MISO states that only by applying its proposed revisions to the GIP broadly and raising the question of project readiness will MISO be able to attain its goal of stopping the constant restudy cycle caused by the churning of projects in and out of the queue.¹³¹

e. **Comments on the Supplemental Filing**

95. Iberdrola argues that MISO's assertions in the Supplemental Filing provide additional evidence that its proposal is unduly discriminatory in that it fails to consider the project life cycle for independent power producers (IPPs). Iberdrola argues that MISO's statements, including its assertion that the revised GIP must be applied to all projects in the queue in order to get them to review their business case, evince a complete lack of understanding of how projects are developed, financed, and built. Iberdrola maintains that IPPs cannot determine their revenue outlook until they have an estimate of the actual costs associated with a specific project. Iberdrola states that the GIP provides a process whereby the costs of interconnection are determined, allowing the interconnection customer to evaluate the viability of a project in the market, and that the projects will not know their revenue outlook prior to entering the Definitive Planning Phase without this information.¹³²

96. E.ON argues that it is unjust and unreasonable to require a customer to update the *pro forma* portion of an executed GIA if the customer is restudied because the sole

¹³⁰ *Id.*

¹³¹ *Id.* at 9.

¹³² Iberdrola February 21 Protest at 4-5.

purpose of a restudy is to identify any further network upgrades that are needed to accommodate the project. Thus, according to E.ON, the only item that must be updated in an existing GIA to accommodate a restudy is the milestone table in the appendix to the GIA to list any new facilities, new costs for these facilities, new deposits, and any new changes in timing for completion. Moreover, E.ON states that while an interconnection customer knows that the cost and timing of required network upgrades may change if a restudy occurs, the terms and conditions of service are otherwise established upon execution of the GIA and it is unjust and unreasonable to subject customers to potentially moving targets as would occur if the entire GIA were updated when a restudy occurs.¹³³

97. AWEA and WOW state that MISO has not provided any justification for departing from the practice of limiting the reform to those projects that have not yet executed a Facilities Study Agreement. They maintain that, at a minimum, MISO should limit the application of its proposed amendments to those projects that have not yet signed a GIA, as applying these reforms to projects that have signed a GIA would violate the certainty that the GIA is intended to provide to both the Transmission Provider and the interconnection customer. AWEA and WOW state that, to the extent that MISO seeks to modify the actual terms and conditions of the GIA, it has failed to provide any legal justification for its ability to make such unilateral modifications under section 205 of the FPA.¹³⁴

98. Calpine states that, based on the Supplemental Filing, it appears that MISO is planning to not only modify, but effectively terminate, existing GIAs and that this requirement will apply to projects that are currently in suspension under executed GIAs and to projects – like its subsidiary (Mankato) – where only half of its anticipated Generating Facility capacity has been installed by the Commercial Operation Date. Calpine argues that the Commission should make it clear that MISO may not modify or terminate any existing GIA without the Commission's specific authorization. Calpine states that MISO has conceded, and the Commission has reiterated, that MISO cannot unilaterally terminate a GIA of its own accord. Calpine urges the Commission to decline to prejudge the validity of any GIA modification or termination proceedings. Moreover, Calpine states that while it is unclear whether MISO plans to attempt to terminate Mankato's GIA, any attempt to do so would be inequitable and unreasonable.¹³⁵ Calpine

¹³³ E.ON February 21 Protest at 10-11.

¹³⁴ AWEA and WOW February 21 Protest at 11-12.

¹³⁵ Calpine Protest at 6-9.

states that the Commission should require MISO to explain in more detail how it would implement its proposal.¹³⁶

f. Answers

99. MISO claims that timely application of the proposed revisions to existing projects is necessary to avoid the immediate need for numerous unexecuted filings that will be triggered for projects in Group 5 under the existing process. MISO explains that applying the revised GIP would permit many existing projects to return to the System Planning and Analysis phase if they are not ready to proceed, rather than forcing them to proceed with withdrawals or unexecuted filings at the Commission.¹³⁷

g. Commission Determination

100. We find that MISO's proposed transition provisions are just and reasonable. While MISO is proposing to apply the revised GIP to projects in the later stages of the interconnection process, as discussed further below, we find that doing so is reasonable in light of the issues that MISO is experiencing in administering its queue. However, we will require MISO to revise its Tariff such that existing interconnection customers have 90 days after the issuance of this order – instead of 90 days after the effective date of MISO's revisions (January 1, 2012) – to transition to the revised GIP. Moreover, we will reject MISO's proposed transition provisions to the extent that MISO interprets these provisions as granting it the authority to require interconnection customers with existing GIAs to modify the body of these agreements to reflect the revisions to the *pro forma* GIA accepted in this proceeding if the customer is subject to restudy. We find that if MISO wants to revise the body of an existing GIA to reflect the revisions to the *pro forma* GIA accepted in this proceeding, it must file each agreement that it proposes to modify with the Commission and demonstrate that its proposed revisions are just and reasonable.

101. In order to avoid potential confusion, we will clarify our understanding of MISO's proposed transition provisions. Under MISO's proposal, interconnection customers with "outstanding requests" are required to transition to the revised GIP within a reasonable amount of time not to exceed 90 days. MISO defines "outstanding requests" to include any interconnection request that, on the effective date of the GIP, has been submitted but not yet accepted by MISO, any interconnection request that has an interconnection agreement that has not yet been submitted to the Commission for approval, any interconnection request that has an interconnection study agreement that has not yet been

¹³⁶ *Id.* at 9.

¹³⁷ MISO March 7 Answer at 5-9.

executed, or any interconnection request that is in the process of being studied (including restudies).¹³⁸ Additionally, under MISO's proposal, interconnection customers that are subject to restudy will be restudied under the revised GIP, as modified on compliance.

102. While all interconnection requests with outstanding requests will be required to transition to the revised GIP, MISO proposes to exempt certain interconnection customers from the requirement to meet the revised M2 milestone, including the new M2 milestone payment. First, projects that have an executed GIA and that have commenced commercial operation as of the effective date of the revised GIP will not be required to meet the revised M2 milestone. Second, those projects that have a GIA prior to the effective date of the revised GIP and that are not subject to restudy will not be required to meet the revised M2 milestone. Third, as MISO acknowledges in its answer and the Supplemental Filing, the following projects also will not be required to meet the revised M2 milestone: (1) a project that is subject to restudy and has been meeting milestones under an existing GIA; and (2) a project that is subject to restudy but has reached the point under its GIA where the M2 milestone payment would have been refunded.¹³⁹

103. We note that MISO's proposed transition provisions do not currently indicate that those projects that fall within (1) and (2) will not be required to meet the revised M2 milestone, as clarified in MISO's pleadings in this proceeding. Therefore, we will direct MISO to submit a compliance filing revising its transition provisions to clarify that these projects will not be required to meet the M2 milestone.

104. We further note that, under MISO's proposal, projects with outstanding interconnection requests are required to transition to the revised GIP, including, where applicable, the revised M2 milestone, within 90 days of the proposed effective date of the revised GIP (i.e., 90 days after January 1, 2012). In effect, this would require projects to meet these requirements one day after the issuance of this order (March 31, 2012). Under the circumstances, we find that doing so would be unjust and unreasonable. Accordingly, we direct MISO to submit, within 30 days of the issuance of this order, a compliance filing revising section 5.1 of its tariff so that the transition period begins upon the issuance of an order approving the revised GIP, giving interconnection customers 90 days from the latter date to comply.

105. While we agree that MISO's proposal is reasonable under the circumstances, we are concerned by MISO's statement that it plans to require a project with an existing GIA that is subject to restudy to revise the body of its GIA to conform to the revised *pro forma* GIA which in turn would subject the interconnection customer with a previously

¹³⁸ Proposed section 5.1.2.

¹³⁹ MISO December 15 Answer at 11; Supplemental Filing at 7-8.

executed GIA to MISO's proposed Initial Payment requirement. In essence, it appears that MISO is interpreting its proposed transition provisions as granting it the authority to require an interconnection customer to modify the body of its interconnection agreement. As an initial matter, we note that MISO's interpretation may be inconsistent with Article 11.3.2 of the *pro forma* GIA, which states that, in the case of restudy, the parties "agree to amend Appendix A to [the agreement] . . . to reflect the results of any restudy required under Article 11.3.2." While the text of Article 11.3.2 does not prohibit the body of the GIA from being modified in the case of restudy, such modification can not be compulsory. Further, we agree with those commenters who assert that, consistent with Commission precedent, MISO should be required to file each agreement that it proposes to modify with the Commission and demonstrate that its proposed revisions are just and reasonable.¹⁴⁰ Accordingly, we reject MISO's proposal to require, on a generic basis, interconnection customers with existing GIAs that are subject to restudy to revise their GIAs, without prejudice to MISO filing with the Commission each agreement that it proposes to modify and demonstrating that its proposed revisions are just and reasonable.

106. We disagree with those commenters that argue that MISO's proposal should be rejected because it will affect late-stage interconnection requests. While we acknowledge that MISO is proposing to apply its revisions to the GIP to a broader array of projects than it has in the past, we find that MISO's proposed transition provisions are reasonable under the circumstances. In the Conference Order, the Commission recognized that reforms that affect interconnection requests in the later stages of the interconnection process create special circumstances that require careful considerations because such reforms can significantly disrupt the activities of customers who may have relied upon the existing process. However, the Commission recognized that it may be necessary in some circumstances to apply reforms to late-stage interconnection requests to resolve current backlogs.¹⁴¹ Here, MISO has submitted evidence indicating that there is a backlog in its queue and that a substantial number of terminations in the queue are at or beyond the point of entering the Definitive Planning Phase. In light of these facts, we agree with MISO that limiting MISO's proposed revisions to projects that are before or after some pre-determined point in the queue (e.g., exempting projects that have a Facilities Study underway or that have entered the Definitive Planning Phase) would create bifurcation in the queue and would not address the problems identified by MISO. Accordingly, we find that MISO's proposal to apply the revised GIP to outstanding requests while exempting those projects that have demonstrated readiness from meeting the revised M2 milestone, including the M2 milestone payment, to be a reasonable

¹⁴⁰ See, e.g., Order Rejecting Proposed Tariff Revisions, 117 FERC ¶ 61,128 at PP 25-27; Order Denying Rehearing, 119 FERC ¶ 61,097 at PP 13-14.

¹⁴¹ Conference Order, 122 FERC ¶ 61,252 at P 19.

approach. Further, we note that, as mentioned above, MISO must file with the Commission each agreement that it proposes to modify and demonstrate that its proposed revisions are just and reasonable..

107. Finally, we disagree with Flat Hill's argument that, in accepting MISO's proposal, we are unlawfully permitting MISO to impose tariff changes retroactively. On the contrary, MISO is proposing to require projects to comply with the revised GIP on a going forward basis following a prescribed transition period. And as required herein, we are modifying the dates for meeting the new milestones, to permit a reasonable transition period. In response to EPSA and NextEra, we will direct MISO to make a compliance filing clarifying the extent to which it is proposing to apply the revised GIP to projects that have reached partial commercial operation or that are operating under a provisional GIA. While MISO states that projects with provisional GIAs will be subject to the revised GIP, it is unclear whether MISO intends to require such customers that have commenced commercial operation under provisional GIA to meet the M2 milestone in order to remain in the DPP.

3. Two Queues

a. Proposal

108. MISO proposes to revise the structure of the interconnection queue. As under the existing Tariff, MISO will perform a Feasibility Study when an interconnection customer enters the queue, which will provide a preliminary evaluation of the impact of the proposed interconnection request on the transmission system.¹⁴² While MISO's proposal retains the System Planning and Analysis phase and Definitive Planning Phase, MISO explains that it is modifying the System Planning and Analysis phase by removing required timelines to proceed to the Definitive Planning Phase.

109. Under MISO's proposal, a System Impact Study is required to be performed in the System Planning and Analysis phase.¹⁴³ MISO states that the interconnection customer will determine the scope of the System Impact Study.¹⁴⁴ According to MISO, this

¹⁴² Proposed revised section 6.

¹⁴³ Proposed Revised section 7.

¹⁴⁴ November 1 Filing at 13. As explained in section 7.3 of the GIP, the System Impact Study will be performed pursuant to the assumptions specified by the interconnection customer in the System Planning and Analysis Study Scope Form. Failure to submit the System Planning and Analysis Study Scope Form within 30 days will result in withdrawal of the interconnection request.

requirement allows the interconnection customer to select the parameters that it wants to have studied, receive those results from MISO, and work to analyze and market its projects. MISO states that this analysis may lead the interconnection customer to request further analysis in the System Planning and Analysis phase, decide to enter the Definitive Planning Phase, or withdraw. MISO claims that its proposal has the benefit of allowing interconnection customers with different business plans to get studies tailored towards their business plan and that its proposal represents an improvement over larger group studies with a “one-size-fits-all” approach.¹⁴⁵ MISO explains that a customer may remain in the System Planning and Analysis phase indefinitely, so long as the interconnection customer “refreshes” its System Planning and Analysis System Impact Study once every 18 months.¹⁴⁶ MISO further explains that an interconnection customer that fails to refresh its System Planning and Analysis System Impact Study will be withdrawn from the queue.¹⁴⁷

110. To reflect MISO’s revisions to the System Planning and Analysis phase and the Definitive Planning Phase, MISO is proposing to replace the defined term “Queue Position” with two new defined terms: “Initial Queue Position” and “Definitive Planning Phase Queue Position.” MISO states that it added these definitions to clarify that a project that enters the Definitive Planning Phase will now be assigned a Definitive Planning Phase Queue Position while other projects will retain their Initial Queue Position. According to MISO, projects that have moved into the Definitive Planning Phase will be studied based on this Definitive Planning Phase Queue Position.¹⁴⁸

b. Comments

111. Several commenters argue that MISO’s proposed revisions will limit the amount of information available to an interconnection customer prior to entering the Definitive Planning Phase. In this regard, NextEra argues that, while MISO suggests that it is

¹⁴⁵ Lavery Testimony at 16-18.

¹⁴⁶ Proposed revised section 7.2 of the GIP requires that the interconnection customer must submit a completed System Planning and Analysis Study Scope form no later than 18 months after the completion of an interconnection study. *See* November 1 Filing at 12 (stating that initially this requirement will be triggered by the completion of a Feasibility Study and that, after that, an updated scope form must be completed every 18 months).

¹⁴⁷ Lavery Testimony at 18.

¹⁴⁸ November 1 Filing at 5.

revising the GIP to improve customer service, MISO's proposal will require interconnection customers to make significant commitments without having superior information on which to act.¹⁴⁹ Iberdrola states that MISO's proposal provides limited access to the information necessary to make critical business decisions until after a project meets the M2 milestone and enters the Definitive Planning Phase because the interconnection customer determines the scope of the study in the System Planning and Analysis phase – despite the fact that the interconnection customer is at a significant informational disadvantage in identifying assumptions.¹⁵⁰

112. Xcel expresses support for MISO's proposed revisions to the System Planning and Analysis phase. Xcel maintains that these revisions should result in a product consistent with the interconnection customer's business model. Xcel states that this is a paradigm shift in queue administration and, by affording the interconnection customer flexibility, will help the customer understand project risks and costs by providing meaningful analysis of its individual project. Xcel maintains that this flexibility represents a significant improvement over the existing process and should allow MISO to meet its queue objective of facilitating a "first-ready, first served" approach.¹⁵¹

113. MISO Transmission Owners note that several sections of the GIP include references to "applicable Queue Position" or "Queue Position." They state that, because "Queue Position" is no longer a defined term, it should not be capitalized in the GIP or the GIA. MISO Transmission Owners argue that the Commission should direct MISO to revise references to "Queue Positions" or "applicable Queue Position" in sections 3.6 (Withdrawal), 4.3 (Transferability of Queue Position), and 5.5.1 of the GIP to reflect that Queue Position is no longer a defined term and should not be capitalized. Additionally, MISO Transmission Owners state that for the purpose of consistency with the changes in section 5.5.1, the reference to "GIP" in section 5.1.2 of the GIP should be changed to "revised GIP."

c. Answers

114. In its answer, MISO argues that its proposed revisions, including its revisions to the System Planning and Analysis phase, will reduce uncertainty in the queue. MISO states that its proposed revisions to the System Planning and Analysis phase will encourage interconnection customers that are not ready to proceed into the Definitive

¹⁴⁹ NextEra Protest at 3.

¹⁵⁰ Iberdrola Protest at 9-10.

¹⁵¹ Xcel Comments at 7-8.

Planning Phase to remain in the System Planning and Analysis phase. MISO notes that an interconnection customer may determine the level of detail that it would like in the study and that refreshing a customer's study may cost as little as \$5,000 if the project requests a minimal restudy of the System Impact Study. MISO states that this is a relatively small price to pay for any potentially viable project to remain in the System Planning and Analysis phase without the risk of facing a deadline to proceed.¹⁵²

115. The Midwest Developers argue that MISO's proposal will eliminate any meaningful opportunity for projects that are not yet in the Definitive Planning Phase to obtain the studies necessary to evaluate their likelihood of success. They maintain that MISO's proposal will create a "negative feedback loop" because the Definitive Planning Phase will only be for projects that are ready to proceed, but those same projects will be unable to evaluate their readiness to proceed prior to entering the Definitive Planning Phase. They state that while the interconnection customer will receive some preliminary cost information during the System Planning and Analysis phase, these cost estimates are nonbinding and cannot be relied upon since the study assumptions used in the Definitive Planning Phase may be different than those used in the System Planning and Analysis phase. They state that the resulting process would undermine the ability of customers to determine whether a project is ready to proceed and imposes greater risk on customers.¹⁵³

d. Commission Determination

116. We will accept MISO's proposed changes to the System Planning and Analysis phase. We disagree with those parties that argue that MISO's proposal will limit the amount of information available to an interconnection customer prior to entering the Definitive Planning Phase and find that an interconnection customer should be able to get necessary information through the interconnection customer's judicious use of the System Planning and Analysis Study Scope Form. The System Planning and Analysis Study Scope Form provides the interconnection customer with several study options. For example, an interconnection customer may customize its study by selecting from a range of assumptions regarding the timeframe for study, the transmission and generation facilities included in the model, and outages, to name just a few.¹⁵⁴ We agree with MISO that this flexibility will allow the interconnection customer to obtain sufficient information to make an informed decision about whether its project should proceed to the Definitive Planning Phase. We also note that the Tariff affords an interconnection

¹⁵² MISO December 15 Answer at 7-8.

¹⁵³ Midwest Developers December 20 Answer at 2-3, n.5.

¹⁵⁴ Proposed revised Appendix 2, Attachment A.

customer that believes it needs assistance in identifying the potential costs and risks of its project the option of consulting with the Transmission Provider even before it enters the System Planning and Analysis phase.¹⁵⁵

117. Although we will accept MISO's revisions to the System Planning and Analysis phase, we will direct MISO to revise its Tariff to remedy certain ambiguities and inconsistencies. First, we note that while the System Planning and Analysis Scope form provided by MISO refers to a "[r]egular Generator Interconnection System Impact Study," a "[p]lanning horizon study," and an "[o]perating horizon study," these terms are not defined. Accordingly, we will direct MISO to submit revisions clarifying the meaning of these terms. Second, we agree with MISO Transmission Owners that references throughout the GIP should be consistent with defined terms. Therefore, we will direct MISO to make the revisions identified by MISO Transmission Owners above.

4. Cash-at-Risk Milestones

118. MISO proposes several revisions that will increase the financial contributions that interconnection customers will be required to make in order to proceed through the queue and will require the interconnection customer to meet these financial requirements earlier in the interconnection process.

a. M2 Milestone Payment

i. Proposal

119. MISO proposes revisions to section 8.2 of the GIP to clarify that a project is eligible to enter the Definitive Planning Phase after having provided: (1) a new capital contribution (M2 milestone payment); (2) technical data requirements; and (3) Definitive Planning Phase study deposit.¹⁵⁶ MISO explains that only the capital contribution is "new." MISO states that it is proposing to replace previously accepted indicia of readiness that the Commission approved in phase one of MISO's queue reform with a requirement that the interconnection customer make a capital contribution in the form of

¹⁵⁵ MISO, FERC Electric Tariff, Attachment X (0.0.0), § 6.1.

¹⁵⁶ Together, these requirements are commonly referred to as the M2 milestone. Under the currently-effective tariff, entry into the Definitive Planning Phase requires a project to meet the M2 milestone. Queue Reform Order, 124 FERC ¶ 61,183 at P 65.

cash or an irrevocable letter of credit because it has determined that a capital contribution provides a better indicator of a project's readiness to proceed.¹⁵⁷

120. MISO explains that the amount of the required capital contribution will be based upon a formula that considers the interconnecting zone's schedule 7 \$/MW year long-term firm point-to-point transmission service rate, the MW size of the facility, and the number and cost of constraints.¹⁵⁸ MISO states that it initially considered a deposit equal

¹⁵⁷ Currently, interconnection customers are required to demonstrate readiness to proceed to the Definitive Planning Phase by providing two of six possible demonstrations of readiness, only one of which involves a capital contribution. An interconnection customer also has the option of providing additional security reasonably acceptable to MISO equal to the requested gross nameplate capacity times the rate for one month of drive-out point-to-point transmission service in lieu of certain other non-cash options including, e.g., that turbines have been ordered.

¹⁵⁸ Specifically, as proposed, section 8.2 provides that the M2 milestone payment will be calculated based on the following formula:

Ten percent (10%) of the sum of the following calculation, with a minimum charge of \$2,000 per gross MW addition and a maximum charge of \$10,000 per gross MW addition:

(Schedule 7 \$/MW yearly rate for interconnecting Zone multiplied by the gross MW capacity increase to the Generating Facility) + (Constant \$ amount per table below for each voltage level multiplied by the number of constraints shown in Feasibility Study, for that voltage level)

Feasibility Study Constraint Voltage level	Constant \$ amount
345 kV	\$350,000
230 kV	\$200,000
161 kV	\$130,000
138 kV	\$130,000
115 kV	\$130,000
69 kV	\$125,000

to approximately 10 percent of the expected transmission costs of a project, which would historically result in about 1 percent of the overall project cost. MISO states that it considered two different algorithms for determining the amount of the required capital contribution: (1) analyzing the transmission costs of projects with interconnection agreements and developing a “best-fit” line formula to compute 10 percent of the expected costs; and (2) taking into account the location of the interconnection and the results of the Feasibility Study. MISO explains that it decided to use the latter because it was more forward-looking and keeps the emphasis on the Feasibility Study. MISO states that its chosen method closely matches 10 percent of expected transmission costs if a 10 percent multiplier is used. MISO notes that its formula also includes floors and caps in order to ensure both that every project has some milestone payment charge and that the charge does not exceed a reasonable range.¹⁵⁹

121. MISO states that it is proposing an “off-ramp,” which provides that the M2 milestone payment will be refunded in certain circumstances: (1) upon satisfaction of the Initial Payment milestone in Article 11.5 of a non-provisional GIA;¹⁶⁰ (2) upon commencement of commercial operation under a provisional GIA; or (3) if the total network upgrade cost estimates contained in the Interconnection Facilities Study performed in the Definitive Planning Phase increase by more than 25 percent over the network upgrade cost estimates in the System Impact Study performed in the Definitive Planning Phase and the interconnection customer withdraws its interconnection request.¹⁶¹ MISO explains that the M2 milestone payment will be forfeited if the project otherwise withdraws.¹⁶²

122. MISO explains that it determined that the amount of capital available to a project is the best indicator of whether a project will proceed after reviewing key requirements to interconnect a generator. MISO notes that, in contrast to 2008, it is now relatively easy to get a turbine order. MISO further states that non-monetary milestones such as a turbine order come in many forms, and, as a result, MISO is required to expend time and resources to judge whether or not a particular milestone submittal is sufficient evidence of a turbine order. MISO states that while turbine orders, environmental permits, and other requirements are important, what distinguishes projects that will go forward from ones that will not is how well a project is financed and whether investors believe in the

¹⁵⁹ Lavery Testimony at 22-23.

¹⁶⁰ The Initial Payment milestone is discussed further below. *See infra* text accompanying notes 230-231.

¹⁶¹ November 1 Filing at 15; Proposed section 8.2; Lavery Testimony at 23.

¹⁶² Lavery Testimony at 20.

project's business plan. MISO notes that there is less ambiguity when it comes to cash and that, irrespective of the project's business structure, the risk falls on the investor.¹⁶³

123. MISO argues that its proposal aims to expedite the queue process and meet the goals of Order No. 2003 by requiring an additional payment as projects progress while also allowing projects to control how long they remain in the System Planning and Analysis phase of the queue indefinitely and obtain tailored study results.¹⁶⁴ MISO contends that its proposal is consistent with the guidance provided in the Conference Order because it balances the needs of different generator interconnection projects and prioritizes the processing of requests on a fair basis to ensure that the flexibility for individual generators does not undermine the certainty and speed needed for the queue as a whole. Moreover, according to MISO, its methodology appropriately addresses the impact on small interconnection customers by basing the required milestone on the size of the project and the number of constraints.¹⁶⁵ MISO notes that it rejects the contention by some stakeholders that the new M2 milestone payment favors regulated utilities. MISO maintains that this assertion is based on the flawed assumption that utilities will be able to easily obtain approval from their regulatory authority to simply recover any lost capital as part of its rate base. MISO states that the risk will be the same for both regulated utilities and independent developers: any forfeited deposits are charged to the company.¹⁶⁶

ii. Comments

124. Several commenters argue that MISO has failed to demonstrate that the M2 milestone payment will demonstrate project readiness. AWEA and WOW state that MISO has failed to explain why past financial deposit increases have been insufficient to ensure readiness or why its proposed non-refundable capital contribution will be effective or just and reasonable. AMP, Flat Hill, and the Midwest Developers argue that, unlike existing milestones, which are based on actual achievement of project-related progress, the proposed M2 milestone payment merely shows which entities have the most money.¹⁶⁷ The Midwest Developers and AMP argue that it is not necessarily the case

¹⁶³ *Id.* at 19-20.

¹⁶⁴ November 1 Filing at 15 (citing Queue Reform Order, 124 FERC ¶ 61,183 at PP 17, 79; Conference Order, 122 FERC ¶ 61,252 at P 17).

¹⁶⁵ *Id.* at 16.

¹⁶⁶ Laverty Testimony at 20.

¹⁶⁷ AMP Protest at 9-10; Flat Hill Protest at 5; Midwest Developers Protest at 21.

that parties with the ability to put significant dollars at risk early in the study process are more likely to succeed in developing a power plant or to do so more efficiently.¹⁶⁸ AMP states that it would support replacing the options available under the currently-effective GIP requirements with MISO's new proposed capital contribution as an alternative for those customers that are unable or unwilling to enter the Definitive Planning Phase under the existing system.¹⁶⁹

125. Commenters also claim that MISO's proposal is contrary to Commission precedent. AWEA and WOW state that while the Commission has afforded regions the flexibility to propose solutions to backlogs in the queue, the Commission has directed RTOs and ISOs to first consider whether they have used all of the effective steps provided for by their current tariffs or as explicitly authorized in Order No. 2003.¹⁷⁰ AWEA and WOW further state that while the Commission has indicated that increasing deposit amounts may be one suitable way of addressing queue backlogs, the Commission has recognized that proposals to do so should not result in undue discrimination between types of developers and that there must be a balance between flexibility to demonstrate readiness and having a functioning queue process. AWEA and WOW claim that MISO's proposal is contrary to this guidance because MISO is proposing to replace the *options* available to demonstrate readiness under the current tariff with a single demonstration of financial resources. According to AWEA and WOW, MISO's proposal is geared more towards alleviating its own administrative burdens than providing a service that works well for its diverse customer base.¹⁷¹

126. A number of commenters argue that the proposal unduly discriminates against IPPs and is unduly preferential to generators affiliated with vertically-integrated Transmission Owners.¹⁷² The Midwest Developers, Iberdrola, and AWEA and WOW argue that MISO has failed to demonstrate that the proposal will not discriminate between load serving entities (LSE) that have the capability of recovering expenses by

¹⁶⁸ Midwest Developers Protest at 21; AMP Protest at 9-10.

¹⁶⁹ AMP Protest at 10.

¹⁷⁰ AWEA and WOW Protest at 10 (citing Conference Order, 122 FERC ¶ 61,252 at P 8).

¹⁷¹ *Id.* at 12-13.

¹⁷² *Id.* at 14; EPSA Protest at 20-21; Midwest Developers Protest at 22-23; Iberdrola Protest at 11-13; Juhl Protest at 3-4.

including these costs in rate base and IPPs who have no such option.¹⁷³ AWEA and WOW add that while there is no certainty that an LSE developer would be able to recover a forfeited milestone as a prudently incurred investment in a rate proceeding, rate-making principles in some states suggest that this is a real possibility. AWEA and WOW further add that an LSE developer should have access to more reliable information in the System Planning and Analysis phase, and thus be in a better position than an IPP to evaluate expected costs and the decision on whether to pay the M2 milestone payment.¹⁷⁴ Similarly, Iberdrola argues that MISO has failed to provide any discussion regarding the impact of its proposal on different classes of customers, despite the fact that the risk to IPPs varies significantly from that of LSEs.¹⁷⁵ Iberdrola and EPSA state that, unlike an IPP, utility-affiliated generators can finance projects based on the balance sheets of their regulated parents.¹⁷⁶

127. A number of commenters argue that the M2 milestone payment creates a chicken-and-egg problem for developers. AWEA and WOW note that MISO acknowledges that before committing funds to satisfy the M2 milestone payment, a customer would need MISO to provide information about the transmission upgrades needed, or, more likely, a reasonable set of bounds around these costs; yet, at the same time, MISO acknowledges that the results of studies in the System Planning and Analysis phase cannot be relied upon specifically because, under MISO's proposal, the scope of studies in the System Planning and Analysis phase will be determined by the interconnection customer.¹⁷⁷ Likewise, EPSA states that, without an interconnection agreement, lenders will typically not provide financing for projects and purchasers will often decline to enter into PPAs with developers. At the same time, without financing or a PPA, asserts EPSA, an interconnection customer will not be in a position to satisfy the M2 milestone payment.¹⁷⁸

128. Juhl argues that MISO's proposed revision would create an unfair economic burden upon small wind projects, including "community wind" projects whereby a larger

¹⁷³ AWEA and WOW Protest at 13-14; Midwest Developers Protest at 22-23; Iberdrola Protest at 12-13.

¹⁷⁴ AWEA and WOW Protest at 13-14.

¹⁷⁵ Iberdrola Protest at 11.

¹⁷⁶ EPSA Protest at 21; Iberdrola Protest at 12.

¹⁷⁷ AWEA and WOW Protest at 15-16.

¹⁷⁸ EPSA Protest at 21. *See also* Iberdrola Protest at 12.

percentage of wind farm proceeds are shared with local interests. According to Juhl, the imposition of these costs would result in a complete shift in competition and the possibility of eliminating small wind altogether and ensuring that only a small group of larger, well funded energy/electric utility conglomerates would be the only market players able to survive. This, Juhl asserts, would completely undermine the Commission's goal of lowering wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale market and, due to general trends of consolidation, will result in increased wholesale prices.¹⁷⁹

129. ARES also contends that the proposal discriminates against smaller projects because the cost of the milestone is significantly higher per MW of nameplate capacity for a 20 MW project as opposed to a much larger project. Specifically, ARES states that the cost is significantly higher per MW of nameplate capacity for a 20 MW project as opposed to much larger projects (up to ten times as high). ARES suggests that a straight-line deposit framework would be more appropriate.¹⁸⁰ Further, ARES asserts that past milestones already demonstrated financial commitment and asks the Commission to direct MISO to revise its Tariff to eliminate further Definitive Planning Phase entry milestone deposit requirements for projects that are less than 25 MW in nameplate capacity and entered the MISO queue prior to September 1, 2008.¹⁸¹

130. Several commenters also argue that, if the M2 milestone payment is accepted, the Commission should require MISO to modify the formula for calculating the required capital contribution.¹⁸² For instance, the Midwest Developers, Iberdrola and AWEA and WOW criticize MISO's use of zonal rates to determine milestone payment costs. The Midwest Developers assert this would result in disparate treatment of similarly sized projects in different zones based solely on location.¹⁸³ Iberdrola states that zonal rates have little to do with interconnection costs and argues that the Commission should direct MISO to modify its calculation of the M2 milestone payment so that it relates to the estimated study costs and the risk of restudy upon withdrawal.¹⁸⁴ AWEA and WOW

¹⁷⁹ Juhl Protest at 3-4.

¹⁸⁰ ARES Protest at 1, figure 1, figure 2.

¹⁸¹ *Id.* at 1.

¹⁸² Midwest Developers Protest at 23; AWEA and WOW Protest at 15; Iberdrola Protest at 19.

¹⁸³ Midwest Developers Protest at 23-24 (noting that a hypothetical presented in the stakeholder process demonstrated that similarly-sized projects located in two different areas within MISO could face a 4:1 difference in the size of their milestone payments).

¹⁸⁴ Iberdrola Protest at 19-20.

suggest using an average of schedule 7 rates or something similar to ensure equal treatment across zones.¹⁸⁵

131. Commenters also object to the circumstances under which the M2 milestone payment will be refunded. EPSA argues that MISO's proposal to require forfeiture of the M2 milestone payment, except under limited circumstances, should be rejected because MISO has failed to justify the need for such punitive measures. EPSA states penalties are only justified where a participant has violated some rule, regulation, or tariff provision, and withdrawal or termination of an interconnection agreement does not violate any such rule. EPSA maintains that MISO has failed to show that the preconditions for imposing punitive measures have been satisfied because MISO has failed to demonstrate that the measures are narrowly tailored to deter the alleged abuses and will not deter legitimate projects from progressing through the queue.¹⁸⁶ EPSA further contends that the M2 milestone payment is a deposit and that Commission precedent requires transmission providers to refund deposits in excess of actual costs.¹⁸⁷ Iberdrola raises a similar argument and argues that the Commission should order MISO to refund all amounts above the costs associated with any restudies, with interest, following withdrawal.¹⁸⁸

132. If the Commission accepts the M2 milestone payment, EPSA states that, at a minimum, the Commission should eliminate the forfeiture requirement or require MISO to refund the M2 milestone payment under a wider range of circumstance, as it has done in other circumstances. Additionally, EPSA states that the Commission should adopt a maximum cap on the amount that can be forfeited, such as the lesser of half the amount posted or \$2 million. EPSA maintains that the risk of forfeiting up to \$2 million should be more than adequate to deter speculative projects while not penalizing projects that are forced to withdraw due to forces beyond their control.¹⁸⁹

¹⁸⁵ AWEA and WOW Protest at 15.

¹⁸⁶ EPSA Protest at 22 (citing *Sierra Pac. Power Co. and Nevada Power Co.*, 92 FERC ¶ 61,179, at 61,627 (2000); *Entergy Servs., Inc.*, 88 FERC ¶ 61,098, at 61,233-34 (1999); *Mirant Kendall, LLC and Mirant Americas Energy Mktg., L.P.*, 110 FERC ¶ 61,272, at P 17 (2005)).

¹⁸⁷ EPSA Protest at 23 (citing Queue Reform Rehearing Order, 127 FERC ¶ 61,294 at P 13; *SPP*, 128 FERC ¶ 61,114 at P 67).

¹⁸⁸ Iberdrola Protest at 9, 20.

¹⁸⁹ EPSA Protest at 24 (citing CAISO Queue Order, 124 FERC ¶ 61,292 at P 135).

133. The Midwest Developers argue that the Commission should make the M2 milestone payment fully refundable upon the interconnection customer's withdrawal from the Definitive Planning Phase, as the act of posting an expensive deposit is itself a strong sign of commitment by the interconnection customer.¹⁹⁰ The Midwest Developers, along with AWEA and WOW, maintain that, even if the Commission does not make the deposit fully refundable, it should require MISO to refund the milestone payment where the customer withdraws and the estimate in either the Feasibility Study or the System Planning and Analysis System Impact Study exceeds that in the Definitive Planning Phase System Impact Study.¹⁹¹

134. AMP argues that the Commission should direct MISO to use a cost differential of 20 percent instead of 25 percent for the purpose of determining whether a refund should be provided to the interconnection customer upon its withdrawal. AMP argues that its proposals would create an incentive for MISO to adopt more accurate cost estimates.¹⁹²

135. EPSA, Iberdrola, AWEA, and WOW note that MISO does not clearly disclose what happens to forfeited deposits and that the retention of these funds is unjust and unreasonable.¹⁹³ Among other things, these parties argue that MISO must disclose how it will treat forfeited funds and justify its proposal to the Commission.¹⁹⁴ AWEA and WOW argue that any forfeited Definitive Planning Phase milestones should be credited back to the benefit of interconnection customers and not used as a way to transfer funds to transmission customers. AWEA and WOW ask the Commission to direct MISO to clarify how these funds are credited and to require MISO to credit forfeited funds in such a way that the parties most affected by the withdrawal benefit from the forfeited funds.¹⁹⁵

136. Xcel notes that the Interconnection Practices Task Force struggled to develop a fair and equitable solution that would be applicable to all projects regardless of size or generation type. Xcel states that it is optimistic that the M2 milestone payment, along with other changes proposed by MISO, will be enough for the process to operate

¹⁹⁰ Midwest Developers Protest at 25-26.

¹⁹¹ *Id.* at 26-27; AWEA and WOW Protest at 17.

¹⁹² AMP Protest at 11.

¹⁹³ EPSA Protest at 22-23; Iberdrola Protest at 20; AWEA and WOW Protest at 39.

¹⁹⁴ *See, e.g.*, Iberdrola Protest at 20.

¹⁹⁵ AWEA and WOW Protest at 38, 39.

efficiently and meet the first-ready, first-served objective of Attachment X. However, Xcel states that it further believes that the size of the M2 milestone payment is the minimum necessary to provide the proper indication of readiness and, therefore, requests that these amounts not be reduced. Xcel would support a more rigorous financial milestone in order to ensure the success of the proposed reforms. Xcel also feels that MISO's proposed "off-ramp" is reasonable.¹⁹⁶

iii. Answers

137. MISO states that it inadvertently omitted a formula for the application of forfeited milestone funds. MISO explains that it plans to use the forfeited funds to offset MISO administration costs by, for example, crediting such funds to schedule 10. MISO states that it has reviewed AWEA and WOW's suggestions and will continue to examine its schedules to find a way to offset study costs with forfeited funds. MISO states that, in the event that it develops a workable method to do so, MISO can move the forfeited funds to offset engineering study costs at that time.¹⁹⁷

138. Noting that they support the use of forfeited funds to offset engineering study costs, the Midwest Developers argue in response that the vague assurances provided by MISO in its answer do not go far enough because MISO is still seeking to use such funds to offset its administrative costs. The Midwest Developers maintain that it is essential that such funds be used to reduce the cost of affected interconnection customers because funds committed to the interconnection study process should remain in that process and not be swallowed up into MISO's broader budget. Therefore, they state that the Commission should direct MISO to revise its tariff to apply any forfeited milestone funds to offset affected customers' study costs.¹⁹⁸

iv. Supplemental Filing

139. In the supplemental filing, MISO provides further details about the formula for calculating the new M2 milestone payment. MISO states that it originally intended the formula to approximate the expected costs of network upgrades required for service.¹⁹⁹

140. MISO explains that it proposed a preliminary methodology for calculating the payment using factors such as the location of the transmission upgrade, the size of the

¹⁹⁶ Xcel Comments at 5-6.

¹⁹⁷ MISO December 15 Answer at 14.

¹⁹⁸ Midwest Developers December 20 Answer at 8.

¹⁹⁹ Supplemental Filing at 9.

project, the cost of upgrades, turbine type, and interconnection kilovolt level. MISO ran regression analyses on historical data in order to determine the relationship between these variables and upgrade costs. MISO states that after it ran several models, it chose the model that included two factors – the size of the unit and the service type of the request -- as the best indicators of upgrade costs. MISO explains that after applying this formula, the total payment appeared to be too high and, in order to reduce the cash exposure of all customers, MISO updated the formula by using only 10 percent of the updated costs. Additionally, MISO states that it proposed caps and floors that would serve as reasonable bounds to ensure that the amount of the capital contribution is between 0.25-0.65 percent of the total installed costs of the project. MISO notes that historically the total cost of transmission for a project has been 10-15 percent of the cost of generation.²⁰⁰

141. MISO notes that it selected 10 percent of the transmission costs because it was half of the 20 percent down payment encouraged in the housing market and appeared to be a reasonable starting point for the analysis. MISO claims that stakeholders did not object to the regression formula and the use of a 10 percent factor; however, a few stakeholders expressed concern that the use of a linear regression model could inflate the required capital contribution for projects that were located in areas with no significant congestion and could interconnect with fewer upgrades. MISO explains that while it initially considered the location of the transmission upgrade as one of the factors that should be included, its regression models were unable to identify any reasonable relationship between the network upgrade costs and the geographical location of the upgrades. In order to address these concerns, MISO states that it decided to use the Schedule 7 point-to-point transmission delivery rate to approximate the relationship between the cost and location of the upgrade.²⁰¹

142. MISO states that the cap and floor values incorporated within its formula were crafted with stakeholder input. MISO explains that it initially proposed caps and floors with the goal of keeping the dollar cap within a .25-.65 range of the total installed cost of a wind project, assuming \$2 million per MW installed. According to MISO, a number of stakeholders expressed concerns that MISO's approach was biased because it appeared that it was more punitive to small wind projects because the dollar cap, based on MW size, appeared to be much higher for small projects in comparison to larger projects. MISO explains why several of the alternatives it explored were less satisfactory. In order to address stakeholders' concerns, MISO explains that it proposed a \$10,000/MW cap and \$2,000/MW floor for all types of requests. MISO states that this methodology

²⁰⁰ *Id.* at 10-11.

²⁰¹ *Id.* at 11.

ensured that the smaller wind units would not be given a higher dollar cap per MW value and was not based on any specific fuel type.²⁰²

143. MISO claims that these values produce a just and reasonable result when compared to cash commitments required for other transactions in markets where some kind of monetary commitment is required to hold territorial rights to obtain something. For instance, MISO notes that prospective homeowners are typically required to make a down payment before acquiring a loan and that the amount that interconnection customers will be required to provide is far less than the amount typically required as a down payment towards a house. MISO also claims that the amount that each interconnection customer will be required to pay is reasonable when compared with the amount that other business owners are required to provide before starting a new venture, such as franchises. MISO states that its proposed M2 milestone payment will provide just and reasonable results for projects of various sizes by establishing a minimum floor to show readiness to proceed while linking the size of the cap to the size of an underlying project. MISO asserts that, under its proposal, small generators will pay commensurately smaller deposits than larger generators.²⁰³

v. Comments on Supplemental Filing

144. Iberdrola maintains that MISO's attempt to analogize the process for interconnection to the real estate market and franchise agreements is inappropriate. Iberdrola asserts that an interconnection customer is not buying a commodity or purchasing rights to a product; the customer is trying to get a cost estimate so that it can determine whether its project can compete in the power market.²⁰⁴ Iberdrola contends that the GIP must be based solely on the costs incurred by MISO to allow non-discriminatory access to power markets by new entrants and that MISO has failed to address this issue. Instead, according to Iberdrola, MISO proposes to erect a barrier to entry by IPPs and, in the process, eliminate the relatively unencumbered entry that is necessary for competitive markets and that Order No. 2003 sought to promote.²⁰⁵

145. AWEA and WOW also argue that MISO's analogy to the real estate market is inappropriate, especially considering the point at which the M2 milestone payment is required, as the certainty and risk in each of these settings is very distinct. AWEA and

²⁰² *Id.* at 14-15.

²⁰³ *Id.* at 15-16.

²⁰⁴ Iberdrola February 21 Protest at 5-6.

²⁰⁵ *Id.* at 5-6 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 11).

WOW note that a more appropriate analogy would be to the earnest money payment that homeowners make, which tends to be around one percent of the price of a home and is refundable once the consumer receives more information about the home during a home inspection. AWEA and WOW state that what is really needed, in addition to a fully refundable deposit, is Feasibility Study results that provide more reliable information on upgrades and cost estimates that are expected to be within 10 to 15 percent of final costs.²⁰⁶

vi. Commission Determination

146. We will conditionally accept MISO's proposal to revise the M2 milestone. As discussed above, MISO continues to experience significant challenges in administering its queue. In light of these challenges, we believe MISO's proposal to require projects to demonstrate project readiness by making a capital contribution is just and reasonable.

147. We find that MISO's proposal is consistent with previous Commission guidance regarding methods to streamline and speed the processing of interconnection requests while remaining faithful to the goals of Order No. 2003. In the Conference Order, the Commission acknowledged that it may be appropriate to increase the requirements for getting a queue position and that such a change would increase the likelihood that only projects that are likely to be commercially viable are in the queue. Here, consistent with this guidance, MISO has determined that existing milestones are no longer sufficient to distinguish those projects that are ready to proceed to commercial operation from those that are not. Specifically, MISO has reported significant numbers of terminations of late-stage projects whose developers had met the existing M2 milestone. And, as stated previously, the consequence of late-stage terminations can be multiple and iterative restudies for lower-queued customers. Thus, if the proposed M2 milestone succeeds in significantly reducing such late-stage terminations, we anticipate that projects with viable business plans will more easily and quickly reach commercial operation. MISO asserts that the amount of capital available to the project is the best indicator of whether the project will proceed to commercial operation.²⁰⁷

148. We disagree with those commenters who argue that MISO has failed to show that the M2 milestone payment will demonstrate project readiness. By placing the risk of losing the capital contribution on the customer, each interconnection customer must consider its project and the accompanying risks before making the commitment to enter the Definitive Planning Phase and proceed to commercial operation. In so doing, we believe that the M2 milestone payment will help to ensure that projects that enter the

²⁰⁶ AWEA and WOW February 21 Protest at 9-10.

²⁰⁷ Laverty Testimony at 19.

Definitive Planning Phase are commercially viable and likely to proceed to commercial operation.

149. Additionally, we disagree with those commenters that assert that the proposed M2 milestone payment will merely distinguish projects that have financial resources from those that do not and is contrary to Commission guidance because it does not allow enough customer flexibility in demonstrating project readiness. While we recognize the importance of affording interconnection customers flexibility, the Commission has emphasized that there must be a balance between flexibility to demonstrate readiness and having a functioning queue process.²⁰⁸ We agree with MISO that its proposal, taken as a whole, strikes an appropriate balance by allowing projects that are not ready to meet the M2 milestone payment with the option to remain in the System Planning and Analysis phase until they are ready to proceed.²⁰⁹

150. We also find that the arguments that the M2 milestone payment merely distinguishes projects with financial resources from projects that do not, unduly discriminates against independent developers and creates a chicken-and-egg problem for such entities are without merit. The Commission addressed nearly identical arguments in a case involving revisions to CAISO's generator interconnection procedures.²¹⁰ In that case, CAISO had proposed to revise its generator interconnection procedures, which only required an interconnection customer to provide financing for network upgrades after construction commenced, to require an interconnection customer to post security for the cost of network upgrades and interconnection facilities during the study process.²¹¹ Several protesters argued that CAISO's proposal unduly discriminated against independent developers because an interconnection agreement is a precondition to entering into a power purchase agreement, which in turn is a precondition to an independent developer obtaining the financing necessary to post the required the security. The protesters also argued that the requirements were unduly preferential towards utility-affiliated generators because, unlike independent developers, utility-affiliated generators

²⁰⁸ See Queue Reform Order, 124 FERC ¶ 61,183 at P 79; *see also* Conference Order, 122 FERC ¶ 61,252 at P 14.

²⁰⁹ November 1 Filing at 16.

²¹⁰ CAISO Queue Order 124 FERC ¶ 61,292.

²¹¹ Specifically, CAISO proposed to require an interconnection customer to post financial security in the amount of 20 percent of its total cost responsibility for network upgrades and 20 percent of the total cost responsibility for the relevant Transmission Owner's interconnection facilities within 90 days of the publication of the final Phase I Interconnection Study Report. *Id.* P 33.

could finance projects based on the balance sheets of their regulated parents.²¹² The Commission rejected these arguments, stating:

We find the enhanced financial security provisions to be reasonable. Increasing the financial commitments may make it more difficult for underfunded projects to enter the interconnection process. A portion of underfunded projects may not be utility-affiliated. This does not lead to the conclusion that the heightened requirements are unduly discriminatory. Irrespective of financial security provisions, it is not unreasonable to conclude that under-funded projects are less likely to be completed than fully-funded projects and, thus, are more likely to ultimately drop out of the queue and disrupt queue processing for others. Nonutility projects that are appropriately capitalized should benefit along with all other appropriately capitalized projects from the increased efficiencies of the [revised interconnection] process in having earlier assurances as to their cost responsibilities as well as greater certainty as to their commercial operation date.^[213]

151. We find that this reasoning is equally applicable here. MISO has proposed to adopt the M2 milestone payment in an attempt to deter speculative projects from entering the queue. All interconnection customers – whether independent or utility-affiliated – will be required to meet the M2 milestone payment in order to enter the Definitive Planning Phase. While underfunded projects may decide to remain in the System Planning and Analysis phase or withdraw from the queue, developers who have sufficiently funded their projects should benefit. Additionally, with respect to the argument that utility-affiliated interconnection customers will have more access to more reliable information in the System Planning and Analysis phase, we find that this concern is unsubstantiated, as all interconnection customers will have access to the same information in the System Planning and Analysis phase and will have the same ability to request tailored study results.

152. Likewise, we disagree with the argument that MISO's proposal discriminates against small projects. We agree with MISO that its proposed methodology for calculating the M2 milestone payment appropriately addresses the impact on small interconnection customers by basing the milestones on the size of the project and the

²¹² LS Power Associates, L.P. and Tenaska, Inc. Protest, Docket No. ER08-1317-000, at 23-24 (filed Aug. 18, 2008).

²¹³ CAISO Queue Order, 124 FERC ¶ 61,292 at P 151.

number of constraints. We also disagree with ARES's argument that the proposal discriminates against smaller projects because the cost of the M2 milestone payment is higher per MW for smaller entities and that a straight-line deposit framework would be more appropriate. The fact that the M2 milestone payment is higher on a per MW basis for smaller entities does not render the M2 milestone payment unduly discriminatory. The costs that a project faces depend, in part, on its size. For example, larger projects may have lower production or transmission costs because of economies of scale. Likewise, the size of the M2 milestone payment depends on the size of the project at issue. While smaller projects may pay more on a per MW basis, the size of their M2 milestone payment will be smaller than the payments for larger projects. Although ARES may prefer a straight-line framework, we believe MISO's proposal appropriately addresses the effect on smaller projects by taking project size into account in a manner that ensures that the size of M2 milestone payments will be smaller for smaller projects. The fact that ARES has identified some alternative formulation that might be better does not render MISO's proposal unduly discriminatory.²¹⁴

153. We will, however, require MISO to submit a compliance filing to address a deficiency in MISO's proposed formula for calculating the M2 milestone payment. Specifically, we reject MISO's inclusion of a pricing zone specific schedule 7 rate. According to MISO, it included this rate because it believed that it was imperative to address stakeholder concerns by including a "location" factor and that, at the time, the best indicator of costs that had some relationship between the cost and location was the schedule 7 rate. We share the concern expressed by some commenters that the use of the pricing zone specific schedule 7 rate may result in disparate treatment of similarly sized projects without justification. Accordingly, we will require MISO to submit a compliance filing, within 30 days of the date of this order, revising the formula for calculating the M2 milestone payment in a manner that addresses these concerns and proposes a justifiable alternative.

154. We find MISO's "off-ramp" and its proposal to fully refund the M2 milestone payment under a narrow set of circumstances is just and reasonable. As noted above, MISO proposes to fully refund the M2 milestone payment upon satisfaction of the Initial Payment milestone in a non-provisional GIA, upon commencement of commercial operation under a provisional GIA, and if the network upgrade cost estimates contained in the Facilities Study performed in the Definitive Planning Phase are 25 percent higher than the estimates contained in the System Impact Study performed in the Definitive Planning Phase. We find that MISO's proposal is reasonable in light of its goal in adopting the M2 milestone payment: to deter speculative projects from entering the Definitive Planning Phase. By limiting the circumstances under which the M2 milestone

²¹⁴ See, e.g., *Calif. Indep. Sys. Operator. Corp.*, 138 FERC ¶ 61,060, at P 25 (2012) (citations omitted).

payment will be fully refunded, it places the risk on the interconnection customer. We find that requiring MISO to make the M2 milestone payment fully refundable would undermine MISO's effort to increase the certainty that projects that enter the Definitive Planning Phase will complete the interconnection process and commence commercial operation.

155. While we find MISO's proposal to fully refund the M2 milestone payment in a narrow set of circumstances is just and reasonable, we have two concerns relating to the forfeiture of the M2 milestone payment in those instances where the M2 milestone payment is not fully refundable. First, we agree with protesters that forfeited funds should be used to offset the costs to interconnection customers that are affected by another interconnection customer's withdrawal. Although MISO has stated that it will continue to examine its Tariff to find a way to use forfeited funds to offset costs and will apply forfeited funds to schedule 10 in the meantime, we will require MISO to revise its Tariff to do so immediately in order to ensure that forfeited funds are used in a manner consistent with our cost causation policy – that costs are borne by those who cause them.²¹⁵ Accordingly, we direct MISO to revise its Tariff, within 30 days of the date of this order, such that forfeited funds are used to offset costs to those interconnection customers that are affected by another interconnection customer's withdrawal.

156. Second, in those situations where the M2 milestone payment is not fully refundable, we agree with protesters that it is not just and reasonable for MISO to retain M2 milestone payments beyond that which are necessary to offset the costs resulting from an interconnection customer's withdrawal. We have previously rejected proposals by MISO and other transmission providers to retain deposits in excess of costs and found that refunding these amounts is consistent with cost causation.²¹⁶ Although we acknowledge that the M2 milestone payment is not a deposit, cost causation principles continue to apply. Therefore, we direct MISO to revise its Tariff such that any portion of the M2 milestone payment above the costs resulting from an interconnection customer's withdrawal will be refunded to the withdrawing customer.

²¹⁵ Queue Reform Rehearing Order, 127 FERC ¶ 61,294 at P 13.

²¹⁶ *Id.*

b. Elimination of Interest on Refunded Study Deposits

i. Proposal

157. MISO proposes to revise section 3.6 of the GIP to delete the reference to refunding interest earned on the interconnection customer's study deposit.²¹⁷ MISO maintains that this is no longer needed due to the shift away from the "first-in, first-out" paradigm, under which the transmission provider's speed in processing the queue ahead of a given request was the main driver for the amount of time an interconnection customer's deposit was retained by the transmission provider. MISO claims that this is no longer the case due to the revisions that MISO is proposing in this filing, as the interconnection customer now has more control over how long it remains in the queue because it can elect to move into the Definitive Planning Phase faster.²¹⁸

ii. Comments

158. Several commenters argue that MISO's proposal is inconsistent with Commission precedent, including Order No. 2003.²¹⁹ They argue that the Commission has required transmission providers to pay interest in order to compensate interconnection customers for the lost time value of money.²²⁰ EPSA notes that the Commission has rejected analogous proposals by MISO and others to retain unused study deposits.²²¹ Iberdrola

²¹⁷ MISO's Tariff requires interconnection customers to make deposits towards the cost of interconnection studies at certain times in the study process. For example, an interconnection customer must pay a study deposit when submitting their interconnection requests. MISO, FERC Electric Tariff, Attachment X (0.0.0), § 3.3.1. Additionally, when entering the Definitive Planning Phase, an interconnection customer is required to make a deposit towards the cost of the interconnection studies in that phase. *Id.* § 8.2. Currently, the Tariff provides that MISO will refund any portion of the deposit, including interest, that exceeds the costs that MISO has incurred or will incur as a result of the withdrawal. *Id.* § 3.6.

²¹⁸ November 1 Filing at 8; Laverty Testimony at 35.

²¹⁹ EPSA Protest at 28-29; Iberdrola Protest at 16, 24; AWEA and WOW Protest at 23; Midwest Developers Protest at 43.

²²⁰ EPSA Protest at 29 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 723; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 618); Iberdrola Protest at 16, 24; AWEA and WOW Protest at 23-24; Midwest Developers Protest at 43.

²²¹ EPSA Protest at 30 (citing Queue Reform Rehearing Order, 127 FERC ¶ 61,294 at P 13).

adds that MISO has a fiduciary responsibility to use funds that it collects for the purpose for which they are collected and that allowing MISO to retain interest creates an incentive for MISO to slow the queue to collect additional interest.²²²

159. Commenters also reject the notion that interconnection customers are in control of the study process given that the Tariff does not provide a timeframe in which MISO must provide complete and accurate study results and that the timing of studies and restudies are largely beyond the customer's control.²²³ AMP argues that, regardless of which entity is in control of the time that a project remains in the queue, an interconnection customer is entitled to any interest that accrues on the deposit.²²⁴ E.ON states that there is no reason why interest should not be provided when the M2 milestone payment is refunded.

iii. Supplemental Filing

160. MISO notes that it is proposing to eliminate the repayment of interest on study deposits for only those projects that withdraw. MISO states that it is important to note that projects that proceed through the GIP and execute a GIA do not receive any interest on their study deposit under the currently-effective Tariff. MISO maintains that paying interest to those projects that withdraw provides the wrong incentive by rewarding those projects who withdraw and penalizing those that proceed through the GIP.²²⁵

161. MISO argues that its proposal was based on the philosophy that interest earned is usually tied to the investment intent. MISO states that it believes that the real intent of interconnection customers, during the study process, is not to earn interest on their study deposit, but rather to have their projects evaluated for their business justification. MISO states that the real investment decision is made at the time of the GIA where the interconnection customer is making an investment to earn a return over the life of the project. According to MISO, if a project withdraws and the interconnection customer is unwilling to make the investment to earn a return, then the customer should not expect any interest on its study deposit.²²⁶

²²² Iberdrola Protest at 15 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 123; *El Paso*, 137 FERC ¶ 61,101 at P 18).

²²³ E.ON Protest at 29-30; Iberdrola Protest at 15-16.

²²⁴ AMP Protest at 8.

²²⁵ Supplemental Filing at 25.

²²⁶ *Id.* at 25-26.

162. Additionally, MISO states that interconnection customers have chosen to enter the queue themselves and, therefore, from MISO's perspective, the study costs should be treated as sunk costs and the customers should not be refunded either the deposit or the interest back after withdrawal of the project. However, MISO states that taking this step would be a drastic change for a few customers. Accordingly, MISO proposes to permit the interconnection customer to be refunded the deposit amount after withdrawal of the project.²²⁷

iv. Comments on Supplemental Filing

163. E.ON argues that MISO's assertions regarding the purported investment intent of interconnection customers neither justifies MISO's proposal nor represents an apt analogy. First, E.ON states that it does not make sense that it is just and reasonable for the customer to receive a refund of study deposits if its project is withdrawn but is not just and reasonable for the customer also to be refunded interest accrued on those deposits. E.ON states that both should be returned to the interconnection customer. Second, E.ON contends that it is inappropriate to compare the decision to invest in the market and the submission of study deposits, as the interconnection customer has no choice but to submit study deposits if it wants to obtain interconnection service or its request will be withdrawn. Thus, E.ON maintains that it is unjust and unreasonable to penalize the customer if it later decides to withdraw its project because information shows its project will not be economically feasible. Third, E.ON states that the rate of interest is small compared to what the interconnection customer could earn in the marketplace and, presumably, smaller than what MISO earns in the marketplace on the study deposits it holds.²²⁸

164. AWEA and WOW argue that MISO incorrectly assumes that providing interest creates incentives for parties to drop out of the queue. They note that the interest paid on study deposits is not significant enough to provide an incentive to withdraw from the queue, as the interest is only paid on any remaining amount of the study deposit and the rate of interest is lower than the developer's cost of capital. AWEA and WOW claim that MISO's statement that the elimination of interest on study deposits will discourage speculative projects from entering the queue shows that MISO does not appreciate the role of the interconnection queue. AWEA and WOW assert that all developers entering the queue are speculative in that they need to gather information about what it will cost to interconnect their project to the grid. With respect to investment intent, AWEA and

²²⁷ *Id.* at 26.

²²⁸ E.ON February 21 Protest at 8-10.

WOW observe that the fact that a developer eventually withdraws does not mean that the developer did not intend on developing the project initially.²²⁹

v. Commission Determination

165. We will reject MISO's proposal in section 3.6 to eliminate interest on study deposits and direct MISO, within 30 days of the date of this order, to restore the Tariff to the language in effect at the time of this filing.

166. As an initial matter, we note that several parties conflated the actual study deposit with the M2 milestone payment. To be clear, the study deposits required at different points in the GIP are separate and distinct from the M2 milestone payment, which is an indicator of readiness and not a study deposit. MISO's proposal does not alter the approach for determining the size of the study deposit that the Commission accepted in the 2008 queue reform proceeding. Here, we are directing MISO to restore the language of section 3.6 of the GIP, which concerns interest on study deposits upon withdrawal.

167. We find that MISO's proposal to eliminate interest paid on study deposits is inconsistent, as pointed out by numerous protestors, with the Commission's previous precedent. As these protestors point out, the Commission requires payment of interest on collected study deposits to compensate interconnection customers for the time-value of money. We agree with protestors that MISO's assertions that interconnection customers are now in control of the study process and about the purported investment intent of interconnection customers do not provide a reason for departing from Commission policy. Additionally, we agree with protestors' argument that paying interest on study deposits is not significant enough to provide an incentive to withdraw from the queue.

168. However, in light of the reasoning behind requiring the payment of interest on study deposits, we find that it would also be appropriate to require MISO to pay interest on the M2 milestone payment when that payment is refundable. While the M2 milestone payment is an indicator of readiness to proceed and is not a deposit, we believe that it is just and reasonable to require MISO to compensate an interconnection customer for the time-value of money when the M2 milestone payment is refundable to the customer. Therefore, we will also direct MISO to revise its Tariff, within 30 days, to provide for the refund of interest on the M2 milestone payment to an interconnection customer where that payment is refunded to the customer.

²²⁹ AWEA and WOW February 21 Protest at 7-9.

c. Initial Payment

i. Proposal

169. MISO proposes to revise Article 11, “Performance Obligation,” of the GIA to include a new Article 11.5, “Initial Payment,” that requires an interconnection customer to make an initial payment in cash or security for the cost of certain network upgrades. Specifically, Article 11.5 states that the Transmission Owner shall elect and require the interconnection customer to provide: (1) an initial payment of twenty percent of the total cost of the project upgrades if the In-Service Date is five or fewer years from the initial payment date; (2) an initial payment of ten percent of the total cost of the project upgrades if the In-Service Date is more than five years from the initial payment date; or (3) the total cost of the project upgrades in the form of security. Article 11.5 also states that the Initial Payment shall be provided within the later of: (a) thirty days of the execution of the GIA by all parties; or (b) thirty days after the Commission accepts the unexecuted GIA if the interconnection customer is disputing the initial payment; or (c) thirty days after the GIA is filed unexecuted with the Commission if the initial payment is not being contested.²³⁰

170. MISO explains that its proposed Article 11.5 tracks the methodology of the M2 milestone payment by requiring an interconnection customer to make a capital contribution to demonstrate that the interconnection project is viable. MISO maintains that its proposal prevents the interconnection customer from establishing a long lead time for a project and then waiting for the lead time to expire before deciding to withdraw from the interconnection queue without having to expend any capital. MISO states that it expects that projects that are ready to proceed will be able to meet this milestone at this stage and this revision will reduce the concerns with uncertainty about whether a project will proceed.²³¹

ii. Comments

171. Numerous parties argue that MISO’s proposal discriminates against small developers, and is anticompetitive and inconsistent with Order No. 2003. EPSA states that the Initial Payment requirement is excessive and unduly discriminatory because it gives the Transmission Owner the right to require the interconnection customer to either provide a payment of 10 percent or 20 percent of the total cost of network upgrades or to post security equal to 100 percent of the network upgrade costs. According to EPSA, the Commission rejected requests to require interconnection customers to provide security

²³⁰ November 1 Filing at 19-20.

²³¹ *Id.* at 19-20.

equal to the total amount of network upgrades in Order No. 2003 because doing so would have a chilling effect and seriously discourage new generation.²³² Further, EPSA argues that MISO's proposal discriminates against independent developers who would have to first obtain financing for the project in order to post the required amount of security. Specifically, EPSA argues that for independent developers, an interconnection agreement is a precondition to entering into a power purchase agreement, which in turn is a precondition to obtaining the financing necessary to post this security. According to EPSA, thirty days is not a sufficient period of time for an independent developer to raise this amount of capital.²³³

172. AWEA and WOW, and NextEra argue that the addition of Article 11.5 will result in a payment schedule for project upgrades that is not aligned with the need to fund the actual construction of the upgrades.²³⁴ AWEA and WOW allege that MISO is changing the purpose of providing financial security for procurement and construction to serving as another test of project readiness. They maintain that this conflicts with the Commission's holding in Order No. 2003 that the purpose of the security provided is to "fund procurement and construction" and "since it is uncertain when procurement and construction will begin, it is reasonable to make such activity the trigger for tendering Network Upgrades."²³⁵ Additionally, AWEA and WOW argue that MISO must be required to explain why the deposit amounts were selected and how it reached the conclusion that such deposit amounts will not be unduly discriminatory.²³⁶ NextEra argues that there is no legitimate purpose for this requirement, as the payment schedule for network upgrades is already timed towards requiring an interconnection customer to pay the Transmission Owner's costs for building interconnection facilities and network upgrades.²³⁷

173. AWEA and WOW note that, in Order No. 2003-A, the Commission rejected requests that an interconnection customer be required to maintain full security during the

²³² EPSA Protest at 25 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 596; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 431).

²³³ *Id.* at 25-26.

²³⁴ AWEA and WOW Protest at 25; NextEra Protest at 5.

²³⁵ AWEA and WOW Protest at 25 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 593).

²³⁶ *Id.* at 26.

²³⁷ NextEra Protest at 5.

length of the interconnection process because such a requirement would seriously discourage new generation. AWEA and WOW state that MISO is now actively trying to achieve just such a chilling effect. AWEA and WOW state that MISO has a responsibility to balance the need for adequate financial security to demonstrate project viability with its burden to avoid excessive financial commitments that may discourage development.²³⁸ AWEA and WOW argue that MISO has failed to demonstrate that the amounts required are reasonable and will not overly discourage development, and has failed to provide an adequate explanation for excluding other indicia of project readiness.²³⁹

174. The Midwest Developers state that the financial impact of proposed Article 11.5 is unjust and unreasonable because it vests Transmission Owners with the authority to exercise control over the payments required by unaffiliated generators and that this represents the kind of impermissible, anti-competitive authority the Commission rejected in *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*²⁴⁰ Midwest Developers argue that proposed Article 11.5 is no different from Option 1 because each non-independent Transmission Owner will have the sole discretion to determine what financial burden to impose upon interconnection customers.²⁴¹

175. Furthermore, Midwest Developers argue that, for projects with sizable upgrade costs, requiring cash payments of ten or twenty percent of those costs to be made years in advance of the actual construction of the upgrades could effectively sabotage the projects' development if their developers have not yet secured financing for those upgrades. Midwest Developers aver that a more prudent and helpful approach to funding project upgrades would be to require that Transmission Owners develop cash-flow schedules that explain when funds will be required to support design, engineering,

²³⁸ AWEA and WOW Protest at 26 (citing *Calif. Indep. Sys. Operator, Corp.*, 132 FERC ¶ 61,005, at P 33 (2010)).

²³⁹ *Id.*

²⁴⁰ Midwest Developers Protest at 33 (citing *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*, 137 FERC ¶ 61,076 (2011) (finding that a provision of MISO's tariff allowing a Transmission Owner to return the costs of constructing network upgrades to an interconnection customer, at the Transmission Owner's election, and to recover these costs over time (Option 1) was unjust, unreasonable, and contrary to Order No. 2003)).

²⁴¹ Midwest Developers Protest at 35.

procurement, and construction of project upgrades and that such a schedule could then be the basis for establishing payment milestones.²⁴²

176. Like other parties, Iberdrola argues that MISO's proposed Article 11.5 only erects another barrier to entry for independent developers and that the payments for project upgrades should be timed to coincide with the construction of those upgrades. Additionally, Iberdrola notes that the filed proposal retains the non-monetary milestone contained in section 11.3 of the GIP.²⁴³ Iberdrola states that that milestone is no longer needed given the changes proposed by MISO and that the Commission should direct MISO to ensure that these types of milestones are consistent throughout the tariff.²⁴⁴

177. Finally, in their comments, the MISO Transmission Owners state that the reference to the "initial payment" in Article 11.5 is unclear because three items are listed in the section, two of which are clearly identified as initial payments and a third option which is identified as the total cost provided as security. To clarify that the reference to "an initial payment" is intended to include all three options, MISO Transmission Owners propose that the second sentence of Article 11.5 be revised to read: "The initial payment or security required pursuant to the preceding sentence shall be provided to Transmission Owner by Interconnection Customer...." MISO Transmission Owners state that this change should also be reflected in Appendix B of the GIA.²⁴⁵

²⁴² *Id.* at 33-34.

²⁴³ Section 11.3 of the GIP requires an interconnection customer to provide, within 180 days after the customer receives the final GIA, reasonable evidence that one or more of the following milestones have been achieved: (i) the execution of a contract for the supply or transportation of fuel to the generating facility; (ii) the execution of a contract for the supply of cooling water to the generating facility; (iii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the generating facility; (iv) execution of a contract for the sale of electric energy or capacity from the generating facility or a statement by an authorized officer or agent of the interconnection customer attesting that the interconnection customer owns the generating facility and that it is required to serve load; or (v) documentation of application for state and local air, water, land or federal nuclear permits and that the application is proceeding per regulations. MISO, FERC Electric Tariff, Attachment X (0.0.0), § 11.3.

²⁴⁴ Iberdrola Protest at 21.

²⁴⁵ MISO Transmission Owners Comments at 12.

iii. Commission Determination

178. We conditionally accept MISO's proposed Article 11.5 of the GIA regarding the size and timing of the Initial Payment after the execution of a GIA.²⁴⁶ We agree with MISO that the customer's ability to build long lead times into its milestones while taking no action towards achieving commercial operation coupled with the lack of a financial commitment to reach commercial operation has significantly contributed to the problem of late-stage terminations and the potential for cascading and iterative restudies.

179. We disagree with those parties that argue that MISO's proposed Initial Payment is anticompetitive or unduly discriminates against independent developers for the same reasons that we reject similar arguments against the M2 milestone payment above²⁴⁷ and rejected similar arguments in the CAISO Queue Order.²⁴⁸ All interconnection customers – whether independent or utility affiliated – will be required to make the initial payment. While underfunded projects may decide to withdraw from the queue, independent developers that have properly funded their projects should benefit from the increased efficiency of the interconnection process. We do not dispute that developers face challenges in order to proceed through the interconnection process and to achieve commercial operation. However, we believe that viable projects would have been laying the groundwork and marketing their projects well ahead of executing a GIA. That is, for projects that are truly viable, the negotiations necessary to finalize business arrangements should be nearly finalized well prior to the actual execution of the GIA such that once the GIA is executed, the other arrangements necessary to obtain funding should be able to be finalized and executed soon after the GIA is executed.

180. With respect to the argument that 30 days is not a sufficient amount of time for an independent developer to raise capital, we note that the interconnection customer will have approximately 105 days from when it learns the size and scope of necessary upgrades to when it will be required to make the Initial Payment. Section 11.2 (Negotiations) of the GIP gives the customer up to 60 days after it receives its draft Facilities Study and/or completed draft GIA to negotiate the final GIA. It also gives the customer an additional 15 days to execute the final negotiated GIA, at which point the time period for submitting the Initial Payment would begin to run. Thus, a customer will have 75 days after initially learning the size and scope of its necessary upgrades plus the

²⁴⁶ We note that, as discussed above, we decline to grant MISO authority to modify existing GIAs on a generic basis.

²⁴⁷ See *supra* section IV.A above.

²⁴⁸ 124 FERC ¶ 61,292 at P 151.

30-day period in Article 11.5 to raise the necessary capital (105 days total). We find this to be just and reasonable and not unduly discriminatory.

181. We disagree with those parties that argue that the Initial Payment is contrary to Order No. 2003 because it is not tied to the schedule to plan, procure, or construct upgrades. While the Commission declined to require the provision of security at some specified period after the execution of an interconnection agreement in Order No. 2003,²⁴⁹ the Commission found that independent entities, such as MISO, should have flexibility to customize their interconnection procedures to fit regional needs.²⁵⁰ Order No. 2003, among other things, was intended to expedite the development of new generation. Based on the evidence provided, we find that the proposed addition of Article 11.5 is consistent with that intention. MISO has provided compelling evidence that, in the current climate, the ability of customers to wait for long lead times to almost expire before terminating their GIA has caused a significant number of restudies to be necessary and that these restudies adversely impact other customers that are trying to reach commercial operation. MISO has demonstrated that the scope of this problem is causing queue churn and is adversely impacting MISO's interconnection process. Therefore, we find that MISO's proposed Article 11.5 has met the independent entity standard.

182. However, we find that MISO has failed to demonstrate that it is just, reasonable, and consistent with Order No. 2003 to permit the Transmission Owner to elect the type of security that an interconnection customer must provide under Article 11.5. MISO has failed to show why the Transmission Owner should be afforded this discretion under proposed Article 11.5, and we are concerned that this language may create opportunities for undue discrimination. Thus, we will require MISO to revise the language of Article 11.5 so that the interconnection customer has the option of meeting the Initial Payment requirement by providing either: (1) a payment equal to 20 percent of the total cost of Network Upgrades, Transmission Owner Interconnection Facilities, Transmission Owner's System Protection Facilities, Distribution Upgrades and/or Generation Upgrades if the In-Service Date is less than or equal to five years from the date of the Initial Payment or 10 percent of the aforementioned cost if the In-Service Date exceeds the date of the Initial Payment by more than five years; or (2) security equal to 100 percent of the cost of the aforementioned upgrades. Accordingly, we direct MISO to revise, within 30 days of the date of this order, Article 11.5 as discussed here. Again, we reiterate that this provision shall only apply to new GIAs or those in effect, which MISO seeks to amend through a filing with the Commission.

²⁴⁹ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 593.

²⁵⁰ *Id.* PP 26, 827.

183. Finally, we decline to order MISO to remove the non-monetary milestone in section 11.3 of the GIP as requested by Iberdrola. There does not appear to be an inconsistency between this provision and Article 11.5. The mere fact that MISO is proposing an additional financial milestone in the form of the Initial Payment does not render section 11.3 unnecessary. On the contrary, it appears that MISO intends to require interconnection customers to make the Initial Payment in addition to meeting these non-financial milestones. We find that doing so is just and reasonable.

5. Studies

a. Section 8.7 “Interconnection Study Restudy”

i. Proposal

184. MISO proposes to revise section 8.7 of the GIP to clarify that a restudy will be needed if a project recommences following a suspension.²⁵¹ Additionally, MISO proposes to revise section 8.7 to clarify that a restudy will be performed subject to the GIP in effect at the time notice of such restudy is provided by MISO.²⁵²

ii. Comments

185. E.ON argues that section 8.7 should be revised to make clear that, unless an interconnection customer that suspends work is a higher-queued generator that is specifically identified in studies provided to lower-queued generators or specifically listed in the executed GIA of a lower-queued generator, then such higher-queued generator shall not be subject to restudy. E.ON maintains that this revision would be consistent with sections 11.3.1 and 11.3.2 of the *pro forma* GIA which provide for restudy when certain actions by higher-queued generators occur and with Order No. 2003, which requires the Transmission Provider to list any contingencies in the GIA. At most, according to E.ON, the restudy provision should apply to the interconnection customer once it comes out of suspension.²⁵³

186. E.ON also points out that MISO is proposing to revise section 8.7 to provide that if a restudy is required, the “Transmission Provider *may* provide notice of restudy” and that “[t]he Transmission Provider’s notice *may* include an explanation of why an Interconnection Study restudy is required and a good faith estimate of the cost to perform

²⁵¹ November 1 Filing at 17 n.52.

²⁵² *Id.* at 17-18.

²⁵³ E.ON Protest at 31.

the Interconnection Study restudy.”²⁵⁴ E.ON argues that the use of “may,” instead of “shall,” is unjust and unreasonable. E.ON states that the interconnection customer must be provided with notice whenever MISO deems that a restudy is required.²⁵⁵ Moreover, E.ON notes that MISO is proposing to delete the requirement that the notice include a summary of a preliminary analysis supporting the need for a restudy. E.ON argues that this requirement should be reinstated, as MISO has not provided any testimony supporting why it is no longer just and reasonable for the customer to receive this analysis.²⁵⁶

187. The Midwest Developers state that MISO’s proposal to expand its authority to restudy a project following suspension is troubling because such restudies previously were intended only to ensure proper scheduling of the interconnection customer’s construction efforts coming out of project suspension, rather than to subject the interconnection customer to new procedures. Moreover, they note that the tariff currently provides that an interconnection customer that exercises its suspension rights shall only be responsible for costs specified in Article 5.16.3 of the GIA²⁵⁷ and that nothing in that Article provides for the assignment of new costs to customers that have already entered into a GIA under the revised GIP.²⁵⁸

iii. Supplemental Filing

188. MISO argues that its proposal to revise section 8.7 to clarify that restudy may occur if a project desires to recommence after suspension using the GIP is consistent with Commission precedent, which supports the idea that a restudy may be needed after a

²⁵⁴ *Id.* (emphasis added).

²⁵⁵ *Id.* at 31.

²⁵⁶ *Id.* at 32.

²⁵⁷ Article 5.16 states that if an interconnection customer suspends, the customer shall be responsible for all reasonable and necessary costs which Transmission Provider and Transmission Owner have incurred pursuant to the GIA prior to suspension and incur in suspending such work, including the costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the transmission or distribution system during suspension as well as costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which the Transmission Provider and Transmission Owner cannot reasonably avoid.

²⁵⁸ Midwest Developers Protest at 17 n.37.

project ends its suspension to account for any changes in the transmission system.²⁵⁹ MISO maintains that its proposed revisions are consistent with Article 11.3.1 of the GIA addressing contingencies because it clarifies that if a project's own suspension delays its Commercial Operation date, it may trigger the need to restudy that project in the same way that the change to the Commercial Operation Date of a higher queued project may do so. MISO notes that Article 11.3.1 of the GIA allows restudy for eight reasons, with the third item stating that "the Commercial Operation Date for a higher queued interconnection request is delayed such that facilities required to accommodate lower queued projects may be altered." MISO argues that it will revise Article 11.3.1 so that it is clear that these provisions are not in conflict.

iv. Commission Determination

189. We conditionally accept MISO's proposal to revise section 8.7 of the GIP such that a project will be subject to restudy, under the GIP in effect at the time of the restudy, when it comes out of suspension if the Transmission Provider determines that such a restudy is necessary. We disagree with E.ON that MISO should be required to further revise section 8.7 to limit the ability to restudy unless an interconnection customer is a higher-queued generator that is specifically identified in studies provided to lower-queued generators or listed as a contingency in an executed GIA. We also disagree with Midwest Developers that MISO's proposed changes lead to more uncertainty for interconnection customers by potentially requiring new costs to be incurred.

190. MISO has an obligation to ensure that the transmission system is operated in a safe and reliable manner. If MISO determines that a project coming out of suspension needs to be restudied and the result of that restudy causes the interconnection customer to incur more cost in order to safely integrate onto the transmission system, then the interconnection customer is going to have to decide whether to fund the additional costs or to withdraw its interconnection request. Because the decision to suspend is made by the interconnection customer, the interconnection customer assumes a certain amount of risk, and uncertainty, regarding its decision. It is disingenuous to claim otherwise.

191. We agree with MISO, as it explained in its Supplemental Filing, that the proposed revisions are consistent with Article 11.3.1 of the GIA addressing contingencies. However, we will direct MISO to further revise the language in Article 11.3 so that it reads "the Commercial Operation Date for a higher queued interconnection request is delayed, or the project itself is delayed (including due to suspension) such that facilities required to accommodate lower queued projects or the project itself may be altered."

²⁵⁹ Supplemental Filing at 23.

192. However, we do agree with E.ON that if a restudy is required, MISO should be required to provide a notice of restudy to the interconnection customer rather than just having the option to do so. Thus, we direct MISO to revise the language in section 8.7 to restore this language to its previous form. We find that this outcome is more consistent with the overall goal of ensuring that all parties are receiving timely and pertinent information about their interconnection projects.

193. We will not direct MISO to provide additional revisions to its proposal regarding the “reach” of the restudy provisions as requested by E.ON. We find that MISO’s intent is very clear – projects that require a restudy will be restudied under the terms of the GIP in effect at the time of the restudy.

b. Changes to Point of Interconnection

i. Proposal

194. MISO proposes to move language from section 7.4, which concerns the procedures for conducting the System Impact Study in the System Planning and Analysis phase, into sections 8.3 and 8.5 of the revised GIP, which concern the scope of the System Impact Study and the procedures for conducting the Facilities Study in the Definitive Planning Phase, respectively. This language grants MISO the right to change an interconnection customer’s proposed Point of Interconnection if the Interconnection System Impact Study or the Interconnection Facility Study indicate that changing the Point of Interconnection can lower the cost of Network Upgrades without raising the total cost for the Transmission Owner and will not result in a Material Modification. The proposed language in sections 8.3 and 8.5, like the existing language in section 7.4, states that if the interconnection customer chooses to revert back to the original Point of Interconnection, the additional cost of the Network Upgrades will be treated as Transmission Owner’s Interconnection Facilities for the purpose of cost allocation and refunds.²⁶⁰

ii. Comments

195. A number of parties contend that the proposal gives MISO unilateral authority to modify the interconnection customer’s point of interconnection and that it subjects the interconnection customer to unreasonable uncertainty since it may not easily be able to modify its point of interconnection. The Midwest Developers assert that requiring the interconnection customer to make a written request to retain the original point of interconnection and agree that network upgrades will be treated as the Transmission Owner’s interconnection facilities allows MISO to eliminate the right of an

²⁶⁰ Proposed revised sections 8.3 and 8.5.

interconnection customer to be reimbursed for Network Upgrade costs by reclassifying these facilities. They state that MISO has failed to explain why eliminating these reimbursement rights is just and reasonable.²⁶¹

196. EcoEnergy states that MISO's proposal stands in stark contrast to the current tariff, which only allows MISO to make changes to the point of interconnection at the System Impact Study in the System Planning and Analysis phase. EcoEnergy notes that while MISO's proposal will allow it to change the point of interconnection as late as the Facilities Study in the Definitive Planning Phase, interconnection customers must have land control and permits substantially complete by the time the project gets to the Facilities Study under the M3 milestone. EcoEnergy states that while MISO attempts to justify its proposal by stating that it simply intended to allow a point of interconnection change at the Definitive Planning Phase stage and by providing pertinent examples, EcoEnergy argues that it is not unreasonable for MISO to determine the lowest cost point of interconnection during the Feasibility Study or the System Impact Study and that there is no reason why the lowest cost point of interconnection could not be identified earlier in the examples provided.²⁶²

197. Several parties highlight that changing a point of interconnection is not a minor matter. The Midwest Developers and AWEA and WOW note that changing the point of interconnection can impact various aspects of project development.²⁶³ The Midwest Developers maintain that only interconnection customers should be able to change their point of interconnection since it is the customer that will bear the cost of interconnection facilities. AWEA and WOW add that the Commission should require MISO to encourage cooperation among the relevant parties – instead of unilaterally allowing MISO to change the point of interconnection – and that interconnection customers should have a reasonable veto power over any change to the point of interconnection.²⁶⁴ NextEra observes that MISO's proposal overlooks the fact that an interconnection customer's chosen point of interconnection may reflect the land acquisition constraints faced by the project developer. NextEra argues that the interconnection customer should be given the right and opportunity to show that it has engaged in reasonable commercial efforts to obtain the rights to access the new point of interconnection and, if it has, then it should be able to remain at the original point of interconnection without incurring

²⁶¹ Midwest Developers Protest at 28-29.

²⁶² EcoEnergy Protest at 3-5.

²⁶³ Midwest Developers Protest at 29; AWEA and WOW Protest at 37-38.

²⁶⁴ AWEA and WOW Protest at 38.

additional costs.²⁶⁵ Iberdrola argues that allowing changes so late in the interconnection process could significantly increase costs and disadvantage the interconnection customer. Iberdrola maintains that the Commission should direct MISO to revise these sections to reference the “existing requirement for Interconnection Customer consent in section 6.3”²⁶⁶

198. Alliant expresses support for MISO’s revisions to section 8.5. It states that MISO’s proposal will allow it to change the point of interconnection where doing so would result in reduced network upgrade costs. According to Alliant, this will protect load in the zones of ITC Midwest and American Transmission Company, where load bears the majority of generator interconnection costs.²⁶⁷

iii. Commission Determination

199. Here, MISO proposes to revise the Tariff to grant itself authority to modify the point of interconnection following both the System Impact Study and the Facilities Study in the Definitive Planning Phase. As EcoEnergy correctly points out, currently the Tariff only permits MISO to make changes to the point of interconnection if the System Impact Study in the System Planning and Analysis phase indicates that changing the point of interconnection can lower the cost of network upgrades.²⁶⁸ While we believe that MISO’s proposal to make such a change at the System Impact Study stage is consistent with MISO’s proposal to revise the nature of the System Planning and Analysis phase, we find that MISO has failed to justify its proposal to make changes at the Facilities Study stage. The System Impact Study will be the first study conducted after the interconnection customer enters the Definitive Planning Phase. With respect to the Facilities Study, we agree with protesters that allowing MISO to change the point of interconnection at such a late stage could significantly increase costs by impacting

²⁶⁵ NextEra Protest at 6-7.

²⁶⁶ Iberdrola Protest at 22-23. Currently, section 6.3 provides that “[i]f the results of the Interconnection Feasibility Study indicate that an Interconnection Request for a smaller capacity amount could proceed to the [Definitive Planning Phase], Interconnection Customer will have the option to reduce the size of the Interconnection Request to a size equal to or less than Transmission Provider determined amount and proceed to the Definitive Planning Phase.” MISO, FERC Electric Tariff, Attachment X (0.0.0), § 6.3.

²⁶⁷ Alliant Comments at 5.

²⁶⁸ MISO, FERC Electric Tariff, Attachment X (0.0.0), § 7.4.

aspects of project development other than the point of interconnection and unreasonably disadvantage that interconnection customer. Accordingly, we accept MISO's proposed revisions to section 8.3 concerning the ability to change the point of interconnection at the System Impact Study stage; however, we reject, without prejudice, MISO revisions to section 8.5. regarding MISO's authority to change the requested point of interconnection at the Facilities Study stage. Therefore, we direct MISO to submit a compliance filing, within 30 days of the issuance of this order, deleting this language from section 8.5 of the GIP.

c. Model Sign-Off

i. Proposal

200. MISO states that, as proposed, sections 7.3 and 8.3 of the GIP require the interconnection customer to provide a completed Interconnection Study Model Review Form that is provided as a new Appendix 10 to the GIP. MISO explains that these revisions require each interconnection customer to review and sign off on the model for its study prior to the SIS in both the System Planning and Analysis phase and the Definitive Planning Phase.²⁶⁹ MISO explains that the failure to provide a form within 30 days is grounds for withdrawal under section 3.6 of the GIP. MISO maintains that requiring the interconnection customer to sign off on the underlying model will help provide additional certainty to the interconnection process. MISO explains that, while it distributes load flow models to Transmission Owners and interconnection customers for review early in the study process under the current GIP, interconnection customers, in practice, rarely raise issues with the model unless the interconnection studies reveal that costly upgrades are necessary to interconnect or when PPAs are scarce.²⁷⁰ MISO states that interconnection customers will then allege that the study contains modeling errors, which can impact the interconnection process. MISO states that requiring interconnection customers to sign off at the beginning of the process will make the process more efficient by avoiding the need for arguments and to repeat work.²⁷¹

²⁶⁹ November 1 Filing at 13, 16; Laverty Testimony at 28.

²⁷⁰ Laverty Testimony at 28-29.

²⁷¹ *Id.* at 31.

ii. Comments

201. Xcel supports the model sign-off requirement. It states that the sign-off requirement on the model will help provide certainty and efficiency to the process and remove delays that currently exist.²⁷²

202. Several commenters object to the requirement that the interconnection customer submit the Interconnection Study Model Review Form within 30 days and argue that a longer time period is necessary.²⁷³ AWEA and WOW state that while they do not dispute the fact that requiring interconnection customers to sign off on a model might help to reduce model changes and restudies in the future, they believe that 30 days is insufficient because interconnection customers will likely need to hire consultants to assist with this review. AWEA and WOW further state that they believe that the consequences for not returning the sign-off form within 30 days are overly punitive and unnecessary and that other consequences, such as not allowing studies to move forward, would likely be just as effective without the extreme measure of removing an interconnection customer from the queue. The Midwest Developers and AWEA and WOW ask the Commission to direct MISO to change the deadline for reviewing the study model to 90 days and to remove the punitive consequences of withdrawal from the queue if the study model review is not returned in the prescribed time period.²⁷⁴ Geronimo argues that at least 60 to 90 days would be appropriate.²⁷⁵

203. Additionally, the Midwest Developers and Iberdola state that signing off on a study model should not preclude challenges to interconnection studies.²⁷⁶ The Midwest Developers note that, while interconnection customers will have the opportunity to review the models, they will not have full access to system data available to MISO and Transmission Owners. Thus, the Midwest Developers maintain, that it is not reasonable to equate signing off on a form with signing away one's right to later challenge study results or underlying assumptions. Accordingly, the Midwest Developers ask the Commission to direct MISO to include language in its proposal to the effect that neither an interconnection customer's opportunity to comment on the model nor its execution of

²⁷² Xcel Comments at 8.

²⁷³ AWEA and WOW Protest at 28-29, Midwest Developers Protest at 30-31; Geronimo Protest at 3.

²⁷⁴ AWEA and WOW Protest at 28-29, 31; Midwest Developers Protest at 28.

²⁷⁵ Geronimo Protest at 3.

²⁷⁶ Midwest Developers Protest at 28; Iberdola Comments at 23.

the Interconnection Study Model Review Form constitutes a waiver of its rights to challenge the study results.²⁷⁷

204. AMP requests clarification that the provision does not require that the interconnection customer and the Transmission Owner agree on the recommended changes to the model that will be included on the Interconnection Study Model Review Form. It believes the Transmission Owner would have the opportunity to take advantage of the interconnection customer and delay the process in order to ensure that an interconnection customer's project will be withdrawn from the queue²⁷⁸ E.ON claims that MISO has not demonstrated that there is a systemic problem. It states it is not aware of any lack of necessary information from the interconnection customer in order for MISO to provide accurate study results.²⁷⁹

205. AWEA and WOW argue that MISO's proposals to increase the risks and requirements for interconnection customers should be balanced with new accountability for MISO and the MISO Transmission Owners. AWEA and WOW state that there continue to be errors in study models, which delay the progress of interconnection customers; yet, there are no penalties for such errors. They state that, when the model sign-off requirement was discussed early in the stakeholder process, there were consequences if the Transmission Owner did not return the sign-off form. AWEA and WOW argue that Transmission Owners have an important role in ensuring an efficient and accurate interconnection process, as, in many cases, interconnection customers do not have detailed information about the transmission system, other interconnection customer's requirements, or new generators or transmission facilities being added to the system. Accordingly, AWEA and WOW argue that the Commission should require MISO to include balanced consequences for both MISO and the Transmission Owners regarding meeting timelines included in the tariff, inclusion of errors in study models, etc.²⁸⁰ Similarly, Geronimo argues that MISO's proposal lacks proportionality because, while failure to submit the model-sign off form within 30 days will result in complete withdrawal from the queue, there are no revisions that would hold MISO or the Transmission Owners accountable for any mistakes that they may make.²⁸¹

²⁷⁷ Midwest Developers Protest at 28.

²⁷⁸ AMP Protest at 14.

²⁷⁹ E.ON Protest at 9-10.

²⁸⁰ AWEA and WOW Protest at 30-31.

²⁸¹ Geronimo Protest at 3.

iii. Answers

206. In response, MISO repeats its arguments in support of the proposed revision. MISO adds that the requirement does not strip interconnection customers of the ability to protest the ultimate results of the Interconnection Study, but rather it merely seeks to engage interconnection customers in the Interconnection Study Process up front so as to ensure that any disagreements over the study results are genuine. MISO also disagrees with the argument that interconnection customers do not have the necessary expertise or resources to be able to review the Interconnection Study Model because it has not seen any lack of resources or expertise on the part of interconnection customers when challenging Interconnection Study results. MISO finally notes that it cannot allow interconnection customers to have additional time to complete the Interconnection Study Model Review Form without a commensurate delay in the Definitive Planning Phase because it only has 90 days to complete the Interconnection Study.²⁸²

iv. Commission Determination

207. We conditionally accept MISO's proposed revisions to sections 7.3 and 8.3 of the GIP.

208. We disagree with NextEra's contention that 30 days is insufficient time for the customer to review and execute a study review form when it is being studied in the Definitive Planning Phase. Before reaching the Definitive Planning Phase, a customer would have had to perform its own due diligence in order to build a business case that would justify its request for interconnection and would have committed to move forward. Part of this due diligence would be to understand the impact of the proposed interconnection on the existing transmission system with the interconnection request. Another part would be lining up appropriate technical experts or consultants. This would be done through its own efforts and by the customer availing itself of MISO's Pre-Queue Phase and Interconnection Feasibility Study (section 6 of the GIP). Thus, we expect that the interconnection customer would be sufficiently knowledgeable regarding the state of its interconnection request such that 30 days is sufficient for the customer to seek out and understand any differences between its knowledge and the model provided by MISO.

209. We also disagree that deeming the interconnection request to be withdrawn for failing to fulfill the obligation to execute an Interconnection Study Model Review Form within 30 days in the Definitive Planning Phase is not just and reasonable or is unduly harsh. As the Commission has stated previously, the overall goal of interconnection queue reform is to discourage speculative or unviable projects from entering the queue, getting projects not making progress towards commercial operation out of the queue, and

²⁸² MISO December 15 Answer at 12-13.

helping viable projects achieve commercial operation as soon as possible.²⁸³ Customers that are insufficiently prepared to meet this obligation within the given timeframe are not making sufficient progress towards reaching commercial operation and therefore, should not remain in the interconnection queue.

210. Finally, with respect to AMP's concern regarding the potential for a Transmission Owner to delay the process in order to ensure that an interconnection customer's project will be withdrawn, we note that the language of proposed sections 7.3 and 8.3 does not appear to require the interconnection customer and Transmission Owner to agree on a model within 30 days. On the contrary, these sections require the interconnection customer to submit a completed and executed Interconnection Study Model Review Form within 30 days of receiving the models.

211. However, we find that MISO has not adequately explained why the interconnection customer should be required to return the Interconnection Study Model Review Form within 30 days in the System Planning and Analysis phase. Given MISO's proposal that an interconnection customer may remain in the System Planning and Analysis phase until it is ready and that the interconnection customer can set assumptions under which it is studied in the System Planning and Analysis phase, we believe that the same rigorous 30 day period has not been supported as just and reasonable. We will require MISO to submit a compliance filing revising this section to propose a timeframe that is in line with the fact that the interconnection customer may remain in the System Planning and Analysis phase indefinitely.

6. Modifications

a. MISO's Proposal

212. MISO proposes to revise section 4.4 of the GIP to limit the number of permissible modifications once a project enters the Definitive Planning Phase. More specifically, MISO states that it proposes to limit the types of permissible modifications to those listed in sections 4.4.1, 4.4.2, and 4.4.4. MISO states that an interconnection customer would still be required to provide an analysis demonstrating why the proposed change is not a material modification.²⁸⁴

213. MISO explains that the only changes that would be permitted during the Definitive Planning Phase under section 4.4.1 would be changes to the technical parameters associated with the Generating Facility technology (i.e., wind turbines) and changes to

²⁸³ Queue Reform Order, 124 FERC ¶ 61,183 at P 44.

²⁸⁴ November 1 Filing at 9.

the Point of Interconnection permitted under section 4.4.²⁸⁵ In new section 4.4.2, MISO proposes language that prohibits modifications to the type of interconnection service selected by the interconnection customer after the project enters the Definitive Planning Phase other than a change from Network Resource Interconnection Service to Energy Resource Interconnection Service pursuant to section 3.2 of the GIP.²⁸⁶ Section 3.2 of the GIP states that an interconnection customer requesting Network Resource Interconnection Service may request that it be concurrently studied for Energy Resource Interconnection Service up to the point when the Facilities Study for network upgrades commences. At that point, an interconnection customer may elect to proceed with Network Resource Interconnection Service or to proceed under a lower level of interconnection service to the extent that only certain upgrades will be completed.

214. Additionally, MISO states that it is adding language to section 4.4.4 providing that extensions to the In-Service Date or Commercial Operation Date of the Generating Facility shall be deemed a Material Modification.²⁸⁷

b. Comments

215. E.ON notes that while MISO indicates that “changes to technical parameters” includes changes in turbines, section 4.4.1 does not mention turbines. E.ON requests that the Commission require MISO to clarify this language to reflect that a change in turbines is a permissible modification. Additionally, E.ON states that the requirement that the interconnection customer provide a “detailed analysis” demonstrating that the change in turbines is not a Material Modification should be revised, as MISO itself recognizes that it has never denied a request to change turbines and MISO has tremendous experience and familiarity of the system impact that a change in turbines has. E.ON suggests that the section be revised to read that “no such detailed analysis shall be required so long as a change in turbines involves the type or manufacturer of turbines Transmission Provider

²⁸⁵ Proposed revised section 4.4 states that, prior to the completion of the interconnection studies, the interconnection customer, Transmission Owner, or Transmission Provider may identify changes to the planned interconnection that may improve the costs and benefits of the interconnection. To the extent the changes are acceptable to all parties, such acceptance not to be unreasonably withheld, MISO shall modify the point of interconnection and/or configuration

²⁸⁶ November 1 Filing at 9.

²⁸⁷ *Id.*

maintained on its approved list.” E.ON argues that this revision would be consistent with MISO’s goals of improving operating efficiency and customer service.²⁸⁸

216. Iberdrola argues that the Commission should reject MISO’s attempt to shift Transmission Provider responsibilities to interconnection customers. It states that MISO has failed to support the proposed limitation on modifications once a project is in the Definitive Planning Phase and that MISO should be required to evaluate project modifications on a case-by-case basis to determine their impact on lower-queued projects. Iberdrola maintains that the interconnection customer should have the opportunity to demonstrate that a modification does not have any material impact on a later queued project.²⁸⁹

217. Similarly, EPSA argues that the Commission must reject MISO’s proposal to restrict the scope of permissible modifications in the Definitive Planning Phase, as MISO has failed to justify the need for these restrictions and MISO’s proposal would upset the balance struck by Order No. 2003 between providing customers with flexibility and ensuring the Transmission Providers can efficiently and accurately process interconnection requests. EPSA states that MISO has failed to justify its determination that the only plant equipment that may be changed in the Definitive Planning Phase is the generator turbine or its decision to eliminate other changes that the Commission determined to be permissible and non-material in Order No. 2003, such as reductions in the size of the proposed facility. Additionally, EPSA argues that MISO has no basis for its blanket presumption that, apart from changes to generation turbines, any such changes will necessarily materially affect lower-queued generators. EPSA states that the Commission should require MISO to continue to examine whether a proposed change has a material impact on lower-queued generators on a case-by-case basis.²⁹⁰

218. Midwest Developers argue that an interconnection customer should have the right to change from Network Resource Interconnection Service to Energy Resource Interconnection Service after the Facilities Study if a restudy indicates that Network Resource Interconnection Service would require additional Network Upgrades to be built.²⁹¹

²⁸⁸ E.ON Protest at 25-27.

²⁸⁹ Iberdrola Protest at 21-22.

²⁹⁰ EPSA Protest at 18-20.

²⁹¹ Midwest Developers Protest at 37.

219. Several parties argue that the Commission should reject MISO's proposal regarding changes to the commercial operation and In-Service Dates. A number of parties argue that MISO's proposal is contrary to Commission precedent stating that extensions of more than three years do not constitute Material Modifications unless it can be demonstrated that the proposed extension would harm lower-queued interconnection customers or otherwise harm reliability.²⁹² AWEA and WOW maintain that MISO is treating all extensions to commercial operation and In-Service Dates as suspensions in order to justify the implication that any extension is a per se Material Modification. AWEA and WOW state that the Commission has rejected such attempts in the past.²⁹³ They urge the Commission to clarify that MISO may not summarily deny extensions to an interconnection customer's Commercial Operation Date, In-Service Date, or other milestones.

220. E.ON argues that MISO has failed to provide any support for its proposal regarding extensions of the commercial operation and In-Service Dates and that this revision is not necessary to advance queue reform or to address any backup. With respect to extensions of the In-Service Date, this date, by definition, is the date that the interconnection customer expects to use the Transmission Owner's interconnection facilities to obtain back feed power. E.ON states that, as a result, extending this date will not impact other projects in the queue and will not contribute to any backlog in the queue. Likewise, E.ON claims that an extension of the Commercial Operation Date will not impact the generation queue because the Transmission Owner will construct the network upgrades agreed upon and, with the network upgrades in place, any lower-queued generator will not be impacted. Moreover, E.ON states that lower-queued generators will not be harmed if a higher-queued facility achieves commercial operation at a later date because the studies of lower-queued generators are required to model higher-queued generating facilities.²⁹⁴

221. Further AMP protests that an interconnection customer should not be penalized for circumstances beyond its control that may change the In-Service or commercial operation date. AMP states that MISO's elimination of the ability to change the In-Service and commercial operation date would force the interconnection customer to

²⁹² EPSA Protest at 18 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,172, at P 13 (2010); *Judith Gap Energy LLC*, 125 FERC ¶ 61,169, at PP 17-20 (2008); *Ill. Power Co.*, 120 FERC ¶ 61,237, at PP 20-22 (2007)); AWEA and WOW Protest at 32; Midwest Developers Protest at 30-32.

²⁹³ AWEA and WOW Protest at 32-35 (citing *Quilt Block Wind Farm*, 130 FERC ¶ 61,172 (2010)).

²⁹⁴ E.ON Protest at 27-28.

incorporate extra time into projected In-Service and commercial operation dates as a cushion against the inability to alter these dates in the future.²⁹⁵ Iberdrola also raised the concern that the proposed revisions prevent the interconnection customer from modifying its commercial operating date even in the event that circumstances dictate that network upgrades or interconnection facilities will take significantly longer than anticipated.²⁹⁶

c. Answers

222. MISO explains that the purpose of these changes is to provide all queued projects with certainty that only projects that are ready to proceed to commercial operation enter the Definitive Planning Phase. MISO argues that EPSA's argument that an interconnection customer should not be required to forfeit its place in the queue for extending its Commercial Operation Date fails to consider that there are already provisions in place in the GIA to accommodate minor construction delays over which the interconnection customer has no control.²⁹⁷ Finally, MISO notes that a delay of three years would negate the Facilities Study for the project and would require a restudy in the System Planning and Analysis phase.²⁹⁸

d. Commission Determination

223. We conditionally accept MISO's proposed revisions to section 4.4. We believe that MISO's proposal to limit the types of change permissible in the Definitive Planning Phase is consistent with the need to ensure that a project that enters the Definitive Planning Phase is "definitive." We understand Iberdrola's concern that MISO may seek to remove projects from the queue because of minor modifications, although we note that parties have a right to contest such actions through the dispute resolution procedures in the GIP and as a backstop, at the Commission. However, we will require further modifications below.

²⁹⁵ AMP Protest at 4-5.

²⁹⁶ Iberdrola Protest at 22.

²⁹⁷ MISO December 15 Answer at 9-10 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,222, at P 26 (2011) (explaining that Article 5.1.1 of the GIA contemplates that circumstances may arise where construction milestones will not be met and provides for the possibility that construction timelines may need to be modified)).

²⁹⁸ *Id.* at 10.

224. We decline to require MISO to revise the language of section 4.4.1 to clarify that a change in turbine is a permissible modification. While MISO acknowledges that it has not found an instance where it has not granted a request for a turbine change, we are not persuaded that we should require MISO to revise this section to permit turbine changes on a generic basis. Instead, we believe that MISO should continue to have the ability to evaluate each proposal to change the technical parameters associated with a Generating Facility's technology, including a turbine change, to ensure that the proposed modification is not a Material Modification.²⁹⁹

225. However, with regard to MISO's proposed revisions regarding the Commercial Operation Date and In-Service Date, we find that further modification is required. Specifically, we find that where a party to the GIA other than the interconnection customer changes its milestones thereby resulting in the interconnection customer needing to revise its own Commercial Operation Date and In-Service Date, we believe that MISO's approval of such revision should not be unreasonably withheld. Similarly, MISO's approval of an interconnection customer's need to change a date due to changes in a higher-queued interconnection request should not be able unreasonably withheld. In either case, these changes should not exceed three years beyond the original Commercial Operation Date or In-Service Date. We direct MISO to include in its compliance filing revisions to section 4.4, within 30 days of the date of this order, consistent with this discussion.

226. With respect to the Midwest Developers' argument that an interconnection customer should be permitted to downgrade its level of interconnection service after the Facilities Study if a restudy indicates that Network Resource Interconnection Service would require additional upgrades to be built, we disagree. We believe that MISO's proposal is just and reasonable and consistent with the purpose of the Definitive Planning Phase. While the Midwest Developers identify an alternative that they prefer, this alone does not render MISO's proposed revisions unjust and unreasonable.

7. **Miscellaneous**

a. **Article 5.9**

i. **Proposal**

227. MISO proposes to revise Article 5.9, "Limited Operation," of the *pro forma* GIA to require the maximum permissible output of a generating facility to be updated on a quarterly basis in the event that the network upgrades necessary for the interconnection of the generating facility are not in service within six months following the Commercial

²⁹⁹ Proposed revised section 4.4.1.

Operation Date of the facility. MISO explains that this process is currently used for provisional GIAs executed pursuant to section 11.5 of the GIP. MISO states that its proposal will extend this practice to all GIAs that may have limited operation until all upgrades are in place.³⁰⁰

ii. Comments

228. In its protest, NextEra argues that MISO is proposing to establish stricter operating limits on projects that are already operating but whose Network Upgrades are not yet completed. NextEra explains that under the current version of Article 5.9, MISO performs operating studies to determine to what extent a project without all of the required upgrades in place may operate and develop operating guides based on this information. Here, according to NextEra, MISO's proposed language is designed to produce a single limit which will be applied across all hours in a given quarter, regardless of the dynamic nature of the system or the output of a wind energy generator. NextEra alleges that this provision will severely limit generators with executed GIAs to an inflexible operating cap that unnecessarily restricts operations.³⁰¹

229. EcoEnergy argues that if this section is adopted, the manual curtailment that has been conducted in real time will be replaced with a quarterly curtailment study that may restrict sales that could have been conducted under previous procedures. EcoEnergy states that there has long been a lack of transparency in the wind curtailment process and this language will only make the situation worse.³⁰²

iii. Commission Determination

230. In the Queue Reform Order, the Commission agreed with MISO that as the number of temporary (now known as provisional) interconnections increase that it would become impractical for MISO to calculate operating limits based on real-time conditions.³⁰³ Here, MISO is proposing to apply the same type of operating limits on projects that are not yet capable of obtaining their maximum output because the upgrades necessary to facilitate that maximum output are not yet completed. We find that the burden that would be imposed on MISO in order to provide real-time operating limits in these two situations is analogous. Thus, we will allow MISO to provide quarterly

³⁰⁰ November 1 Filing at 19.

³⁰¹ NextEra Protest at 8-9.

³⁰² EcoEnergy Protest at 3-4.

³⁰³ Queue Reform Order, 124 FERC ¶ 61,183 at P 131.

operating limits to generators that are operating, but are unable to operate at their full capacity, because they are still waiting for network upgrades to be constructed.

b. Appendix H

i. Proposal

231. MISO proposes to add new Appendix H to the GIA to incorporate *pro forma* language to be used for provisional GIAs. MISO states that the language has been developed based on MISO's experience in implementing provisional GIAs and that it intends to include Appendix H as part of all provisional GIAs on a prospective basis.

ii. Comments

232. MISO Transmission Owners state that in the third line of the second paragraph, the language "and to require then to be in place" should read "and to require them to be in place."

iii. Supplemental Filing

233. In the Supplemental Filing, MISO notes that the reference to "Interconnection Customer facilities" in paragraph 3 of its revisions to Appendix H is meant to encompass Network Upgrades, Interconnection Facilities, Distribution Upgrades, System Protection Upgrades, and/or Generator Upgrades. MISO states that it will clarify this language if so directed by the Commission.³⁰⁴

iv. Commission Determination

234. We direct MISO to revise, within 30 days of the date of this order, the third line of the second paragraph of Appendix H to the GIA as described by MISO Transmission Owners above. Additionally, we direct MISO to clarify the language in Appendix H regarding the usage of "Interconnection Customer facilities" as proposed in its Supplemental Filing. In particular, we direct MISO to clarify that the reference to "Interconnection Customer facilities" in paragraph three of its revisions to Appendix H is meant to encompass Network Upgrades, Interconnection Facilities, Distribution Upgrades, System Protection Upgrades, and/or Generator Upgrades.

³⁰⁴ Supplemental Filing at 27.

c. Dispute Resolution

i. Proposal

235. MISO proposes to delete the reference to dispute resolution as an alternative to the execution or unexecuted filing of a GIA. MISO states that because projects may now remain in the System Planning and Analysis phase until they are ready to proceed and that they will have to make a financial commitment to meet the M2 milestone payment, MISO anticipates that projects that reach this stage will not need to seek dispute resolution. Further, MISO states that providing dispute resolution as an alternative to proceeding with a GIA or multi-party facilities construction agreement in executed or unexecuted form at that late stage injects uncertainty into the interconnection process. Finally, MISO states that it has seen an increase in requests for dispute resolution and critiques of its process as projects near the deadline to execute an agreement or to file it unexecuted. And in any case, MISO notes that dispute resolution is still available to parties but that seeking dispute resolution does not delay the deadline to execute the agreement or file it unexecuted.

ii. Comments

236. Midwest Developers argue that MISO's proposal effectively eliminates dispute resolution as a meaningful option for interconnection customers by eliminating the "tolling" of the sixty day deadline while such dispute resolution is pending.³⁰⁵ While MISO states that dispute resolution would still be available to customers, Midwest Developers aver that dispute resolution regarding the draft GIA is of little value if interconnection customers nonetheless have to choose, prior to completion of the dispute resolution process, whether to execute the GIA or request that it be filed unexecuted. As a result, Midwest Developers posit that the only effect of MISO's proposal would be to decrease the likelihood of resolving the underlying problems that trigger dispute resolution and to increase the number of unexecuted GIAs filed at the Commission.³⁰⁶

iii. Commission Determination

237. We will accept MISO's proposal to eliminate the reference to dispute resolution as an alternative to the execution or unexecuted filing of a GIA. While we do not disagree with Midwest Developers that the result of this change is to eliminate the "tolling" of the sixty day deadline, we find MISO's general argument regarding the timeliness of this queue reform filing compelling. That is, we agree with MISO that there are numerous

³⁰⁵ Midwest Developers Protest at 35.

³⁰⁶ *Id.* at 36.

projects entering the Definitive Planning Phase without moving forward while the developers attempt to resolve uncertainties or to obtain financing³⁰⁷ and that this outcome is inconsistent with the Commission's goal of improving the efficiency of the interconnection process.

d. GIP, Appendix 1

i. Proposal

238. MISO proposes to revise Attachment A to Appendix 1 of the GIP to request additional detail related to reactive capability for wind turbines and other details, including specific MVAR data for the turbines and the MVAR data provided by the collector cables between the generator turbines and the point of interconnection, to assist in the evaluation of interconnection requests. Under MISO's proposal, an interconnection customer is required to provide this information prior to entering the Definitive Planning Phase.³⁰⁸ MISO states that, consistent with Order No. 661,³⁰⁹ interconnection requests for wind resources need not supply the reactive power information at the time that they submit their application but do need to supply this information before entering the Definitive Planning Phase.³¹⁰

ii. Comments

239. The Midwest Developers argue that the Commission should direct MISO to revise the requirement to provide MVAR data prior to entry into the Definitive Planning Phase because MISO has failed to explain why it needs this information prior to entering the Definitive Planning Phase and because accurate MVAR data cannot be provided this early in the development stage. Moreover, they state that MISO's proposal is inconsistent with Order No. 661, which does not impose a power factor requirement on wind facilities unless and until the Transmission Provider shows, through the System Impact Study, that it is required to ensure the safety or reliability of the Transmission Provider's transmission system. They note that the System Impact Study occurs during the Definitive Planning Phase and that, by requiring this information from wind projects in order to enter the Definitive Planning Phase, MISO proposes to compel wind projects

³⁰⁷ MISO December 15 Answer at 5.

³⁰⁸ Proposed revised section 8.2.

³⁰⁹ *Interconnection for Wind Energy*, Order No. 661, FERC Stats. & Regs. ¶ 31,186, *order on reh'g*, Order No. 661-A, FERC Stats. & Regs. ¶ 31,198 (2005).

³¹⁰ November 1 Filing at 18; Proposed revised Appendix 1, Attachment A.

to demonstrate their ability to provide this capability even before MISO has demonstrated that it will be required.³¹¹

240. Similarly, AWEA and WOW argue that an interconnection customer cannot provide all of the data called for on pages 4 and 5 of Attachment A to Appendix 1 of the GIP with 100 percent accuracy at the outset of the GIP. For example, AWEA and WOW state that the MVAR provided by the collector cables between the generator turbines and the Point of Interconnection depends on the design and construction-specific details that will be available later in the process. AWEA and WOW state that, while an estimate can be provided at the time the form is submitted, this will likely need to be adjusted later. Additionally, AWEA and WOW state that the Operational Tap Setting, on the other hand, is impossible to determine at the outset of the Definitive Planning Phase, and should be removed from the form. AWEA and WOW believe that interconnection customers can provide reasonable estimates to most of the information requested on the form at that time, but are concerned that the stringent limitations on modifications under the tariff could result in an interconnection customer being withdrawn from the queue in the later stages of the Definitive Planning Phase.³¹²

iii. Answers

241. In its answer, MISO explains that its proposal is intended to ensure that any need for reactive power can be determined in the System Impact Study is consistent with Order No. 661. MISO asserts that information from interconnection customers is necessary to make this determination. Finally, MISO states that to the extent this information is truly unavailable early in the process, MISO would consider that issue on a case-by-case basis.³¹³

iv. Commission Determination

242. We reject MISO's revisions to require detail related to reactive power capability for wind turbines prior to entering the Definitive Planning Phase. We agree with Midwest Developers that MISO's proposal is inconsistent with Order Nos. 661 and

³¹¹ Midwest Developers Protest at 38-39.

³¹² AWEA and WOW Protest at 35-36.

³¹³ MISO December 15 Answer at 12 n.21.

661-A.³¹⁴ The Commission's policy requires that if a System Impact Study demonstrates that a wind plant must possess reactive power capability that wind plant must be capable of meeting the standard power factor range of 0.95 leading to 0.95 lagging or any different power factor range that has been established for the relevant control area.³¹⁵ MISO's proposed revisions regarding reactive power capability – by requiring this information before any need has been established by a System Impact Study - puts the cart before the horse. Otherwise, we accept the informational requirements to Attachment A to Appendix 1 of the GIP and require that MISO submit a compliance filing within 30 days of the date of this order removing the requirement to provide reactive power information prior to entering the Definitive Planning Phase.

243. In response to AWEA and WOW's argument that an interconnection customer cannot provide all of the data needed, we recognize the concern of only being able to provide an estimate of data and potentially being withdrawn from the queue if modifications are needed. Therefore, we will require MISO, in a compliance filing to be submitted within 30 days from the date of this order, to revise its Tariff to accommodate the fact that the customer may only be able to provide estimates of the details described on pages 4 and 5 of Attachment A to Appendix 1 and ensuring that an interconnection customer will not be removed from the queue if adjustments are needed.

e. Site Control

i. Proposal

244. In its revisions to the GIP and the GIA, MISO proposes to expand the definition of Site Control by requiring interconnection customers to demonstrate a right to develop a site for the construction of interconnection facilities in addition to the same demonstration for generating facilities.

ii. Comments

245. In its protest, Iberdrola argues that MISO's proposed definition of Site Control is overly vague because the phrase "when applicable" when applied to interconnection

³¹⁴ The Commission will hold a Technical Conference to examine whether the Commission should reconsider or modify the reactive power provisions of Order No. 661-A. See Notice of Technical Conference, Docket No. AD12-10-000 (Feb. 17, 2012).

³¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,270 (2006), *order on reh'g*, 135 FERC ¶ 61,065 (2011).

facilities is insufficiently specific as to when site control will be applicable and that, as proposed, leaves too much discretion to MISO.

iii. Commission Determination

246. We agree with Iberdrola that MISO's proposed definition is unclear. Therefore, we will accept MISO's proposed revisions to the definition of Site Control on the condition that MISO include in its compliance filing revisions to clarify those instances where the documentation required to demonstrate site control includes Interconnection Facilities.

f. Section 7.5

i. Proposal

247. MISO proposes to change the meeting between the interconnection customer, Transmission Owner, and MISO following the receipt of the Interconnection System Impact Study report from a mandatory meeting to an optional meeting that will be held if needed.³¹⁶

ii. Comments

248. AMP states that in the event the Commission does not reject this change, the Commission should direct MISO to further modify the language in section 7.5 to state that whether to hold a meeting is within the interconnection customer's discretion and that the Transmission Owner and MISO must participate in good faith if an interconnection customer determines that a meeting is necessary.³¹⁷

iii. Commission Determination

249. We conditionally accept MISO's proposed revision to section 7.5 of the GIP regarding the meeting to discuss the outcome of the Interconnection System Impact Study. We recognize that a meeting may not be necessary in all cases. However, we find that all parties should have an opportunity to discuss the outcome of the Interconnection System Impact Study to raise issues with the outcome of the study and that other parties should participate in good faith. Therefore, we direct MISO to revise section 7.5 to state that the interconnection customer, Transmission Owner and/or the Transmission Provider may request such a meeting and that all parties must participate in such meetings in good faith. .

³¹⁶ November 1 Filing at 14.

³¹⁷ AMP Protest at 15.

g. Study Backfill

i. Proposal

250. In section 4.2 of the GIP, MISO proposes to delete the last paragraph of the section that related to “backfilling” interconnection customers in group studies.³¹⁸ Based on its experience, MISO states that few interconnection customers want to have their projects moved forward in the process to “backfill” a study when a higher-queued project withdraws.³¹⁹

ii. Comments

251. The Midwest Developers argue that eliminating MISO’s authority to “backfill” a study is neither necessary nor prudent. They contend that MISO has missed opportunities to solicit backfill projects by not providing timely and useful information to potential backfill projects. They state that the fact that MISO has ineffectively implemented the backfill provisions should not be interpreted to mean that the provisions are not desirable or useful.³²⁰ Additionally, Midwest Developers believe that backfilling projects could become more useful as the Group 5 restudy process is completed. Similarly, ARES argues that MISO has discouraged and disregarded requests for backfill provisions and suggests that the backfill provision should remain in the Tariff.³²¹

iii. Commission Determination

252. We deny, without prejudice, MISO’s unsupported proposal to eliminate the study backfill provisions of section 4.2 and direct MISO, within 30 days of the date of this order, to restore this language to section 4.2. While MISO maintains that few interconnection customers have wanted to be considered for being backfilled into a group study, we still agree with MISO’s original argument in the Queue Reform Order that “‘backfilling’ of group studies should reduce the restudy time and increase cost certainty

³¹⁸ Backfilling occurs when a project withdraws from a group study and MISO substitutes the next highest queued, similarly situated interconnection request into the study group.

³¹⁹ November 1 Filing at 9.

³²⁰ Midwest Developers Protest at 40.

³²¹ ARES Protest at 1.

for all members of the group.”³²² MISO has not provided any evidence that these provisions need to be removed or that retaining these provisions causes any harm.

8. Net Zero Interconnection Service

a. Proposal

253. In section 3.2.3 of the GIP, MISO proposes a new class of Energy Resource Interconnection Service called Net Zero Interconnection Service. MISO defines Net Zero Interconnection Service as “a form of Energy Resource Interconnection Service that allows an Interconnection Customer to alter the characteristics of a Generating Facility in Commercial Operation, with the consent of Interconnection Customer for that existing Generating Facility, at the same [point of interconnection] such that the new MW capability remains the same.”³²³ MISO explains that the existing generator and new generator work out a control scheme to regulate the output of the combined unit and, as a result, the net effect on output seen by the system is unchanged.³²⁴

254. According to MISO, Net Zero Interconnection Service is consistent with Order No. 2003 because it enables existing generators to better use their existing rights to capacity on the transmission system. In support of its proposal, MISO states that the Commission previously approved the creation of conditional Energy Resource Interconnection Service and Network Resource Interconnection Service as a means to enhance the use of existing system capacity.³²⁵

255. MISO explains that, under its proposal, an interconnection customer that is not the owner or a subsidiary of the owner of the existing Generating Facility will be required to execute an Energy Displacement Agreement with the owner of the existing Generating Facility before submitting a request for Net Zero Interconnection Service. Additionally, the interconnection must also include a memorandum of understanding with the Transmission Owner to enter into a Monitoring and Consent Agreement upon execution of a GIA in its request for Net Zero Interconnection Service.³²⁶

³²² Queue Reform Order, 124 FERC ¶ 61,183 at P 112.

³²³ Proposed revised section 1.

³²⁴ November 1 Filing at 6; Laverty Testimony at 37.

³²⁵ November 1 Filing at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,306, at PP 2-3, 29-32 (2006)).

³²⁶ Proposed revised section 3.3.1; Laverty Testimony at 37-38.

256. MISO states that in order to obtain Net Zero Interconnection Service, the Net Zero Interconnection Service customer must be studied for issues relating to reactive power, short circuit/fault duty, and stability. These studies will identify the interconnection upgrades, if any, that are necessary to address reliability issues associated with the request for Net Zero Interconnection Service.

257. MISO explains that while it believes that the ability to process a request for Net Zero Interconnection Service already exists in the tariff, it is proposing revisions because a critical mass of stakeholders convinced it that it would be beneficial to enumerate and clarify the services in the tariff.³²⁷

b. Comments

258. Numerous parties filed comments supporting Net Zero Interconnection Service. A number of parties express support for Net Zero Interconnection Service because they believe that it promotes the more efficient use of existing interconnection capacity and will allow interconnection customers to avoid costly upgrades.³²⁸ Xcel asserts that Net Zero Interconnection Service is consistent with the Commission's practice of permitting several generators to use the same point of interconnection even though the generators are separately owned and that Net Zero Interconnection Service will expand opportunities for renewable generation development in MISO.³²⁹ AWEA and WOW add that, given that MISO's transmission system is close to capacity, Net Zero Interconnection Service will act as a bridge strategy for increased development of wind and other types of generation until such time as more local and regional transmission upgrades (e.g., MVPs) can be built.³³⁰

259. Other parties argue that the Commission should reject Net Zero Interconnection Service because MISO's proposal is unduly discriminatory and not transparent. EPSA claims that MISO's proposal would permit a generation owner to favor itself or an affiliate in obtaining interconnection service because it is the incumbent generation owner, not MISO, which gets to reassign existing interconnection capacity. Nothing in MISO's proposal, EPSA avers, compels the existing generator to reassign its capacity in

³²⁷ Lavery Testimony at 36-37.

³²⁸ Xcel Comments at 7; Midwest Developers Protest at 43-44; AWEA and WOW Protest at 40.

³²⁹ Xcel Comments at 6-7.

³³⁰ AWEA and WOW Protest at 40.

a transparent or non-discriminatory manner.³³¹ Similarly, EcoEnergy argues that MISO's proposal allows an incumbent generator to "transfer" interconnection capacity to a generator of its choice, thereby allowing the favored generator to jump over other projects in the queue and avoid funding network upgrades.³³² EcoEnergy asserts that the arrangements for the provision of Net Zero Interconnection Service are neither transparent nor open to competition.³³³ EcoEnergy further maintains that MISO's proposal is unduly discriminatory in that it will allow net zero customers to rely upon Special Protection Systems in lieu of paying for network upgrades.³³⁴

260. The Joint Protestors raise similar concerns and argue that the net zero interconnection at issue in Docket No. ER12-188-000 provides an example of how MISO's proposed Net Zero Interconnection Service is discriminatory and inconsistent with open access.³³⁵ They state that, in order to vary the *pro forma* OATT, MISO must show that its variations are "consistent with or superior to" their *pro forma* OATT and that MISO has failed to provide evidence that its proposal meets this standard – other than bald assertions about the supposed benefits of Net Zero Interconnection Service. In fact, they claim that MISO's proposal cannot meet this burden because it invites discriminatory treatment and eliminates open access by allowing entities with an interest in market outcomes the ability to unilaterally select, in a non-transparent manner, favored new generators in a manner that bypasses the traditional interconnection queue and avoids responsibility for network upgrades.³³⁶ Joint Protestors also argue that, under the Net Zero construct, it would be possible for an uneconomic existing generator to

³³¹ EPSA Protest at 27.

³³² EcoEnergy Protest at 10-11.

³³³ *Id.*

³³⁴ *Id.* at 12.

³³⁵ Joint Protestors Protest at 25-27, 28-31. In that proceeding, MISO filed a provisional non-conforming GIA among itself, Northern States Power Company and Prairie Rose including a request for Net Zero Interconnection Service. The Commission conditionally accepted the GIA in an order issued December 23, 2011, subject to a further order. *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,234 (2011). In an order issued concurrently with this order, the Commission directs that that GIA be subject to the outcome of certain compliance requirements detailed herein. *Shetek Wind Inc., Jeffers South, LLC and Allco Renewable Energy Limited v. The Midwest Independent System Operator, Inc.*, 138 FERC ¶ 61,250 (2012).

³³⁶ Joint Protestors Protest at 16-20.

essentially shutter its operation and transfer its interconnection capacity to a new generator that it owns or controls, allowing that new generator to interconnect without having to follow the requirements of the GIP applicable to other generators seeking interconnection. Furthermore, Joint Protestors argue that vertically integrated utilities can use Net Zero Interconnection Service to avoid having their baseload generators exposed to market competition, thus creating a disincentive for incumbent public utilities to build more transmission capacity.³³⁷

261. The Joint Protestors also claim that MISO's net zero policy is inconsistent with open access because it provides an existing public utility with the ability to circumvent the Commission's requirement that each public utility that owns, controls, or operates facilities used for the transmission of electric energy must have on file with the Commission a tariff of general applicability for transmission services over such facilities.³³⁸

262. The Joint Protestors argue that Net Zero Interconnection Service will harm the development of renewables because independent renewable developers will not be able to compete on an equal footing with generators that are affiliated with existing generators and able to access Net Zero Interconnection Service. Joint Protestors argue that, despite MISO's claims to the contrary, Net Zero Interconnection Service will come with deliverability. They note, for example, that Northern States Power has stated to the Minnesota Public Utilities Commission that it will not see curtailment of its net zero interconnection at issue in Docket No. ER12-188-000 because the existing generating facility is deliverable as a network resource and that status is extended to the Net Zero interconnection generator. Joint Protestors argue that this is a huge advantage because other wind projects will be forced to manage the remaining Energy Resource Interconnection Service as a Dispatchable Intermittent Resource. Finally, Joint Protestors aver that the new Dispatchable Intermittent Resource rules that the Commission recently approved will ensure that non-Net Zero projects will be non-competitive versus Net Zero projects.³³⁹

263. Joint Protestors argue that MISO's proposal is inconsistent with section 205 in that the tariff filing fails to include the *pro forma* Energy Displacement Agreement and fails to address other agreements that may affect the GIA for a generator receiving Net Zero

³³⁷ *Id.* at 34-35.

³³⁸ *Id.* at 27-28.

³³⁹ *Id.* at 35.

Interconnection Service.³⁴⁰ Joint Protestors contend that because the proposed Energy Displacement Agreement establishes specific services, rules, terms, and conditions for Net Zero Interconnection Service, MISO must file a *pro forma* Energy Displacement Agreement with the Commission. Additionally, Joint Protestors argue that MISO's filing does not include a transparent method to determine what the "study limit" of the existing generator is and argues that evidence of the study limit should be required to be included in the *pro forma* GIA. Moreover, Joint Protestors argue that MISO's filing fails to address material issues that could arise that would be unique to Net Zero Interconnection Service, such as, for example, what would happen to the Energy Displacement Agreement in the event of bankruptcy.³⁴¹ Additionally, Joint Protestors posit that the GIA for a new generator constitutes an amendment to the terms of the existing generator's GIA and therefore, should require an amendment to the existing generator's GIA.

264. Commenters also raise operational concerns. EPSA states that in its responses to the Commission's data request in the Net Zero Complaint proceeding,³⁴² MISO implicitly concedes that it does not have the ability to automatically curtail or otherwise prevent the combined output of the new and existing interconnection customers from exceeding the maximum injection limits specified in the existing generator's GIA. Additionally, EPSA contends that MISO will not actively monitor generators operating under Net Zero Interconnection Service in order to identify and sanction net output violations. Finally, EPSA argues that as a consequence of MISO's inability or unwillingness to monitor these arrangements, it is possible that MISO may need to curtail or redispatch other generators to address any overloads caused by generators with Net Zero Interconnection Service.³⁴³

265. EcoEnergy argues that, despite MISO's contentions that its currently effective tariff allows Net Zero Interconnection Service and that the new provisions proffered here are merely a clarification of the existing tariff, Net Zero Interconnection Service does not currently exist in MISO's Tariff. To the contrary, EcoEnergy states that Section 3.2 of the GIP clearly identifies Energy Resource Interconnection Service and Network Resource Interconnection Service as the only two types of interconnection service available for new interconnection requests. Additionally, EcoEnergy argues that the proposed study requirements for Net Zero interconnection requests and non-Net Zero

³⁴⁰ *Id.* at 12-13.

³⁴¹ *Id.* at 13-14.

³⁴² Midwest Indep. Transmission Sys. Operator, Inc., Response to Data Request, Docket No. EL11-53-000 (filed Nov. 7, 2011).

³⁴³ EPSA Protest at 26-27.

interconnection requests are substantially different and that the requirements for net zero requests are inconsistent with the currently effective provisions of GIP sections 3.2.1.2 and 4.1 as well as MISO's Generator Interconnection Business Practices Manual section 4.2.5.³⁴⁴

266. According to Joint Protestors, MISO's Net Zero Interconnection Service is premised on the fact that the combined output of the existing generator and the new generator would be limited to the study limit of the existing generator. However, Joint Protestors allege that this premise pre-supposes that the existing generator was properly studied in the first instance and that the study included a review of the interconnection capacity that the existing generator wishes to assign.³⁴⁵ Joint Protestors argue that the proposed GIA currently before the Commission in Docket No. ER12-188-000 shows that this is not the case. Specifically, they allege that the existing generator in that proceeding was, at best, only partially studied for off-peak conditions but that the filed GIA allows the new generator to utilize these off-peak times under the same parameters of the existing generator during peak times. Joint Protestors contend that in those circumstances, it is not clear that there is off-peak transmission capacity available to be assigned to the new generator.

267. Joint Protestors also contest MISO's assertions that Net Zero Interconnection Service will lead to the more efficient utilization of the transmission system. Essentially, Joint Protestors argue that because no new transmission capacity is being added to the overall transmission system to accommodate Net Zero projects, competing interconnection projects will be faced with higher pricing pressure at the node in the form of congestion charges or curtailments that they would otherwise not see.³⁴⁶ As a result of this increased pricing pressure it will become more difficult for new renewable energy projects to become financeable.

268. Joint Protestors argue that Net Zero Interconnection Service violates the Public Utility Regulatory Policies Act (PURPA). They argue that if Net Zero Interconnection Service becomes an option under MISO's GIP, section 292.306 of the Commission's regulations prohibits MISO and any transmission owner within MISO from charging any Qualifying Facility (QF) that seeks interconnection any costs in excess of what it would be charged if it were a net zero interconnection. Likewise, they argue that the same rule

³⁴⁴ EcoEnergy Protest at 5-7.

³⁴⁵ Joint Protestors Protest at 22.

³⁴⁶ *Id.* at 36.

should equally apply to QFs with respect to special protection schemes, which have been used for net zero interconnections.³⁴⁷

269. Finally, Joint Protestors suggest that the Commission should exercise its authority under section 380.4(B) of its regulations to order an environmental assessment of Net Zero Interconnection Service. While the Joint Protestors acknowledge that section 380.4 categorically exempts actions under sections 205 and 206 of the FPA, they argue that the Commission should exercise its discretion to require an assessment where the environmental effects are uncertain. They claim that Net Zero Interconnection Service will result in less transmission being built and less renewable energy being developed.³⁴⁸

270. While generally supporting Net Zero Interconnection Service, Iberdrola states that the Commission should direct MISO to remove the requirement that the interconnection customer provide an executed Energy Displacement Agreement with its interconnection application and require a Memorandum of Understanding instead, as it believes the latter is sufficient to establish agreement between the existing generator and the interconnection customer.³⁴⁹ Additionally, several parties propose revisions to different provisions of MISO's tariff concerning Net Zero, which they claim are necessary to ensure consistency throughout MISO's tariff and to clarify certain aspects of Net Zero Interconnection Service.³⁵⁰

c. Answers

271. In response to the protests, MISO states that existing generators seeking to take advantage of Net Zero Interconnection Service must retain business discretion in choosing which interconnection customers to pair with at a shared Point of Interconnection. MISO states that forcing an existing generator to pair with another interconnection customer based on queue order could result in the existing generator having to contribute to the cost of more expensive assets than another interconnection customer plans to use.³⁵¹

³⁴⁷ *Id.* at 38.

³⁴⁸ *Id.* at 39.

³⁴⁹ Iberdrola Protest at 19.

³⁵⁰ E.ON Protest at 7-8; MISO Transmission Owners Comments at 5-9.

³⁵¹ MISO December 15 Answer at 14.

272. MISO Transmission Owners state that Net Zero Interconnection Service applies in the same manner to all new interconnection customers that wish to interconnect generation at the same location as an existing generator. Additionally, MISO Transmission Owners state that Transmission Owners have no more ability than any other generation owner to use Net Zero Interconnection Service to favor one generator over another because it is MISO that implements and administers the interconnection queue and the associated study processes.³⁵²

273. Xcel states that a Net Zero Interconnection Service generator will connect additional generation capacity at an existing Point of Interconnection without increasing the net output at that Point of Interconnection beyond levels that have already been studied. Net Zero Interconnection Service will allow a new generator to utilize existing transmission capacity when that existing capacity is not being utilized by the existing generator.³⁵³ Thus, Net Zero Interconnection Service increases efficiency by enhancing competition among resources and by reducing the number of hours that existing system capacity is being underutilized.

274. Additionally, Xcel reiterates that the language in proposed Section 3.3.1 of the GIP requires the new generator to enter into an Energy Displacement Agreement with the existing generator to ensure that both generators have contractually agreed to the terms and conditions of the use of the interconnection capacity so that the net injections of energy do not exceed the existing interconnection capacity.³⁵⁴

275. Contrary to the protest of Joint Protestors, Xcel argues that Net Zero Interconnection Service allows generators that otherwise meet the criteria of the MISO Tariff to achieve commercial operation more quickly, thus expanding – not reducing – the opportunities for renewable generation in the MISO market. Also, Xcel states that it is MISO’s transmission planning process that is intended to identify and require construction of transmission upgrades that will reduce congestion in order to provide transmission service.³⁵⁵ That is, network upgrades for interconnection service do not relieve transmission system congestion as suggested by EPSA and Joint Protestors.

276. In response to EcoEnergy’s comments that MISO’s Tariff does not allow for Net Zero Interconnection Service, Xcel answers that several provisions within MISO’s

³⁵² MISO Transmission Owners Answer at 5-6.

³⁵³ Xcel Answer at 4-5.

³⁵⁴ *Id.* at 5-6.

³⁵⁵ *Id.* at 6-7.

pro forma GIA are broad enough to allow for the safe and reliable interconnection of a generator under the Net Zero construct. For example, Sections 9.3 and 9.4 of the *pro forma* GIA obligate all parties to operate in a safe and reliable manner consistent with operating protocols and operating limits. Xcel posits that from an interconnection perspective, it is the net impact of the proposed interconnection on the transmission system, not the precise size or configuration of the generator itself, that matters. So long as measures are taken to ensure that the net output does not exceed the interconnection capacity, the system itself is indifferent.³⁵⁶

277. Regarding arguments that Net Zero Interconnection Service is unduly discriminatory, Xcel reiterates that the proposal does not limit who can request Net Zero Interconnection Service. That is, it is available to all new generators, non-utility and utility-owned alike. It is also available to all existing generators, including those of incumbent utilities and independent power producers. Additionally, the provisions do not impose any different non-operational requirements on any generator seeking to utilize Net Zero than would be required of a generator seeking to interconnect to the transmission system on its own.³⁵⁷

278. Xcel also states that Net Zero Interconnection Service does not facilitate queue jumping as alleged by Joint Protestors. Xcel explains that a Net Zero generator will affect the transmission system differently than other generators proposing to interconnect at the same point. Therefore, it is not unreasonable that the two types of projects progress through the interconnection process at different speeds based on their different system impacts.³⁵⁸

279. Rebutting Joint Protestors' assertions that an existing generator only has interconnection rights under the exact conditions it was studied and that the way in which it was modeled dictates the terms of the existing generator's interconnection rights, Xcel asserts that interconnection service is indisputably an around-the-clock product, meaning that generation is authorized to operate during all hours, whether or not a particular generator has been economically dispatched during any particular hour.³⁵⁹

280. Prairie Rose argues that Joint Protestors misstate the applicable standard and that MISO must show that its proposal meets the "independent entity" standard and not the

³⁵⁶ *Id.* at 9.

³⁵⁷ *Id.* at 10.

³⁵⁸ *Id.* at 13.

³⁵⁹ *Id.* at 14.

“consistent with or superior to” standard. Prairie Rose maintains that MISO’s proposed revisions to clarify Net Zero Interconnection Service under the tariff are just and reasonable because they will provide all parties with a uniform approach to the process of obtaining service. Prairie Rose argues that net zero interconnection should not be expected to provide every answer to the region’s transmission capacity deficit and that significant new transmission will still need to be built over time. Nevertheless, Prairie Rose maintains that net zero interconnections are a significant step towards a more efficient utilization of the existing transmission grid.³⁶⁰ Additionally, Prairie Rose argues that the Joint Protestors’ claims of discrimination are without merit because the difference between their projects and the projects of those that will be able to take advantage of Net Zero Interconnection Service is factual in nature. In particular, Prairie Rose states that simply because Joint Protestors are not similarly situated to all other interconnection customers does not mean that MISO’s proposed revisions equate to undue discrimination.³⁶¹

d. Supplemental Filing

281. In response to questions posed in the December 30, 2011 deficiency letter, MISO states that it does not anticipate creating either a *pro forma* Energy Displacement Agreement or a *pro forma* Consent and Monitoring Agreement at this time but that it would consider doing so if such agreements become more widely used. However, MISO explains that at a minimum, any Energy Displacement Agreement would have to memorialize (1) that the term of the agreement is the same as the term of the GIA for the host generator; (2) that the existing generator will remain in commercial operation over that term; and (3) that the existing generator and the new generator are electrically located at the same Point of Interconnection. MISO explains that as a condition of service, the total combined output of both generators is limited to that of the existing generator (both real and reactive power) at the Point of Interconnection. As part of these conditions of service, MISO states that either the existing generator, the new generator, or the agent for both generators is solely responsible to maintain the coordinated output level within the proper rating and that if the new generator fails to perform as required, it will be curtailed to zero (0) MW until an operating plan is implemented by the two generators, the Transmission Owner, and MISO.³⁶²

282. MISO states that, as a condition of service, the Monitoring and Consent Agreement will require an annual self-certification by the net zero generator, that the

³⁶⁰ Prairie Rose December 15 Answer at 3-4.

³⁶¹ *Id.* at 5.

³⁶² Supplemental Filing at 17.

Energy Displacement Agreement and the Monitoring and Consent Agreement are both in place and that no party is in breach or default of either agreement.³⁶³

283. Regarding what information would be included in the appendices to a net zero GIA in order for MISO to ensure that the customer is operating under the appropriate output and under appropriate conditions, MISO states that a net zero facility is required to meet Attachment X Appendix I requirements that a net zero generator, in coordination with the existing generator, is required to maintain a total combined output limit within the rating of the existing generator at the Point of Interconnection.³⁶⁴

284. In describing the process of obtaining net zero service, MISO states that it anticipates two ways an interconnection customer could identify an opportunity for a net zero interconnection. First, the interconnection customer can examine the vicinity of its proposed location and seek out, if one exists, an existing generator to work out an arrangement. Second, an owner of an existing unit could advertise that it is willing to partner with a prospective interconnection customer. In either case, it would be incumbent on the interconnection customer to develop the opportunity.³⁶⁵

285. Regarding the costs involved with consummating a net zero arrangement, MISO states that from a tariff perspective the existing customer is not subject to any additional upgrade costs. However, MISO states that it would consider an existing generator deciding to fund some of the required connection equipment to facilitate the net zero interconnection as a bilateral agreement between the two interconnection customers. Similarly, any compensation by the new generator to the existing generator would also be agreed to through a bilateral arrangement.

286. In response to a question regarding the studies performed for an existing natural gas peaking plant and the studies performed for a generator seeking Net Zero Interconnection Service, MISO explains that regardless of the fact whether an existing peaker plant was studied under off-peak conditions or not, MISO's Business Practices Manual requires MISO to perform reliability analysis for a new interconnection under summer peak load conditions and shoulder load conditions. Further, MISO states that whether an existing generator was studied "off peak," MISO states that it depends on the rules that were in place at the time the generator was studied and that there will not be a hard and fast rule because some projects were studied under MAPP rules. Finally, MISO explains that it will ensure that a net zero customer only receives Energy Resource

³⁶³ *Id.* at 17-18.

³⁶⁴ *Id.* at 18.

³⁶⁵ *Id.* at 18-19.

Interconnection Service by indicating in its interconnection database the new generator is a net zero generator and therefore only allowed Energy Resource Interconnection Service. Additionally, MISO states that when it is preparing the draft GIA for the customer, the parties to the GIA would select Energy Resource Interconnection Service rather than Network Resource Interconnection Service in section 4.1 of the GIA.³⁶⁶

e. Comments on Supplemental Filing

287. Joint Protestors allege that two recent developments demonstrate that Net Zero Interconnection Service grants privileged access to existing capacity and potentially requires the redispatch of existing customers to address resulting overloads. First, the Joint Protestors allege that a review of the Definitive Planning Phase Cycle1 Re-Restudy by Power System Engineering, Inc. shows that MISO has changed its study assumptions in order to lock-in the perceived net zero rights of incumbent utilities and lay the groundwork for a massive implementation of Net Zero Interconnection Service.³⁶⁷

288. Second, the Joint Protestors allege that MISO is planning to displace existing projects with the Prairie Rose project, which demonstrates that MISO's proposal allows projects that receive Net Zero Interconnection Service to displace other projects. In this regard, they note that the updated quarterly curtailment spreadsheet for the fourth quarter of this year indicates that existing projects are being curtailed to accommodate the interconnection of Prairie Rose.³⁶⁸

289. The Joint Protestors state that while MISO has provided an "Energy Needs" graph showing the projects in the queue and the projected renewable energy needs of its members, MISO should be required to produce an analysis that shows how much wind generation would be eligible for net zero interconnection, as such an analysis would shed some light on the Joint Protestors assertions that net zero will allow the existing incumbent utilities to essentially control access for the foreseeable future. The Joint Protestors note that MISO's "Energy Needs" graph indicates that 5,000 MW of additional wind will be needed to meet RPS standards in 2020 and that the nameplate capacity for gas peaker plants within MISO appears to be 24,646 MW, which would allow for Net Zero projects that are a multiple of that difference. They maintain that these peaking-plants coupled with net zero interconnections would allow incumbent generators to corner the market for decades. The Joint Protestors also argue that there will be little incentive to build transmission in furtherance of the policy of Order No. 1000 because

³⁶⁶ *Id.* at 19-20.

³⁶⁷ Joint Protestors February 21 Protest at 7.

³⁶⁸ *Id.* at 8-11.

Net Zero Interconnection Service could be used to cover all foreseeable renewable energy mandates of the MISO utilities.³⁶⁹

290. With respect to MISO's assertion that it is required to perform reliability analyses under summer peak load conditions and shoulder load conditions for all new generator interconnections, the Joint Protestors argue that net zero projects are not being studied properly. They maintain that MISO's assertion is intended to create the impression that complete studies are being done for net zero interconnection, which is not the case and is demonstrated by the lack of network upgrades necessary to provide service to Prairie Rose and the millions of dollars of upgrades proposed for projects at the same point of interconnection.³⁷⁰

291. The Joint Protestors contend that, at its core, Net Zero Interconnection Service is unfair. In particular, they note that this construct has allowed Prairie Rose's project to cut in front of their projects and, as a result, has rendered their years of effort and investment worthless.³⁷¹ Moreover, the Joint Protestors state that MISO failed to employ an open stakeholder process in developing its net zero proposal and that such notification is the minimum constitutional requirement that would need to be observed.³⁷² For these reasons, the Joint Protestors request that the Commission reject MISO's proposed tariff changes in their entirety or suspend them for the full statutory period and set them for evidentiary hearing.

292. E.ON states that there are three specific problems with MISO's responses regarding Net Zero Interconnection Service. First, E.ON avers that MISO has not explained why the net zero generator must be curtailed to zero (0) MW when the violation of coordinated output limits is due to the actions of the existing generating customer and not the net zero generator. Second, MISO has not explained how long any curtailment will be imposed and the basis for that duration. Finally, MISO must explain the basis for allowing a Transmission Owner to initiate curtailment rather than MISO as the Transmission Provider.³⁷³

³⁶⁹ *Id.* at 11-12.

³⁷⁰ *Id.* at 12.

³⁷¹ *Id.* at 13-14.

³⁷² *Id.* at 18-19.

³⁷³ E.ON February 21 Protest at 7.

f. Commission Determination

293. We accept MISO's proposal to implement Net Zero Interconnection Service on the condition that it modify its proposal as further discussed below.³⁷⁴

294. We agree with MISO and commenters that Net Zero Interconnection Service will promote the more efficient utilization of existing interconnection capacity. In this regard, we find that MISO's proposal is consistent with prior Commission precedent. For instance, the Commission has permitted the voluntary reassignment of all or part of a holder's firm point-to-point capacity rights to any eligible customer because it believed that such reassignment will foster efficient capacity allocation.³⁷⁵ The Commission previously accepted MISO's proposal to permit the provision of conditional Energy Resource Interconnection Service and Network Resource Interconnection Service because the proposal provided benefits by making use of available capacity and promoting the more efficient use of the transmission system.³⁷⁶ We believe that Net Zero Interconnection Service will provide similar benefits by allowing an interconnection customer receiving this service to use interconnection capacity at an existing point of interconnection when that capacity is not being fully utilized by an existing generator. In this regard, we believe that Net Zero Interconnection Service will promote one of the goals of Order No. 2003; it will "increase energy supply and lower wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale electricity market."³⁷⁷

295. We disagree with those protesters that argue that Net Zero Interconnection Service does not make more efficient use of the transmission system. These protestors argue that

³⁷⁴ MISO and several protesters have raised the issue of whether MISO's tariff currently permits the provision of Net Zero Interconnection Service. This issue is addressed in an order that is being issued concurrently with this order. *Shetek Wind Inc., Jeffers South, LLC and Allco Renewable Energy Limited v. The Midwest Independent System Operator, Inc.*, 138 FERC ¶ 61,250 (2012).

³⁷⁵ *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, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,696 (1996).

³⁷⁶ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,306, at PP 3-4 (2006).

³⁷⁷ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 1.

the transmission system is already being fully used and that Net Zero Interconnection Service will increase congestion costs and curtailment. Although we acknowledge that Net Zero Interconnection Service will not obviate the need to further expand the transmission grid, we believe that allowing a new generator to use interconnection capacity when an existing generator is not using that capacity allows for more efficient use of interconnection capacity.

296. Additionally, we disagree with the assertion that we should require an environmental assessment of Net Zero Interconnection Service. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.³⁷⁸ However, as Joint Protestors acknowledge, section 380.4(a)(15) of the Commission's regulations provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classifications, and services.³⁷⁹ Section 380.4 does provide for an exception to this exclusion where circumstances indicate that the proposal may be a major federal action significantly affecting the quality of the human environment, including situations where the environmental effects are uncertain.³⁸⁰ In this case, however, there is no evidence in the record of identifiable environmental harm that would likely result from the implementation of Net Zero Interconnection Service. Accordingly, we will decline to require the preparation of an Environmental Assessment or an Environmental Impact Statement.

297. We also disagree with the argument that Net Zero Interconnection Service violates PURPA. In support of their argument, Joint Protestors cite section 292.306(a) of the Commission's regulations. This section, however, only applies to non-jurisdictional interconnections. The interconnection of a QF is jurisdictional where the QF is permitted to make sales to a third-party purchaser (i.e., a party other than the directly interconnected utility).³⁸¹ Any QFs that were to take service under MISO's Tariff would be transmitting power in interstate commerce and, therefore, this rule is inapplicable here.

³⁷⁸ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

³⁷⁹ 18 C.F.R. § 380.4(a)(15) (2011).

³⁸⁰ 18 C.F.R. § 380.4(b).

³⁸¹ *Western Massachusetts Electric Co.*, 61 FERC ¶ 61,182, at 61,662 (1992), *aff'd sub nom.* 165 F.3d 922, 926 (D.C. Cir. 1999); *see also Midwest Indep. Transmission Sys.*

(continued...)

298. While we recognize the benefits of Net Zero Interconnection Service, we also share some of the concerns raised by the protesters regarding studies for resources during off-peak conditions. For instance, we are concerned that a net zero resource would be able to share interconnection rights with an existing generator that was not evaluated under the conditions that the net zero resource would utilize. This is a concern because resources such as wind typically operate in off-peak hours and if they wish to interconnect using Net Zero Interconnection Service, they could potentially interconnect to a resource such as a peaker unit that may not have had an off-peak study performed for its interconnection capacity. In the Supplemental Filing, MISO states that its Business Practices Manual requires it to perform reliability analysis for a new interconnection under summer peak load conditions and shoulder load conditions.³⁸² Therefore, we require MISO to include in its compliance filing tariff language that details how it will address net zero projects that wish to interconnect to existing generators that were not studied under off-peak conditions.

299. Additionally, we also share concerns with protesters on potential competitive implications of the manner in which MISO proposes to implement this service. In particular, we are concerned that MISO's proposal creates opportunities for undue discrimination and preferential treatment. Under MISO's proposal, prior to submitting a request for Net Zero Interconnection Service to MISO, the interconnection customer must have entered into a memorandum of understanding with the relevant Transmission Owner to enter into a Monitoring and Consent Agreement upon execution of a GIA and, if the interconnection customer seeking Net Zero Interconnection Service is not the owner or a subsidiary of the owner of the existing generating facility at the point of interconnection, enter into an Energy Displacement Agreement with the owner of the existing generator.³⁸³ Thus, in effect, MISO's proposal provide an existing generator and Transmission Owner the ability to grant access to this service to some customers and not to others.

300. MISO argues that an existing generator must have business discretion to choose which interconnection customer to pair with at a shared point of interconnection.³⁸⁴ Regardless of whether an existing generator should be compelled to permit the provision

Operator, Inc., 132 FERC ¶ 61,241 (2010); *see also Florida Power & Light Co.*, 133 FERC ¶ 61,121 (2010).

³⁸² Supplemental Filing at 19.

³⁸³ *See* proposed revised section 3.3.1; *See also* Supplemental Filing at 18-19.

³⁸⁴ MISO December 15 Answer at 13-14.

of Net Zero Interconnection Service at an existing point of interconnection, once an existing generator decides to do so, that service must be provided in a manner that is just and reasonable and not unduly discriminatory or preferential. The manner in which MISO proposes to implement Net Zero Interconnection Service does not meet this standard.

301. Moreover, we are concerned by the lack of transparency in MISO's proposal. As an initial matter, MISO's proposal does not provide a clear and consistent way in which generators seeking Net Zero Interconnection Service may identify opportunities for Net Zero Interconnection Service or how such a generator would be chosen for such service.³⁸⁵ Additionally, MISO proposes to leave many of the rates, terms, and conditions of obtaining Net Zero Interconnection Service to the agreement of the parties and does not propose to require the filing of these agreements with the Commission. For example, MISO takes the view that any compensation that an existing generator receives from the provision of Net Zero Interconnection Service should simply be left to the parties and does not propose to require disclosure of the compensation paid for this service. Further, based on the information provided, it appears that MISO does not expect Energy Displacement Agreements and Monitoring and Consent Agreements to be filed with the Commission. MISO's position, however, overlooks the fact that the Commission has identified interconnection as an element of transmission service and, as a result, rates, terms and conditions of such service must be filed with the Commission under section 205 of the FPA.³⁸⁶

302. Given these concerns, we direct MISO to submit a compliance filing, within 180 days of the date of this order, revising its Tariff to implement additional procedures that ensure that Net Zero Interconnection Service is offered on a fair, transparent, and non-discriminatory basis and that comply with the filing requirements of FPA section 205. We will leave it to MISO to develop an approach that is workable from its perspective and ensures that non-discriminatory open access principles are preserved; however, we expect that the revisions proposed in MISO's compliance filing will be informed by prior Commission efforts to promote open access and eliminate undue discrimination in other contexts. For instance, in the context of interconnection service, the Commission has required Transmission Providers to file *pro forma* interconnection documents. In Order No. 2003, the Commission required the use of *pro forma* documents in order to ensure that interconnection customers receive non-discriminatory service and that all interconnection customers are treated on a fair and consistent basis.³⁸⁷ The Commission

³⁸⁵ Supplemental Filing at 18-19.

³⁸⁶ Order No. 2003, FERC Stats. & Regs. ¶ 31,146; 16 U.S.C. § 824d.

³⁸⁷ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 12.

also rejected arguments by some commenters that there was no need to require independent Transmission Providers to be signatories to the interconnection agreement because the responsibilities of the Transmission Provider can be fully addressed in the tariff and the main purpose of the agreement was to establish a property-based relationship between the interconnection customer and the Transmission Owner. The Commission found that requiring the Transmission Provider to be a party to the interconnection agreement would better define the relationship among the parties, protect the interconnection customer, and facilitate the development of new generation resources.³⁸⁸

303. Additionally, while the Commission has permitted the reassignment of firm point-to-point capacity rights, the Commission has imposed certain posting and reporting requirements in order to increase transparency, to facilitate the monitoring of the secondary market for transmission capacity, and to ensure that rates for reassigned transmission capacity remain just and reasonable and are not unduly discriminatory or preferential. First, the Commission has required that all sales or assignment of capacity be conducted through or otherwise posted on the Transmission Provider's OASIS on or before the date the reassigned service commences. Second, the Commission has required that assignees of transmission capacity execute a service agreement with the Transmission Provider prior to the date on which the reassignment of service commences. Third, the Commission has required Transmission Providers to aggregate and summarize the data contained in these service agreements and report this data in an electric quarterly report.³⁸⁹

304. Similarly, the Commission has imposed requirements to enhance transparency and protect against undue discrimination in the release of firm capacity by shippers on interstate natural gas pipelines. In Order No. 636, the Commission required gas pipelines to unbundle their transportation and storage services from their sales service, so that gas purchasers could obtain high quality firm transportation service whether they purchased from the pipeline or another gas seller. In order to create a transparent program for the reallocation of interstate pipeline capacity, the Commission adopted a comprehensive capacity release program by permitting firm shippers to release their capacity to others when they were not using it. In order to ensure that firm shippers could not reallocate their capacity in a discriminatory manner, the Commission placed several conditions on

³⁸⁸ *Id.* PP 908-909.

³⁸⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at PP 815-818, *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).

the transfer of capacity: (1) the Commission prohibited private transfers between shippers and required that all release transactions be conducted through the pipeline; (2) the Commission imposed a ceiling on the rate the releasing shipper could charge for the released capacity; (3) the Commission required that the capacity offered for release at less than the maximum rate must be posted for bidding and allocated to the entity offering the highest rate; and (4) the Commission prohibited tying the release of capacity to any extraneous conditions so that the releasing shippers could not attempt to add additional terms or conditions to the release of capacity.³⁹⁰

305. In the market-based rate context, the Commission has enacted regulations to protect against concerns regarding the potential for affiliate abuse and has stated that, in cases where affiliates are entering into market-based rate sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.³⁹¹ Under *Edgar*, the Commission has approved affiliate sales resulting from competitive bidding processes after the Commission has determined that, based on the evidence, the proposed sale was not the result of affiliate preference and was instead the result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.

306. In sum, while we find that MISO's proposal to permit the sharing of interconnection capacity will promote the efficient use of the transmission system, we have serious concerns about the manner in which MISO proposes to implement this service and find that MISO's proposal requires modification in order to meet the Commission's standards respecting transparency and to eliminate the potential for undue discrimination. We expect that, on compliance, MISO will propose a MISO-administered

³⁹⁰ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997). The Commission modified these requirements in subsequent orders to accommodate market changes. *See, e.g., Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271, at PP 24-29 (2008), *order on reh'g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

³⁹¹ *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382, at 62,167-69 (1991) (*Edgar*).

process that ensures that Net Zero Interconnection Service is offered in a manner that is consistent with section 205 of the FPA, generators operate in a manner that respects the rights of all market participants, and service is available on a fair, transparent and non-discriminatory basis.

The Commission orders:

(A) MISO's tariff sheets are hereby conditionally accepted, effective January 1, 2012, as discussed in the body of this order.

(B) MISO is hereby directed to make a compliance filing within 30 days of the date of issuance of this order modifying its proposed tariff revisions as discussed in the body of order, other than the section discussing Net Zero Interconnection Service.

(C) MISO is hereby directed to make a compliance filing within 180 days of the date of issuance of this order modifying its proposed tariff revisions as discussed in the body of the section of this order addressing Net Zero Interconnection Service.

(D) MISO is directed to file in April 2013, April 2014, and April 2015, informational reports detailing the effectiveness of the reforms approved in this order and on compliance.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

The listed parties have filed motions to intervene in Docket No. ER12-309-000. A short-name reference to a party, shown in parentheses after the full name, indicates that the party also filed comments or a protest or is otherwise mentioned in the order.

Akuo Energy USA Inc. (Akuo)
Alliant Energy Corporate Services, Inc. (Alliant)
American Municipal Power, Inc. (AMP)
American Wind Energy Association and Wind on the Wires (AWEA and WOW)

Calpine Corporation (Calpine)
Clipper Windpower Development Co., LLC (Clipper)
Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.
Consumers Energy Company
CPV Renewable Energy Company, LLC

Detroit Edison Company (Detroit Edison)
Duke Energy Corporation

EcoEnergy LLC (EcoEnergy)
Edison Mission Energy (Edison)
EDP Renewables North America LLC (EDP)
Electric Power Supply Association (EPSA)
Element Power US, LLC (Element)
E.ON Climate & Renewables North America LLC (E.ON)
Exelon Corporation

Flat Hill Windpark I, LLC (Flat Hill)

Gamesa Energy USA, LLC
Geronimo Wind Energy (Geronimo)

Iberdrola Renewables, Inc. (Iberdrola)
Integrus Energy Group, Inc.
Invenergy Wind Development LLC and Invenergy Thermal Development, LLC
(Invenergy Companies)

Juhl Wind, Inc. (Juhl)

LS Power GenCo, LLC

Midwest Developers ¹
Midwest TDUs ²
MISO Transmission Owners ³

National Renewable Solutions, LLC (National Renewable Solutions)
NextEra Energy Resources, LLC (NextEra)

PNE WIND USA, Inc.
Prairie Rose Wind, LLC (Prairie Rose)
Project Resources Corporation
Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy
Resources & Trade LLC

Renewable Energy Systems Americas, Inc.

¹ The Midwest Developers are the Invenegy Companies, Clipper, Edison, E.ON, PNE Wind USA, Inc., St. Joseph Energy Center, LLC, and Element. It should be noted, however, that E.ON was not a party to the answer.

² Midwest TDUs consists of Madison Gas and Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy System, and WPPI Energy.

³ The MISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company, 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; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Shetek Wind, Inc., Jeffers South LLC, and Allco Renewable Energy Limited (Joint Protestors)

St. Joseph Energy Center, LLC

Wisconsin Electric Power Company
Wisconsin Public Service Corporation

Xcel Energy Services, Inc. (Xcel)